

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Saluda County

Honorable Kristi F. Curtis, Circuit Court Judge

KYLE WAYNE WAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000547

APPENDIX

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

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

ZACHARY W. JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit
100 East Church Street
Saluda, SC 29138
(803) 785-8352

ATTORNEYS FOR RESPONDENT

VOLUME I OF II
PAGES 1-500

RECEIVED

Oct 30 2024

S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED NOVEMBER 18-19, 2019	1
TRIAL TRANSCRIPT DATED NOVEMBER 20, 2019	298
TRIAL TRANSCRIPT DATED NOVEMBER 21, 2019	521
APPLICATION FOR POST-CONVICTION RELIEF	572
RETURN, PARTIAL MOTION TO DISMISS, AND MOTION FOR A MORE DEFINITE STATEMENT	579
AMENDED APPLICATION FOR PCR DATED OCTOBER 4, 2022	587
AMENDED APPLICATION FOR PCR DATED MARCH 22, 2023	589
PCR HEARING TRANSCRIPT DATED APRIL 4, 2023	591
ORDER OF DISMISSAL	627
INDICTMENTS	643
SENTENCE SHEET	645

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

COURT OF GENERAL SESSIONS

STATE	)	
	)	
	)	TRANSCRIPT OF RECORD
V.	)	2017-GS-41-01175
	)	
KYLE WAYNE WAY	)	
	)	
<u>DEFENDANT.</u>	)	

NOVEMBER 18 - 19, 2019
SALUDA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WALTON J. MCLEOD, IV, JUDGE; AND
A JURY.

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

ROBBIE MCNAIR, ASSISTANT SOLICITOR
MELANIE DARKO, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

ANDREW BISHOP, ESQUIRE
ATTORNEY FOR THE DEFENDANT

BETHANIE K. CREPPON
CIRCUIT COURT REPORTER

	I N D E X	
1	<u>WITNESS</u>	<u>PAGE</u>
2		
3	<u>JOSHUA PRICE</u>	36
4	IN-CAMERA EXAMINATION	36
5	BY MR. MCNAIR	
6	CROSS-EXAMINATION	45
7	BY MR. BISHOP	
8	MINOR 1	64
9	DIRECT EXAMINATION	64
10	BY MS. DARKO	
11	CONTINUED DIRECT EXAMINATION	127
12	BY MS. DARKO	
13	CROSS-EXAMINATION	141
14	BY MR. BISHOP	
15	REDIRECT EXAMINATION	163
16	BY MS. DARKO	
17	RECROSS-EXAMINATION	169
18	BY MR. BISHOP	
19	<u>DONNA ROGERS WAY</u>	175
20	DIRECT EXAMINATION	176
21	BY MS. DARKO	
22	CROSS-EXAMINATION	203
23	BY MR. BISHOP	
24	REDIRECT EXAMINATION	218
25	BY MS. DARKO	

1	<u>LAURA WAY</u>	221
2	DIRECT EXAMINATION	221
3	BY MR. MCNAIR	
4	CROSS-EXAMINATION	235
5	BY MR. BISHOP	
6	REDIRECT EXAMINATION	237
7	BY MR. MCNAIR	
8	<u>DANA BERRY</u>	239
9	DIRECT EXAMINATION	239
10	BY MR. MCNAIR	
11	CROSS-EXAMINATION	251
12	BY MR. BISHOP	
13	REDIRECT EXAMINATION	254
14	BY MR. MCNAIR	
15	RECROSS-EXAMINATION	256
16	BY MR. BISHOP	
17	<u>DAVID ROGERS</u>	257
18	DIRECT EXAMINATION	258
19	BY MR. MCNAIR	
20	CROSS-EXAMINATION	271
21	BY MR. BISHOP	
22	<u>ANGELA ROGERS</u>	273
23	DIRECT EXAMINATION	274
24	BY MR. MCNAIR	
25	CROSS-EXAMINATION	290

1 BY MR. BISHOP

2 REDIRECT EXAMINATION

293

3 BY MR. MCNAIR

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	<u>STATE'S</u>			
4	1	NO EXHIBIT		
5	2	NO EXHIBIT		
6	3	NO EXHIBIT		
7	4	Motorola Phone		76
8	5	NO EXHIBIT		
9	6	NO EXHIBIT		
10	7	NO EXHIBIT		
11	8	NO EXHIBIT		
12	9	NO EXHIBIT		
13	10	NO EXHIBIT		
14	11	NO EXHIBIT		
15	12	NO EXHIBIT		
16	13	NO EXHIBIT		
17	14	House Layout		106
18	15	NO EXHIBIT		
19	16	NO EXHIBIT		
20	17	NO EXHIBIT		
21	18	Photo		118
22	19	LG Phone		119
23	20	Text Messages - LG		126
24	21	Text Photo		123
25	22	NO EXHIBIT		

1	23	NO EXHIBIT	
2	24	NO EXHIBIT	
3	25	NO EXHIBIT	
4	26	Photo	183
5	27	Photo	184
6	28	Aerial Photo	196
7	29	Photo	185
8	30	Text Message	233
9	<u>DEFENDANT'S</u>		
10	1	Text Messages	154
11	<u>COURT'S</u>		
12	1	Written Statement	38
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2 * * *

3 THE COURT: All right. Mr. Solicitor, please
4 call the case.

5 MR. MCNAIR: Thank you, Your Honor. May it
6 please the Court?

7 THE COURT: Yes, sir.

8 MR. MCNAIR: State calls the case of State vs.
9 Kyle Way, Indictment No. 2017-GS-41-01175A, indicted
10 for criminal sexual conduct with a minor in the
11 second degree; also Indictment 2019-GS-41-00344,
12 indicted for criminal sexual conduct with a minor in
13 the third degree.

14 The defendant is present in the courtroom and
15 the State is ready for trial, Your Honor.

16 THE COURT: All right. Ladies and gentlemen,
17 as you just heard, the indictment charges the
18 defendant in this case with criminal sexual conduct
19 with a minor in the second degree and criminal
20 sexual conduct with a minor in the third degree.

21 I remind you that the fact that the defendant
22 was arrested, charged, and indicted in this case is
23 not evidence in this case and cannot be considered
24 by you as evidence of guilt in this case, nor does
25 it create presumption or inference of guilt. The

1 document that was just published is simply the
2 formal written instrument which contains the charges
3 made against the defendant. It's the formal
4 document in which this case is brought here to
5 court.

6 The defendant has pled not guilty to this
7 indictment, and that plea puts the burden on the
8 State to prove the defendant guilty. A person
9 charged with committing a criminal offense in South
10 Carolina is never required to prove himself
11 innocent.

12 No matter what the seriousness of the charge
13 may be, the defendant will always be presumed to be
14 innocent of the crime for which the indictment is
15 issued, unless guilt has been proven by evidence
16 satisfying you of that guilt beyond a reasonable
17 doubt.

18 I have several questions I want to ask you.
19 But, before I do that, I want to allow the attorneys
20 to stand up and introduce themselves to you and
21 their client at this time.

22 MR. MCNAIR: Good morning, ladies and
23 gentlemen. I'm Robbie McNair. I'm a prosecutor in
24 the Eleventh Circuit; that's Lexington, Saluda,
25 Edgefield, and McCormick. With me this week is

1 prosecutor Melanie Darko, our investigator Jesse
2 Smith, and this is Captain Josh Price with the
3 Sheriff's Department.

4 MR. BISHOP: Good morning. My name is John
5 Andrew Bishop. I practice law in Abbeville with my
6 father Durham Bishop, and I'm representing Kyle Way
7 in this case.

8 THE COURT: Mr. Bishop, that's The Bishop Law
9 Firm, correct?

10 MR. BISHOP: That's correct.

11 THE COURT: Ladies and gentlemen, is there any
12 member of the jury panel who is related by blood or
13 marriage or have a business or social relationship
14 with the defendant in this case? If so, please
15 stand. Okay.

16 Is there any member of the jury panel that has
17 been previously represented by or have any business,
18 personal or friendship, with either Mr. Bishop and
19 The Bishop Law Firm or any member of the Eleventh
20 Circuit Solicitor's Office? All right.

21 Does anyone know the defendant or any of the
22 defendant's relatives?

23 I previously asked if anyone had been
24 represented by The Bishop Law Firm. Does anyone
25 have any relatives or friends who have been

1 represented by The Bishop Law Firm?

2 Is there anyone on the jury panel that has
3 previously been a witness in a criminal case?

4 Yes, sir. Your juror number?

5 PROSPECTIVE JUROR: 54, sir.

6 THE COURT: And when you were a witness in a
7 criminal case, were you a witness for the defendant
8 or the State?

9 PROSPECTIVE JUROR: Prosecution.

10 THE COURT: Okay. And your juror number again?

11 PROSPECTIVE JUROR: 54, sir.

12 THE COURT: And the fact that you've been a
13 witness in a previous criminal case, would that
14 affect your ability to be fair and impartial in
15 hearing the evidence in this case?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: All right. Have you or any of your
18 family members ever been investigated for or charged
19 with an offense involving child abuse or sexual
20 assault?

21 Has anyone had any kind of experience with any
22 law enforcement agency that might affect your
23 ability to be fair and impartial in this matter?

24 Okay. Your juror number, ma'am?

25 PROSPECTIVE JUROR: 91.

1 THE COURT: Okay. And you had a previous
2 experience with a law enforcement agency?

3 PROSPECTIVE JUROR: Yes, sir, Saluda County
4 Detention Center.

5 THE COURT: All right. Why don't I allow you
6 to come up shortly and let you tell me the
7 circumstances directly?

8 PROSPECTIVE JUROR: Okay.

9 THE COURT: Someone else stood up. Who was
10 that?

11 PROSPECTIVE JUROR: I misunderstood the
12 question.

13 THE COURT: Okay. So you haven't had any
14 experience with any law enforcement agency?

15 PROSPECTIVE JUROR: No.

16 THE COURT: All right. Thank you.

17 PROSPECTIVE JUROR: Your Honor, is that any law
18 enforcement agency or that would affect...

19 THE COURT: Well, that would affect your
20 ability to be fair and impartial. Thank you for the
21 clarification.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: Does any member of the jury have
24 any religious or moral beliefs that would prevent
25 them from passing judgment as a member of the jury?

1 Has any member of the jury panel heard about
2 the facts of this case or formed any opinion
3 whatsoever about the case before us today?

4 Is any member of the jury panel a close family
5 member of a current or former civilian or military
6 law enforcement officer? Has anyone previously
7 served in law enforcement?

8 Yes, sir. You're Juror No. 54?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: And, again, would that affect your
11 ability to be fair and impartial?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: All right.

14 Has any member of the jury panel, a close
15 family member, relative, or friend been a victim of
16 a crime involving child abuse, criminal sexual
17 conduct, or rape?

18 Your juror number, ma'am?

19 PROSPECTIVE JUROR: Juror 143.

20 THE COURT: Okay.

21 And, ma'am, your juror number?

22 PROSPECTIVE JUROR: 74.

23 THE COURT: Thank you. I'll bring you up at
24 the end.

25 Does any member of the jury panel believe that

1 simply because a person is charged with a crime that
2 he or she is guilty of the same? Okay.

3 Now, the following is a possible list of
4 witnesses in this case: Captain Josh Price with the
5 Saluda County Sheriff's Department; Kenneth Clark,
6 formerly of the Saluda County Sheriff's Department;
7 John Coon of the Saluda County Sheriff's Department;
8 Gary Hitt of the Saluda County Sheriff's Department;
9 Toby Horne, again, with the Saluda County Sheriff's
10 Department.

11 MINOR 1 ; Laura Way; MINOR2 Kerry Way;
12 Donna Way; Julia Rogers; Angela Rogers; David
13 Rogers; Dana Berry; James Berry; Tanner ;
14 Kimberly Sawyer.

15 Dr. Kate Chappell; Jeremy Hembry of Aiken
16 Public Safety; Madison R ; Meagan Smith; Princess
17 M ; Myron Presley Jones; Jessica Zubilliga; Kyle
18 Wayne Way.

19 Does anyone on the jury have any personal,
20 friendship, business relationship, or is related by
21 blood or marriage to any of these witnesses I've
22 just called out? If so, please stand.

23 Yes, ma'am. Your juror number?

24 PROSPECTIVE JUROR: 116.

25 THE COURT: And who do you know? Who was the

1 witness you were --

2 PROSPECTIVE JUROR: MINOR2 and Laura Way
3 and Meagan Way.

4 THE COURT: You're friends with them?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Okay. The fact that you have a
7 friendship with them, do you think that would affect
8 your ability to be fair and impartial in this case?

9 PROSPECTIVE JUROR: Maybe.

10 THE COURT: Okay. Thank you.

11 Yes, ma'am?

12 PROSPECTIVE JUROR: Number 76. I'm a friend
13 with Kenneth Clark.

14 THE COURT: Ma'am, what was that name again?

15 PROSPECTIVE JUROR: My name?

16 THE COURT: No. Who is the witness you know?

17 PROSPECTIVE JUROR: Didn't you say Kenneth
18 Clark?

19 THE COURT: I did. So you know Mr. Clark.
20 Would that affect your ability to be fair and
21 impartial in this case, knowing him?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Yes, sir, in the back?

24 PROSPECTIVE JUROR: I'm related by Toby Horne.

25 THE COURT: You're related to Mr. Horne; is

1 that correct?

2 PROSPECTIVE JUROR: That's right.

3 THE COURT: The fact that you are related to
4 Mr. Horne, do you think that would affect your
5 ability to be fair and impartial in this case, being
6 that he is a witness?

7 PROSPECTIVE JUROR: Not at all.

8 THE COURT: And you're juror number what?

9 PROSPECTIVE JUROR: 87.

10 THE COURT: Yes, ma'am?

11 PROSPECTIVE JUROR: I'm number 88. I taught
12 the Way children several years ago. And I
13 previously worked with Angela Rogers.

14 THE COURT: The fact that you taught some of
15 the witnesses in this case in school, would that
16 affect your ability to be fair and impartial?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: And you're number 88?

19 PROSPECTIVE JUROR: Yes, sir.

20 MR. MCNAIR: Will you inquire as to what grades
21 she taught them?

22 THE COURT: Yes, sir.

23 PROSPECTIVE JUROR: I was the music teacher, so
24 I had Laura, MINOR2.

25 THE COURT: Which school was this?

1 PROSPECTIVE JUROR: Ridge Spring-Monetta.

2 THE COURT: High school?

3 PROSPECTIVE JUROR: Elementary, middle, and
4 high school.

5 THE COURT: All right. So that was at Ridge
6 Spring-Monetta that you taught the Way children.

7 Did you work with Ms. Rogers? Was she a
8 teacher?

9 PROSPECTIVE JUROR: She's a secretary at the
10 high school.

11 THE COURT: And your relationship with them, do
12 you think that would impact your ability to be fair
13 and impartial hearing evidence in this case?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: All right. Thank you.

16 Anyone else on the witness list?

17 All right. If I can have Juror 143 and 74 come
18 forward, as well as 91.

19 Yes, ma'am?

20 THE BAILIFF: Number 143.

21 THE COURT: Yes, ma'am?

22 PROSPECTIVE JUROR: I have a great-niece that
23 was sexually abused and --

24 THE COURT: I'm sorry. Come a little closer,
25 please. She needs to be able to hear you. So

1 you're Juror 143?

2 PROSPECTIVE JUROR: Yes. I have a great-niece
3 that was sexually abused as a minor. And the guy
4 was put in jail for 40 years. He was tried here
5 about two years ago.

6 THE COURT: Obviously, this may be a situation
7 where --

8 PROSPECTIVE JUROR: I understand.

9 THE COURT: -- the subject matter may be --

10 PROSPECTIVE JUROR: I really don't want to do
11 it.

12 THE COURT: All right. We'll excuse you.

13 PROSPECTIVE JUROR: Thank you.

14 THE COURT: Juror 143 will be excused -- or
15 struck.

16 THE BAILIFF: Juror 74.

17 THE COURT: Yes, ma'am?

18 PROSPECTIVE JUROR: You asked had we ever had a
19 relationship or been a victim of.

20 THE COURT: Uh-huh.

21 PROSPECTIVE JUROR: I, myself, and three of my
22 siblings were victims.

23 THE COURT: All right. You're not going to
24 have to serve on this jury.

25 PROSPECTIVE JUROR: Thank you very much.

1 THE COURT: Juror 74 will be struck.

2 THE BAILIFF: Number 91.

3 THE COURT: Yes, ma'am?

4 PROSPECTIVE JUROR: Your Honor, I believe that
5 I can be fair and impartial. I just want to make
6 sure you-all know that I worked law enforcement --

7 THE COURT: You work for law enforcement?

8 PROSPECTIVE JUROR: I worked at the detention
9 center from, I think, 2000 -- my last time working
10 was 2003.

11 THE COURT: Okay. So you didn't have a -- your
12 experience was work experience. You didn't have
13 a --

14 PROSPECTIVE JUROR: No. I don't go out in the
15 field or anything.

16 THE COURT: Okay. So you're just letting us
17 know you worked for the Saluda County Detention
18 Center --

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: -- at some period of time?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: And the fact that you worked for
23 the Saluda County Detention Center, do you think
24 that would affect your ability to be fair and
25 impartial hearing the evidence of this case?

1 PROSPECTIVE JUROR: No. I'm sure I can do it.

2 THE COURT: Okay. Thank you, ma'am.

3 That will be all. Thank you.

4 The only other one, 116, she knows MINOR2
5 and Kara Way. She wavered, so I'm going to strike
6 her.

7 MR. MCNAIR: I agree.

8 MR. BISHOP: The teacher?

9 MR. MCNAIR: No; that's the friend.

10 THE COURT: So 116 will be struck; 91, I mean,
11 she just didn't know what the question was. I read
12 it like if you had a bad experience with --

13 MR. BISHOP: Uh-huh. That's the way I
14 interpreted as well.

15 THE COURT: Is there another one that -- 54
16 used to work for law enforcement, but he said he was
17 fine. There were a couple jurors that knew some of
18 the witnesses. One guy is related to Mr. Horne.
19 But, I mean, he's just related to him. As a
20 witness, I --

21 MR. MCNAIR: I will tell you that the teacher
22 that taught all of them, this happened during the
23 years that our victim was in middle school. So we
24 may need to just let her go, just to prevent --

25 THE COURT: Yeah. That was --

1 MR. MCNAIR: Just to be safe.

2 THE COURT: What number was that?

3 MR. MCNAIR: That was 88, I believe.

4 THE COURT: All right. So we'll strike 88 as
5 well. And the rest is up to y'all.

6 MR. MCNAIR: All right.

7 THE COURT: Okay. Ladies and gentlemen, right
8 now, we're compiling a list of potential jurors in
9 this case. This will take a few minutes to get
10 together. Just remain seated and keep the noise
11 down. We would appreciate it.

12 And, counsel, I just note, no other voir dire
13 from anyone, correct?

14 MR. BISHOP: Yes, sir.

15 THE COURT: All right.

16 (Brief pause in the proceedings.)

17 THE COURT: All right. Counsel, are we ready
18 to proceed?

19 MR. MCNAIR: Yes, Your Honor.

20 MR. BISHOP: Yes, Your Honor.

21 THE COURT: All right. Madam Clerk? And the
22 strikes will be five and ten.

23 THE CLERK: Okay. So I'm going to be calling
24 y'all one at a time. When you come up, just stand
25 right in front of me, have your back to me, and then

1 we'll go through that. For all the women, if you
2 have anything with you, your coats or your purses,
3 bring it with you, because your next stop might be
4 right over here. Okay?

5 With that, Juror No. 144, William A. Robertson.

6 (Mr. Robertson comes forward.)

7 THE CLERK: What say you for the State?

8 MR. MCNAIR: Please present this juror.

9 THE CLERK: What say you for the Defense?

10 MR. BISHOP: Please seat this juror.

11 THE CLERK: Please take a seat in the jury box,
12 sir.

13 THE COURT: Ladies and gentlemen, all you got
14 to do is come up and just stand there. You don't
15 need to say anything.

16 THE CLERK: I should have explained that too.
17 I'm sorry.

18 Juror 161, Georgia M. Simpkins.

19 (Ms. Simpkins comes forward.)

20 THE CLERK: What say you for the State?

21 MR. MCNAIR: Please present this juror.

22 THE CLERK: What say you for the Defense?

23 MR. BISHOP: Please excuse this juror.

24 THE CLERK: Thank you.

25 Juror No. 48, Mauree Davis.

1 (Mr. Davis comes forward.)

2 MR. BISHOP: Wesley Davis?

3 THE CLERK: Mauree Davis, Juror No. 48.

4 What say you for the State?

5 MR. MCNAIR: Please present this juror.

6 THE CLERK: What say you for the Defense?

7 MR. BISHOP: Please seat this juror.

8 THE CLERK: Have a seat in the jury box, sir.

9 Now Wesley A. Davis.

10 (Mr. Davis comes forward.)

11 THE CLERK: What say you for the State?

12 MR. MCNAIR: Please present this juror.

13 THE CLERK: What say you for the Defense?

14 MR. BISHOP: Please excuse this juror.

15 THE CLERK: Take your seat back in the

16 audience.

17 Juror No. 36, Kayla L. Cleveland.

18 (Ms. Cleveland comes forward.)

19 THE CLERK: What say you for the State?

20 MR. MCNAIR: Please excuse this juror.

21 THE CLERK: You may take your seat back out in

22 the audience. Thank you.

23 Juror No. 154, Phillip W. Rude.

24 (Mr. Rude comes forward.)

25 THE CLERK: What say you for the State?

1 MR. MCNAIR: Please excuse this juror.

2 THE CLERK: Return to your seat.

3 Juror No. 3, Kayla M. Alewine.

4 (Ms. Alewine comes forward.)

5 THE CLERK: What say you for the State?

6 MR. MCNAIR: Please present this juror.

7 THE CLERK: What say you for the Defense?

8 MR. BISHOP: Please excuse this juror.

9 THE CLERK: Return to your seat.

10 Juror No. 40, Katelyn P. Corley.

11 (Ms. Corley comes forward.)

12 THE CLERK: What say you for the State?

13 MR. MCNAIR: Please present this juror.

14 THE CLERK: What say you for the Defense?

15 MR. BISHOP: Please seat this juror.

16 THE CLERK: Take a seat in the jury box.

17 Juror 91, Valerie D. Jenkins.

18 (Ms. Jenkins comes forward.)

19 THE CLERK: What say you for the State?

20 MR. MCNAIR: Please excuse this juror.

21 THE CLERK: You may return to your seat.

22 Juror No. 63, Thomas H. Ferguson.

23 (Mr. Ferguson comes forward.)

24 THE CLERK: What say you for the State?

25 MR. MCNAIR: Please excuse this juror.

1 THE CLERK: Return to your seat.
2 Juror No. 55, Ben E. Duffie.
3 (Mr. Duffie comes forward.)
4 THE CLERK: What say you for the State?
5 MR. MCNAIR: Please present this juror.
6 THE CLERK: What say you for the Defense?
7 MR. BISHOP: Please seat this juror.
8 THE CLERK: Have a seat in the jury box, sir.
9 Kristan D. Wood, Juror No. 197.
10 (Ms. Wood comes forward.)
11 THE CLERK: What say you for the State?
12 MR. MCNAIR: Please present this juror.
13 THE CLERK: What say you for the Defense?
14 MR. BISHOP: Please excuse this juror.
15 THE CLERK: Return to your seat.
16 Juror No. 110, Luvenna H. Mathis.
17 (Ms. Mathis comes forward.)
18 THE CLERK: What say you for the State?
19 MR. MCNAIR: Please present this juror.
20 THE CLERK: What say you for the Defense?
21 MR. BISHOP: Please excuse this juror.
22 THE CLERK: Return to your seat.
23 Juror No. 12, Michael K. Barton.
24 (Mr. Barton comes forward.)
25 THE CLERK: What say you for the State?

1 MR. MCNAIR: Please present this juror.

2 THE CLERK: What say you for the Defense?

3 MR. BISHOP: Please seat this juror.

4 THE CLERK: Please have a seat in the jury box.

5 Juror 131, Ricky D. Pound.

6 (Mr. Pound comes forward.)

7 THE CLERK: What say you for the State?

8 MR. MCNAIR: Please present this juror.

9 THE CLERK: What say you for the Defense?

10 MR. BISHOP: Please excuse this juror.

11 THE CLERK: You may return to your seat.

12 Juror 89, Ricky Jackson.

13 (Mr. Jackson comes forward.)

14 THE CLERK: What say you for the State?

15 MR. MCNAIR: Please present this juror.

16 THE CLERK: What say you for the Defense?

17 MR. BISHOP: Please excuse this juror.

18 THE CLERK: You may return to your seat.

19 Juror No. 174, Johnnie L. Stone.

20 (Mr. Stone comes forward.)

21 THE CLERK: What say you for the State?

22 MR. MCNAIR: Please excuse this juror.

23 THE CLERK: You may return to your seat.

24 Juror No. 100, Brenda G. Lawson.

25 (Ms. Lawson comes forward.)

1 THE CLERK: What say you for the State?

2 MR. MCNAIR: Please present this juror.

3 THE CLERK: What say you for the Defense?

4 MR. BISHOP: Please seat this juror.

5 THE CLERK: Have a seat in the jury box.

6 Juror 111, Willie L. McField.

7 (Mr. McField comes forward.)

8 THE CLERK: What say you for the State?

9 MR. MCNAIR: Please present this juror.

10 THE CLERK: What say you for the Defense?

11 MR. BISHOP: Please seat this juror.

12 THE CLERK: Please have a seat in the jury box.

13 Juror 148, Jason L. Rodgers.

14 (Mr. Rodgers comes forward.)

15 THE CLERK: What say you for the State?

16 MR. MCNAIR: Please present this juror.

17 THE CLERK: What say you for the Defense?

18 MR. BISHOP: Please excuse this juror.

19 THE CLERK: Juror 185, Lucas A. Walker.

20 (Mr. Walker comes forward.)

21 THE CLERK: What say you for the State?

22 MR. MCNAIR: Please present this juror.

23 THE COURT: What say you for the Defense?

24 MR. BISHOP: Please seat this juror.

25 THE CLERK: Juror 135, Jacob M. Rawl.

1 (Mr. Rawl comes forward.)

2 THE CLERK: What say you for the State?

3 MR. MCNAIR: Please present this juror.

4 THE CLERK: What say you for the Defense?

5 MR. BISHOP: Please seat this juror.

6 THE CLERK: Have a seat in the jury box.

7 Juror No. 175, Derrick P. Stoudemire.

8 (Mr. Stoudemire comes forward.)

9 THE CLERK: What say you for the State?

10 MR. MCNAIR: Please present this juror.

11 THE COURT: What say you for the Defense?

12 MR. BISHOP: Please seat this juror.

13 THE CLERK: Have a seat in the jury box.

14 Juror 132, Al J. Praylow.

15 (Mr. Praylow comes forward.)

16 THE CLERK: What say you for the State?

17 MR. MCNAIR: Please present this juror.

18 THE CLERK: What say you for the Defense?

19 MR. BISHOP: Please excuse this juror.

20 THE CLERK: You may return to your seat.

21 Juror 101, Lisa J. Lewis.

22 (Ms. Lewis comes forward.)

23 THE CLERK: What say you for the State?

24 MR. MCNAIR: Please present this juror.

25 THE CLERK: What say you for the Defense?

1 MR. BISHOP: Please excuse this juror.

2 THE CLERK: Juror 162, Toni Sisco.

3 (Ms. Sisco comes forward.)

4 THE CLERK: What say you for the State?

5 MR. MCNAIR: Please present this juror.

6 THE CLERK: What say you for the Defense?

7 MR. BISHOP: Please seat this juror.

8 THE CLERK: You may have a seat in the jury
9 box.

10 Juror 113, Melissa A. McCay.

11 (Ms. McCay comes forward.)

12 THE CLERK: What say you for the State?

13 MR. MCNAIR: Please present this juror.

14 THE CLERK: What say you for the Defense?

15 MR. BISHOP: Please seat this juror.

16 THE CLERK: You may have a seat in the jury
17 box.

18 Juror No. 76, Hilda S. Haltiwanger.

19 THE COURT: Okay. So one and one on the
20 alternates, correct? We're at the alternates now.

21 MR. MCNAIR: Yes, sir. One and two.

22 THE COURT: One and two. Excuse me. Thank
23 you.

24 THE CLERK: What say you for the State?

25 MR. MCNAIR: Please present this juror.

1 THE CLERK: What say you for the Defense?

2 MR. BISHOP: Please excuse this juror.

3 THE CLERK: You may return to your seat.

4 Juror 8, Mikell W. Autrey.

5 (Mr. Autrey comes forward.)

6 THE CLERK: What say you for the State?

7 MR. MCNAIR: Please present this juror.

8 THE CLERK: What say you for the Defense?

9 MR. BISHOP: Please seat this juror.

10 THE CLERK: Take a seat in the jury box.

11 Juror 151, Victor L. Rogers.

12 (Mr. Rogers comes forward.)

13 THE CLERK: What say you for the State?

14 MR. MCNAIR: Please present this juror.

15 THE CLERK: What say you for the Defense?

16 MR. BISHOP: Please seat this juror.

17 THE CLERK: Please have a seat in the jury box.

18 THE COURT: All right. Counsel, anything from

19 jury selection we need to discuss?

20 MR. MCNAIR: No, Your Honor.

21 MR. BISHOP: Nothing from the Defense.

22 THE COURT: All right. Ladies and gentlemen,

23 thank you again for serving in jury duty this week.

24 At this moment, I'm going to actually have you go in

25 the jury room for a moment so I can discuss some

1 matters with the attorneys.

2 Please don't discuss the case in any way,
3 shape, or form while you're in this courthouse or
4 even after you leave the courthouse. Please don't
5 do any independent research of the people involved
6 or the case itself or the law. I want to make sure
7 everybody understands that.

8 When you go back in the jury room now, I'd like
9 you to sit around and discuss -- I want you to pick
10 a foreperson who is going to be the foreperson for
11 this jury, and I'll get you back out here in a few
12 minutes. Okay? Thank you. Please don't discuss
13 the case.

14 (The jury exits the courtroom at 11:46 AM.)

15 THE COURT: Mr. Solicitor, are there any other
16 jury trials this week?

17 MR. MCNAIR: This is the only one, Your Honor.

18 THE COURT: Okay.

19 All right. Ladies and gentlemen, we've picked
20 a jury for our jury trial this week. That's the
21 only jury trial scheduled for this week. So, while
22 I know you're disappointed, it doesn't appear we
23 need you to stay any longer. You're welcome to
24 stay, but you're free to go.

25 We appreciate you being on time this morning,

1 and we appreciate your patience during the jury
2 qualification and selection process. If anyone
3 needs a work excuse, the bailiffs have that
4 paperwork for you at this time and they can complete
5 that for you. Anything else? Thank you-all for
6 being here. You're free to go.

7 (Balance of the jury pool excused at 11:47 AM.)

8 THE COURT: Okay. So they'll pick a
9 foreperson. Sounds to me like we can just do
10 pretrial this afternoon and any other stuff we have
11 on the calendar. And then we can start tomorrow
12 morning, first thing.

13 So, for Saluda County, is there any reason
14 people can't be here and ready to start by 9:30 and
15 have the jury in there at 9:15?

16 MR. MCNAIR: That works for us, Your Honor.

17 THE COURT: Mr. Bishop?

18 MR. BISHOP: That's plenty of time.

19 THE COURT: All right. Then we'll -- as soon
20 as I know they've picked a foreperson, we'll bring
21 them back in, let them go for the day, and ask them
22 to start at 9:30 in the morning.

23 MR. MCNAIR: Okay.

24 THE COURT: Anything we need to discuss before
25 we do that?

1 MR. MCNAIR: No, sir, Your Honor.

2 THE COURT: Do they have a foreperson picked
3 yet?

4 THE BAILIFF: They're discussing it, Judge.

5 THE COURT: Okay.

6 (Brief pause in the proceedings
7 11:50 AM - 11:54 AM.)

8 THE COURT: Juror No. 135, Jacob Rawl, will be
9 foreperson.

10 MR. MCNAIR: Yes, sir.

11 THE COURT: All right. Anything else before I
12 bring them out?

13 MR. MCNAIR: No, sir, Your Honor.

14 MR. BISHOP: No, sir.

15 THE COURT: All right. Let's bring the jury
16 back out real quick.

17 (The jury enters the courtroom at 11:54 AM.)

18 THE COURT: Okay. Mr. Rawl, I understand
19 you've been selected as the foreman for the jury.
20 Thank you for agreeing to do that.

21 THE FOREPERSON: Yes, sir.

22 THE COURT: I'll have more detailed
23 instructions for you tomorrow morning.

24 During this trial, what I will tell you now, is
25 all the evidence in this case will be coming from

1 this witness stand. That's all you need to concern
2 yourselves with. I have some matters to take up
3 with the attorneys this afternoon that don't require
4 your presence. So we're going to start first thing
5 in the morning with you with opening statements
6 tomorrow.

7 After you leave here today and while you're
8 still in this courthouse, please don't discuss this
9 case with anyone, including your fellow jurors.
10 When you leave the courthouse today and you go home,
11 please don't discuss this case with your family
12 members; please don't do any research of the law or
13 any of the parties involved in the law; please don't
14 do any research into what you think may have
15 happened in this case because, right now, you don't
16 know. The only way you're going to find out is from
17 this witness stand and nowhere else.

18 So it's vitally important that the information
19 you get on this case comes from this courtroom and
20 not from any other source. Does everyone understand
21 that?

22 THE JURY (collectively): Yes.

23 THE COURT: When we get started, usually we'll
24 go about 90 minutes to two hours in between breaks.
25 Now, things may come up and we may take breaks in

1 between. But, generally, we go 90 minutes to about
2 two hours of testimony. If, for any reason, during
3 the trial, that any one of you needs a break, if I
4 don't make eye contact with you, wave at one of the
5 bailiffs, and we'll take a break any time you need
6 it. Sometimes you just need to take a break, and
7 that's okay. We'll certainly accommodate that, but
8 I need to know.

9 So, tomorrow morning, what I'll do is I'll ask
10 you to be in your jury room at 9:15 so we can start
11 promptly at 9:30. Okay? Please be back in your
12 jury room at 9:15 tomorrow morning. Have a safe
13 evening. Hopefully, the rain will stop and things
14 will be a little nicer tomorrow. I haven't even
15 looked at the forecast. But, anyways, we'll see you
16 bright and early tomorrow morning.

17 Once again, please don't discuss the case or do
18 any sort of research of the case. We'll see you
19 tomorrow morning. Thank y'all.

20 (The jury exits the courtroom at 11:57 AM.)

21 THE COURT: All right. When we spoke in
22 chambers, I understand that we have a Jackson vs.
23 Denno on a statement to go through. Is that all the
24 pretrial we need to do?

25 MR. MCNAIR: That's all I'm aware of, Your

1 Honor. We probably can knock out the Jackson vs.
2 Denno in about ten minutes, if you want to go ahead
3 and do that now.

4 THE COURT: Well, if you have everyone you need
5 here, then we can go forward.

6 MR. MCNAIR: Yes, sir. We're ready to go.

7 THE COURT: I remember we discussed the shield
8 statute. Counsel mentioned he didn't have any issue
9 with that, but I trust you'd want to put something
10 on the record --

11 MR. MCNAIR: Yes, sir. We did file the
12 standard rape shield motion to prevent him from
13 bringing out any prior sexual activity of the victim
14 or any sexual activity of the victim involving other
15 people other than the defendant.

16 THE COURT: Mr. Bishop, do you have any issue
17 with that?

18 MR. BISHOP: The Defense has no objection to
19 that motion, Your Honor.

20 THE COURT: And your client has been made aware
21 of what that means?

22 MR. BISHOP: He has, Your Honor.

23 THE COURT: Okay. Any other pretrial stuff we
24 need to summarize before we move on to
25 Jackson vs. Denno?

1 MR. MCNAIR: That's all, Your Honor.

2 THE COURT: Okay. Proceed.

3 MR. MCNAIR: Your Honor, the State calls
4 Captain Josh Price.

5 JOSHUA PRICE

6 being first duly sworn, testified as follows:

7 THE WITNESS: So help me God.

8 THE COURT: Good morning.

9 THE WITNESS: Good morning, Judge.

10 IN-CAMERA EXAMINATION

11 BY MR. MCNAIR:

12 Q. Captain Price, where are you employed?

13 A. At the Saluda County Sheriff's Office.

14 Q. How long have you been with the sheriff's
15 department?

16 A. Since 2012.

17 Q. All right. When did you first become involved
18 in this case?

19 A. Around February of 2017.

20 Q. And when was this incident actually first
21 reported?

22 A. October of 2015.

23 Q. All right. Now, when you first became involved
24 in February of 2017, what was the status of the case
25 at that point?

1 A. The case was an open case. It had been,
2 basically, sitting. It had been -- one investigator
3 had started the case, then had basically went
4 through a period of standstill.

5 Another deputy received the case, and then that
6 deputy left employment with the Sheriff's Office and
7 the case was pending open. When I moved into
8 investigations, I moved in as a CSC investigator,
9 and that was one of the first cases that I reviewed
10 for the Sheriff's Office that were open.

11 Q. Okay. And what information did you review once
12 you became involved?

13 A. I reviewed the report, forensic interviews, and
14 phone records.

15 Q. All right. And that would be the forensic
16 interviews of the victim, MINOR 1 ?

17 A. That's correct.

18 Q. Okay. And what phone records did you review?

19 A. Phone records from the victim.

20 Q. Okay. Did you review text messages that were
21 obtained off of those phones?

22 A. I did.

23 Q. All right. Prior to you becoming involved, had
24 the defendant ever been talked to about this case?

25 A. He had not, to my knowledge.

1 Q. Did you, in the course of your investigation,
2 speak to the defendant?

3 A. I did.

4 Q. And how did you first make contact with him?

5 A. I made contact with him over the phone.

6 Q. What did you tell him when you called him?

7 A. I told him that I was investigating a sexual
8 assault with his -- with the victim -- pertaining to
9 him and the victim, Ms. Way.

10 Q. And did he agree to speak with you?

11 A. He did.

12 Q. And where did y'all meet?

13 A. We met at the Saluda County Sheriff's Office.
14 Myself and Deputy Horne met with him in a trailer, a
15 conference room, adjacent to the sheriff's office.

16 Q. And do you recall what date that was?

17 A. That was on --

18 Q. March 3rd of 2017; does that sound correct?

19 A. That sounds correct.

20 Q. Okay. And how did the defendant get there that
21 day?

22 A. I don't recall. He drove or was driven there.

23 Q. Okay.

24 A. I don't recall speaking to anyone else other
25 than him that day.

1 Q. Y'all didn't transport him there?

2 A. No, sir.

3 Q. And was he in custody at that time?

4 A. No, sir.

5 Q. Did you have a warrant for him at that time?

6 A. No, sir.

7 Q. Was he a suspect?

8 A. He was a suspect.

9 Q. Prior to speaking with him, did you advise him
10 of his Miranda rights?

11 A. I did.

12 Q. And how did you do that?

13 A. I used a standard Sheriff's Office Miranda
14 Form; I read the form to him. It had blocks where
15 he can initial next to each of the rights. Also, it
16 is -- once the Miranda form is read by whomever we
17 are interviewing or reading Miranda to, they sign,
18 stating that they do wish to speak to us.

19 Q. Okay. And did he indicate that he understood
20 his rights?

21 A. He did verbally and, also, by signing.

22 Q. All right. And after he -- did he waive those
23 rights?

24 A. Yes. He agreed and wanted to speak with us.

25 Q. And after he agreed to waive his rights, did he

1 give a written statement?

2 A. He did.

3 (Court's Exhibit No. 1 marked for
4 identification.)

5 BY MR. MCNAIR:

6 Q. I'm going to show you what's been marked as
7 Court's Exhibit 1 and ask if you can identify this.

8 A. Yes, sir, I can.

9 Q. What is that?

10 A. This is a Miranda Waiver of Rights form from
11 the Saluda County Sheriff's Office. This is the
12 document -- the first page of this document is the
13 Miranda form signed by the defendant; the second
14 page of this document, along with the third page, is
15 the written statement that the defendant provided.

16 Q. Okay. And on the first page of that document
17 are the Miranda rights?

18 A. Yes, sir.

19 Q. All right. And you read those Miranda rights
20 to him?

21 A. I did.

22 Q. And whose initials are those?

23 A. They are the initials of the defendant.

24 Q. Okay. So he initialed that he understood those
25 rights?

1 A. Correct.

2 Q. And whose signature is at the bottom?

3 A. The defendant's, along with a witness between
4 myself and Deputy Horne.

5 Q. And who filled out the top portion of that
6 waiver form?

7 A. That's my handwriting.

8 Q. Okay. And that's his signature at the bottom?

9 A. Correct.

10 Q. Okay. Did he appear to understand the rights
11 that you read to him?

12 A. Correction: I believe the -- let me correct
13 the record. I believe that's the defendant's
14 handwriting. And I believe that my handwriting is
15 where it says the crime of CSC with a minor. And I
16 wrote in the block "I understand my rights explained
17 to me by Deputy Horne/Price."

18 Q. Okay. So he filled in the identifying
19 information?

20 A. That's correct. He filled in the identifying
21 information; he filled in, at the time, Captain
22 Horne's name; and I filled in the -- concerning the
23 crime of CSC with a minor.

24 Q. Okay. And whose handwriting is the written
25 statement in?

1 A. The defendant's.

2 Q. All right. Now, as you were going over his
3 rights, did he appear to understand everything you
4 were telling him?

5 A. He did.

6 Q. Did he appear to be under the influence of
7 drugs or alcohol?

8 A. He did not.

9 Q. Were his answers responsive to your questions?

10 A. Yes.

11 Q. At any time that you were speaking to him, did
12 he say he didn't understand his rights?

13 A. No, sir.

14 Q. Did he ever say he didn't want to talk anymore?

15 A. No, sir.

16 Q. Did he ever ask for a lawyer?

17 A. He did not.

18 Q. Did you threaten or force him to say anything?

19 A. No, sir.

20 Q. Did you ever promise him anything?

21 A. No, sir.

22 Q. During the course of your interview, was he
23 free to leave at any time?

24 A. He was.

25 Q. And he appeared to understand that?

1 A. Yes, sir.

2 Q. And did he, in fact, leave on his own accord
3 after this interview was over?

4 A. He did.

5 Q. And when did you ultimately get a warrant?

6 A. I got a warrant, I believe, several days after
7 this interview.

8 Q. Are there -- did he make any verbal statements
9 to you that are not contained within his written
10 statement?

11 A. He did.

12 Q. All right. And can you tell us what statements
13 those were?

14 A. He stated that he did have feelings for his
15 sister that were more than what a -- what would be a
16 normal brother-and-sister relationship; he also
17 stated that he had kissed his -- the victim on two
18 different occasions, and that he had walked around a
19 track at the Saluda High School/Middle School
20 complex holding the victim's hand; that he had done
21 that, from what he said, was a way to -- his
22 reasoning for that was to, basically, try to help
23 his sister look cool at school.

24 Q. All right.

25 A. That was his reasoning behind that. That was

1 the answer. It was to help her be popular,
2 basically.

3 Q. And did you ask him about whether or not people
4 at the victim's school knew that he was her brother?

5 A. Yes. And he stated that they did not.

6 Q. They did not know he was her brother at school?

7 A. Correct.

8 Q. All right. And did he describe what type of
9 kiss?

10 A. He did, at the time. And it was what anyone
11 would consider a kiss on the lips. I don't recall
12 him going into details. But it was a kiss,
13 mouth-to-mouth, lips-to-lips.

14 Q. Okay. And is that the extent of what you
15 believe you talked to him about on that day, in
16 addition to what's in the written statement?

17 A. Correct.

18 MR. MCNAIR: That's all from the State, Your
19 Honor.

20 THE COURT: Any cross-examination? I think we
21 spoke earlier. You weren't contesting the
22 admissibility of the statement. But was there
23 anything else?

24 MR. BISHOP: I wasn't contesting the
25 admissibility of the written statement. We have

1 some issues with what was verbally said outside of
2 his written statement.

3 THE COURT: Okay.

4 CROSS-EXAMINATION

5 BY MR. BISHOP:

6 Q. Captain Price, just briefly, just to clarify
7 for the record, you said that my client came in on
8 March the 3rd, 2017. Does February the 3rd sound
9 like a more correct date? I believe that's the date
10 on his voluntary statement.

11 A. My report and the Waiver of Rights say the date
12 of March -- his statement is labeled as -- with his
13 writing as February.

14 Q. Okay. And, for the record, he only came up one
15 time and spoke with you one time?

16 A. One time. I believe that date to be on March
17 the 3rd.

18 Q. Okay. And there were no other attempts by your
19 office to call and meet with him again?

20 A. There were. We had scheduled a polygraph exam
21 that was going to be conducted at SLED, I believe,
22 on March the 10th. He and I had one other
23 conversation after that, I believe, on the 9th, and
24 he told me that he had hired an attorney and that he
25 was not going to take that polygraph exam.

1 Q. As to what was given -- what statements were
2 given outside of his written statement, how long did
3 you and my client speak?

4 A. I'd say, roughly, about 45 minutes to an hour.

5 Q. And you said he testified that he kissed his
6 sister.

7 A. Yes, sir.

8 Q. Did he describe that as a peck?

9 A. I would think -- I remember him saying
10 mouth-to-mouth. Yeah, peck kind of kiss. I think
11 that would be descriptive of the possible way he
12 said it.

13 Q. You said it's more of a -- you say it's
14 possibly what family members would do? Or did he
15 indicate --

16 A. He didn't describe it as the way I would kiss
17 my grandmother -- that wasn't his description -- or
18 a mother.

19 MR. MCNAIR: No further questions, Your Honor.

20 THE COURT: All right.

21 Anything else from the State?

22 MR. MCNAIR: Nothing from the State, Your
23 Honor.

24 THE COURT: All right.

25 You may step down.

1 Any other witnesses?

2 MR. MCNAIR: That's all we have, Your Honor.

3 THE COURT: The record is clear that the
4 statement was voluntarily made after Miranda.
5 Whether the jury believes it or not will be up to
6 them to decide at a later date. But I'll certainly
7 hold that it's voluntary and admissible for Jackson
8 vs. Denno purposes. All right?

9 MR. MCNAIR: Thank you, Your Honor.

10 MR. BISHOP: Thank you, Your Honor.

11 THE COURT: All right. Thank y'all. We'll be
12 in recess til tomorrow morning.

13 (The following proceedings were held November
14 18, 2019.)

15 THE COURT: All right. When we left yesterday,
16 we discussed the order for this morning. First
17 things first: One of the jurors spoke with the
18 Clerk of Court yesterday after we left the
19 courthouse and advised her of an additional
20 response: He felt like he, perhaps, should have
21 given during qualification. He was engaged to a
22 correctional officer. That is Juror No. 55.

23 I've talked with counsel for the defendant and
24 for the State, and they're in agreement that we'll
25 excuse him in an abundance of caution. So what

1 we'll do is we'll bring him out here in a moment and
2 let him know he's excused. Alternate No. 1, who is
3 Juror No. 8, Mikell Autrey, assuming that he's here,
4 will be our alternate first up. I'm told the jury
5 is here.

6 Before we even bring them out, the State wants
7 to make a motion to sequester. Is that correct?

8 MR. MCNAIR: Yes, sir, Your Honor. At this
9 time, we'd move to sequester all witnesses until
10 after they've testified.

11 THE COURT: And that will be for all witnesses,
12 understood?

13 MR. BISHOP: No objection from the Defendant.

14 THE COURT: All right. The motion to sequester
15 is granted. And I spoke with counsel -- sometimes,
16 in the courtroom, people come and go. And so I need
17 eyeballs to let me know if a witness is in here.

18 MR. MCNAIR: Correct, and with the exception of
19 our lead investigator over this case, Captain Josh
20 Price.

21 MR. BISHOP: Right.

22 THE COURT: Okay. Let's bring Juror No. 55,
23 Mr. Ben Duffie, from outside please; just him.

24 (Juror No. 55, Ben Duffie, enters the
25 courtroom.)

1 THE COURT: Mr. Duffie, good morning. I
2 understand you're engaged to be married to a
3 correctional officer. Is that correct?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: Okay. Well, listen, I appreciate
6 you telling us that yesterday afternoon. You're
7 certainly not in trouble. But, in an abundance of
8 caution, I've decided to excuse you from serving on
9 this jury.

10 But we appreciate you being here on time this
11 morning. But we'll go ahead and excuse you from
12 service at this time. I don't know if you brought a
13 coat or if you brought anything with you, but you're
14 free to go. I would appreciate it if you don't
15 speak with any of your fellow jurors. In fact, you
16 can wait out here and go back into the jury room
17 after they're seated. Would that be easier for you?

18 MR. DUFFIE: Yeah. So I just sit back here
19 somewhere?

20 THE COURT: You can just wait out there in the
21 hall.

22 MR. DUFFIE: Okay.

23 THE COURT: Okay? Thank you, sir.

24 If someone can, just get him into the jury room
25 after the jury is out.

1 All right. Let's go ahead and get the jury out
2 at this time, please.

3 (The jury enters the courtroom at 9:41 AM.)

4 THE COURT: All right. Good morning, ladies
5 and gentlemen, Mr. Foreman, ladies and gentlemen of
6 the jury. Welcome back. I hope you had a nice
7 evening. The weather is a little bit better today.
8 I don't think it was raining when I came in this
9 morning.

10 Our main order of business this morning is,
11 Mr. Autrey, you're up now; you're going to be
12 serving on this jury, if you wouldn't mind moving
13 down to that chair.

14 Before we get started with this case and before
15 I have some other things to tell you, I'll have the
16 Clerk of Court go ahead and swear you in. Okay?

17 THE CLERK: Please stand and raise your right
18 hand.

19 (Jury sworn by the Clerk of Court.)

20 THE COURT: Thank you, Madam Clerk.

21 Ladies and gentlemen, before we begin the trial
22 of this case, I thought it might be helpful if I
23 explain to you, basically, how a trial proceeds.

24 First, the State will make an opening
25 statement. An opening statement is not evidence; it

1 is simply an outline to help you understand what
2 that party expects the evidence will show. The
3 Defendant may, if he wishes, present an opening
4 statement, but he does not have to, for reasons I'll
5 explain later.

6 Following the opening statements, you will hear
7 testimony and evidence in this case. This will
8 consist of testimony from the State's witnesses, as
9 well as any physical exhibits which will be
10 introduced into evidence.

11 Following the completion of the testimony, the
12 attorneys will again have the opportunity to make
13 what's called a closing statement or summation to
14 you. This is an opportunity for the attorneys to
15 summarize the case from their respective points of
16 view. Again, these arguments are not evidence.

17 Following closing statements of the attorneys,
18 I will instruct you on the law of South Carolina as
19 it pertains to the issues that have arisen in this
20 case. When I have completed my instructions to you,
21 you will then be permitted to begin your
22 deliberations in order to reach a verdict.

23 Now, ladies and gentlemen, you are the jury in
24 this case, and I want to take a few minutes and tell
25 you something about your duty as jurors and give you

1 some instructions. At the end of this trial, I'll
2 give you more-detailed instructions. Those
3 instructions will control your deliberations.

4 It will be your duty to decide, from the
5 evidence, what the facts are. You, and you alone,
6 are the judges of the facts. You will hear the
7 evidence, decide on what the facts are, and then
8 apply those facts to the law which I will give to
9 you. That is how you will reach a verdict.

10 In doing so, you must follow that law, whether
11 you agree with it or not. The evidence will consist
12 of the testimony of witnesses, documents, and other
13 things that are received into evidence as exhibits,
14 and any facts in which the lawyers agree or which I
15 may instruct you to accept. You should not take
16 anything that I may say or do during the trial as
17 indicating what I think of the evidence or what your
18 verdict should be.

19 This is a criminal case brought by the State of
20 South Carolina. The State charges the defendant
21 with criminal sexual conduct with a minor in the
22 second degree and criminal sexual conduct with a
23 minor in the third degree. The charges against the
24 defendant are contained in the indictments. The
25 indictments -- the indictment is not evidence of

1 anything. It is simply the description of the
2 charge made by the State against the defendant.

3 The defendant has pled not guilty to the charge
4 and is presumed innocent, unless proven guilty
5 beyond a reasonable doubt. Proof beyond a
6 reasonable doubt is proof that leaves you firmly
7 convinced of the defendant's guilt. A defendant has
8 the right not to testify and never has to prove
9 innocence or present any evidence. The burden of
10 proof is always upon the State of South Carolina.

11 Now, the following things are not evidence and
12 you must not consider them as evidence in deciding
13 the facts of the case: Statements and arguments of
14 attorneys, questions and objections of attorneys,
15 and testimony that I may instruct you to disregard.

16 Evidence may be direct or circumstantial.
17 Direct evidence is testimony by a witness about what
18 that witness personally saw, heard, or did.
19 Circumstantial evidence is indirect evidence; that
20 is, it is proof of one or more facts from which one
21 could find another fact. You are to consider both
22 direct and circumstantial evidence. The law permits
23 you to give equal weight to both. But it is for you
24 to decide how much weight to give any evidence.

25 There are rules of evidence which control what

1 can be received in evidence. When a lawyer asks a
2 question or offers an exhibit into evidence and a
3 lawyer on the other side thinks that it is not
4 permitted by the rules of evidence, that lawyer may
5 object. If I overrule the objection, the question
6 may be answered or the exhibit received may be
7 received; if I sustain the objection, the question
8 cannot be answered or the exhibit cannot be
9 received.

10 Whenever I sustain an objection to deny -- to a
11 question or deny a motion to admit an exhibit into
12 evidence, you must ignore the question or the
13 existence of the exhibit, and you must not guess
14 what the answer would have been or what the exhibit
15 would have shown.

16 Sometimes it may be necessary for me to request
17 that you leave the courtroom while I discuss with
18 the attorneys legal questions that come up during
19 the trial. If this occurs, you should not speculate
20 about our discussions or the reason you were asked
21 to leave the room. This is simply a procedure that
22 the law requires when certain legal issues arise.

23 There also may be occasions where I ask the
24 attorneys to approach the bench so I can discuss a
25 legal issue with them in private. I will do this as

1 often as possible so that you will not be required
2 to leave the courtroom more than is absolutely
3 necessary. And, again, if I ask the attorneys to
4 step up to the bench or if I ask you to leave the
5 courtroom, please don't think that anybody is trying
6 to hide anything from you or keep evidence from you.
7 This is simply a procedure used by all lawyers and
8 by all Courts to determine and decide legal
9 questions.

10 In deciding the facts of this case, you may
11 have to decide which witnesses to believe and which
12 witnesses not to believe. You may believe
13 everything a witness says or only a part or none of
14 it. In deciding what to believe, you may consider a
15 number of factors, including the following: The
16 witness' ability to see, hear, or know the things
17 testified to; the quality of a witness' memory; the
18 witness' manner while testifying; whether the
19 witness has an interest in the outcome of the case
20 or any motive, bias, or prejudice; whether the
21 witness was contradicted by anything the witness
22 said or wrote before the trial or by other evidence;
23 or how reasonable was the witness' testimony when
24 considered in the light of other evidence which you
25 believe.

1 Now, until I advise you to begin your
2 deliberations, you must not discuss this case with
3 anyone, including your fellow jurors, friends,
4 family members, or anyone involved in the case.
5 This includes discussions face-to-face and those by
6 telephone, e-mail, text, blog, social media, you
7 name it. You're not supposed to have any sort of
8 communication with anyone about this case prior to
9 me telling you that you may begin your
10 deliberations.

11 During your breaks for meals or overnight, it
12 is necessary -- if it is necessary, you may use your
13 smartphone devices. But under no circumstances
14 should you do any research -- independent research
15 of any of the facts or law involved in this case.

16 During the trial, do not read or listen to or
17 watch any news reports about this case. This
18 includes anything that may be in the newspapers or
19 on the Internet, radio, or television. You must not
20 consider anything you may have read or heard about
21 the case outside of the courtroom, whether before or
22 during the trial.

23 After the case is submitted to you, you must
24 discuss it only in the jury room with your fellow
25 jurors. The attorneys and parties in this case have

1 been advised that they are not to talk to you at
2 all. So if you see anyone involved in this case and
3 they do not even say hello, they're not being
4 unfriendly; they're just following my instructions.

5 It's important that you keep an open mind and
6 not decide any issue in this case until all the
7 evidence has been presented, the parties have made
8 their closing arguments, and I've instructed you on
9 the law of the case.

10 It is your solemn responsibility to determine
11 the guilt or innocence of the defendant, and your
12 verdict must be based solely on the evidence as it
13 is presented to you in this trial and the law as I
14 instruct you during and at the close of trial.

15 Now, ladies and gentlemen, I don't see anybody
16 with any notepads. But, just to be clear, I don't
17 want anyone taking notes during this case. I want
18 you to concentrate on the witness stand, the
19 presentation of the lawyers, and the witness
20 testimony here.

21 As I told you yesterday, we'll go for about 90
22 minutes to two hours, and we may take breaks in
23 between. If anyone ever needs a break, and you'll
24 know, give me a wave if you need a break, and we'll
25 make sure we accommodate that request.

1 At this time, though, we'll be beginning with
2 the opening statements with the State going first.
3 Please give the attorneys your undivided attention
4 from this time forward.

5 Counsel?

6 MS. DARKO: Thank you, Your Honor. May it
7 please the Court?

8 THE COURT: Yes, ma'am.

9 MS. DARKO: As you heard at the call of this
10 case -- and, excuse me, I have kind of a soft voice.
11 So if you can't hear me, please let me know. That's
12 one of my small issues in a courtroom this large.

13 But, you heard at the call of the case, the
14 defendant has been charged with criminal sexual
15 conduct in the second degree -- with a minor in the
16 second degree. And he's also been charged with
17 criminal sexual conduct with a minor in the third
18 degree. That's South Carolina's fancy, legal way of
19 saying that the defendant has committed a sexual
20 battery against a child who was under the age of 14,
21 over the age of 11; in this case, his little sister
22 who was 13 at the time.

23 With regard to the third-degree offense, that's
24 again, a fancy, legal way in South Carolina of
25 saying that the defendant has touched the victim in

1 a lewd and lascivious manner, with the intent of
2 arousing the child or himself. And the defendant,
3 under that section of law, must be over the age of
4 14. In this case, the defendant, again, the
5 victim's big brother, was 28 years old, had three
6 children of his own at the time.

7 I've said on numerous occasions that committing
8 a crime against a child, those types of acts are so
9 difficult for communities to endure. And that's
10 because if you slaughter a child, you sever the
11 hopes of the community. When you commit sexual
12 violence against a child, you also take away their
13 hopes, because it's very difficult to think about a
14 white wedding or where you're going to go to college
15 or what your future is going to hold when somebody
16 you've loved and trusted has taken away that trust
17 by violating you and have replaced it with shame and
18 secrecy.

19 So I don't know how you hold onto hope in that
20 instance as a victim, but I'm encouraged every day
21 by the bravery of folks who take the stand, folks
22 like MINOR 1, who is our victim in this
23 case, and who, in just a few moments, will take the
24 stand to tell you her story.

25 And what she will tell you and what the

1 evidence will show in this case, is that MINOR1 --
2 MINOR1 is what her family calls her -- was living in
3 a home that was violent; where her father was
4 battling a terrible alcohol addiction. And, during
5 the time that the defendant comes into her life, her
6 father was actually in rehab pursuant to court
7 order.

8 The knowledge that she had a -- a brother, a
9 protector, was new to her. He came into her life
10 and was introduced to her, and it was like a gift.
11 Somebody was going to love her; somebody was going
12 to protect her. And it's not very long after he's
13 introduced to her that he requests to move in to
14 assist with things while her father is in rehab.
15 And, as you can imagine, that felt good to her and
16 that made her feel safe.

17 She'll go on to explain to you that the
18 defendant began having sex with her about two weeks
19 after he moved in, in March of 2015, and that he
20 continued to have sex with her for approximately
21 seven months and that she didn't tell because she
22 was afraid and she also didn't tell because he had
23 secured her loyalty. Because the thing is, you will
24 see from her testimony, that she endured something
25 she physically did not want, to gain something she

1 needed very badly: A protector, somebody who loved
2 her.

3 This was not discovered by anyone until
4 approximately October of 2015 when an aunt discovers
5 that the defendant had been snuggling with the
6 victim. And this gave her cause for concern. So,
7 in confronting that situation, she does what anybody
8 would do who has a teenager in their care: She
9 takes a cell phone. And then that discomfort and
10 concern turns to absolute horror at what she sees in
11 that cell phone. Because, not only is this just an
12 uncomfortable situation; in fact, the defendant has
13 decided that the victim is his wife and that he has
14 convinced her that they are in a relationship. And
15 she has engaged in what, to a 13-year-old, is
16 complete emotional loyalty.

17 Now, you'll also hear from **MINOR1** that this is
18 not a secret; even after adults are discovering all
19 of these things, that she still did not want to tell
20 about the nature of her relationship with the
21 defendant and what he was doing to her and how that
22 made her feel. And she had several reasons for not
23 doing that. So she holds onto that secret, not
24 wanting to confirm what was already out in her
25 school, what she was already being bullied for, what

1 she was already being harassed for, holding onto
2 that secret because she feels and knows that, at any
3 moment, she could be snatched out of her parents'
4 home again. Those are all the things that happened
5 then.

6 But, today, you get to hear from a woman, a
7 young lady who has a bright future ahead of her, who
8 is here to tell you all of these things, as horrible
9 and embarrassing as it might be.

10 You'll also get to hear from law enforcement,
11 medical experts in this case, technology experts,
12 people who will help you put all of this together.
13 And what I'm convinced of and what will leave you
14 firmly convinced, at the end of this case, is that
15 this defendant, this man, this grown man with three
16 children of his own, did heinous things to his
17 little sister.

18 He committed a sexual battery against her; he
19 used her for his own gains. And I believe that you
20 will return a verdict for the State and hold him
21 responsible for something that he has evaded for
22 several years. Thank you.

23 MR. BISHOP: May it please the Court?

24 THE COURT: Yes, sir.

25 MR. BISHOP: Good morning. I'm going to use

1 this as a podium. Once again, my name is John
2 Andrew Bishop. I represent the accused, Kyle Way.

3 I know there are a lot of places y'all would
4 rather be right now. I know y'all don't have the
5 choice but to be here. But it's very important to
6 my client that he gets a fair trial. And I just
7 appreciate the time and effort you're going to
8 devote in this case.

9 I'm going to be brief. My client did not
10 commit the crimes the State is alleging that he did.
11 These alleged incidents happened about four years
12 ago. From the onset of the investigation, my client
13 has been adamant that nothing sexual happened
14 between him and his half-sister.

15 From the evidence and the testimony that will
16 be presented, I believe you'll see discrepancies in
17 the facts from other witnesses, with stories being
18 changed over time. What my client will admit to is
19 creating an online fake relationship with **MINOR1**
20 **████**, his half-sister. And this also happened via
21 text and phone communication.

22 Is this weird? Yes. Is it something you or I
23 would do? Probably not. Did it lead to anything
24 sexual? No, it did not. In my client's mind, going
25 along with this fake relationship was for a

1 legitimate purpose.

2 My client experienced a similar home life
3 growing up with the victim -- or as the victim, as
4 they shared the same father who does have the issues
5 that the State has alleged. My client has a big
6 heart; he knew what MINOR1 was going through; he
7 tried to put himself in her shoes.

8 She was having issues with school, issues with
9 his [sic] personal life, and he went along with this
10 fake relationship to help her with this. At the end
11 of the trial, when you look at the totality of the
12 evidence, or lack thereof, I believe that you'll
13 find that my client did not commit criminal sexual
14 conduct with a minor, and the State has failed to
15 meet its burden of proof. Thank you for your time
16 and attention in this case.

17 THE COURT: State's witness.

18 MS. DARKO: Thank you, Your Honor. The State
19 calls MINOR1 to the stand.

20 MINOR1
21 being first duly sworn, testified as follows:

22 THE WITNESS: I do.

23 DIRECT EXAMINATION

24 BY MS. DARKO:

25 Q. Good morning, MINOR1.

1 A. Good morning.

2 Q. And can you just scoot a little bit closer to
3 the mic? I know you can't scoot the chair up.

4 Can you state your full name for the record.

5 A. MINOR1.

6 Q. And how old are you?

7 A. 18.

8 Q. And what is your birthday?

9 A. [REDACTED], 2001.

10 Q. Okay. And what school do you currently attend?

11 A. Piedmont.

12 Q. Okay. And is that a high school or --

13 A. It's a college.

14 Q. What are you studying there?

15 A. Vet tech.

16 Q. Okay. And why are you studying to be a vet
17 tech?

18 A. Because I grew up around animals and I fell in
19 love with them.

20 Q. Okay. And I want to take you back to when you
21 were 13 years old. What school did you attend then?

22 A. Saluda High School.

23 Q. Okay. And have you always attended -- and is
24 that a public school?

25 A. Yes.

1 Q. Had you always attended a public school?

2 A. No.

3 Q. Where did you attend school before?

4 A. I was home-schooled.

5 Q. How long were you home-schooled?

6 A. Since 3rd grade, all the way up to 7th grade.

7 Q. And who did the home-schooling?

8 A. My grandmother.

9 Q. And does she live close to you?

10 A. Yes.

11 Q. And where do you live now?

12 A. I live at [REDACTED] Lookout Lane.

13 Q. And where did you live when you were 13?

14 A. At this same address.

15 Q. Okay. And what county is that in; do you know?

16 A. It's in Saluda County.

17 Q. Okay. And you said that -- when you were 13
18 years old, would that have been 2015, approximately?

19 A. Yes.

20 Q. Okay. And how would you get to school?

21 A. My grandmother or my older sister would take
22 me.

23 Q. And outside of attending the regular school
24 day, did you ever do any other activities? What
25 were your interests then?

1 A. I had dance one day every week, and then I did
2 track.

3 Q. Okay. And you did track. Was that every day
4 after school?

5 A. Yes.

6 Q. And what part of the year was that?

7 A. It was 2015, around -- close to Christmas.

8 Q. Okay. And that's when that season would have
9 ended?

10 A. Yes.

11 Q. Okay. And while you're living at the address
12 you just recited, who was living with you when you
13 were 13?

14 A. When I was 13, at the beginning of the 8th
15 grade, it started out with my dad, my mom, my little
16 sister, my little brother, and my older sister.

17 Q. And when you say your little sister, who is
18 that?

19 A. MINOR2

20 Q. And how old would she have been at that time?

21 A. She was 11 or 12.

22 Q. Okay. And when you say your little brother,
23 who is that?

24 A. That's MINOR3 .

25 Q. How old is he?

1 A. Now or back then?

2 Q. Back then.

3 A. He would have been six or seven.

4 Q. Okay. And your older sister?

5 A. She was 14, 15.

6 Q. Okay. And what's her name?

7 A. Laura Way.

8 Q. Okay. And was -- and you say that those are
9 the siblings that lived in the house. Did everybody
10 stay in the house every single night?

11 A. No.

12 Q. Okay. Who was there every night?

13 A. Every night, it was me, my mom, and the
14 defendant.

15 Q. Okay. And, just clarifying a little bit, you
16 lived with your mom and your dad and your siblings,
17 as you just stated. Did there come a time when --
18 in that year, when your father no longer lived with
19 you?

20 A. Yes.

21 Q. Okay. And can you explain about when that was?

22 A. It was right about Christmas.

23 Q. And why did he no longer live with you?

24 A. Because he -- by court, he was sentenced to go
25 do rehab.

1 Q. Okay. And so, at that time, it was your mom,
2 your older sister, your little brother and your
3 sister; so MINOR2, MINOR3, and Laura.

4 And did Laura stay in the house every single
5 night?

6 A. No.

7 Q. Okay. How many nights a week would she stay
8 with you?

9 A. Like, maybe once or twice a week.

10 Q. And when she wasn't staying with you, do you
11 know where she was staying?

12 A. It was either at a friend's house or my
13 grandmother's house.

14 Q. Okay. You also mentioned earlier that Kyle
15 lived with you. Did he live with you that entire
16 year?

17 A. No.

18 Q. He did not. Do you remember about what time
19 frame he moved into your house?

20 A. Right around when my dad left.

21 Q. Okay. Had Kyle always been a part of your life
22 when he moved into the house?

23 A. (Nonverbal response).

24 Q. Had he always been a part of your life when he
25 moved in? Did you know him your whole life or had

1 you just --

2 A. I didn't know him my whole life.

3 Q. Okay. And how did you come to find out that
4 you had a big brother?

5 A. My dad and my mom said one day that we had two
6 older brothers and that they were coming over with
7 their children to the house.

8 Q. Okay. And do you remember about when they told
9 you that?

10 A. It was the summer before my dad went to rehab.

11 Q. Okay. Would that have been about 2014?

12 A. Yes.

13 Q. And he came to meet you with his children?

14 A. Yes.

15 Q. And how many children did he have?

16 A. He had three.

17 Q. And do you know about how old he was?

18 A. He was?

19 Q. Yeah, how old Kyle was.

20 A. He was 28 -- 27 or 28.

21 Q. Okay. And how did it make you feel to find out
22 that you had a big brother?

23 A. It was weird and I didn't know how to go about
24 it.

25 Q. And did you always feel odd about it?

1 A. Yeah, because I didn't know my dad or my mom
2 had any more children they weren't telling me about.

3 Q. Okay. And did you gradually start to spend
4 more time with the defendant?

5 A. Yes.

6 Q. Okay. And if you can describe -- how did that
7 come about?

8 A. After we first met, when they -- him and his
9 children came over to the house, I texted him. And
10 then we just started talking on text messages, on
11 Facebook.

12 Q. Okay. And I'm going to back you up just a
13 little bit. Did Kyle go straight from living with
14 his children to your home?

15 A. No.

16 Q. Okay. So about how often did he visit on the
17 weekends before he moved in?

18 A. It was about every other weekend.

19 Q. Okay. And do you know where he worked at that
20 time?

21 A. At VELUX.

22 Q. And do you know where that was?

23 A. It's in Ninety Six.

24 Q. Okay. And did the defendant have an address in
25 Greenwood at the time he was also staying with

1 y'all?

2 A. Yes.

3 Q. Okay. When Kyle came over on the weekends, who
4 would he primarily spend time with?

5 A. Me.

6 Q. Okay. And how did that make you feel?

7 A. Like I was important to someone.

8 Q. And what sorts of things would y'all do when
9 you spent time together?

10 A. Draw on each other's faces, play video games.

11 Q. Okay.

12 MS. DARKO: Permission to approach the witness,
13 Your Honor?

14 THE COURT: Yes, ma'am.

15 MS. DARKO: And may I have a continuing
16 permission while I examine this witness?

17 THE COURT: Yes, ma'am.

18 BY MS. DARKO:

19 Q. I'm showing you what's been marked as State's
20 1, 2, and 3 for ID only. Do you recognize these
21 items?

22 A. Yes.

23 Q. What are they?

24 A. Pictures of me and the defendant.

25 Q. Okay. And about what time were these taken?

1 A. Right about before he moved in.

2 Q. Okay. And are they a fair and accurate
3 depiction of the sorts of things that y'all would do
4 together?

5 A. Yes.

6 Q. Okay. And have they been altered or changed in
7 any material way?

8 A. No.

9 MS. DARKO: At this time, Your Honor, the State
10 would move State's 1, 2, and 3 into evidence.

11 MR. BISHOP: No objection.

12 THE COURT: State's Exhibit 1, 2, and 3 are
13 admitted into evidence without objection.

14 MS. DARKO: Permission to publish, Your Honor?

15 THE COURT: Yes, ma'am.

16 (State's Exhibit Nos. 1, 2, 3 admitted into
17 evidence and published to the jury.)

18 BY MS. DARKO:

19 Q. Okay. And, if you could, just describe to the
20 jury who is pictured in this photo.

21 A. That is me and the defendant.

22 Q. And what are you guys doing?

23 A. We had drawn on each other's face, and so we
24 were posing for the camera.

25 Q. And how old were you when this picture was

1 taken?

2 A. I really don't remember.

3 Q. And who is in this picture?

4 A. Me and the defendant and my older sister, my
5 younger sister, and my little brother.

6 Q. Okay. And when you say your little sister,
7 that's -- who's pictured right here?

8 A. That's MINOR2, my little sister.

9 Q. And this is?

10 A. My older sister.

11 Q. And this snippet here?

12 A. That's my little brother.

13 Q. And --

14 A. That's me. And that's the defendant.

15 Q. Okay. And you said before that you don't know
16 how old you were when this picture was taken. But
17 you testified earlier that you're about 13 when the
18 defendant moved into the house --

19 A. Yes.

20 Q. -- and that this is something that you were --
21 these were activities that you were doing at about
22 the time that he was getting ready to move into the
23 house.

24 A. Yes.

25 Q. Is it safe to say that you were about 13 at the

1 time?

2 A. Yes.

3 Q. Okay. Did you have a cell phone at that time?

4 A. Yes.

5 Q. And did you also have a Facebook page?

6 A. Yes, ma'am.

7 Q. And did you use the cell phone to access
8 Facebook?

9 A. Yes, ma'am.

10 Q. And prior to his moving in, did you communicate
11 with your big brother on Facebook Messenger on your
12 cell phone?

13 A. Yes, ma'am.

14 Q. And prior to his moving in, did you communicate
15 with him by text message from your cell phone?

16 A. Yes, ma'am.

17 Q. MINOR1, I'm showing you what's been marked as
18 State's 4 for ID only. Do you recognize this item?

19 A. Yes.

20 Q. And what is it?

21 A. My Motorola.

22 Q. That's the phone you were using to text with
23 the defendant at that time?

24 A. Yes, ma'am.

25 Q. Has it been changed or altered in any way?

1 A. No, ma'am.

2 MS. DARKO: At this time, Your Honor, the State
3 would move State's 4 into evidence.

4 MR. BISHOP: No objection.

5 THE COURT: All right. State's Exhibit 4 is
6 admitted into evidence.

7 (State's Exhibit No. 4 admitted into evidence.)

8 BY MS. DARKO:

9 Q. MINOR1, how did -- can you remind the jury how
10 you got his cell phone number?

11 A. On Facebook.

12 Q. Okay. And that would have been through the
13 Messenger app --

14 A. Yes, ma'am.

15 Q. -- that you were accessing on your phone?

16 A. Yes, ma'am.

17 Q. I'm showing you what's been premarked as
18 State's 5 and 6 for ID only. If you could, take a
19 few moments and take a look at these.

20 Okay. What -- with regard to Item No. 5, what
21 does that appear to be?

22 A. They are Facebook messages between me and the
23 defendant.

24 Q. Okay. And were those the messages on your
25 Motorola cell phone?

1 A. Yes, ma'am.

2 Q. And do they appear to have been changed or
3 altered in any way as to the content?

4 A. No, ma'am.

5 Q. And it's a fair and accurate representation of
6 the entirety of your conversations through Messenger
7 on that phone?

8 A. Yes.

9 Q. And with regard to Item No. 6, what does that
10 appear to be?

11 A. It's a shortened version of the text messages.

12 Q. When you say shortened, is it with regard to
13 one conversation on one date?

14 A. Yes.

15 Q. And what date is that?

16 A. February 20th of 2015.

17 Q. Okay. And does the content appear to have been
18 changed or altered in any way?

19 A. No.

20 Q. And is it a fair and accurate representation of
21 the conversation you had on that day with him --

22 A. Yes.

23 Q. -- through Facebook Messenger? Okay.

24 MS. DARKO: And, Your Honor, at this time, the
25 State would move to admit State's 6 and State's 5

1 into evidence.

2 MR. BISHOP: No objection.

3 THE COURT: All right. State's Exhibit 5 and 6
4 are admitted into evidence without objection.

5 MS. DARKO: Permission to publish State's 6?

6 THE COURT: Yes, ma'am.

7 (State's Exhibit Nos. 5 and 6 admitted into
8 evidence and published to the jury.)

9 MS. DARKO: And can I get a continuing
10 permission to publish, Your Honor?

11 THE COURT: Certainly.

12 Would it interfere with the jury's view of the
13 television if I moved it a little bit?

14 MS. DARKO: Oh, no. You can move it.

15 THE COURT: Let's see if I can see it.

16 BY MS. DARKO:

17 Q. MINOR1, I don't know if you can see that
18 because of the light. Can you read that first
19 message when you're reaching out to him?

20 A. It says: Hey, Bubba.

21 Q. And is that what you called the defendant at
22 that time?

23 A. Yes, ma'am.

24 Q. And you testified earlier that you got his cell
25 phone number through Facebook Messenger. Are you

1 able to read that second message there?

2 A. The one from him?

3 Q. Yes. That would be the one in blue; is that
4 correct?

5 A. Yes, ma'am.

6 Q. Okay. And what is the phone number that he's
7 giving you?

8 A. (864) 323-3254.

9 Q. And do you also give him your phone number?

10 A. Yes.

11 Q. And can you read that number?

12 A. (803) 604- .

13 Q. And that's the number associated with your
14 Motorola cell phone?

15 A. Yes.

16 Q. Okay. And you texted the defendant at the
17 number you just recited, the 864, ending in 35 --
18 excuse me, 3254?

19 A. Yes, ma'am.

20 Q. MINOR1, do you recall whether it was -- whose
21 idea it was for Kyle to move into your house?

22 A. It was my idea.

23 Q. Okay. And why did you want that to happen?

24 A. Because, at the time, I didn't have anybody
25 else to go to and he seemed like I could go to him.

1 Q. And so your mom did not invite him?

2 A. No.

3 Q. And you had family living close by?

4 A. Yes.

5 Q. And they would help your mom --

6 A. Yes.

7 Q. -- during the time that your dad was in rehab?

8 A. Yes.

9 Q. And do you recall about how long after this
10 Facebook exchange he moved into your home? Was it
11 several months or was it a couple weeks?

12 A. After the text messages, it was only a couple
13 weeks.

14 Q. Would it be safe to say around March 2015?

15 A. Yes.

16 Q. Okay. And when he was spending time with you
17 during this early part of this relationship, you
18 said that he primarily spent time alone with you; is
19 that right?

20 A. Yes.

21 Q. And would you have conversations with the
22 defendant?

23 A. Yes.

24 Q. Did you confide in him things that were going
25 on in your life?

1 A. Yes.

2 Q. What sorts of things did you talk to him about?

3 A. Life, school.

4 Q. Did you tell him what was going on in your home
5 life?

6 A. Yes.

7 Q. And was the defendant supportive of you?

8 A. Yes.

9 Q. And when you're having these conversations,
10 where, primarily, would they occur?

11 A. In my room.

12 Q. And how would the defendant be positioned when
13 he was speaking to you?

14 A. He would be next to me, looking at me.

15 Q. Okay. And how did it make you feel when he was
16 listening to you and helping you with your problems?

17 A. Can you say that again?

18 Q. How did these conversations make you feel
19 initially?

20 A. They made me feel like I actually had somebody
21 there.

22 Q. And did, at any time, anything happen during
23 these conversations that made you uncomfortable?

24 A. When he grabbed my hand.

25 Q. And how did that make you feel?

1 A. It made me feel weird.

2 Q. Okay. And did you say anything about it?

3 A. No.

4 Q. And did anything else happen after the
5 hand-holding?

6 A. He kissed me.

7 Q. Okay. And when you say kiss, what kind of kiss
8 was it?

9 A. At first, it was a peck.

10 Q. Okay. And do you remember what time of the day
11 this occurred?

12 A. I think it was the afternoon.

13 Q. Okay. Do you remember whether it was a school
14 day or a weekend day?

15 A. Weekend day.

16 Q. And do you remember where it happened at?

17 A. In my room.

18 Q. Okay. And where was your mom on this day?

19 A. She was at work.

20 Q. And where were your siblings?

21 A. They were at friends' houses or my
22 grandmother's.

23 Q. And how did that make you feel?

24 A. It made me feel like something else was going
25 on.

1 Q. Okay. And did you tell anybody about it?

2 A. No.

3 Q. Why not?

4 A. Because I felt weird about it; like, people
5 could be on his side or be on my side about it.

6 Q. You described this kiss as a peck. Did the
7 defendant ever kiss you with his tongue?

8 A. Yes.

9 Q. And do you remember about when that happened?

10 A. It was right around the first time that me and
11 him had sex.

12 Q. Okay. And explain for me, before we get into
13 that, what happened when he kissed you with his
14 tongue.

15 A. We were in my room and we were playing video
16 games. And I was sitting there and I looked -- me
17 and him were having a conversation about the person
18 he was playing a game with. And then he just turned
19 over and kissed me.

20 Q. And did you tell anybody about this?

21 A. No.

22 Q. Did you want him to kiss you?

23 A. No.

24 Q. And how long -- you've already said that the
25 two of you had sex. Do you remember about when that

1 occurred?

2 A. March 13th of 2015.

3 Q. Okay. And when you say had sex, what do you
4 mean by that?

5 A. Like, his dick went inside of me.

6 Q. Okay. And when you're using -- when you say
7 inside of you, what part of your body are you
8 referring to? I know that this is very hard.

9 A. My vagina.

10 Q. Okay. On that day, who was in the house?

11 A. Nobody.

12 Q. Okay. And you were in your house?

13 A. Yes.

14 Q. Where you lived with your family?

15 A. Yes.

16 Q. And what area of the house were you in?

17 A. The -- one of the back bedrooms, which was my
18 room.

19 Q. And what were you doing at the time before the
20 sex began?

21 A. Watching him play a video game.

22 Q. Okay. And after the -- you're playing the
23 video game with him. And what happens as you're
24 playing the video game?

25 A. He kisses me and then the other stuff happens.

1 Q. Okay. And when you say the other stuff
2 happens, how does that happen? Were you -- did you
3 both have your clothes on?

4 A. Yes.

5 Q. And did he take your clothes?

6 A. Yes.

7 Q. And were you -- what were you wearing?

8 A. I was wearing jeans.

9 Q. Okay. Were you wearing undergarments?

10 A. I was wearing underwear.

11 Q. Okay. Did he take all of your clothes off?

12 A. Yes.

13 Q. Did he -- were you wearing a bra at that time?

14 A. No.

15 Q. Okay. And why not?

16 A. Because I didn't have boobs then.

17 Q. Okay. And once he has you unclothed, what
18 happens next?

19 A. He takes his penis out and sticks it in me.

20 Q. Okay. And was -- did he use a condom?

21 A. No.

22 Q. And what was your reaction?

23 A. I told him to stop.

24 Q. And did he?

25 A. No.

1 Q. Did he tell you anything?

2 A. Just told me be quiet.

3 Q. Were you crying?

4 A. Yes.

5 Q. MINOR1, you explained that this occurred in
6 your bedroom in your house; you think, on a weekend.
7 Do you remember what time of the day it was?

8 A. I think it was in the evening.

9 Q. And you said that it was March 13th, 2015?

10 A. Yes.

11 Q. And why do you know that it was on or about
12 that date, specifically?

13 A. Because that was the password on my phone.

14 Q. Okay. And why was that the password on your
15 phone?

16 A. It was just to remember what had happened.

17 Q. Okay. And did the defendant ever designate
18 this as a special day?

19 A. Yes.

20 Q. Did he consider it an anniversary --

21 A. Yes.

22 Q. -- between the two of you?

23 A. Yes.

24 Q. You explained that you did not have breasts at
25 this point. Had you had your first period?

1 A. Yes.

2 Q. And when we're saying period, we mean menstrual
3 cycle?

4 A. Yes.

5 Q. Did he take any precautions to keep you from
6 being pregnant?

7 A. When he got close to cumming, he came in his
8 hand.

9 Q. When you say cumming, you mean ejaculating?

10 A. Yes.

11 Q. Okay. Did you have -- was this the only time
12 that he had sex with you?

13 A. No.

14 Q. Do you know how many more times it happened
15 after this?

16 A. Around two to three times a day -- or a week.

17 Q. And two to three times a week. And did you
18 have any physical issues because of the sexual
19 contact, that you know of?

20 A. I had a UTI.

21 Q. Okay. And did you tell anybody about that?

22 A. No.

23 Q. Did you get any treatment for that?

24 A. I took my mother's antibiotics.

25 Q. Did you have any conversation with the

1 defendant -- I'm going to take you back to the first
2 time. After this happens, what do you do?

3 A. I go to the bathroom.

4 Q. Okay. And do you have any conversations with
5 the defendant about what just happened?

6 A. Yes.

7 Q. And what was the nature of that conversation?

8 A. I asked him if I was able to tell anybody that
9 it happened.

10 Q. Okay. And do you remember what his response
11 was?

12 A. He said no.

13 Q. And was that the end of the conversation?

14 A. No. He told me no because he'd go to jail.

15 Q. And had you known that that was an implication
16 before -- that that could be a result before? Did
17 you understand that before you -- before he had sex
18 with you?

19 A. No.

20 Q. And how did you react to hearing that news?

21 A. Scared.

22 Q. Okay. And why were you scared?

23 A. Because if somebody found out, I would lose the
24 only person I had to go to.

25 Q. After this -- the first time he had sex with

1 you in March of 2015, did he consider you his
2 girlfriend?

3 A. Yes.

4 Q. And did you consider him to be your boyfriend?

5 A. Yes.

6 Q. And did you save his contact information into
7 your cell phone, the information we talked about
8 before?

9 A. Yes.

10 Q. And do you remember how it was saved in your
11 phone?

12 A. It was saved as My Babe.

13 Q. And that was on your Motorola ending in [REDACTED]?

14 A. Yes.

15 Q. And did Kyle consider you to be engaged to him
16 at some point?

17 A. Yes.

18 Q. And did he give you a ring?

19 A. Yes.

20 Q. And would you wear it?

21 A. I wouldn't wear it when I went to school.

22 Q. Okay. And why wouldn't you wear it when you
23 went to school?

24 A. Because I didn't want people knowing.

25 Q. Okay. And did he expect you to wear it when

1 you went to school?

2 A. Yes.

3 Q. And did he begin to refer to you as his wife?

4 A. Yes.

5 Q. And do you remember about what time he gave you
6 the ring?

7 A. It was shortly after March 13th.

8 Q. And did you have conversations by text message
9 about all of this, as far as him referring to you as
10 his wife --

11 A. Yes.

12 Q. -- and your relationship?

13 A. Yes.

14 Q. I'm showing you what's been marked as State's 7
15 for ID. Do you recognize this item? And take your
16 time. I know it's lengthy.

17 A. Yes.

18 Q. And what is it?

19 A. Text messages between me and the defendant from
20 my Motorola.

21 Q. And is it a fair and accurate representation of
22 the entirety of your text conversations from that
23 phone?

24 A. Yes.

25 Q. And does it appear to have been altered as to

1 content or changed in any way?

2 A. No.

3 MS. DARKO: At this time, Your Honor, the State
4 would move State's 7 into evidence.

5 MR. BISHOP: No objection.

6 THE COURT: State's Exhibit 7 admitted into
7 evidence without objection.

8 (State's Exhibit No. 7 admitted into evidence.)

9 BY MS. DARKO:

10 Q. Did the defendant ever buy you presents?

11 A. Yes.

12 Q. What sorts of things would he buy you?

13 A. He took me to the mall when I turned 14 and he
14 bought me a whole bunch of Hollister and Aeropostale
15 clothes.

16 Q. Okay. And when would your birthday have been?

17 A. [REDACTED].

18 Q. And that would have been, I guess, 2015, is
19 that right --

20 A. Yes.

21 Q. -- that you turned 14?

22 A. Yes.

23 Q. So he celebrated your 14th birthday with you?

24 A. Yes.

25 Q. MINOR1, at the time when you were 13 and later,

1 14, did you feel like the defendant's romantic
2 feelings towards you were real?

3 A. Yes.

4 Q. And how do you feel about that today?

5 A. I feel like it was disgusting.

6 Q. Was the defendant ever physically violent
7 towards you?

8 A. Yes.

9 Q. And can you explain those interactions?

10 A. We were in my sister's room and I told him he
11 wasn't family. And he opened his hand and slapped
12 me across the face.

13 Q. Okay. You were in your sister's room. And
14 this is about what time of the day?

15 A. It was around the afternoon time.

16 Q. Okay. Was it a weekday or a weekend day?

17 A. A weekday.

18 Q. And you said that you -- you stated that he
19 wasn't family and he slapped you across the face.
20 Was that with his open hand?

21 A. Yes.

22 Q. And what instigated this argument?

23 A. When we were in the room and I had walked away
24 from him, because he was playing video games and I
25 just wanted time to myself.

1 Q. You said you wanted time to yourself. Was the
2 defendant always with you or were you able to be
3 around your family without him present?

4 A. He was always around me.

5 Q. Okay. And did that increase after he first had
6 sex with you?

7 A. Yes.

8 Q. And, on that occasion, you were asking for
9 space?

10 A. Yes.

11 Q. And that instigated the physical violence?

12 A. Yes.

13 Q. Did anything else happen on that day?

14 A. We had sex again.

15 Q. Okay. And, at this point, you -- do you
16 remember about when -- how long this was after
17 the -- he first had sex with you on March 13th,
18 2015?

19 A. It was a couple weeks.

20 Q. Okay. Did -- was he -- after this encounter
21 with the violence, was he ever violent towards you
22 again?

23 A. Yes.

24 Q. Okay. And would it primarily take the same
25 form that it did that day, the open hand across your

1 face?

2 A. Sometimes. Sometimes it was more.

3 Q. When he first comes into your life, did you
4 have a middle-school boyfriend?

5 A. Yes.

6 Q. And how did Kyle feel about that?

7 A. He wanted me to break up with him.

8 Q. And what would happen, if anything, if you did
9 not break up with him?

10 A. He was going to text him.

11 Q. Okay. And did he tell you that he would do
12 that?

13 A. Yes.

14 Q. And did you ultimately break up with him?

15 A. Yes.

16 Q. What was this boyfriend's name?

17 A. Austin [REDACTED].

18 Q. And how did that make you feel, having to break
19 up with him?

20 A. Hurt, because I didn't want to.

21 Q. Okay. And did you tell anybody about this?

22 A. I texted Princess.

23 Q. Okay. And did anybody see you in your house
24 upset about this?

25 A. Yes.

1 Q. And who was that?

2 A. My older sister Laura.

3 Q. And did Kyle allow you to speak to boys from
4 school?

5 A. No.

6 Q. Would he monitor your cell phone?

7 A. Yes.

8 Q. And did he ever confront people who contacted
9 you on your cell phone?

10 A. Yes.

11 Q. Do you remember any of the people that he
12 confronted?

13 A. Tanner and Dakota.

14 Q. Okay. And who was Tanner?

15 A. Tanner was a boyfriend that I had in 9th grade.

16 Q. Okay. And that you would eventually have in
17 9th grade -- okay. And who was Dakota?

18 A. Dakota was just a random dude reaching out to
19 me.

20 Q. Okay. And they reached out to you by text
21 message or by Facebook Messenger?

22 A. Facebook.

23 Q. Okay. I'm showing you what's been marked as
24 State's 8 and 9 for ID. If you could, take your
25 time to identify these.

1 A. These are text messages between me and Tanner.

2 Q. Okay. And when you say you and Tanner, are you
3 actually doing the texting?

4 A. No.

5 Q. Okay. And how do you know?

6 A. Because in one of the text messages it says I
7 was asleep.

8 Q. Okay. And, going back, this is a fair and
9 accurate representation of messages that are coming
10 in on your Facebook Messenger --

11 A. Yes.

12 Q. -- between you and Tanner?

13 A. Yes.

14 Q. And do they appear to have been altered as to
15 content?

16 A. No.

17 Q. And are they a fair and accurate representation
18 of that conversation?

19 A. Yes.

20 Q. And can you tell me about when this
21 conversation took place?

22 A. September 7th, 2015.

23 Q. And with regard to State's 9, what is that,
24 specifically, as it relates to State's 8?

25 A. It's a shorter version.

1 Q. And would that assist you in your testimony
2 before the jury today?

3 A. Yes.

4 MS. DARKO: Okay. State would move State's 9
5 and 8 into evidence.

6 MR. BISHOP: No objection.

7 THE COURT: State's Exhibit 8 and 9 admitted
8 into evidence without objection.

9 (State's Exhibit Nos. 8 and 9 admitted into
10 evidence.)

11 BY MS. DARKO:

12 Q. And, MINOR1, I'm just going to have you --
13 because it's difficult to read from the projector.
14 If you can, read just what -- the initial message
15 from Tanner and then those two responses on
16 State's 9.

17 A. Tanner said hey. And then the replies were:
18 MINOR1's asleep; this is her boyfriend; I'll tell
19 her you messaged her in the morning.

20 Q. And, MINOR1, I'm now showing you what's been
21 identified for ID only as State's 10 and 11.

22 With regard to State's 10, do you recognize
23 that item?

24 A. Yes.

25 Q. And what is it?

1 A. It's messages between me and Dakota.

2 Q. Is it a fair and accurate representation of the
3 messages coming on Messenger between you and this
4 person?

5 A. Yes.

6 Q. Does it appear to be altered as to content in
7 any way, shape, or form?

8 A. No.

9 Q. And with regard to State's 11, what is that in
10 relationship to State's 10?

11 A. It's a shorter version.

12 Q. Okay. And when you say shortened version,
13 what's taken out of it?

14 A. The file stuff.

15 Q. Okay. And would it assist you in your
16 testimony before the jury here today?

17 A. Yes.

18 MS. DARKO: State would move State's 10 and 11
19 into evidence.

20 THE COURT: Without objection?

21 MR. BISHOP: No objection.

22 THE COURT: All right. State's Exhibit 10 and
23 11 admitted into evidence.

24 (State's Exhibit Nos. 10 and 11 admitted into
25 evidence.)

1 BY MS. DARKO:

2 Q. So you said that this Dakota person is somebody
3 that you don't know specifically, but they're
4 reaching out to you. And on what date was this?

5 A. September 13th of 2015.

6 Q. And, if you could, just read the responses in
7 green.

8 A. MINOR1 asleep. This is her boyfriend. She
9 moving in with me. I tell her in the morning when I
10 wake her up. Yeah. And I'm Kyle. I'm happy with
11 my boyfriend. Me and him have been together for
12 almost a year now and I'm moving in with him. So
13 you can't move in with me because it's only going to
14 be me and him.

15 Q. Okay. And you don't actually personally know
16 the person who is contacting you?

17 A. No.

18 Q. And did you draft these responses? Did you
19 write them? Are you the one typing them?

20 A. No.

21 Q. But they're on your Messenger account?

22 A. Yes.

23 Q. And this would have been during one of the
24 times when Kyle had your phone?

25 A. Yes.

1 Q. And did you have any confrontations about these
2 contacts?

3 A. Not with the one with Dakota.

4 Q. Okay. And what about the one with Tanner?

5 A. I asked him why he did it.

6 Q. And what was his response?

7 A. Because me and him were together and that me
8 and the defendant were dating.

9 Q. Did any of your friends -- I know that you
10 testified before that you didn't want the people at
11 school to know that your -- you didn't want to wear
12 the ring because you didn't want people at school to
13 know. Did anybody in your friend group know?

14 A. Princess.

15 Q. Okay. And did you have a good number of
16 friends at public school?

17 A. Yes.

18 Q. So you had been able to make friends that first
19 year?

20 A. Yes.

21 Q. And the only one that you told was Princess?

22 A. Yes.

23 Q. Okay. While you were still living with your
24 mom, did anyone outside your home confront you about
25 your relationship with Kyle as looking inappropriate

1 to the outside eye?

2 A. No.

3 Q. Okay. And do you remember if anyone within
4 your home saw what Kyle was doing to you?

5 A. My little sister.

6 Q. Okay. And do you remember what happened on
7 that day?

8 A. She walked in and saw me in my underwear and
9 told me that she was going to go tell my mom.

10 Q. What did you do when she walked in?

11 A. I got up and walked out into the hallway with
12 her.

13 Q. Okay. And what did you say to your sister?

14 A. I told her not to be alone with him.

15 Q. Okay. Did you -- what did you say with regard
16 to her telling?

17 A. I told her not to tell.

18 Q. And did you tell anybody that -- about your
19 sister walking in on you?

20 A. No -- well, yeah. I told Princess.

21 Q. Okay. I'm showing you what's been marked as
22 State's 12 and 13 for ID. Do you recognize these
23 items?

24 A. Yes.

25 Q. And what are they?

1 A. They are messages between me and Princess.

2 Q. And on what day are -- did this conversation
3 occur?

4 A. April 27th, 2015.

5 Q. And is it a fair and accurate representation of
6 your conversation that day?

7 A. Yes.

8 Q. And has it been changed with regard to content
9 at all or altered?

10 A. No.

11 Q. And with regard to 13, what is that?

12 A. It's a short version.

13 Q. Okay. With the data information removed.

14 A. (Nonverbal response).

15 Q. And would that assist you in your testimony
16 before the jury today?

17 A. Yes.

18 MS. DARKO: Your Honor, State would move
19 State's 12 and 13 into evidence.

20 MR. BISHOP: No objection.

21 THE COURT: State's Exhibits 12 and 13 admitted
22 into evidence without objection.

23 (State's Exhibit Nos. 12 and 13 admitted into
24 evidence.)

25 BY MS. DARKO:

1 Q. Because the text is a little bit blurry on the
2 projector, if you could, just read that initial
3 message to Princess.

4 A. It says: Help me because MINOR2 is trying her
5 hardest to get me and my boyfriend to break up, and
6 she's telling my mom everything.

7 Q. Okay. And, again, this occurred on May 10th,
8 2015?

9 A. Yes.

10 Q. And you were panicked. Do you know whether or
11 not MINOR2 kept your secret?

12 A. I don't know.

13 Q. You don't know whether she told anybody or not?

14 A. No. But I've never been questioned about it.

15 Q. Okay. You testified that your dad moved out of
16 your home in December 2014. Is that right?

17 A. Yes.

18 Q. And when did he complete rehab?

19 A. Around June, July.

20 Q. Okay. And was he allowed to move back into the
21 house?

22 A. No.

23 Q. And he did have contact with y'all?

24 A. Yes.

25 Q. Why was he not allowed to move back into the

1 house?

2 A. Because he had extra things after rehab he had
3 to complete.

4 Q. Okay. And in order to be in the house -- under
5 what circumstances could he be around y'all?

6 A. As long as somebody else was in the house.

7 Q. And somebody else would have to be --

8 A. An adult.

9 Q. -- an adult?

10 Okay. At this time, what was your mom's work
11 schedule?

12 A. It was still 7:00 to 7:00.

13 Q. So she's gone a good portion of the day. Who
14 was, then, the adult supervisor allowing your dad to
15 be in the house with y'all?

16 A. The defendant.

17 Q. Okay. And how long -- your dad was not staying
18 overnight?

19 A. No.

20 Q. Okay. And where would he sleep at night?

21 A. He would go up to the camper in our yard.

22 Q. Did he ever witness the defendant and you
23 together?

24 A. He walked in and saw me and him asleep in the
25 same bed.

1 Q. And what was his reaction to that?

2 A. He pulled the defendant out of the room and
3 talked to him about it.

4 Q. Okay. And how did that make you feel?

5 A. Kind of, like, relieved that somebody saw, but
6 kind of worried, too.

7 Q. MINOR1, I'm showing you what's been marked as
8 State's 14 for ID. Do you recognize this item?

9 A. Yes.

10 Q. And what is it?

11 A. It's a layout of my house.

12 Q. And is it a fair and accurate representation of
13 the layout of your house at this time?

14 A. Yes.

15 Q. And this is during -- when you're 13, 14.
16 2015; is that correct?

17 A. Yes.

18 Q. And has it been changed or altered in any way?

19 A. No.

20 Q. And would it assist you in your testimony to
21 the jury here today?

22 A. Yes.

23 MS. DARKO: State moves State 14 into evidence,
24 Your Honor.

25 MR. BISHOP: No objection.

1 THE COURT: State's Exhibit 14 is admitted into
2 evidence without objection.

3 MS. DARKO: Permission to publish?

4 THE COURT: Yes, ma'am.

5 MS. DARKO: Your Honor, at this point in the
6 witness' testimony, can we have her step down so
7 that she can explain to the jury who is in what
8 room?

9 THE COURT: When you step down, away from the
10 microphone, try to keep your voice up so that the
11 court reporter and the jury can hear you. Okay?

12 (State's Exhibit No. 14 admitted into evidence
13 and published to the jury.)

14 BY MS. DARKO:

15 Q. And you can just step in front of the
16 television, MINOR1. Which bedroom is yours on the
17 diagram?

18 A. It is this one [indicating].

19 Q. Okay. And which bedroom is -- and who is in
20 this other bedroom?

21 A. In this room was my little sister.

22 Q. Where did your mom sleep?

23 A. In the bedroom over there [indicating].

24 Q. And where was the defendant supposed to sleep?

25 A. On the couch.

1 Q. And where did he actually sleep?

2 A. In my room.

3 Q. And, at this time, you testified that your mom
4 is working 7:00 to 7:00. About what time would your
5 mom go to bed at night?

6 A. Right about 8:00.

7 Q. Okay. Would you put yourself to sleep then,
8 you and your siblings?

9 A. Yes.

10 Q. And where did MINOR3 sleep?

11 A. He slept on the couch.

12 Q. Okay. And would he ever sleep anywhere else?

13 A. No.

14 Q. Okay. But he did not sleep in your bedroom?

15 A. No.

16 Q. Where would Laura sleep, on the occasion that
17 she was in the house?

18 A. In this room [indicating].

19 Q. Okay. And just so I understand -- so you sleep
20 in this bedroom here. And the defendant would
21 primarily sleep with you?

22 A. Uh-huh.

23 Q. MINOR2 sleeps there; MINOR3 sleeps on the
24 couch; your mother is sleeping in this bedroom. And
25 your father is -- when he was there, was sleeping in

1 the camper. Is that right?

2 A. Uh-huh.

3 Q. And --

4 MS. DARKO: Begging the Court's indulgence.

5 BY MS. DARKO:

6 Q. With regard to the sleeping arrangements,
7 you've already testified that DSS was involved in
8 your home.

9 A. Yes.

10 Q. Was DSS aware of these sleeping arrangements?

11 A. No.

12 Q. Why -- why not?

13 A. Because if we told them the sleeping
14 arrangement, then the -- my parents wouldn't have
15 custody of us.

16 Q. And how did you come to know that?

17 A. Ms. Peterson.

18 Q. Okay. Who is Ms. Peterson?

19 A. She's the DSS caseworker.

20 Q. And but for the alternative sleeping
21 arrangement, who -- who gave you what you should say
22 to Ms. Peterson?

23 A. My mom.

24 Q. If I'm understanding that -- okay.

25 MINOR1, I'm showing you what's been marked as

1 State's 15, 16 and 17. Do you recognize these
2 items?

3 A. Yes.

4 Q. And what are they?

5 A. They are pictures of my house.

6 Q. And are they a fair and accurate representation
7 of the interior of your home at the time of this
8 incident --

9 A. Yes.

10 Q. -- in 2015?

11 And do they appear to have been altered or
12 changed in any way?

13 A. No.

14 Q. And, just for clarification, these were not
15 taken at the time of the incident; is that right?

16 A. No.

17 Q. They were actually taken recently; is that
18 correct?

19 A. Yes.

20 MS. DARKO: Your Honor, State would move 15,
21 16, and 17 into evidence.

22 MR. BISHOP: No objection.

23 THE COURT: State's Exhibit 15, 16, and 17
24 admitted into evidence without objection.

25 (State's Exhibit Nos. 15, 16, 17 admitted into

1 evidence.)

2 BY MS. DARKO:

3 Q. MINOR1, with regard to Item No. 15, what door
4 is this to?

5 A. That is the bathroom.

6 Q. And what door is that?

7 A. That one in the back is my room.

8 Q. Okay. And what is off over here?

9 A. My sister's room.

10 Q. Okay. And, again, that's just a clearer image
11 of the layout of your home. Those doors -- that's
12 your bedroom door right there?

13 A. Yes.

14 Q. Okay. When did Kyle stop living with you?

15 A. He stopped shortly after my parents lost
16 custody of us.

17 Q. Okay. And do you remember about when that was?

18 A. I think it was around October.

19 Q. Okay. And can you describe what happened that
20 led to your parents losing custody?

21 A. My dad started drinking again.

22 Q. And your dad starts drinking again. Was there
23 a particular incident?

24 A. When he chased me and my little sister around
25 the yard with a cane.

1 Q. Okay. And did you contact somebody after this
2 happened?

3 A. Yes.

4 Q. Who did you contact?

5 A. I called my mom.

6 Q. Okay. And did you contact anybody else about
7 it?

8 A. I called the defendant.

9 Q. Okay. And did you talk to your caseworker
10 about this?

11 A. Yes.

12 Q. Would that have been Ms. Peterson?

13 A. Yes.

14 Q. And where are you placed when you're removed
15 from your parents' custody?

16 A. With my grandmother.

17 Q. And where does your grandmother live?

18 A. In the same yard.

19 Q. That's next door to y'all?

20 A. Yes.

21 Q. How did -- you said that you contacted Kyle
22 right after this. How did he react to your being
23 placed with your grandmother?

24 A. He was pissed.

25 Q. And how did you feel about it?

1 A. I -- me and my grandmother never got along, so
2 I didn't like it.

3 Q. And you did not want to stay there?

4 A. No.

5 Q. Were you trying to -- was -- do you know
6 whether or not the defendant was trying to get
7 custody of you?

8 A. Yes.

9 Q. And, at that time, what was your reaction to
10 that?

11 A. I felt like it was probably the best thing to
12 happen.

13 Q. So once your grandmother has custody of you,
14 does the defendant stay in her home with you?

15 A. For one night.

16 Q. Okay. So you weren't really permitted to stay
17 with each other while your grandmother had you?

18 A. No.

19 Q. Okay. And did you communicate about that
20 situation?

21 A. Yes.

22 Q. Through text message?

23 A. Yes.

24 Q. On your Motorola cell phone?

25 A. Yes.

1 Q. And, ultimately, during this time frame, this
2 first two-week period when you're with your
3 grandmother, do you stay inside your grandmother's
4 home the entire time?

5 A. No.

6 Q. Okay. Where else do you stay?

7 A. We moved into a camper behind my aunt's house.

8 Q. What aunt is that?

9 A. Aunt Angie.

10 Q. Okay. And you're living in the camper behind
11 her home. Who is in the camper?

12 A. Me, my grandmother, my older sister, my younger
13 sister, and my little brother.

14 Q. And was this a temporary stay?

15 A. Yes.

16 Q. Why did y'all move to the camper behind her
17 house?

18 A. Because DSS said that the house that she was in
19 was too close to my parents'.

20 Q. Because it was right next door?

21 A. Yes.

22 Q. And were you still trying to have contact with
23 your parents?

24 A. Yes.

25 Q. And were you supposed to have contact with your

1 parents?

2 A. No.

3 Q. And during this time that you're staying in the
4 camper, was the defendant allowed to stay there with
5 you?

6 A. Yes.

7 Q. And for how long did that go on?

8 A. For maybe about two, three days.

9 Q. Okay. So like a long weekend?

10 A. Yes.

11 Q. And during this longer weekend when you're in
12 the camper behind your aunt's house, did anybody
13 ever observe the two of you together?

14 A. Yes.

15 Q. And what happened -- and who was that?

16 A. It was my grandmother.

17 Q. And what did she observe?

18 A. She saw me, him, and my younger sister laying
19 on the big bed in the camper, watching a movie.

20 Q. And do you remember about when this was?

21 A. It was, like, shortly after we moved into the
22 camper.

23 Q. Okay. And you -- what was her reaction to
24 that?

25 A. She said that me and the defendant needed to

1 put space in between me and him.

2 Q. And what happens after that?

3 A. She -- I move over. And then she still gets
4 mad about it and walks out and goes into my aunt and
5 uncle's house.

6 Q. Did your -- did Kyle remain in the camper with
7 you after she observes this?

8 A. For a little bit, until my uncle comes out and
9 tells him to come in the house.

10 Q. Leaving you and your sister in the camper?

11 A. Yes.

12 Q. How did you feel when he was ordered to go into
13 the house?

14 A. Like I didn't know what was going on.

15 Q. Okay. And about how long was he inside the
16 house?

17 A. Maybe four, five minutes.

18 Q. And what happens after the four-or-five-minute
19 period?

20 A. He comes out and tells me that they're kicking
21 him out.

22 Q. How did you feel about that?

23 A. Scared.

24 Q. Why were you scared?

25 A. Because I didn't have anybody there anymore.

1 Q. And this was at the time you're placed with
2 your grandmother. And you don't want to stay with
3 your grandmother, but you're not permitted to at
4 your mom and dad's house?

5 A. Yeah.

6 Q. And you were -- and you thought the defendant
7 was trying to get custody of you; is that right?

8 A. Yes.

9 Q. And after -- does he leave, ultimately, that
10 night?

11 A. Yes.

12 Q. And, just to clarify, about what time of the
13 day did all of this happen?

14 A. It was close to night.

15 Q. Okay. Like, bedtime?

16 A. (Nonverbal response).

17 Q. And do you -- after he leaves, do you have any
18 conversation with your grandmother or your aunt
19 about what happened?

20 A. They brought me into the house. And my aunt
21 started talking to me, trying to, like, calm me down
22 and everything, and then she asked for my phone.

23 Q. And is that the Motorola cell phone that's been
24 admitted as State's 4?

25 A. Yes.

1 Q. And what was your reaction to that?

2 A. Scared, because I knew if she went through
3 those messages, she'd find out.

4 Q. Was that the last time you spoke with the
5 defendant, when he leaves the camper that night?

6 A. For that day.

7 Q. Okay. And you don't have a cell phone. Did
8 anybody tell you not to talk to the defendant?

9 A. Yes.

10 Q. Okay. And did you listen?

11 A. No.

12 Q. How do you come in contact with him again?

13 A. We ended up moving back into my grandmother's
14 house, and he came and dropped the cell phone in the
15 WaveRunner.

16 Q. And how did you know to go to the WaveRunner to
17 get the cell phone?

18 A. He texted Princess and told her.

19 Q. And I'm showing you what's been marked as
20 State's 18. Do you recognize this item?

21 A. Yes.

22 Q. And what is it?

23 A. It's a picture of my grandmother's house on the
24 outside where the jet ski trailer is parked.

25 Q. Okay. And is it a fair and accurate

1 representation of the area where you retrieved the
2 cell phone from?

3 A. Yes.

4 Q. And does it appear to have been altered or
5 changed in any way?

6 A. No.

7 MS. DARKO: At this time, Your Honor, the State
8 would move State's 18 into evidence.

9 MR. BISHOP: No objection.

10 THE COURT: State's Exhibit No. 18 is admitted
11 into evidence without objection.

12 (State's Exhibit No. 18 admitted into
13 evidence.)

14 BY MS. DARKO:

15 Q. And this is the trailer that you're speaking
16 of --

17 A. Yes.

18 Q. -- where you retrieved the cell phone that day?

19 A. Yes.

20 Q. And what kind of cell phone was it? Do you
21 remember?

22 A. I think it was an LG.

23 Q. Okay. And how did you know what number to
24 contact the defendant at?

25 A. It was already programmed into the phone.

1 Q. Do you remember what it was saved as?

2 A. My Babe.

3 Q. Okay. I'm showing you what's been marked as
4 State's 19 for ID only. Do you recognize this item?

5 A. Yes.

6 Q. And what is it?

7 A. It's the LG.

8 Q. And it's in the -- remotely in the same
9 condition that it was in at the time you retrieved
10 it from the WaveRunner?

11 A. Yes.

12 MS. DARKO: At this time, the State would move
13 State's 19 into evidence.

14 MR. BISHOP: No objection.

15 THE COURT: State's Exhibit 19 is admitted into
16 evidence.

17 (State's Exhibit No. 19 admitted into
18 evidence.)

19 BY MS. DARKO:

20 Q. And about how long did it take him to get this
21 cell phone to you?

22 A. Not long.

23 Q. Okay. Would it have been a week? More than a
24 week?

25 A. It was more than a week.

1 Q. Okay. I'm showing you what's been marked as --
2 once you -- once he got you the cell phone, did you
3 contact him immediately?

4 A. Yes.

5 Q. And this was a telephone conversation? A text
6 conversation?

7 A. Text.

8 Q. Okay. Did you also have a telephone
9 conversation with him?

10 A. Yes.

11 Q. And what was the nature of that first
12 conversation?

13 A. It was just he wanted to know if I had told
14 anybody anything.

15 Q. And when you say "anything," what do you mean,
16 specifically?

17 A. About me and him having sex.

18 Q. Okay. And you also spoke with him by text
19 message?

20 A. Yes.

21 Q. And did he -- did he also send you pictures as
22 well?

23 A. Yes.

24 Q. I'm showing you what's been marked as
25 State's 20. Do you recognize this item? You can

1 take your time and look at it. What is it?

2 A. It's text messages on the LG between me and the
3 defendant.

4 Q. Is it a fair and accurate representation of the
5 text conversations you had with the defendant, taken
6 from that phone?

7 A. Yes.

8 Q. Does it appear to have been changed or altered
9 as to content in any way?

10 A. No.

11 Q. What was the defendant's number saved out as
12 that you were to contact him?

13 A. My Babe.

14 Q. And that was the number that was preprogrammed
15 into the phone; is that right?

16 A. Yes.

17 Q. And, if you could, read that telephone number
18 into the record.

19 A. This one?

20 Q. Yeah. If you want to, read them both.

21 A. (864) 321-0519.

22 Q. Okay. And that -0519 phone number, that is
23 a -- that is the defendant's phone?

24 A. Yes.

25 Q. And you already testified -- excuse me.

1 MS. DARKO: Your Honor, State would move
2 State's 20 into evidence.

3 THE COURT: Without objection?

4 MR. BISHOP: Your Honor, we would object to
5 this exhibit being entered. We have no verification
6 that was my client's number. And I also think the
7 majority of those -- or a lot of the text messages
8 are cumulative and not relevant.

9 THE COURT: All right.

10 MS. DARKO: Your Honor, this -- she's already
11 testified that the phone number was preprogrammed
12 into the phone and that he left it there
13 specifically for the purpose of her communicating
14 with him. And I can also further, if you'll give me
15 about three more questions, verify, in another
16 manner, that this is, indeed, his cell phone.

17 THE COURT: All right. Proceed.

18 BY MS. DARKO:

19 Q. You've testified that he -- that you received
20 photos on that phone as well?

21 A. Yes.

22 Q. I'm showing you what's been marked as
23 State's 21. And what is that?

24 A. It is a picture of the defendant.

25 Q. And this was received on the LG phone that was

1 left in the WaveRunner?

2 A. Yes.

3 Q. And is it a fair and accurate representation of
4 a photo that you received from the cell phone number
5 preprogrammed into the phone?

6 A. Yes.

7 Q. And does it appear to have been changed or
8 altered in any way?

9 A. No.

10 MS. DARKO: State would move State's 21 into
11 evidence.

12 THE COURT: Without objection?

13 MR. BISHOP: No objection.

14 THE COURT: State's Exhibit 21 admitted into
15 evidence.

16 (State's Exhibit No. 21 admitted into
17 evidence.)

18 BY MS. DARKO:

19 Q. Who is that?

20 A. That's the defendant.

21 Q. And this is a selfie that he sent to you on the
22 LG cell phone?

23 A. Yes.

24 MS. DARKO: Your Honor, at this time, because
25 the defendant is sending shirtless photos of himself

1 to that phone, has left it in the WaveRunner to --
2 for her to retrieve, I would move State's 20 into
3 evidence.

4 She can self-authenticate this, essentially, as
5 being the conversations that she had with the person
6 who sent her this photo.

7 THE COURT: We've been going about an hour and
8 a half anyway, so I'm going to go ahead and take our
9 morning break. Let's take about five to ten
10 minutes.

11 Go back in you're the jury room, refresh
12 yourselves. Please don't discuss the case in any
13 way. And I'll get you back out here in a few
14 minutes.

15 (The jury exits the courtroom at 11:13 AM.)

16 THE COURT: Ma'am, if you need to step down to
17 refresh yourself as well, feel free.

18 (Pause in the proceedings 11:13 AM - 11:22 AM.)

19 MS. DARKO: Your Honor, Rule 901 requires
20 authentication or identification of -- as a
21 condition precedent before admitting evidence; in
22 this case, the text messages from the LG cell phone.

23 And one of the ways under that rule that you
24 may authenticate information is through witness
25 testimony where the witness is essentially

1 purporting that it is the thing that it purports to
2 be.

3 In this case, the witness has testified that
4 these text messages came from her LG cell phone, and
5 that phone was provided to her by the defendant with
6 a preloaded telephone number in the phone, and that
7 it was further authenticated by his confirming his
8 identity associated with that phone when he sends
9 the selfie where he is shirtless.

10 Your Honor, the argument that this is not his
11 cell phone or that these did not come from the
12 defendant really seemed rather illogical, given what
13 we have on the record.

14 With regard to it being cumulative, the --
15 these messages are, indeed, different from the
16 messages from the Motorola cell phone. What you see
17 with regard to these messages is a heightened level
18 of control from the defendant, a heightened level of
19 jealousy, a heightened level of him being concerned
20 with who she's hanging out with at school.

21 It's my understanding, based on the defendant's
22 statement, that his argument is essentially -- and
23 this was referenced in the opening -- that he was
24 doing this in order to help her become more popular
25 in school.

1 So gutting these LG messages essentially keeps
2 the State from having a responsive argument to that
3 position, because these messages are different.
4 Additionally, Your Honor, these are the messages
5 where the defendant talks about the victim's father
6 walking in on them and witnessing him, quote, all
7 over her. There's more acknowledgment of the
8 physical relationship.

9 They are very different from the Motorola
10 messages from the early part of the relationship and
11 evidences a heightened desire to keep this secret.

12 THE COURT: And I believe -- I heard defense
13 counsel's objection. Anything else you want to add
14 to the record?

15 MR. BISHOP: No, Your Honor. I would just
16 renew my objection.

17 THE COURT: State's Exhibit 20 will be
18 admitted, subject to objection.

19 Are we ready to bring the jury back in?

20 MS. DARKO: Yes, Your Honor.

21 THE COURT: MINOR1, you can come back to the
22 stand, please. Thank you.

23 Let's bring the jury back in, please.

24 (State's Exhibit No. 20 admitted into
25 evidence.)

1 (The jury enters the courtroom at 11:25 AM.)

2 THE COURT: Okay. Mr. Foreman, ladies and
3 gentlemen of the jury, I hope you had a chance to
4 refresh yourselves. We'll just continue on from
5 where we were with direct examination.

6 Madam Solicitor?

7 MS. DARKO: And, Your Honor, to clarify for the
8 record, State's 20, the text messages from the LG
9 cell phone, are admitted?

10 THE COURT: Yes. State's Exhibit 20 is
11 admitted into evidence, subject to objection.

12 CONTINUED DIRECT EXAMINATION

13 BY MS. DARKO:

14 Q. When was the last time you spoke to the
15 defendant? When did your contact end?

16 A. When we got the phone taken.

17 Q. And do you remember about when that was?

18 A. It was around spring of 9th grade.

19 Q. Okay. And are you absolutely certain that that
20 was the date?

21 A. No.

22 Q. Okay. And I'm showing you what's been admitted
23 as State's 20. I know that this is a long time ago.
24 If you could, just look to the last conversation you
25 have with the defendant on the LG phone by text

1 message, and give me the date of your last text
2 message conversation.

3 A. 11/18/2005 -- '15.

4 Q. And would that have been on or near the time
5 that the phone was taken?

6 A. Yes.

7 Q. Okay. And when -- you've already testified
8 that you were having telephone conversations. When
9 would these conversations take place?

10 A. When we had lunch.

11 Q. And were you supposed to have a cell phone at
12 school?

13 A. No.

14 Q. And did you get discovered talking on the cell
15 phone?

16 A. Yes.

17 Q. And who were you talking to?

18 A. The defendant.

19 Q. And who took the cell phone?

20 A. Mr. Shealy.

21 Q. And what was your reaction to that?

22 A. I was scared, so I rushed over to my friend
23 Maddie.

24 Q. And, just to clarify, Mr. Shealy is a teacher
25 at the school?

1 A. He is the assistant principal.

2 Q. Okay. And you rush over to your friend Maddie.

3 Then what do you do?

4 A. I borrow her phone.

5 Q. And for what purpose?

6 A. To call him and tell him that I got the phone
7 taken away.

8 Q. And what was his reaction to the phone being
9 taken?

10 A. He was scared and pissed at the same time.

11 Q. And when you say that he was pissed, you mean
12 he was very angry?

13 A. Yes.

14 Q. And why was he angry?

15 A. He was mad because then they had another thing
16 they could possibly pin against him.

17 Q. Okay. And did he say anything else in that
18 conversation?

19 A. He told me that if I opened my mouth and told
20 anybody anything, that he was going to come to my
21 house and kill me.

22 Q. And did you believe him?

23 A. Yes.

24 Q. And why did you believe him?

25 A. Because he had slapped me before.

1 Q. During this period of time where you have the
2 LG cell phone and you're still in contact with him,
3 are you still speaking to each other as -- by this
4 time, husband and wife -- calling each other husband
5 and wife?

6 A. Yes.

7 Q. And the defendant, did he ever ask you to
8 delete your personal Facebook account?

9 A. Yes.

10 Q. And what was his reasoning for that?

11 A. Because he didn't want me talking to any guys
12 and he didn't have the password or e-mail to get
13 into it.

14 Q. Did he set up an account where he had the
15 password and everything?

16 A. Yes.

17 Q. Do you remember the name of that account?

18 A. I think it was Kanda Way.

19 Q. And he gave you access to that account?

20 A. Yes.

21 Q. I'm showing you what's been marked as State's
22 22, 23, 24, and 25. There are four items. And what
23 are these items -- excuse me. Let's go one by one.
24 What is State's 22?

25 A. 22 is a picture of the Facebook page itself.

1 Q. Is that a fair and accurate representation of
2 the -- is that the Kanda Way Facebook page?

3 A. Yes.

4 Q. And this was the joint Facebook page?

5 A. Yes.

6 Q. And is it a fair and accurate representation of
7 that Facebook page at that time?

8 A. Yes.

9 Q. And does it appear to have been altered or
10 changed in any way since the time of the incident?

11 A. No.

12 Q. And, with regard to State's 23, what is that?

13 A. That is a picture of me and the defendant.

14 Q. Okay. And was this the profile picture for
15 that Facebook page?

16 A. Yes.

17 Q. And that -- you can see that on State's 22, but
18 not clearly. This is a blow-up of that profile
19 picture?

20 A. Yes.

21 Q. And does it appear to have been changed or
22 altered in any way?

23 A. No.

24 Q. And it's an accurate representation of what the
25 profile picture was for that account at that time?

1 A. Yes.

2 Q. And who loaded the profile picture?

3 A. He did.

4 Q. Okay. And, State's 25, this is -- what is this
5 item?

6 A. It's the picture where he changed the profile
7 picture. And, underneath it, it's a post that says
8 "got married."

9 Q. And the date of the change was what date?

10 A. November 17, 2015.

11 Q. And what is the profile picture changed to?

12 A. It's a hand that has a sign language thing
13 meaning I love you.

14 Q. And the information at the bottom, what is
15 that?

16 A. It says: Got married in March of 2015.

17 Q. And what was the day? I'm sorry.

18 A. The date is March 13th of '15.

19 Q. And this information that you've identified in
20 State's 25, is that a fair and accurate
21 representation of the information contained on that
22 joint Facebook account Kanda Way?

23 A. Yes.

24 Q. And that was at this time when you have the LG
25 cell phone time period?

1 A. Yes.

2 Q. And has it been changed or altered in any way
3 since you saw it and witnessed it there?

4 A. No.

5 MS. DARKO: State would move State's 22, 23,
6 and 25 into evidence. State will not admit
7 State's 24.

8 THE COURT: All right. No objection?

9 MS. BISHOP: Without objection.

10 THE COURT: All right. State's Exhibits 22,
11 23, and 25 are admitted into evidence.

12 (State's Exhibit Nos. 22, 23, and 25 admitted
13 into evidence.)

14

15 BY MS. DARKO:

16 Q. You said that this is the profile picture for
17 that joint Facebook account?

18 A. Yes.

19 Q. And this picture on the left -- it's a
20 bifurcated picture. The picture on the left is who?

21 A. Me.

22 Q. And when was that taken?

23 A. That was taken when I was, like, 14.

24 Q. Okay. So this is sometime after you've been
25 involved with the defendant; is that right?

1 A. Yes.

2 Q. And the picture on the right is?

3 A. The defendant.

4 Q. Okay. And with regard to this date, March
5 13th, 2015, was that the memorialization of the day
6 that the defendant had sex with you for the first
7 time?

8 A. Yes.

9 Q. That he considered your marriage date?

10 A. Yes.

11 Q. We are about to conclude your testimony here,
12 MINOR1; I promise. I just have a couple clean-up
13 questions before we finish your last line of
14 questioning.

15 When you were speaking about the slapping
16 incident and you say that you had sex with the
17 defendant, that he had sex with you in connection
18 with that first incident of violence, what kind of
19 sex? Can you describe the sexual contact during
20 that time?

21 A. It was similar to the one when it first
22 happened.

23 Q. Did he ask you to perform any other type of sex
24 act on that occasion?

25 A. He asked me to give him a blow job.

1 Q. And what is a blow job?

2 A. Where you put his penis in your mouth and you
3 suck on it.

4 Q. And did he have to tell you how to do that?

5 A. Yes.

6 Q. When you were speaking about his interceding
7 your messages on Facebook, was it your testimony
8 that he -- you did have a conversation about the
9 message between him and Tanner; is that right?

10 A. Yes.

11 Q. And you did not have a conversation about the
12 messages that he sent to this Dakota person?

13 A. None.

14 Q. Was -- do you remember where you were when he
15 sent the messages to Tanner? Were you, indeed, with
16 him in the bedroom?

17 A. I was asleep.

18 Q. Okay. And were you asleep in bed with him, do
19 you know?

20 A. I know he was sitting up and I turned over and
21 went to sleep in the same room.

22 Q. You testified before on that diagram that the
23 defendant was sleeping on the sofa -- or that he was
24 to sleep on the sofa. When would he come into your
25 room?

1 A. When my mom went to sleep.

2 Q. Okay. And about how often would that occur?

3 A. All the time.

4 Q. Okay. And you testified that on -- some of the
5 times that he had sex with you were during those
6 occasions when he came into your room at night.

7 A. Yes.

8 Q. And the other times were after you got home
9 from school when nobody was there; is that right?

10 A. Yes.

11 Q. And this is during the period of time that your
12 mom is working 7:00 to 7:00?

13 A. Yes.

14 Q. And where were your siblings?

15 A. They're gone to dance.

16 Q. And why were you not at dance?

17 A. Because I only did dance one day.

18 Q. And did you, in fact, want to drop out of
19 dance?

20 A. Yes.

21 Q. And why did you have to do one day?

22 A. Because I had cross-country practice.

23 Q. Did your mom make you stay in dance?

24 A. Yes.

25 Q. Did there come a time when you had to give an

1 interview to a lady in Aiken about what you've
2 described to the jury here today?

3 A. Yes.

4 Q. And do you remember how many interviews you
5 gave?

6 A. I gave two.

7 Q. And were you still at your grandmother's house
8 when you gave these interviews?

9 A. No.

10 Q. The first time that you gave an interview, who
11 brought you to the interview?

12 A. My mom and my dad.

13 Q. And how long had you been with your mom and
14 your dad?

15 A. For a month, I think, or like -- no. It was a
16 couple days.

17 Q. How did you feel about that, being placed with
18 your parents?

19 A. I felt better because I wasn't with my grandma.

20 Q. And you don't know -- and you did not know for
21 what purpose you were giving this interview?

22 A. No.

23 Q. And did you misrepresent anything during those
24 interviews?

25 A. Yes.

1 Q. And what did you misrepresent?

2 A. I lied.

3 Q. Okay. And what, specifically, did you lie
4 about?

5 A. I told the forensic interviewer that nothing
6 happened.

7 Q. So, initially, you tell the forensic
8 interviewer that nothing happened. Is there a time
9 where you told the forensic interviewer that the
10 sexual contact from the defendant came, basically,
11 exclusively by force or that you were drugged?

12 A. Yes.

13 Q. And was that the truth?

14 A. No.

15 Q. And why did you tell the forensic interviewer
16 that?

17 A. Because I didn't know anyone was going to see
18 the video and who else was going to know, and I
19 didn't want to be bullied anymore at school.

20 Q. And did you think that it somehow made it
21 better if it were -- if he had forced you to --
22 physically or under drugs, that that somehow -- did
23 you believe that this was your fault?

24 A. Yes.

25 Q. Do you know today that it wasn't your fault?

1 A. Yes.

2 Q. And did you know at the time that --

3 MS. DARKO: New question, Your Honor. I'll
4 strike that.

5 BY MS. DARKO:

6 Q. During the forensic interviews, did you know
7 that law enforcement had the content of your text
8 messages?

9 A. No.

10 Q. And are you confronted with that information?

11 A. Yes.

12 Q. And when you're confronted with that
13 information, what's your reaction?

14 A. I started thinking and I started crying.

15 Q. And why did you have that reaction?

16 A. Because I was scared but relieved at the same
17 time.

18 Q. And you said that you were being bullied at
19 school about your relationship with the defendant.

20 A. Yes.

21 Q. Were there rumors that your brother was having
22 sex with you?

23 A. Yes.

24 Q. And did that make you more popular in school?

25 A. No.

1 Q. After your interview in Aiken, were you taken
2 for a medical exam?

3 A. Yes.

4 Q. And about how long after your -- after the
5 defendant last had sex with you did the exam occur?

6 A. I think it was a couple months.

7 Q. What you told the jury here today about your
8 big brother forcing his penis into your vagina, did
9 that happen when you were 13 in 2015?

10 A. Yes.

11 Q. And did it happen on multiple occasions?

12 A. Yes.

13 Q. And did that continue after he celebrated your
14 14th birthday with you, taking you to the mall for
15 clothes?

16 A. Yes.

17 Q. And did that sexual contact also involve his
18 putting his penis into your mouth?

19 A. Yes.

20 Q. And can you identify the person who, during
21 that time period, was forcing his penis into your
22 vagina and forcing his penis into your mouth in the
23 courtroom here today?

24 A. Yes.

25 Q. And where is he seated?

1 A. Next to his lawyer.

2 Q. Okay. And what is he wearing?

3 A. A white shirt and a red striped tie.

4 MS. DARKO: Let the record reflect that she has
5 identified the defendant as the person who committed
6 these acts against her.

7 Nothing further. Please answer any questions
8 the Defense may have for you.

9 THE COURT: Cross-examination?

10 CROSS-EXAMINATION

11 BY MR. BISHOP:

12 Q. MINOR1, I know you've given a lot of testimony
13 this morning. I'm going to try not to jump around
14 too much. I don't want to confuse you. And I know
15 this is tough.

16 Can you kind of explain what was going on in
17 your home life -- I know you told the State a little
18 bit about it -- around early 2015 with your father?

19 A. My dad was drinking.

20 Q. And how was he treating the family?

21 A. Horribly.

22 Q. Did DSS get involved?

23 A. Yes.

24 Q. Did your dad eventually go to rehab?

25 A. Yes.

1 Q. When was that?

2 A. It was around Christmas.

3 Q. Around Christmas?

4 A. Yeah.

5 Q. Christmas of 2014?

6 A. Yes.

7 Q. And when did he get out of rehab?

8 A. Around that summertime of 2015.

9 Q. So around, possibly, June?

10 A. Like June or July.

11 Q. And what were the conditions that he get out?

12 Did another adult have to be in the house?

13 A. Yes.

14 Q. And who, ultimately, was that adult?

15 A. Kyle.

16 Q. You testified that you were the one that asked
17 Kyle to move in. Is that correct?

18 A. Yes.

19 Q. But that's not true, is it?

20 A. It is.

21 Q. So Donna didn't want Kyle to move in?

22 A. Nope.

23 Q. So it was your idea?

24 A. Yes.

25 Q. And when did Kyle move in?

1 A. He moved in around February.

2 Q. Moved in around February. But you just
3 testified that your dad got out of rehab in June.

4 A. June or July of 2015. And Kyle moved in around
5 February -- early that February, about 2015. So it
6 was early that year.

7 Q. So he didn't have to move in because your dad
8 was getting out of rehab?

9 A. He moved in before my dad came back from rehab.

10 Q. What was going on with you during this time, in
11 terms of school and your personal life, before Kyle
12 moved in?

13 A. I was being bullied. I didn't have anybody to
14 go to.

15 Q. Were you hurting yourself or threatening to
16 hurt yourself?

17 A. No.

18 Q. You never cut your arms or threatened to kill
19 yourself --

20 A. No.

21 Q. -- via Facebook or other messages?

22 A. Nope.

23 Q. When Kyle moved in, what did he tell you about
24 his upbringing and his relationship with your
25 father?

1 A. He said he didn't like my father.

2 Q. Did he tell you he kind of had the same issues
3 growing up?

4 A. Yes.

5 Q. So you two could relate?

6 A. Yep.

7 Q. Did you go to Relay For Life with Kyle and --
8 or go -- did you see Kyle at the Relay For Life in
9 2015 in Saluda?

10 A. Not that I recall.

11 Q. So you don't recall being with him in public
12 and your friends asking who he is?

13 A. No.

14 Q. When did your friends ultimately see you and
15 Kyle together?

16 A. They never saw us together besides when he came
17 to one of the dance recitals for my sisters.

18 Q. Well, how did this talk on Facebook come up
19 about you and Kyle?

20 A. What talk?

21 Q. That your friends asked you who your boyfriend
22 is or is this your boyfriend or concerned that you
23 were in a relationship with this guy?

24 A. I talked to people at school.

25 Q. You're alleging that this happened March 13th

1 of 2015 until October of 2015; is that correct?

2 A. Yes.

3 Q. Did you give a forensic interview in May of
4 2016?

5 A. I know I gave a forensic interview, but I don't
6 know the specific date.

7 Q. And did you give another interview towards the
8 end of 2016?

9 A. Yes.

10 Q. Did your story change between those two
11 forensic interviews, as to what happened?

12 A. I started opening up and telling the truth.

13 Q. Did you admit to lying in the first forensic
14 interview?

15 A. Yes.

16 Q. Did you admit to lying in your forensic
17 interview about running to a neighbor's house?

18 A. Yes.

19 Q. Why would you not tell the truth in some of
20 these interviews?

21 A. Because I didn't want -- I didn't know who was
22 going to see the video.

23 Q. Well, how would that hurt you, whether or not
24 you went to a neighbor's house?

25 A. Because I was told that if I didn't give them a

1 story besides that that happened and that I didn't
2 go away from it, then my parents would have been
3 taken to jail because they were going to be at
4 fault.

5 Q. So you were told what to say in this interview?

6 A. No. I was told that if I didn't -- okay.

7 What I was told was that my parents would have
8 been at fault and that they would have gone to jail.

9 Q. So you made up some aspects of this interview?

10 A. Yes.

11 Q. And the same with the second one you gave?

12 A. No.

13 Q. Does your story change now from what you gave
14 in your second forensic interview?

15 A. No.

16 Q. If I were to show you some of this forensic
17 interview, would it refresh your memory?

18 A. More than likely.

19 MR. BISHOP: Your Honor, I'd like to show the
20 victim some of her interview, just to refresh her
21 memory. I know that it wasn't under oath and it
22 won't be admissible to the jury --

23 (Sidebar conference.)

24 BY MR. BISHOP:

25 Q. MINOR1, the State introduced an exhibit that

1 was a picture of your house; is that correct?

2 A. Yes.

3 MS. BISHOP: May I approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. BISHOP:

6 Q. This was entered as State's Exhibit 14. Is
7 that the house where you were residing when your
8 brother lived there?

9 A. Yes.

10 MR. BISHOP: Judge, I'm going to republish
11 this.

12 BY MR. BISHOP:

13 Q. You stated that the room on the bottom was
14 yours; is that correct?

15 A. Yes.

16 Q. And that's the room on the bottom. Could you
17 point to that room for me?

18 A. (Witness complies).

19 Q. And whose room is at the top?

20 A. My younger sister's.

21 Q. And that is?

22 A. MINOR2

23 Q. MINOR2. So you and MINOR2 didn't share a room?

24 A. No.

25 Q. And where did Kyle sleep?

1 A. He was supposed to sleep on the couch, but he
2 slept in this room.

3 Q. And where did MINOR3 sleep?

4 A. On the couch.

5 Q. And it's your testimony that you slept in the
6 same room as Kyle?

7 A. Yes.

8 Q. You didn't sleep in the same room as your
9 sister?

10 A. No.

11 Q. You also said he was physically violent towards
12 you; is that correct?

13 A. Yes.

14 Q. And when did this happen?

15 A. It happened when -- the second time that me and
16 him had sex.

17 Q. And where did that happen?

18 A. In my younger sister's room.

19 Q. In your younger sister's room. Where was your
20 younger sister?

21 A. She was gone to dance.

22 Q. Where was your younger brother?

23 A. He was gone to dance.

24 Q. When did Kyle move out of the house?

25 A. Out of my parents'?

1 Q. Out of your parents', yes.

2 A. When all of us kids were taken from my parents.

3 Q. And you moved into a -- or you went to your
4 grandmother's house; is that correct?

5 A. Yes.

6 Q. And you were in a camper behind your
7 grandmother's house?

8 A. No.

9 Q. Did y'all stay in a camper some behind your
10 grandmother's house?

11 A. We didn't stay in a camper behind my
12 grandmother's house; we stayed in a camper behind my
13 aunt's house.

14 Q. Behind your aunt's house?

15 A. Yes.

16 Q. Okay. And that was near your house?

17 A. No.

18 Q. That was near your grandmother's house?

19 A. No.

20 Q. Where was that in relation to your
21 grandmother's house?

22 A. It was nowhere next to my grandmother's house
23 or in that area.

24 Q. You testified that your grandmother walked in
25 when it was you and Kyle in the camper; is that

1 correct?

2 A. It was me, him, and my little sister.

3 Q. Was your sister Laura there?

4 A. Yes.

5 Q. In the camper?

6 A. Yes.

7 Q. And was your brother MINOR3 there?

8 A. Yes.

9 Q. So why did you testify that it was just you,
10 Kyle, and MINOR2?

11 A. It was -- I said it was me, him, and my younger
12 sister on the bed. I never said nobody else was --

13 Q. Okay. So others were in there. And y'all were
14 watching a movie?

15 A. Yes.

16 Q. The Kanda Way Facebook profile, who made that
17 account?

18 A. He did.

19 Q. Who maintained that account or had access to
20 it?

21 A. Me and him.

22 Q. Who posted pictures on there?

23 A. He did.

24 Q. Only he did?

25 A. Yes.

1 Q. So you didn't post any pictures on there?

2 A. Nope.

3 MR. BISHOP: I beg the Court's indulgence, Your
4 Honor.

5 THE COURT: Okay.

6 BY MR. BISHOP:

7 Q. You testified that the Motorola phone that the
8 State offered into testimony [sic] was yours?

9 A. Yes.

10 Q. And the text messages they showed, those were
11 received or sent by you?

12 A. Yes.

13 Q. Okay. And a lot of them were to your brother;
14 is that correct?

15 A. Yes.

16 Q. I know you've reviewed a lot of them. I
17 reviewed them as well. You guys talked about a lot
18 of things, had a lot of conversations; is that
19 correct?

20 A. Yes.

21 Q. A lot of them were just between the two of you?

22 A. Yes.

23 Q. Via text message?

24 A. Yes.

25 Q. But you never mentioned sex or any type of

1 sexual relationship; is that correct?

2 A. No.

3 Q. You never did?

4 A. (Nonverbal response).

5 Q. If that was something going on, you think that
6 you would at least discuss it or he would discuss it
7 with you?

8 A. We discussed it in person because he didn't
9 want evidence of it.

10 Q. Did you deny the sexual relationship to anybody
11 at that time?

12 A. Yes.

13 Q. Who was that?

14 A. I denied it -- that anything happened to the
15 forensic interviewer.

16 Q. To what?

17 A. The forensic interviewer.

18 Q. Okay. Just to the forensic interviewer?

19 A. Yes, because nobody else asked.

20 Q. Okay. Did Donna, your mother, ever ask about
21 it or did it ever come up?

22 A. No.

23 Q. Did your grandmother ever ask about it?

24 A. No.

25 MR. BISHOP: Permission to approach, Your

1 Honor?

2 THE COURT: Very well.

3 BY MR. BISHOP:

4 Q. Does this look like some of the text messages
5 sent or received by you?

6 A. Yes.

7 Q. Okay. And does that look like the setup of --

8 MS. DARKO: Your Honor, if I could just see
9 what he's showing --

10 THE COURT: Do you have a copy, Counsel?

11 Allow counsel a moment to look at it.

12 MR. BISHOP: All right.

13 (Brief pause in the proceedings.)

14 MS. DARKO: I've had an opportunity to look at
15 it, Your Honor.

16 THE COURT: All right. Proceed.

17 BY MR. BISHOP:

18 Q. Okay. MINOR1, is that your phone number in
19 these messages?

20 A. I can't see the number.

21 Q. The last four are 6238.

22 A. Yes.

23 Q. Okay. Do those messages look familiar or is
24 that -- those messages you could have possibly sent
25 from your phone?

1 A. Yes.

2 Q. Okay.

3 MR. BISHOP: Your Honor, I'd move to introduce
4 this as Defendant's Exhibit 1.

5 THE COURT: Any objection?

6 MS. DARKO: No objection, Your Honor.

7 THE COURT: All right. Defendant's Exhibit
8 admitted into evidence.

9 (Defendant's Exhibit No. 1 admitted into
10 evidence.)

11 BY MR. BISHOP:

12 Q. MINOR1, can you read the next to the last text
13 on the right -- the bottom right that says from
14 MINOR1 ?

15 A. Grandma said we were too close and she kicked
16 him out. And now they have took my phone and
17 Grandma has been telling everyone me and him are
18 having sex and we're not. I need to talk to Bubba.
19 I need to know he's okay. I'm crying.

20 Q. And you sent that to whom?

21 A. My mother.

22 Q. And who is Bubba?

23 A. Him.

24 Q. Him, as in --

25 A. Kyle.

1 Q. -- Kyle?

2 So, at that point in time, someone must have
3 thought something was going on, and you were denying
4 it; is that correct?

5 A. Yes.

6 Q. And you told that to your mother?

7 A. Yes.

8 Q. And, once again, what is the date on that text?

9 A. 10/14/2015.

10 Q. Is that after Kyle moved out of the house?

11 A. That's when he was in the camper with us kids
12 and --

13 Q. You're still in the camper?

14 A. Yes.

15 Q. -- on October 14th, 2015?

16 A. Yes.

17 Q. I'd like to talk about your cell phones. The
18 first cell phone was the Motorola phone, which we
19 just read the texts from. Where did you get that
20 phone?

21 A. My mother.

22 Q. And how long did you have that phone?

23 A. For about a year, I think.

24 Q. What ultimately happened to it?

25 A. It ended up getting taken. My aunt took it.

1 Q. All right. And when did you get another phone
2 after that?

3 A. When he brought it to the WaveRunner.

4 Q. Who is he?

5 A. Kyle.

6 Q. Are those the only two phones you had during
7 this time?

8 A. Yes.

9 Q. Or during the time that you and Kyle were in
10 communication?

11 A. Yes.

12 Q. Did you previously give a statement that you
13 threw a phone into the water at Disney World --

14 A. No.

15 Q. -- in Orlando?

16 The picture of Kyle with no shirt on, you're
17 saying that that was sent to you on that phone?

18 A. I'm not saying it's evidence; it's just he did
19 it.

20 Q. So you are saying he sent that to you?

21 A. He did. I'm not saying that there's --

22 Q. You're stating that he sent that --

23 A. He did.

24 Q. You didn't pull that picture off of Facebook or
25 take it from another account?

1 A. No.

2 Q. It's your testimony today that the Facebook
3 relationship you and Kyle had and the conversations
4 you were having from March of 2015 through October
5 were purely between the two of you; they weren't to
6 express some relationship to anybody else, to anyone
7 at school?

8 A. No.

9 Q. When Kyle was there, was he helping you out in
10 a positive way?

11 A. He was basically an emotional support.

12 Q. Like a big brother?

13 A. In a way.

14 Q. Did he help you out with school?

15 A. No.

16 Q. He didn't?

17 A. No.

18 Q. Did he help you out with any extracurricular
19 activities?

20 A. No.

21 Q. So he was just there to talk?

22 A. Yep.

23 Q. I want to go back briefly to these forensic
24 interviews. And you testified that, in the first
25 one, you said that you were drugged and that, I

1 believe -- did you say that you had sex with him at
2 his house in Greenwood?

3 A. Yes.

4 Q. Why did you say that?

5 A. Because that was true.

6 Q. That was true?

7 A. Yes.

8 Q. Okay. You didn't testify to that earlier, did
9 you?

10 A. I said I didn't testify to where I was drugged
11 or had alcohol in my system.

12 Q. So you told that to the forensic interviewer,
13 but then you said earlier, and I think the State
14 asked you, that that was not what happened, but you
15 told that to the forensic interviewer because you
16 didn't know it was being videotaped?

17 A. I knew it was being videotaped because in every
18 room I walk into, I look up to see if there's a
19 camera.

20 Q. Okay.

21 A. And in the forensic interview, if you look
22 closely, you can see me looking up at the camera.

23 Q. So why would you tell that to the interviewer
24 if that's not true and this is a few months after
25 these events allegedly happened?

1 A. Because I wanted it to be true. I wish it was
2 what had happened.

3 Q. Why not just tell the truth? I mean, you're
4 saying that you guys had sex five times a week.
5 This is after Kyle had already moved out. You know,
6 he's really not in your life anymore. So why
7 fabricate this kind of story?

8 A. Because I was still terrified of the fact that
9 he told me if I told anybody and he knew about it,
10 he was going to kill me.

11 Q. He told you that in person?

12 A. Yes.

13 Q. And you didn't tell anyone about that?

14 A. No.

15 Q. Were you also scared of your dad when he was
16 living in the house?

17 A. Yes.

18 Q. Were there times when you would call the law
19 enforcement or notify DSS when your dad was doing
20 wrong --

21 A. Yes.

22 Q. -- or when he threatened to harm you?

23 So what's the difference if you're scared of
24 your father and you're going to notify someone
25 immediately, if you're scared of Kyle and Kyle's

1 already out of the house, why are you not telling
2 anyone else or notifying some authorities?

3 A. Because I know what my dad is capable of and I
4 don't know what he is.

5 Q. You know that your dad is capable of violence?

6 A. I know how -- how to go about getting out of
7 the house with my dad versus I don't know what to do
8 with him.

9 Q. Why did you also tell the interviewer that you
10 were being bullied at school and then, today, you're
11 saying that's not true?

12 A. I was being bullied at school when he -- when
13 Kyle decided to text my friends and stuff.

14 Q. To text your friends?

15 A. Yes.

16 Q. And what did he text your friends?

17 A. Saying that I was his boyfriend [sic] and that
18 we were engaged.

19 Q. Did the bullying stop?

20 A. It stopped when I was in 11th grade.

21 Q. So your testimony today is that when this
22 relationship -- alleged relationship started,
23 nothing changed with you and your friends?

24 A. I had friends in the beginning. And then,
25 shortly after that, I lost some, but gained some

1 others.

2 Q. And I'm sorry for jumping around. You gave a
3 lot of testimony earlier. When Kyle was living at
4 the house, where was he working, to your knowledge?

5 A. VELUX.

6 Q. Do you know what hours he worked?

7 A. No.

8 Q. Do you know when he was at work?

9 A. The only times I knew he was at work is when he
10 texted me.

11 Q. But when you got home from school, was he at
12 home?

13 A. Yes.

14 Q. He was?

15 A. Yes.

16 Q. About what time would you get home from school?

17 A. Like 4:00 or 5:00.

18 Q. And he was already at home?

19 A. Yes.

20 Q. Do you know when he would leave for work in the
21 morning?

22 A. No.

23 Q. Would he leave before you would?

24 A. No.

25 Q. So he would leave after you would?

1 A. Yes.

2 Q. What time did you leave to go to school?

3 A. I had to get up at, like, 6:00.

4 Q. You'd get up at 6:00?

5 A. Yes.

6 Q. And what time would you leave?

7 A. I would leave about 6:00, 6:30.

8 Q. Did Kyle stay on the weekends there?

9 A. Yes.

10 Q. Did he stay some on the weekends before he
11 officially moved in?

12 A. Yes.

13 Q. And around when was that?

14 A. I don't recall.

15 Q. You don't recall?

16 A. No.

17 Q. Do you know what time of year it was?

18 A. Probably spring.

19 Q. And you've testified that he moved in March
20 13th or about so?

21 A. He moved in before March 13th.

22 Q. Full-time?

23 A. Yes.

24 Q. Okay.

25 MR. BISHOP: Beg the Court's indulgence.

1 Your Honor, barring some possible review of the
2 forensic interview, I have no further questions at
3 this time.

4 THE COURT: All right. Well, let me speak to
5 y'all over here.

6 (Sidebar conference.)

7 THE COURT: All right. Redirect?

8 REDIRECT EXAMINATION

9 BY MS. DARKO:

10 Q. MINOR1, there were some occasions when you were
11 out in public with the defendant; is that true?

12 A. Yes.

13 Q. And he -- would he grab your hand?

14 A. Yes.

15 Q. Would the two of you be very close?

16 A. Yes.

17 Q. As a couple would be?

18 A. Yes.

19 Q. Did you proclaim that he was your brother while
20 he was holding your hand? Is that something that
21 you wanted the world to know?

22 A. No.

23 Q. And is that something that you advertised
24 around school?

25 A. No.

1 Q. When you have -- with regard to the piece of
2 evidence that Defense admitted, the conversation
3 between -- that's a conversation between you and
4 your mother; is that correct?

5 A. Yes.

6 Q. And you weren't really supposed to be having
7 any contact with your mother at that time; is that
8 right?

9 A. No.

10 Q. And you were, obviously, trying to get her to
11 buy you a cell phone for the purpose of staying in
12 contact with the defendant?

13 A. Yes.

14 Q. And you previously testified that you were
15 afraid of anybody finding out about his having sex
16 with you; is that right?

17 A. Yes.

18 Q. So when all of this blows up, you continuously
19 say that he did not have sex with you?

20 A. Yes.

21 Q. And this is just one more example of that?

22 A. Yes.

23 Q. With regard to the incident that occurred in
24 Greenwood, at the time the defendant moved in with
25 y'all, he actually had his own place in Greenwood;

1 is that right?

2 A. Yes.

3 Q. And he worked in Greenwood?

4 A. Yes.

5 Q. Were there occasions when he might not stay in
6 your home?

7 A. Yes.

8 Q. And was his work schedule consistent?

9 A. Yes.

10 Q. So he was -- on the occasions that he was
11 staying with you, he'd be home at about the same
12 time?

13 A. Yes.

14 Q. But there were some evenings when he would not
15 stay at the house?

16 A. Yes.

17 Q. But he primarily stayed with you between the
18 period of March of 2015 and October of 2015?

19 A. Yes.

20 Q. And, ultimately, does he move out of that house
21 in Greenwood?

22 A. Yes.

23 Q. Was it a house or was it an apartment?

24 A. He was renting a house.

25 Q. Okay. And did you help him move out of that

1 place?

2 A. Yes.

3 Q. And did your father help move him out of the
4 place?

5 A. Yes.

6 Q. And did Kyle ask your father if he could be
7 left alone with you, that he would -- to finish
8 cleaning up the house?

9 A. My mom, my dad, and my little brother and my
10 little sister were at that house with us while we
11 were trying to help him move out. And then my dad
12 saw a car out there, which is a Honda, and my dad
13 really liked the car, so Kyle told him he could take
14 it.

15 So then they -- my mom followed him back to the
16 house with the car. They all left. And I stayed
17 there with him, because I asked my mom if I could,
18 and then Kyle would just take me home afterwards.

19 Q. And, on this occasion, did he have sex with you
20 again?

21 A. Yes.

22 Q. And what, if anything, happened prior to his
23 having sex with you?

24 A. I don't understand.

25 Q. Did he give you alcohol on this occasion?

1 A. He pulled it out of the cabinets.

2 Q. And did you drink any of it?

3 A. Yes.

4 Q. And what happened after that?

5 A. I ended up passing out.

6 Q. And when you woke up, what happened?

7 A. I woke up and I heard he was in the shower.

8 And I was lying on his bed and my clothes were off.

9 Q. And did you believe that he had had sex with
10 you?

11 A. Yes.

12 Q. Why did you believe that?

13 A. Because there was cum on the blankets and
14 stuff.

15 Q. And, again, after you -- does he take you home
16 that night?

17 A. Yes.

18 Q. And about what time do you arrive home?

19 A. Right about probably 6:00 or 7:00, maybe.

20 Q. Okay. And that's home to -- your home in
21 Saluda; that's right?

22 A. Yes.

23 Q. During the time that you were staying with your
24 grandmother, were you sneaking out to go visit your

25 mom?

1 A. Yes.

2 Q. And did you want very badly to be back at home
3 with your mom?

4 A. Yes.

5 Q. Were you afraid of your dad?

6 A. When he was drinking.

7 Q. Did Kyle sometimes act as a barrier, a
8 protector, between you and your dad?

9 A. Yes.

10 Q. And when Kyle left, were you afraid that you
11 had lost that protection?

12 A. Yes.

13 Q. And that was stressful to you?

14 A. Yes.

15 Q. When you were giving your forensic interviews,
16 you were aware that DSS was still involved in your
17 life --

18 A. Yes.

19 Q. -- and that if they found out about the sexual
20 contact between you and Kyle, who was acting -- you
21 testified, as basically a monitor, you believed that
22 your parents would get in trouble?

23 A. Yes.

24 Q. And, at that time, would your grandmother have
25 allowed you and your siblings to live back with her?

1 A. Can you restate the question?

2 Q. Would your grandmother have allowed you to come
3 back to her house after you left?

4 A. Yes.

5 Q. And so -- which is somewhere you did not want
6 to be?

7 A. Yes.

8 Q. And you did not want any -- being relocated
9 back into your grandmother's to be anywhere near
10 your fault; is that right?

11 A. Yes.

12 Q. And that's what was going on as you're giving
13 these forensic interviews?

14 A. Yes.

15 Q. You're trying to protect yourself; you're
16 trying to protect your siblings --

17 A. Yes.

18 Q. -- and stay with your mom?

19 A. Yes.

20 MS. DARKO: Begging the Court's indulgence just
21 briefly.

22 Nothing further.

23 THE COURT: Any recross?

24 MR. BISHOP: Just briefly, Your Honor.

25 RE CROSS-EXAMINATION

1 BY MR. BISHOP:

2 Q. I want to touch on this Greenwood allegation
3 one more time. How did y'all get to Kyle's house in
4 Greenwood?

5 A. I rode with him in his black Kia.

6 Q. And who else was with you?

7 A. My mom and dad, and my little brother and my
8 little sister drove in, in the Excursion.

9 Q. Okay. And met y'all there?

10 A. Yes.

11 Q. And who did you ride back with?

12 A. I rode back with Kyle.

13 Q. Where was your mom, your dad, and [REDACTED] MINOR2?

14 A. I just said before, they were in the car, they
15 were in the Excursion; that they -- my dad liked the
16 Honda that was sitting outside Kyle's house, so Kyle
17 said my dad could have the car. My dad ended up
18 driving it back to the house and my mom followed
19 him.

20 Q. So you and Kyle and [REDACTED] MINOR2 didn't follow your
21 dad back in the Excursion --

22 A. My little sister went with my parents.

23 Q. And your testimony is that you spent the night
24 at Kyle's house?

25 A. Yes.

1 Q. In your statement, I believe you said you had a
2 friend named Troy there.

3 A. Troy didn't exist.

4 Q. Troy didn't exist?

5 A. No. That's a made-up person.

6 Q. Why did you make that up?

7 A. Why not?

8 Q. Well, if you're making up a lot of these
9 allegations then, how do we know what to believe
10 that you're saying today?

11 A. Because the difference is, if you put me on a
12 lie-detector test right now, I can pass it and I bet
13 he can't.

14 MR. BISHOP: Nothing further.

15 THE COURT: All right. The witness may step
16 down.

17 All right. Ladies and gentlemen, it's 12:20.
18 We're going to go ahead and break for lunch now.
19 I'd like for you to be back in your jury room in an
20 hour. Okay? And we'll get started about 1:30 this
21 afternoon.

22 Please don't discuss or research this case in
23 any way, inside or outside the courthouse.
24 Otherwise, have a good and safe lunch, and we'll see
25 you back here in about an hour. Thank you.

1 (The jury exits the courtroom at 12:20 PM.)

2 THE COURT: Okay. We'll break for lunch and
3 see you back here in about an hour.

4 MR. MCNAIR: Judge, can we put something on the
5 record real quick?

6 THE COURT: Certainly.

7 MR. MCNAIR: I've got serious concerns about
8 all this talk about this Greenwood incident. That's
9 something we never planned to get into, obviously,
10 because it happened in Greenwood.

11 Mr. Bishop asked her about it, I guess, to
12 impeach her credibility that she lied about what
13 happened in Greenwood. So I guess I would ask that
14 Mr. Bishop put just on the record that that was a
15 strategic decision of his, that his client wanted as
16 well, in order to impeach her credibility. Because,
17 otherwise, we can never get into what happened in
18 Greenwood in Saluda County.

19 We were never going to get into that, but he
20 opened the door to impeach her credibility. So I
21 would just ask that they put on the record that that
22 was their strategic decision to impeach her
23 credibility.

24 I don't question any attorney's strategy, of
25 course, and her credibility is important in this

1 case, but that's otherwise inadmissible and
2 potential grounds for a mistrial, even if we had
3 gotten into that. So, just to protect the record, I
4 think they need to put on the record that that was
5 their decision to get into that because it was more
6 beneficial to them to try and impeach her
7 credibility of bringing out what they believe to be
8 lies.

9 THE COURT: I'll let him respond to it,
10 Mr. Bishop.

11 MR. BISHOP: Yes, Your Honor. I'll agree with
12 that. We did bring it up to show her credibility
13 and to show that she's fabricated multiple stories
14 before, regarding my client.

15 THE COURT: The Troy person was mentioned in
16 one of the forensic interviews; is that correct?

17 MR. BISHOP: Yes.

18 THE COURT: And, obviously, the forensic
19 interviews were discussed by both sides. I see
20 counsel's point in the fact that it was a Greenwood
21 incident which was not for concern here today. But
22 the record will reflect he did that for strategic
23 purposes.

24 MR. BISHOP: I did, Your Honor. And, you know,
25 all this was -- obviously, about the Greenwood

1 incident, all this was provided in discovery through
2 her forensic interviews where she talks about just
3 the entire relationship.

4 THE COURT: All right.

5 MR. MCNAIR: And just to confirm that that is
6 something his client wanted as well, for him to
7 impeach her credibility, that that was part of his
8 strategy as well; that he was onboard with that
9 tactic.

10 MR. BISHOP: That's correct. We've discussed
11 this.

12 THE COURT: All right. Very well.

13 MR. MCNAIR: Thank you, Your Honor.

14 THE COURT: See y'all shortly.

15 (Luncheon recess 12:23 PM - 1:28 PM.)

16 THE COURT: Madam Court Reporter, it's about
17 1:30. We'll kick off the afternoon and see where it
18 leads us. Let's aim at -- we'll just see where you
19 are with the witnesses. But I'd like to stop around
20 5:00.

21 MS. DARKO: Yes, Your Honor. That sounds very
22 reasonable.

23 THE COURT: Is your next witness ready to go?

24 MS. DARKO: Yes, Your Honor. State would --
25 well --

1 THE COURT: Well, not yet. Mr. Bishop --

2 MS. DARKO: It will be the victim's mother.

3 THE COURT: -- are you ready?

4 MR. BISHOP: Yes, Your Honor.

5 THE COURT: All right. Let's bring the jury
6 in, please.

7 (The jury enters the courtroom at 1:29 PM.)

8 THE COURT: All right. Mr. Foreman, ladies and
9 gentlemen of the jury, I hope you had a nice lunch.
10 I want you to do me a favor during the afternoon's
11 testimony. In the event that you cannot hear,
12 either the witness or the attorneys, I just want you
13 to put your hands up in the air like this
14 [demonstrating]. The lawyers will pick up on it and
15 they'll elevate their voice. And I'll do the same.

16 But we're going to kick off the afternoon
17 testimony here. I anticipate we'll take kind of a
18 break in the middle, if not before, and just go from
19 there.

20 Is the State ready to call their next witness?

21 MS. DARKO: Yes, Your Honor. The State calls
22 Donna Rogers Way.

23 THE COURT: All right.

24 THE CLERK: Raise your right hand.

25 DONNA ROGERS WAY

1 being first duly sworn, testified as follows:

2 THE WITNESS: Yes.

3 DIRECT EXAMINATION

4 BY MS. DARKO:

5 Q. Good afternoon, Donna. Can you please state
6 your full name for the record.

7 A. It's Donna Rogers Way.

8 Q. And where do you currently live?

9 A. [REDACTED] Lookout Point, Leesville.

10 Q. And who is MINOR1 [REDACTED] to you?

11 A. She is my daughter.

12 Q. Yes. And where do you work?

13 A. I work for Prisma Health at Baptist in the
14 NICU.

15 Q. And how long have you worked there?

16 A. 31 years.

17 Q. Who are you married to?

18 A. Kerry Way.

19 Q. How long have you been married to Kerry?

20 A. 20 years.

21 Q. And, if you could, just list the names of your
22 other children that you have with Kerry.

23 A. Laura Way, MINOR2 [REDACTED], and MINOR3 [REDACTED].

24 Q. And I want to take you back to the time period
25 of when your daughter MINOR1 [REDACTED] would have been 13.

1 This would have been back in 2015. Do you
2 remember -- let me back up.

3 Who is Kyle Way to you?

4 A. He was my stepson.

5 Q. Okay. And when did you first meet Kyle?

6 A. In June of '98.

7 Q. Okay. And, before this time, you were not
8 aware that you had a stepson?

9 A. No, I was not.

10 Q. Okay. And when did you make your other
11 children aware that they had a half-brother?

12 A. It was probably right about the time that
13 MINOR1 was 13.

14 Q. And do you recall introducing him to MINOR1 and
15 your children?

16 A. Not like an official introduction.

17 Q. You just -- they -- you feel like they found
18 out in that time frame?

19 A. They did.

20 Q. And around this time, if you can, explain to me
21 what your household dynamic was.

22 A. When like --

23 Q. Okay. So at the time that Kyle comes into your
24 life, is Kerry living in the household?

25 A. In 2013, Kerry was -- he was in the house. He

1 entered rehab in December for alcoholism.

2 Q. And you said 2013. Was that actually December
3 of 2015?

4 A. Yes, it was. Sorry.

5 Q. And his entering rehab, what was that in
6 connection with?

7 A. He had gotten drunk while I was at work. And
8 he and the kids got in a big squabble and we ended
9 up in a DSS case. And he entered rehab for six
10 months.

11 Q. And the rehab was in connection with a DSS
12 order?

13 A. He actually entered rehab on his -- he knew he
14 was going to have to go, and he had made the
15 decision. He had been to several others that were
16 only like six-week programs, and they had not
17 worked. So he found this one that was six months,
18 and he decided, okay, let me try this and see if it
19 will work, because he finally realized that he had a
20 huge problem.

21 Q. And had he been violent towards your children
22 in the past?

23 A. Not up until now.

24 Q. Okay.

25 A. Not like he was this time.

1 Q. Okay. And when you say this time, you're
2 referring to about what year?

3 A. The fall of, probably, '15.

4 Q. When you introduced -- and just to clarify, how
5 old was MINOR1 at this time?

6 A. In '15, she would have been probably 13 -- 12,
7 13.

8 Q. And when you introduced Kyle to MINOR1, did --
9 how long after that does he move into your home?
10 Because -- did he move into your home that year?

11 A. He did. It was around the first of March of
12 '16, I believe.

13 Q. And was that his idea or your idea?

14 A. It was more his than mine. I really needed
15 help getting kids where they needed to be because I
16 was working full-time and trying to juggle working
17 full-time within 12 hours, getting four kids to
18 school, to ball, to Scouts, to dance, wherever they
19 needed. I didn't have really great support from my
20 family.

21 Q. And with regard to that piece, the support from
22 your family, how did they feel about Kerry?

23 A. They did not like Kerry.

24 Q. And is that part of the reason why they
25 withdrew some of their support?

1 A. It is.

2 Q. And when Kyle moves into the home, what was
3 your work schedule like?

4 A. I was working 12-hour shifts, usually 7:00 a.m.
5 to 7:00 p.m. Sometimes it was probably nights, if I
6 got called in. I was working three days a week,
7 every third weekend.

8 Q. Had your work schedule increased when Kerry
9 left the home?

10 A. I picked up as much overtime as I could to try
11 to make ends meet.

12 Q. And at the time that Kyle moves into your home,
13 were you aware of anything -- did he move into the
14 home with his children and the mother of his
15 children?

16 A. No, he did not.

17 Q. And do you have any idea where they were at?

18 A. I did not know where they were staying at that
19 time.

20 Q. After Kyle moved into your home, did you
21 observe any changes in MINOR's behavior?

22 A. She got more withdrawn and wasn't as open with
23 me as she had been in the past. She and Kyle
24 developed a really close relationship.

25 Q. Before he moved into the home, what were her

1 after-school activities like?

2 A. She was busy. She was involved in some FFA
3 stuff at school for some classes; she danced. She
4 was busy most of the week with dance.

5 Q. And after he moves in the home, what were her
6 activities like, her interaction with her friends?

7 A. She slowly withdrew. And just really, the only
8 person that she did spend time with or did talk to,
9 was Kyle.

10 Q. And did this concern you?

11 A. It did.

12 Q. And did you have any discussions with MINOR1
13 about it?

14 A. I tried to. But she was very closed to any
15 type of suggestions or any -- she was telling me
16 that I was seeing what I wanted to see and not
17 seeing the true picture. She was very protective of
18 him.

19 MS. DARKO: Permission to approach, Your Honor?

20 THE COURT: Yes, ma'am.

21 BY MS. DARKO:

22 Q. I'm showing you what's been premarked as
23 State's 26, 27, and 29. Can you identify these
24 items for me?

25 A. Yes, ma'am. The first one is a picture of my

1 children at Disney, probably November 1st. We had
2 been to the Halloween party. And they had several
3 days off school, so it was end of October, first of
4 November. And Disney -- we went to the Halloween
5 party on Halloween. And when the Halloween is done,
6 it's done. When you go back in the park the next
7 day, the Halloween decorations are down and it's
8 Christmas.

9 Q. And would this have been November of 2014?

10 A. Yes.

11 Q. So approximately two to three months before the
12 defendant moves into your home?

13 A. Yes.

14 Q. And is it a fair and accurate depiction of your
15 children at that time?

16 A. Yes, it is.

17 Q. And has anything been altered or modified in
18 this photograph?

19 A. No, ma'am.

20 MS. DARKO: State would move State's 26 into
21 evidence.

22 THE COURT: Without objection?

23 MR. BISHOP: No objection, Your Honor.

24 MS. DARKO: Permission to publish?

25 THE COURT: State's Exhibit 26 is admitted into

1 evidence. Yes, ma'am.

2 (State's Exhibit No. 26 admitted into evidence
3 and published to the jury.)

4 BY MS. DARKO:

5 Q. And this would have basically been before Kyle
6 started having any interaction with MINOR1?

7 A. Yes, it was.

8 Q. With regard to that next photograph,
9 State's 27, can you identify what's going on in that
10 photo?

11 A. Yes, ma'am. We had been to a show by The Gator
12 Boys in the late summer. And this was MINOR1
13 petting a little alligator.

14 Q. And late summer of?

15 A. '14.

16 Q. Okay. And is this a fair and accurate
17 depiction of about the age she was at when all of
18 this took place, Kyle moving into the home?

19 A. It is.

20 Q. And this is her -- I guess, her demeanor and
21 her nature before?

22 A. She loved animals, anything with four legs or a
23 tail and fins or whatever.

24 Q. And does anything in this photograph appear to
25 have been altered or changed?

1 A. No, it does not.

2 MS. DARKO: And State would move State's 27
3 into evidence.

4 MR. BISHOP: No objection.

5 THE COURT: All right. State's Exhibit No. 27
6 is admitted into evidence.

7 (State's Exhibit No. 27 admitted into evidence
8 and published to the jury.)

9 BY MS. DARKO:

10 Q. While I'm publishing this, State's 29, if you
11 could, just identify that photograph.

12 A. This is a photograph taken at Hunting Island
13 State Park. It shows all four of my children.
14 Probably the same summer before the alligator show
15 when we had been down there just to spend a nice
16 weekend with us and the kids, having fun on the
17 beach.

18 Q. And this is a fair and accurate depiction,
19 again, of the ages and how your children appeared
20 physically at that time?

21 A. Yes, it is.

22 Q. And has it been altered or changed in any way?

23 A. No, ma'am.

24 Q. And the designations -- there appear to be some
25 designations on here.

1 A. It's got their grades in school, which would be
2 the grades that they were going into.

3 Q. So this would have been at the beginning of her
4 8th grade year?

5 A. Yes.

6 MS. DARKO: State would move State's 29 into
7 evidence.

8 MR. BISHOP: No objection.

9 THE COURT: So admitted, State's 29.

10 (State's Exhibit No. 29 admitted into evidence
11 and published to the jury.)

12 BY MS. DARKO:

13 Q. You testified that MINOR1's demeanor changed;
14 that you had conversations with her about the amount
15 of contact she was having with Kyle. What did you
16 observe specifically about their interaction that
17 gave you concern?

18 A. They were just closer. They wanted to be side
19 by side all the time, hold hands, just closer than a
20 normal brother-sister would be. It was more like a
21 boyfriend-girlfriend, really serious type of
22 relationship.

23 Q. Did you ever have any opportunity to be alone
24 with MINOR1 when Kyle was in the home?

25 A. Very little.

1 Q. And, based on what you saw, was it more of
2 MINOR1 following Kyle around or Kyle following
3 MINOR1?

4 A. They were more just almost like glued together,
5 the two of them. Where one went, the other one
6 went. If Kyle went to the grocery store, go get his
7 kids, go do whatever for the weekend, she was there
8 with him.

9 Q. And you've testified that your work schedule
10 was 7:00 to 7:00. So this would have prevented you
11 from taking the children to school?

12 A. Yes.

13 Q. So who did take your children to school?

14 A. Most of the time, my mom would take them to
15 school. She lived next door.

16 During this time, Laura got her driver's
17 license, so she was able to drive and take them to
18 school.

19 Q. And when the children got out of school,
20 because you would have still been at work, who
21 picked them up from school?

22 A. Most of the time, they rode home with my mom.
23 She substitute taught for the School District. So,
24 usually, she would pick them up. And, usually, they
25 would go from there to dance or Scouts or whatever

1 their normal activity was for that day.

2 Q. Now, you testified that MINOR1 was no longer in
3 dance. She was in just one day a week; is that
4 correct?

5 A. Yes.

6 Q. So would she have had -- would she have been at
7 home alone from -- time to time, when her siblings
8 were at dance?

9 A. Yes, she would have.

10 Q. And do you know when the defendant got home
11 from work?

12 A. I want to think he probably got to the house
13 about -- between 5:00 and 6:00.

14 Q. So there would have been times when they were
15 alone there together?

16 A. Yes, there was.

17 Q. And did Kyle ever pick MINOR1 up on the days
18 that she had dance?

19 A. Yes.

20 Q. I want to take you to April 20th of that year.
21 Does that date stand out to you for any reason in
22 particular?

23 A. MINOR2's confirmation.

24 Q. Okay. And that would have been her
25 confirmation at church?

1 A. Yes.

2 Q. Did you go to church regularly?

3 A. Yes, we did.

4 Q. Did all your children go?

5 A. Yes, ma'am.

6 Q. Did **MINOR1** and Kyle go?

7 A. Yes, ma'am, they did.

8 Q. And how would y'all ride to church?

9 A. We usually all went together.

10 Q. And on the day of the confirmation, did
11 anything stand out about Kyle's behavior towards
12 **MINOR1**?

13 A. That day, most of my attention was focused on
14 **MINOR2**. But I know they were in the church. And
15 family members commented that they were acting
16 inappropriately.

17 Q. So, to you, this behavior wasn't necessarily
18 new. But this would have been maybe the first time
19 your family members were seeing it?

20 A. Yes.

21 Q. And you were estranged from your family members
22 because of their opinion of Kerry?

23 A. Yes.

24 Q. As a result of your family confronting you
25 about this behavior, did you do anything at that

1 point?

2 A. I thought about it and did say something to

3 MINOR1. But, at that point, he and her were so

4 close that I felt like if I pushed too hard, he

5 would leave and take her with him and I wouldn't

6 know what was going on or where they would be.

7 Q. After you observed the confrontation over the
8 way they're behaving at church, did you observe
9 anything inside the home that gave you cause for
10 concern?

11 A. Yes, I did.

12 Q. And what was that?

13 A. There was one morning when I had gotten up to
14 go to work between 4:00 and 5:00 every morning.

15 And, most mornings, I would go just peek in the
16 bedrooms and make sure the kids were okay. And when
17 I peeked in her bedroom, she and Kyle were laying in
18 the bed together. And she had a twin bed. And they
19 knew that was never supposed to happen.

20 Q. And what did you do as a result of this
21 observation?

22 A. Said something to both of them, if I remember
23 right, that that really did not ever need to happen
24 again; there was a room for MINOR1 to sleep and
25 there was somewhere that Kyle was supposed to sleep,

1 and they both knew the arrangements.

2 Q. And was this before -- you said this was after
3 the confirmation. Was it before or after MINOR1's
4 birthday?

5 A. Probably right after.

6 Q. Okay. And when is MINOR1's birthday?

7 A. [REDACTED].

8 Q. And did -- do you remember Kyle getting her
9 anything for her birthday?

10 A. Yes. He took her on a huge shopping spree and
11 spent a ton of money on her with designer clothes
12 and stuff that I would not have bought her because I
13 couldn't have. I didn't have the money to do it.

14 Q. And did you ever see them together in the
15 bedroom again?

16 A. Other than sitting on the bed and playing --
17 while he was playing video games or watching a
18 movie, no, I did not.

19 Q. What time did you go to bed again?

20 A. Usually I was in bed by 10:00.

21 Q. And, again, what time did you wake up?

22 A. Between 4:00 and 5:00.

23 Q. And if somebody had gone into her room after
24 you went to bed, would you have known?

25 A. No, ma'am, because after I go to bed, I sleep

1 really sound. I'm usually exhausted.

2 Q. By this point, you've seen that Kyle is very
3 close with her inside the home; family members have
4 confronted you; you've actually seen them in the bed
5 together. And you've testified that you said
6 something.

7 Can you explain to the jury why you didn't do
8 something?

9 A. Because, at that point, I guess I viewed it, in
10 a way, of a necessary evil; that I had to have help
11 getting my kids where they needed to be and doing
12 what they needed to do. And I -- I saw it as a way
13 to get, I guess, some of the stress off of me,
14 trying to work and keep food on the table and get
15 kids where they needed to be and everybody on time.
16 And I was putting their dad in front of them at that
17 time, when I really should not have. And I would
18 never ever do that again.

19 Q. Let's talk a little bit more about that. This
20 time frame that you've just described, the April-May
21 time frame, Kerry would have still been in rehab; is
22 that right?

23 A. He was.

24 Q. And so you're utilizing Kyle to assist with
25 transportation, in your mind?

1 A. Yes.

2 Q. And, I guess, to have an adult there?

3 A. Yes.

4 Q. Once Kerry is released from rehab, can you
5 explain what the DSS requirement was with regard to
6 Kerry's contact with your children?

7 A. Once he was released, he could be in the house
8 with the kids, if there was another adult there; if
9 I was there, if Kyle was there, or another adult.
10 And my family wasn't going to help facilitate that,
11 so it was usually either myself or Kyle. And it was
12 usually him on the days that I was working; me on
13 the days I wasn't working.

14 Q. When you're observing all of this, and before
15 Kerry comes home, did you ever talk to Kerry about
16 what you were observing?

17 A. We had very limited meetings with him, usually
18 a couple Sundays a month for a couple hours. And it
19 was the whole family together, so I never got any
20 time by myself with him. And I didn't -- I wanted
21 this rehab to work. I didn't want to end up right
22 back where we were again. And it appeared that it
23 was making a difference.

24 And I was scared if I mentioned anything, maybe
25 it would push him backwards and we would end up

1 further backwards.

2 Q. Did you think he would check himself out of
3 rehab?

4 A. Yes.

5 Q. So it's safe to say that you were not rocking
6 Kerry's boat at the expense of your child?

7 A. No, I was not, unfortunately.

8 Q. Once Kerry comes back -- and Kyle is the other
9 adult that is allowing him to have time with his
10 children; is that right?

11 A. Yes.

12 Q. Was that something Kyle was aware of as well?

13 A. It was.

14 Q. How did this impact how you treated Kyle?

15 A. It -- I probably treated him better than what I
16 should because, obviously, I let him stay in the
17 house when I should not have. I never should have
18 allowed that.

19 Q. Did -- was Kyle aware of -- that -- the level
20 of need your household had --

21 A. Yes, he was.

22 Q. -- and of his presence?

23 A. Yes.

24 Q. By October 2nd, 2015, when Kerry comes home,
25 does he remain sober?

1 A. He had been sober up until that point.

2 Q. Okay. So the time that he was in rehab, he
3 wasn't drinking?

4 A. No, he was not.

5 Q. And how long does he not drink when he gets
6 out?

7 A. He -- the time he got out of rehab, he was
8 going to meetings at the same place that he had gone
9 to rehab. He was doing classes and meetings there
10 probably six days a week. So he was very involved
11 in that, which played a huge part in keeping him
12 from going back to drinking again.

13 Q. And by October, was he still sober? October
14 2015?

15 A. Best I can remember, he was.

16 Q. So why did DSS remove the children from the
17 home in October of 2015?

18 A. He was not supposed to be there with the kids
19 by himself without another adult. And he was there
20 in the house. They came in and the kids all say --
21 well, it just -- MINOR2 and MINOR1 were both in the
22 house with him. And Laura had gone over to her
23 grandmother's, like she normally did after school.
24 MINOR3 had gone home to a friend's house for the
25 weekend.

1 And MINOR2 and MINOR1 knew that if Kyle wasn't
2 there -- they were not supposed to be there with
3 their dad -- that they were supposed to go to their
4 grandmother's. And Kerry knew that he was not
5 supposed to be there with them. If they were going
6 to be there, he was going to have to leave and go
7 somewhere else. And I don't know what made
8 everybody decide let's stay.

9 But, anyway, DSS came, and it was Kerry and the
10 kids and no one else.

11 Q. Was there an altercation between Kerry and the
12 kids that you know of?

13 A. Not that I was aware of, because I was at work.
14 So I really don't know what happened.

15 Q. So you don't really know what was going on in
16 your home?

17 A. Not on that day.

18 Q. When -- where did the children go when they're
19 removed from your house?

20 A. They went to live with my mom.

21 Q. Okay. And I'm going to show you what's been
22 marked as State's 28 for ID. Can you identify this
23 item for me?

24 A. Yes, ma'am. It's a picture of the area where
25 we live.

1 Q. And is it a fair and accurate depiction of that
2 area?

3 A. Yes, it is.

4 Q. Is it an aerial?

5 A. Yes, it is.

6 Q. Does it appear to have been changed or altered
7 in regard to the positioning of the homes or
8 anything like that?

9 A. No, it does not.

10 MS. DARKO: At this time, Your Honor, State
11 would move State's 28 into evidence.

12 MR. BISHOP: No objection.

13 THE COURT: State's 28 admitted into evidence.

14 MS. DARKO: And permission to have the witness
15 step down, Your Honor, just briefly?

16 THE COURT: Sure.

17 (State's Exhibit No. 28 admitted into evidence
18 and published to the jury.)

19 BY MS. DARKO:

20 Q. Donna, if you could -- and I know there's a
21 good bit of glare. But can you point out on this
22 photo where your house is in relationship to your
23 mom's house?

24 A. This is my house right here and my mom's house
25 is right here.

1 Q. So within a few minutes' walk?

2 A. Probably less than a minute.

3 Q. And how did MINOR1 adjust to being placed at
4 your mom's house?

5 A. She didn't. She and my mom were like oil and
6 vinegar. They did not get along.

7 Q. And was she sneaking out to see you?

8 A. She ran away to my house one night. She was
9 crying. I don't even remember what it was. She and
10 her grandmother had gotten into a fight. It was in
11 the middle of the night on a weekend. So she did
12 sneak out that night.

13 I gave her a coat, got her calmed down. And
14 the hardest thing I ever had to do was walk her back
15 over to her grandmother's.

16 Q. When MINOR1 was dealing with her grandmother,
17 was Kyle staying there too?

18 A. He was.

19 Q. All of the time or occasionally?

20 A. He was there, I know, up until they saw things
21 that they didn't like.

22 Q. Okay. And would it be safe to say that he
23 stayed there less than he would have stayed at your
24 house?

25 A. Yes, he did.

1 Q. And that your mom did not really want him
2 around?

3 A. No.

4 Q. And were you aware that the children had
5 been -- that your mom had moved away from her
6 residence for a period of time, relocated briefly?

7 A. We knew she had gone somewhere. But the 2nd of
8 October was the Friday before the flood. We had no
9 contact with her. We didn't know where exactly she
10 had gone. We just knew she was not at her house.

11 Q. Okay. So you were not aware that she had taken
12 the kids and gone to stay in the camper behind their
13 aunt's home?

14 A. No, I was not.

15 Q. And you were not really allowed to be aware of
16 these things?

17 A. No. Everything was pretty much kept from us at
18 that point.

19 Q. But did you learn that something had happened
20 while they were staying there?

21 A. I did.

22 Q. And what did you learn?

23 A. I learned that my brother and my mom had walked
24 into the camper when the kids were just there and
25 Kyle was there, and they found **MINOR1** and Kyle on

1 the bed.

2 Q. And did you see Kyle after this incident?

3 A. That night, he came to my house.

4 Q. Comes to your house?

5 A. Yes.

6 Q. And what did he tell you, if anything?

7 A. He was really worried. He didn't believe that
8 they actually had caught him there. He was really
9 worried about how on earth they could prove
10 anything. Had they taken her to a doctor? How were
11 they going to go about proving anything that they
12 saw or anything that they suspected? He was pacing
13 the floor and --

14 Q. Why would he tell you this?

15 A. I don't know.

16 Q. And what was your reaction to it?

17 A. I was shocked. I didn't know what to say,
18 other than -- I told him I didn't know how they
19 would go about proving anything like that, other
20 than he needed to contact DSS and the Sheriff's
21 Department and find out exactly what was going on,
22 because I was going to do that in the morning.

23 Q. Was he telling you this like you knew what was
24 going on?

25 A. In a way, yes.

1 Q. And do you think it's safe to say that he
2 thought that you knew what was going on because you
3 said something, but didn't do anything?

4 A. Probably.

5 Q. When was the last time you talked to Kyle?

6 A. That night is the last contact I remember.

7 Q. And when did you get custody of your children
8 back?

9 A. In -- somewhere around April 25th of '16, I
10 believe.

11 Q. Do you recall taking MINOR1 to her forensic
12 interview?

13 A. Yes, I do.

14 Q. And was -- I guess, was that shortly after DSS
15 had placed the children back in your home?

16 A. It was probably within the week.

17 Q. And were -- how did you think these allegations
18 would affect the DSS case?

19 A. I felt like -- that we would be -- the kids
20 would be back in custody again and, this time, we
21 wouldn't know where they were.

22 Q. And would y'all talk about it?

23 A. We did.

24 Q. The DSS case, that is.

25 A. Yes.

1 Q. And this incident potentially affecting the DSS
2 case?

3 A. Yes.

4 Q. And did you talk about that in front of your
5 children?

6 A. We all talked about it together.

7 Q. So MINOR1 was aware of this?

8 A. Yes.

9 Q. Was MINOR1 afraid she would end up in foster
10 care?

11 A. She was, because that's what the caseworker had
12 told her.

13 Q. And she expressed this concern to you?

14 A. Yes, she did.

15 Q. Do you recall -- I'm taking you back in time a
16 little bit. Before MINOR1 is taken by DSS and
17 placed with her grandmother in July of that year,
18 after Kerry comes home, did you help the defendant
19 move out of his home in Greenwood?

20 A. We did, on July 4th.

21 Q. Donna, is your testimony here today that you
22 feel partially responsible for this because you
23 didn't protect your daughter?

24 A. Yes, I do.

25 Q. And that you put your daughter -- your husband

1 ahead of your daughter?

2 A. I did.

3 Q. That that was the most important thing to you?

4 A. I did. It's not something I would ever, ever
5 do again. If I had it to do over again, it would
6 not happen.

7 MS. DARKO: Begging the Court's indulgence.

8 BY MS. DARKO:

9 Q. Donna, just to clarify a couple things, Kerry
10 was arrested in December 2014, around there, and he
11 was in rehab until June 2015?

12 A. Yes.

13 Q. And Kyle moved into your home in March of 2015?

14 A. Yes, ma'am.

15 Q. And he had a place in Greenwood that he was
16 paying rent on until July, when y'all moved him out?

17 A. Yes, ma'am.

18 Q. Do you know Kyle's date of birth?

19 A. Somewhere around [REDACTED] of '87.

20 Q. And do you know Kyle's phone number?

21 A. I have his phone number in my phone because he
22 had given it to me when he was there with the kids.

23 But --

24 Q. Do you have your cell phone on you today?

25 A. I don't have it in the courtroom with me. But

1 the number is still in there, just because, usually,
2 what goes into my phone never comes back out.

3 Q. If you saw the phone number, would you
4 recognize it as his?

5 A. Yes, I would.

6 Q. I'm showing you what's been admitted as
7 State's Exhibit No. 6. And, if you could, read the
8 telephone number in that blue box.

9 A. (864) 323-3254.

10 Q. Do you recognize that as the phone number that
11 he gave you to put in your phone when he moved in?

12 A. Yes, ma'am.

13 Q. And you testified that you saw Kyle in bed with
14 your daughter one time. Did you check the bedroom
15 every single day before you left for work?

16 A. Most days, I did. If I happened to have been
17 running late, trying to get out of the house, I
18 didn't. But, most days, I always checked when I got
19 up to go to work.

20 MS. DARKO: Thank you. Nothing further.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. BISHOP:

24 Q. Mrs. Way, you testified that your husband,
25 Kerry, finished rehab around June of 2015; is that

1 correct?

2 A. Yes, sir.

3 Q. And, around that time, DSS was still involved;
4 is that correct?

5 A. Yes.

6 Q. And they had some -- I guess, some instructions
7 or contingencies as to when or what would be done
8 once Kerry was out of rehab?

9 A. Yes.

10 Q. And was one of those that another adult had to
11 be in the home while he was there?

12 A. Yes, it was.

13 Q. And that adult was, ultimately, Kyle, for the
14 most part?

15 A. Yes. If it wasn't me, it was him.

16 Q. Was that part of the consideration for Kyle to
17 move in?

18 A. Yes.

19 Q. Okay. And would that come up shortly before
20 Kerry was supposed to get out of rehab, these
21 requirements?

22 A. The requirements would have been there before
23 he came home so that we knew --

24 Q. Okay.

25 A. -- what had to be in place.

1 Q. Is it possible that Kyle moved in a couple
2 weeks before Kerry got out of rehab?

3 A. He moved in a couple months before he got out
4 of rehab.

5 Q. So your testimony is that he moved in
6 approximately what month in 2015?

7 A. March, I believe, is what I said.

8 Q. And I believe you testified that it was more
9 Kyle's idea than yours to move in?

10 A. Yes, it was.

11 Q. So it wasn't MINOR1's idea for Kyle to move in?

12 A. No.

13 Q. Okay. And when Kyle moved in, he, essentially,
14 helped you out with the family; is that correct?

15 A. He helped me out as far as somebody being there
16 after school when the kids got home or to get them
17 to dance, to Scouts, whatever their after-school
18 activities were.

19 Q. And the children rode the bus home because he
20 wasn't at home when they arrived home?

21 A. Usually, they rode home with their grandmother.
22 Usually, if they didn't come home, they were -- nine
23 times out of ten, they were leaving school and going
24 straight to dance, four -- at least four days a
25 week.

1 Q. You said when Kyle moved in, he was close with
2 MINOR1 and spent a lot of time with MINOR1. Was he
3 also close and spent a lot of time with MINOR2, your
4 other daughter?

5 A. He did.

6 Q. A lot of times, he would hang out with the both
7 of them; is that correct?

8 A. He did, but it was more with MINOR1 than
9 MINOR2

10 Q. And when Kyle moved in, can you tell me what
11 the sleeping arrangement was in the house?

12 A. The sleeping arrangement was supposed to be
13 that the girls got to sleep in their bedrooms. Kyle
14 was supposed to sleep in a recliner, couch, pallet,
15 whatever he wanted to in the den; it was fine.

16 If he were to get up and go into MINOR1's
17 bedroom or MINOR2's bedroom or whatever, they were
18 supposed to get up and go in the other bedroom.
19 MINOR2's bed had a trundle under it, so she could
20 pull that out and there was sleeping for the two of
21 them in there. But never were supposed to be,
22 either one of them, alone with him in a bedroom, and
23 the door was never to be shut, ever.

24 Q. Where was MINOR3 supposed to sleep?

25 A. MINOR3 usually slept with me.

1 Q. Okay. So he didn't sleep on the couch?

2 A. No, he did not. Occasionally, he may have
3 fallen asleep and I left him there. But, most of
4 the time, he fell asleep in my lap and I'd pick him
5 up and put him in the bed where I was.

6 Q. Did MINOR2 and MINOR1 often sleep in the same
7 bedroom?

8 A. Not usually.

9 Q. So they would sleep in separate bedrooms?

10 A. Yes.

11 Q. And where would Kyle sleep when he was there?

12 A. He was supposed to sleep in the recliner in the
13 living room.

14 Q. So Kyle never had his own room at the house?

15 A. No, he did not. We don't have enough bedrooms
16 for that.

17 Q. I'd like to show you what's been marked as
18 State's 14. It's been testified to as a layout of
19 your house.

20 MR. BISHOP: May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 THE WITNESS: Uh-huh.

23 BY MR. BISHOP:

24 Q. Is that an accurate depiction of the set-up or
25 the floor plan of your house?

1 A. Yes, it is.

2 MS. BISHOP: May I publish, Your Honor?

3 THE COURT: Yes, sir.

4 MS. BISHOP: Your Honor, with your permission,
5 if the witness needs to rise and point out certain
6 areas on this exhibit --

7 THE COURT: She can step down, if she needs to.

8 MR. BISHOP: Okay.

9 THE COURT: Just remember to speak in a voice
10 that the Court Reporter can still hear you.

11 BY MR. BISHOP:

12 Q. Mrs. Way, the bedroom on the far right, that
13 was your bedroom; is that right?

14 A. Yes.

15 Q. And MINOR3 would sleep in there?

16 A. He usually would, yes, sir.

17 Q. The bedroom on the top left, whose room was
18 that?

19 A. This bedroom was MINOR2's.

20 Q. And what type of bed was in there?

21 A. There was a twin bed with a trundle under it.

22 Q. A trundle is like a pull-out --

23 A. A trundle bed is another twin bed under there
24 that will pull out.

25 Q. At the time my client resided with you, was

1 there a door on that bedroom?

2 A. Yes. There's always been doors on our
3 bedrooms.

4 Q. And the door was mounted --

5 A. Yes, it was.

6 Q. -- and able to close and shut?

7 Now, the bottom left bedroom, whose bedroom was
8 that?

9 A. This one was MINOR1's bedroom.

10 Q. Okay. It was never designated as Kyle's
11 bedroom --

12 A. No --

13 Q. -- at any point in time --

14 A. -- never.

15 Q. -- while he was there?

16 A. Never.

17 Q. I'm going to backtrack a little bit.

18 You stated that after Kyle moved in, MINOR1
19 dropped out of dance, quit some other activities; is
20 that correct?

21 A. She lost interest in everything.

22 Q. Did she not pick up chorus or choir around that
23 time?

24 A. She took voice and dance for, like, half of a
25 semester. But that was only because I absolutely

1 demanded she take something to take up some of her
2 time. She needed an activity.

3 Q. Did she enjoy it?

4 A. She did enjoy it.

5 Q. Did she continue with it?

6 A. No, she did not.

7 Q. **MINOR2**'s confirmation, I want to make sure I
8 have around the approximate date. You said that was
9 around April 20th --

10 A. Yes.

11 Q. -- of 2015?

12 A. Yes.

13 Q. And your testimony is that Kyle was living at
14 the house at that time?

15 A. At that time, yes, he probably was.

16 Q. It was not just when he would come to visit on
17 the occasional weekend --

18 A. No.

19 Q. -- before he actually moved in?

20 A. No.

21 Q. Okay.

22 A. There was very few occasional weekend visits.

23 Q. Did he still have an apartment elsewhere at
24 this --

25 A. He did.

1 Q. -- or residence at this time?

2 A. Yes, he did.

3 Q. You said on the day of the confirmation, people
4 saw them acting inappropriately; is that correct?

5 A. Yes.

6 Q. Did you see them acting inappropriately?

7 A. When we were in the church, the parents had
8 special reserved pews, which were behind the
9 candidates for confirmation and their sponsors, and
10 the other family members sit behind them.

11 So I was in front of that, and my attention was
12 being reverent, like I should be in church, paying
13 attention to the bishop, the ceremony that was going
14 on, in all seriousness, and watching my child
15 receive her confirmation.

16 Q. This was a, I'd assume, full sanctuary --

17 A. Yes --

18 Q. -- with people all around?

19 A. -- it was. It was St. Mary Help of Christians
20 Catholic Church in Aiken.

21 Q. But you said you didn't witness anything
22 inappropriate?

23 A. I was sitting in front of them --

24 Q. Okay.

25 A. -- so I never would have seen it.

1 Q. Well, from your understanding, was -- the
2 inappropriate acts, were they sexual?

3 A. I know they were very inappropriate in church.
4 Looking at each other, I was told. And you'll have
5 to ask the others that actually saw that behavior.

6 Q. Okay.

7 A. But...

8 Q. I know you stated that you didn't make
9 confrontation at that time -- around that time. Why
10 not pull Kyle aside and just bring that to his
11 attention?

12 A. I've said stuff to him in the past.

13 Q. And what did you say?

14 A. That he needed to -- he and **MINOR1** needed not
15 to be so close; don't go to church holding hands;
16 don't go to church sitting right smack-dab up
17 against each other; don't be out in public doing
18 that. Act like you're brothers and sisters, like
19 you're supposed to be, nothing more than that.

20 And I was scared, by that point, that if I said
21 too much, that he would leave and he would take
22 **MINOR1** with him, because, at that point, she was so
23 brainwashed to what he wanted her to do. He was the
24 only person that she was listening to.

25 Q. Did he ever do anything or say anything that

1 would make you think he would take him --

2 A. Oh, I knew --

3 Q. -- or would take her with him?

4 A. I knew. I knew he would.

5 Q. Throughout the course of this time and --

6 either it being March or June to, I guess, closer to
7 October of 2015, did Kyle threaten to leave a couple
8 of times?

9 A. There probably were a couple times that he and
10 his dad didn't see eye-to-eye. And Kerry would say
11 something to him because he probably saw MINOR1 and
12 Kyle together.

13 Q. Were there -- during these times, did you ask
14 him to stay?

15 A. No. I didn't want him to stay any longer than
16 he had to. The only reason I wanted him there was
17 so I could have my children in the house with me and
18 they could be at home where they were happy and they
19 wanted to be.

20 Q. You never told Kyle that he was making things
21 better around the home?

22 A. No.

23 Q. This incident where you went to work and you
24 said you saw that Kyle was in MINOR1's bed --

25 A. Yes.

1 Q. -- they were both asleep?

2 A. They were both asleep. MINOR1 was facing the
3 wall; Kyle was shirtless under a sheet and facing
4 the TV part of the room, which was the door part of
5 the room.

6 Q. How could you tell Kyle was shirtless?

7 A. Because the sheet didn't cover his chest.

8 Q. Was there separation between them?

9 A. They were in a twin bed, so there was not much
10 of a separation.

11 Q. Where was MINOR2 at this time?

12 A. MINOR2 was in her bedroom.

13 Q. Approximately when was this, in terms of 2015?

14 A. It was probably sometime around MINOR1's
15 birthday, not long after the confirmation.

16 Q. And, once again, you never thought to raise
17 this to Kyle's attention?

18 A. I raised it to his attention.

19 Q. You didn't think about kicking him out or --
20 did you ask him about what was going on?

21 A. I needed to have my children to be able to stay
22 with me. I had no support from my family to make
23 that happen or no friends to make that happen for
24 me.

25 Q. So that was more important to you than your

1 daughter possibly being sexually assaulted?

2 A. No, sir. The most important thing was to have
3 my children with me and have them to be happy with
4 me, be at home where they wanted to be. It was
5 never for any -- anybody to be sexually assaulted.

6 And I trusted what should have been a
7 28-year-old adult male that knew how to take care of
8 kids, because he had three of his own, and he should
9 have been able to be trusted around kids. He took
10 my trust and he betrayed it.

11 Q. Did you ever see Kyle commit any type of sexual
12 act or sexual assault with or against MINOR1?

13 A. No, I did not.

14 Q. You also stated that you were not aware --
15 after they moved out of your house and, I believe,
16 some were in your mother's house and some were in --

17 A. Yes.

18 Q. -- the camper behind there, you were not aware
19 that Kyle was staying in the camper --

20 A. I didn't -- at that point --

21 Q. -- or that he was going over there?

22 A. When the kids were taken, I had no idea where
23 they were, who they -- I knew they were with my mom.
24 But I didn't know where they were or what they were
25 doing. There was a good week I did not even know

1 where my children were. And it was raining cats and
2 dogs outside and flooding, and I didn't even know if
3 they were safe and could not get an answer from
4 anyone at DSS or anywhere else that I could at least
5 know that my kids were safe.

6 Q. Did you have any communication with Kyle during
7 this time?

8 A. No, I did not.

9 Q. He never told you --

10 A. No.

11 Q. -- where they were?

12 A. No. No.

13 Q. I believe you testified -- and I want to make
14 sure I get your testimony right -- that when, I
15 believe it was, your mother or your brother walked
16 into the camper and saw Kyle in the bed, who was
17 with him?

18 A. It was both my brother and my mother.

19 Q. That walked in?

20 A. That walked in.

21 Q. Okay. And what was Kyle doing?

22 A. All I know is they were in the bed. I wasn't
23 there; I did not see it.

24 Q. Who was in the bed?

25 A. Kyle and **MINOR1**

1 Q. Only Kyle and MINOR1?

2 A. To my knowledge --

3 MS. DARKO: Objection, Your Honor.

4 She doesn't have first-hand knowledge of any of
5 this. It's hearsay. She's testifying based on what
6 other people have told her at this point.

7 MR. BISHOP: And, Your Honor, it was brought up
8 by the State in direct.

9 THE COURT: Inside of a camper?

10 MR. BISHOP: Yes, sir.

11 THE COURT: Well, she answered the question
12 that she didn't know. She didn't have direct
13 personal knowledge without being there. So move on.

14 MR. BISHOP: I'll move on.

15 BY MR. BISHOP:

16 Q. Mrs. Way, you truly do seem like a concerned,
17 loving mother. I know you have multiple children.
18 If you truly believed that there was a sexual
19 relationship going on during the time Kyle was
20 staying at your house, would you have reported that?

21 A. I should have. But, at the time, also, I had a
22 zillion others things going on in my life. I was
23 trying to be a single mother to four children; I was
24 trying to work a full-time job, trying to get them
25 to everything they needed to get to. I already had

1 DSS breathing down my neck, watching every little
2 single move that I made or thought about making or
3 made, and I was scared to do anything else that
4 would rock the boat with DSS and I would never get
5 my children back, because the worker -- I knew -- I
6 knew, anything else -- all it took was one little
7 thing to happen and my kids would never be coming
8 home. And I could not live without my children.

9 MR. BISHOP: Thank you. No further questions.

10 THE COURT: Redirect?

11 MS. DARKO: Just briefly.

12 REDIRECT EXAMINATION

13 BY MS. DARKO:

14 Q. With regard to whose idea it was to come -- for
15 Kyle to come live with you, you dont know whether or
16 not **MINOR1** and Kyle had any discussions about this?

17 A. No, I do not.

18 Q. So it very well could have been **MINOR1**'s idea,
19 in her conversations with him, and he was all too
20 happy to bring that idea to your attention?

21 A. Yes.

22 Q. Did your children know to misrepresent their
23 bedding situation to DSS?

24 A. They knew enough to know that they had to be
25 extremely careful with what they would say to DSS if

1 they wanted to stay with us.

2 Q. And, MINOR1's bedroom, was that where Kyle kept
3 his PlayStation?

4 A. Yes, it was.

5 Q. Did he also keep other items in that room?

6 A. I know he had a PlayStation and a TV, and
7 probably some of his clothes in that room.

8 Q. But he wasn't supposed to spend the night in
9 that room?

10 A. No. He was never supposed to spend the night
11 that room.

12 Q. And certainly not in the same bed with her?

13 A. No.

14 Q. So when you're saying that you're too close,
15 the conversations that you had with him, they fell
16 on deaf ears?

17 A. Yes, they did.

18 Q. Because he knows, essentially, he's in control?

19 A. Yes.

20 Q. He knows that he has control of your daughter's
21 mind?

22 A. Yes.

23 Q. And he knows that he has control over you
24 because of the DSS action?

25 A. Yes.

1 MR. BISHOP: Objection, Your Honor; purely
2 speculation.

3 THE COURT: Rephrase the question.

4 BY MS. DARKO:

5 Q. Kyle was aware that he was needed in your home
6 in order to meet DSS requirements?

7 A. Yes. He knew he was very needed there for
8 that.

9 Q. And, in fact, because of the DSS order, you're
10 not really allowed to know where your kids are once
11 they're placed with your mom?

12 A. No.

13 Q. You're not allowed to have contact?

14 A. No.

15 Q. You're not supposed to be having contact?

16 A. No.

17 Q. And your mom is not supposed to be telling you
18 where the children are, lest you should try to meet
19 up with them?

20 A. That is correct.

21 Q. Donna, in your gut, as a mother, did you know
22 that he was likely having sex? Did you suspect
23 that?

24 A. I did, looking back on everything now, putting
25 everything together.

1 Q. And you did not want to have to look harder at
2 that, because the horror of that would have landed
3 you right here --

4 A. Yes.

5 Q. -- in this situation, telling your story to
6 these strangers?

7 A. Yes.

8 MS. DARKO: Nothing further.

9 THE COURT: Recross?

10 MR. BISHOP: Nothing further, Your Honor.

11 THE COURT: All right. The witness may step
12 down. Next witness.

13 MR. MCNAIR: Laura Way.

14 THE COURT: All right.

15 LAURA WAY

16 being first duly sworn, testified as follows:

17 THE WITNESS: I do.

18 DIRECT EXAMINATION

19 BY MR. MCNAIR:

20 Q. Laura, would you please state your full name
21 for the record.

22 A. Laura Way.

23 Q. And how old are you now?

24 A. 19.

25 Q. And what is your birthday?

1 A. [REDACTED].

2 Q. So how old were you in 2015?

3 A. 15.

4 Q. Tell the jury how you're related to MINOR1

5 A. She's my sister.

6 Q. Okay. And Donna is your mother?

7 A. Yes.

8 Q. And --

9 THE COURT: Mr. Solicitor, I'm sorry to cut you
10 off.

11 I need you to speak up just a little bit more.
12 I know this is -- that you're in the witness stand.
13 But I need to make sure that everyone can hear you.
14 Okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you.

17 BY MR. MCNAIR:

18 Q. And your mother is who?

19 A. Donna Way.

20 Q. Kerry Way is your father?

21 A. Yes.

22 Q. Who are your other siblings?

23 A. MINOR2 and MINOR3.

24 Q. Now, back in 2014 -- well, first of all, let's
25 start with this: How are you related to Kyle Way,

1 the defendant?

2 A. He is my father's child; he's my half-brother.

3 Q. Your half-brother. When did you first meet
4 Kyle Way?

5 A. In June 2014, I believe.

6 Q. In 2014?

7 A. Yes.

8 Q. Do you remember where it was that you first met
9 him?

10 A. At my parents' house. They came down -- him
11 and his girlfriend at the time with their three
12 kids, they came down and we went swimming.

13 Q. Okay. So it was the summertime?

14 A. Yes.

15 Q. So the summer of 2014?

16 A. Yes.

17 Q. And who was with him when you first met him?

18 A. His girlfriend at that time was Megan -- she's
19 now Megan Smith.

20 Q. Okay.

21 A. And their three kids, Sierra, Hunter, and
22 Mason.

23 Q. All right. And those were his three kids?

24 A. Yes, sir.

25 Q. Do you remember how old he was when you first

1 met him?

2 A. I do not remember.

3 Q. He was a bit older than you?

4 A. Yes.

5 Q. All right. Where were you living back in 2014?

6 A. I was with my grandma.

7 Q. And she lives close -- next door to your
8 parents?

9 A. Yes.

10 Q. All right. And were you living there in
11 December of 2014?

12 A. Yes.

13 Q. And do you recall an incident between your
14 mother and father in December of 2014?

15 A. Yes.

16 Q. And what type of incident was it?

17 A. Daddy had been drinking at the time and he was
18 yelling and hitting people or hitting Mama.

19 Q. Were you present for that?

20 A. Yes.

21 Q. Is that something that you witnessed growing
22 up?

23 A. On occasions, sometimes.

24 Q. Is it fair to say that your dad has an alcohol
25 problem?

1 A. Yes.

2 Q. Have you seen him be violent in the past?

3 A. From what I can remember, sometimes, yes,
4 depended on how much he drunk.

5 Q. All right. Was that kind of a regular thing
6 when you were growing up, during your childhood?

7 A. Yes.

8 Q. Is that part of the reason that you decided to
9 live with your grandmother?

10 A. Yes.

11 Q. Now, were you living with your grandmother all
12 of 2015?

13 A. Yes.

14 Q. Okay. While you were living with your
15 grandmother, would you still see your siblings from
16 time to time?

17 A. Yes.

18 Q. And would you -- where would you see them?

19 A. I would go to their house about three times a
20 week and hang out with them.

21 Q. All right. So you'd go to your parents' house
22 and hang out with your siblings about three times a
23 week?

24 A. Yes.

25 Q. Do you remember when Kyle Way started staying

1 with your parents?

2 A. I believe it was in March.

3 Q. March of 2015?

4 A. Yes.

5 Q. And how did you come to know that he was
6 staying there?

7 A. When I went over there one day, I noticed he
8 was at the house and some of his stuff was there.
9 And then I asked Mama if he had moved in and she
10 said yes.

11 Q. All right. Now, you testified that you would
12 go visit with them about three times a week at your
13 parents' house. When you would visit, would you
14 have the opportunity to see Kyle and MINOR1
15 together?

16 A. Yes.

17 Q. Had you been there with them when no adults
18 were home?

19 A. Yes.

20 Q. When your mom wasn't there?

21 A. Yes.

22 Q. All right. And your dad was in rehab during
23 this time in March of 2015, right?

24 A. Yes.

25 Q. And can you just tell the jury, I guess, what

1 you would see when you were there without any adults
2 present.

3 A. When I had first gotten there, the door was
4 open and they were in there playing video games.
5 Within maybe three hours of me being there, they
6 would close the door and I would get told by Kyle
7 not to come in there and not to bother them.

8 Q. Okay. And, I guess, in relation to when Kyle
9 moved in, when did you first see that?

10 A. About a month after.

11 Q. Okay. And you testified -- I guess, how often
12 would you see that? You went over three times a
13 week, approximately. How often would you see them
14 go behind closed doors?

15 A. It would usually happen every time I went over
16 there.

17 Q. And what would Kyle tell you before -- what, if
18 anything, would Kyle tell you before they went into
19 the bedroom?

20 A. He would tell me not to follow them; that if
21 that door is closed, to leave them alone and do not
22 bother them.

23 Q. And whose bedroom would they go in?

24 A. MINORI 's.

25 Q. All right. And from the time you saw that

1 happen, I guess, eventually, everybody came to live
2 with your grandmother, right?

3 A. Yes.

4 Q. And that was in October of 2015?

5 A. Yes.

6 Q. Okay. So from the time you first saw that
7 happen with Kyle and MINOR1 until they came to live
8 with your grandmother in October, did that happen
9 every time you went over there?

10 A. Yes.

11 Q. So that continued for the whole period of time
12 that they were living in your parents' house?

13 A. Yes.

14 Q. Where was your mom when this was going on?

15 A. She was at work.

16 Q. What was her shift?

17 A. She was working from 7:00 a.m. to 7:00 p.m.

18 Q. Okay. So what time of day would this usually
19 be when you saw that happening?

20 A. Usually, I would go over there probably about,
21 maybe, 10:00 that morning and stay over there until
22 Mama got home. And sometimes I spent the night.

23 Q. Okay. You spent the sometimes there as well?

24 A. Yes.

25 Q. What were the sleeping arrangements when you

1 would stay the night with them?

2 A. Me and MINOR2 would sleep in her room; MINOR1
3 would sleep in her room; MINOR3 would sometimes
4 fall asleep in the living room watching TV, and
5 either he would sleep in the recliner or me or Mama
6 would take him into her room so he could have a bed
7 sleep on. And Kyle was supposed to go to the living
8 room and sleep on the couch or the recliner.

9 Q. Okay. So MINOR1 had her own bedroom?

10 A. Yes.

11 Q. MINOR2 had her own bedroom?

12 A. Yes.

13 Q. And you would stay in her bedroom when you
14 would stay?

15 A. Yes.

16 Q. And Kyle would either sleep with your mom or
17 he'd sleep in the living room on the recliner?

18 A. No. Kyle would sleep --

19 Q. I'm sorry. MINOR3.

20 A. Yes. He would sleep with Mama.

21 Q. Okay. And Kyle was supposed to be sleeping on
22 the couch --

23 A. Yes.

24 Q. -- in the living room?

25 A. Yes.

1 Q. After Kyle moved into your parents' house, did
2 you notice any changes in MINOR1?

3 A. Yes.

4 Q. What type of changes?

5 A. She became very, very quiet and wouldn't talk
6 to much of us anymore.

7 Q. Was that unusual?

8 A. Yes.

9 Q. Would she talk to you prior to that --

10 A. Yes.

11 Q. -- prior to Kyle --

12 A. Before he moved in, she was very open, talked
13 to us. She used to laugh all the time, smile. But,
14 about a month after he moved in, she became very
15 quiet and would not smile a whole lot or laugh.

16 Q. Okay. Who did she spend the majority of her
17 time with?

18 A. Kyle.

19 Q. Was she involved in any extracurricular
20 activities prior to Kyle moving to the house?

21 A. Yes.

22 Q. And what was that?

23 A. She took dance.

24 Q. All right. Did you take dance?

25 A. Yes.

1 Q. Did all of y'all take dance?

2 A. Yes.

3 Q. How often was dance?

4 A. Usually, three times a week.

5 Q. Were y'all all in the same classes?

6 A. No.

7 Q. Would y'all all go to dance together usually?

8 A. Yes.

9 Q. And did MINOR3 go to dance with y'all?

10 A. Yes.

11 Q. Was MINOR1 taking dance three times a week?

12 A. At one point, yes.

13 Q. Okay. After Kyle moved in, was she taking
14 dance three times a week?

15 A. No. She moved down to one day.

16 Q. One day a week?

17 A. Yes.

18 Q. So if all of y'all were at dance -- who took
19 y'all to dance?

20 A. My grandma.

21 Q. Okay. And that's because your mom was working?

22 A. Yes.

23 Q. So if all of y'all were at dance, where was

24 MINOR1?

25 A. She was at home with Kyle.

1 Q. So she would have been home alone with Kyle
2 while y'all were at dance?

3 A. Yes.

4 Q. Now, do you recall a time in March of 2015 when
5 you saw **MINOR1** upset?

6 A. Yes.

7 Q. And do you remember why she was upset?

8 A. She never told me.

9 Q. Well, tell -- what did you see?

10 A. She -- well, the very beginning, she went into
11 the bedroom with Kyle. And maybe an hour or so
12 later, she came out crying. And, at that point, I
13 know if she wanted to talk to me, I would usually
14 have to text her. So I texted her asking her what
15 was wrong, and she would not tell me. She refused
16 to tell me.

17 Q. Why did you feel like you had to text her?

18 A. Because, at that point, I don't think she felt
19 safe saying anything.

20 Q. All right. So you sent her a text?

21 A. Yes.

22 Q. I'm going to show you what's been marked as
23 State's Exhibit 30. Take a look at this and tell me
24 if you can recognize this.

25 A. Yes, I recognize that.

1 Q. What is that?

2 A. I texted her saying --

3 Q. Is that the text that you just testified to --

4 A. Yes.

5 Q. -- that you sent to MINOR1?

6 A. Yes.

7 MR. MCNAIR: Your Honor, we'd offer State's 30
8 into evidence at this time.

9 MR. BISHOP: No objection.

10 THE COURT: State's Exhibit 30 is admitted into
11 evidence without objection.

12 (State's Exhibit No. 30 admitted into
13 evidence.)

14 BY MR. MCNAIR:

15 Q. And, if you would, just -- what is the date on
16 that?

17 A. March 24th.

18 Q. Of what year?

19 A. 2015.

20 Q. All right. What did you text her?

21 A. I texted her: I will when you tell me what's
22 wrong.

23 Q. All right. And what was -- what other texts
24 did you send after that? Or what did she respond?

25 A. She told me just to leave her alone. And then

1 I asked her: Why were you crying?

2 Q. All right. And that was on March 24th of 2015?

3 A. Yes.

4 Q. And that was when Kyle was living in your
5 parents' house and they'd just been behind closed
6 doors in her bedroom?

7 A. Yes.

8 Q. Did she ever tell you what was wrong?

9 A. No, she did not.

10 Q. Other than seeing them go into the bedroom and
11 close the door, did you observe any other behavior
12 between them that you thought was unusual?

13 A. Not that I can remember.

14 Q. All right. Do you remember how they acted
15 towards each other?

16 A. They were really close together a lot of
17 times --

18 Q. All right.

19 A. -- and more like they were -- when they were
20 together, it reminded me of, like, a couple dating.

21 Q. Okay. Like a couple that was in love?

22 A. Yes.

23 Q. Now, did Kyle ever show you any attention?

24 A. No.

25 Q. Did he show **MINOR3** attention?

1 A. He bought him presents. That was about it.

2 Q. Did he ever ask how you were doing?

3 A. No.

4 Q. Did he appear to care about your well-being?

5 A. No.

6 Q. Who did he spend the majority of his time with?

7 A. MINOR1

8 Q. That's all I have. Please answer anything

9 Mr. Bishop has. Thanks.

10 THE COURT: Cross-examination?

11 MR. BISHOP: Just briefly, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. BISHOP:

14 Q. Laura, it's your testimony that, during the
15 time that Kyle lived with your mom and your sisters,
16 you were living with your grandmother?

17 A. Yes.

18 Q. And I believe you testified that you'd go over
19 on occasion.

20 A. Yes.

21 Q. Would you hang out with Kyle ever when you were
22 over there?

23 A. Huh-uh.

24 Q. What would you normally do when you went over
25 there?

1 A. I'd go over there and sit in the living room
2 and watch TV with my brother.

3 Q. You said you would go over there and spend the
4 night sometimes. Was that during the weekends or
5 during the week?

6 A. Usually, the nights we had dance.

7 Q. And what nights were those, generally?

8 A. That was Monday through Wednesday.

9 Q. And when you were staying over there, both
10 **MINOR1** and **MINOR2** were at the house; is that
11 correct?

12 A. Yes.

13 Q. You testified that Kyle bought **MINOR3**
14 presents, but mainly spent time with **MINOR1**. He
15 spent a lot of time with **MINOR2** as well; is that
16 correct?

17 A. Yes.

18 Q. So the three of them hung out a good bit?

19 A. Yes.

20 Q. And **MINOR1** and **MINOR2**, they're pretty close?

21 A. Yes.

22 Q. I believe they're closer in age than you are.
23 Is that correct?

24 A. Yes.

25 Q. Has Kyle ever treated you inappropriately?

1 A. No.

2 Q. The text messages the State showed you, that
3 was a text between you and MINOR1?

4 A. Yes.

5 Q. It doesn't mention Kyle's name at all, does it?

6 A. No.

7 Q. Did y'all call him Bubba some?

8 A. They did. I did not.

9 Q. Does it mention Bubba?

10 A. Nope.

11 Q. Okay. So they could be talking about anything?

12 A. Yes.

13 Q. Did you ever see Kyle and MINOR1 doing anything
14 sexual?

15 A. No.

16 MS. BISHOP: No further questions.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. MCNAIR:

20 Q. When you texted MINOR1, was Kyle still in the
21 house?

22 A. Yes.

23 Q. Okay. Was he the only -- I guess, he was the
24 only one in the bedroom she'd come out of crying,
25 right?

1 A. Yes.

2 Q. So did you feel the need to put his name in a
3 text message?

4 A. No.

5 Q. Okay.

6 MR. MCNAIR: That's all I've got. Thanks.

7 THE COURT: Counsel, any recross?

8 MR. BISHOP: Nothing further, Your Honor.

9 THE COURT: All right. The witness may step
10 down. Thank you.

11 Mr. Solicitor, I think we'll take a short break
12 now.

13 MR. MCNAIR: Okay.

14 THE COURT: We'll take our afternoon break a
15 little early. Let's take about five to ten minutes.
16 Refresh yourselves and we'll get you back in here
17 shortly. Please don't discuss the case while you're
18 in the jury room.

19 (The jury exits the courtroom at 2:44 PM.)

20 THE COURT: All right. Are we ready?

21 MR. MCNAIR: Yes.

22 THE COURT: Mr. Bishop, are you ready?

23 MR. BISHOP: Yes, sir.

24 THE COURT: All right. Let's bring the jury
25 in, please.

1 (The jury enters the courtroom at 2:53 PM.)

2 THE COURT: All right. Mr. Foreman, ladies and
3 gentlemen of the jury, welcome back. I hope you had
4 a chance to refresh yourselves. We'll continue on
5 with the State's case in chief.

6 Solicitor, is the State ready to call their
7 witness?

8 MR. MCNAIR: Yes, sir, Your Honor. The State
9 calls Dana Berry.

10 THE COURT: Dana Berry?

11 MR. MCNAIR: Yes, sir.

12 DANA BERRY

13 being first duly sworn, testified as follows:

14 THE WITNESS: I do.

15 DIRECT EXAMINATION

16 BY MR. MCNAIR:

17 Q. Hey, Dana.

18 A. Hi.

19 Q. Will you please state your full name for the
20 record.

21 A. Dana Rogers Berry.

22 Q. And tell the jury how you are related to

23 MINOR1

24 A. I'm MINOR1's niece [sic]. Her mother, Donna
25 Way, is my sister.

1 Q. Okay. And Julia Rogers is your mother?

2 A. My mother, yes.

3 Q. All right. And do you have any other siblings?

4 A. I do. I have a brother David.

5 Q. A brother David. And who is his wife?

6 A. Angela Rogers.

7 Q. Okay. Now, how do you know Mr. Way?

8 A. Mr. Way is my brother-in-law Kerry's son. And
9 I knew him previous. They had custody of him when
10 he was 12 -- 11 or 12, and then he went into the
11 foster system. And I lost touch with him after
12 that.

13 Q. Okay. So you met him initially sometime in
14 2012?

15 A. Correct.

16 Q. Okay. When was the next time you remember
17 seeing him?

18 A. I wouldn't have seen him again until probably
19 the summer of 2014. He came to my mother's lake
20 house with his -- I'm not sure if it was his wife or
21 his girlfriend. And he had three children.

22 Q. Okay. They were his three children?

23 A. I assume they were his three children. I took
24 it to be his three children.

25 Q. All right. So you saw him, I guess, in the

1 summer of 2014 at the lake?

2 A. At the lake. It was late summer.

3 Q. Okay. Late summer. When was the -- at some
4 point, did you learn that he had actually moved into
5 the Way home?

6 A. I think around -- it would have been the
7 following year, he started hanging around more in
8 March of 2015.

9 Q. Okay.

10 A. So sometime between then, around May of 2015, I
11 think he moved into the Way home.

12 Q. Okay. And how did you learn that he had moved
13 into their home?

14 A. My mother lives right beside my sister Donna
15 and her family, so I -- I frequent her house a lot,
16 so I would drive by. He would be there all times of
17 the day and night, so, you know, it became apparent
18 that he was living there.

19 Q. Okay. And would you actually go into Donna's
20 house and visit or you just saw --

21 A. Just the cars from the road. I didn't go into
22 the actual home to visit, no.

23 Q. All right. So you just saw his car outside the
24 home?

25 A. Right.

1 Q. Okay. And that's how you realized he was
2 staying there?

3 A. Right.

4 Q. Okay. Now, before we get into **MINOR1** and Kyle,
5 tell the jury a little bit about Donna and Kerry's
6 relationship over the years.

7 A. Well, from the time they've been married, Kerry
8 is -- it's well-documented, he's an alcoholic. So
9 it's a very tumultuous relationship they have. He's
10 been in and out of rehab; he's been accused of
11 domestic violence. So it is a volatile situation.

12 Q. All right. And Donna was the victim --

13 A. Yes.

14 Q. -- of those --

15 A. Yes.

16 Q. -- domestic violence charges?

17 A. Yes.

18 Q. And is this during the time frame when the kids
19 were around?

20 A. It is, yes.

21 Q. Now, after, I guess, and during 2015, after
22 Kyle moved into the Way home, did you have an
23 opportunity to observe **MINOR1** and the defendant
24 together?

25 A. I did.

1 Q. Where would you see them?

2 A. They go to the same -- well, my sister and I,
3 we all go to a small Catholic church in Ward called
4 St. Williams Church. So they would come to church
5 every Sunday and he would -- Kyle would accompany
6 them on many a Sunday and sit with the Way family.

7 Q. Okay. So you went to church just about every
8 Sunday?

9 A. We did, yes.

10 Q. And they did, too?

11 A. They did, yes.

12 Q. And you'd see Kyle and MINOR1 together at
13 church.

14 A. I would, yes.

15 Q. Now, does any particular date stick out to you
16 when you recall seeing them at church?

17 A. In particular, the date of April the 20th, my
18 daughter and my sister's younger daughter, MINOR2,
19 received their sacrament of confirmation at
20 St. Mary's Help of Christian Church in Aiken. And I
21 know that he was there that day with MINOR1 at the
22 ceremony that evening.

23 Q. Okay. And what do you recall seeing that day
24 between MINOR1 and the defendant?

25 A. It was just a very unnatural state for a

1 brother and sister. They would gaze into each
2 other's eyes, smile, exchange almost lover glances
3 at one another. You know, they sat very close
4 together; they were very physically touchy-feely
5 with one another.

6 Q. Did you see them holding hands?

7 A. More so probably just draped around each other,
8 not so much maybe hand-holding. But definitely the
9 eye glances and maybe an arm around.

10 Q. Okay. So, I guess, how would you describe that
11 relationship that you saw?

12 A. It wasn't a brother-sister-style relationship.
13 It was definitely more of a boyfriend-girlfriend
14 type of situation.

15 Q. All right. A loving type relationship?

16 A. Yes. Yes.

17 Q. In a --

18 A. I mean, I don't have a --

19 Q. And in a romantic-type way or a
20 brother-sister-type way?

21 A. No, no, no. Definitely a romantic style. I
22 have a daughter and a son, and my children never --
23 you know, they have a brother-sister relationship.
24 And this was definitely not that.

25 Q. Okay.

1 A. This was more of a romantic, sexual-type
2 relationship.

3 Q. All right. Now, after that confirmation on
4 April 20th, would you continue to see them at church
5 on Sundays after that?

6 A. I did, yes.

7 Q. And was it more of the same type of behavior?

8 A. More the same, yeah. I mean, they would sit so
9 close together you couldn't sandwich anything
10 between them. They would be looking into each
11 other's eyes; they would be -- arm around each
12 other. I remember, one particular Sunday, her
13 sitting on his lap in church before the service
14 started.

15 Q. What, if anything, did you try to do about
16 that?

17 A. I -- my sister and I have a very strained
18 relationship. I can't really discuss that sort of
19 thing with her because she gets angry with me and we
20 end up in an argument over it, because I don't -- I
21 don't agree with that. I would have discussions
22 with my mother. My mother confronted her, I think,
23 on several occasions. But I expressed my concerns
24 through my mother, but not directly to my sister.

25 Q. Okay. So you were concerned about it and it

1 was your understanding that your mom, Julia Rogers,
2 talked to Donna about it?

3 A. To Donna, yes.

4 Q. But you didn't directly talk to Donna about it?

5 A. I didn't feel comfortable doing that. It
6 wouldn't have ended well.

7 Q. And were you aware of when all of the children
8 were taken away from Donna and placed in your
9 mother's custody?

10 A. I was, yes.

11 Q. When was that?

12 A. That was in October of 2015.

13 Q. 2015?

14 A. Uh-huh.

15 Q. And that was around the time of the flood of
16 2015?

17 A. It was, yes. It was early October, I think.

18 Q. All right. And so from April 20th at the
19 confirmation, up until they were placed in their
20 grandmother's custody, you would still see that type
21 of behavior in the course --

22 A. Yes.

23 Q. -- or during that period of time?

24 A. Yes.

25 Q. Did you ever see **MINOR1** and the defendant

1 together after they were placed in your mother's
2 custody?

3 A. We did. I mean, we didn't spend lots of time
4 with them. But we did -- when my mother got custody
5 of the children, I went with her to buy some beds
6 for the girls. Kyle accompanied us on that trip.
7 He was with them, wherever they went. When my
8 mother first got custody, he was always with them.
9 He would not leave MINOR1's side.

10 Q. Okay. Was that common?

11 A. It was, yes. And they would all -- like, if
12 she would go -- if they went to the Dollar General
13 to get a drink, MINOR1 and Kyle would go together.
14 They were always together.

15 Q. Okay. Was Kyle like that with any of the other
16 kids that you remember?

17 A. Not Laura, which she -- which, I think, Laura
18 was living with my mother even before my mother got
19 custody of the children. But, at first, I think,
20 MINOR2 got some of the same attention. But more
21 attention was paid to MINOR1 than any of the others.

22 Q. Okay. Did you see him giving that type of
23 attention to MINOR3?

24 A. No.

25 Q. All right. So we left off where you were going

1 to help get bunk beds. Is that when they were going
2 to live in your mother's house?

3 A. They were going to live at her lake house.
4 Right.

5 Q. And did you see MINOR1 and the defendant
6 together at your mother's house?

7 A. They were. But we were -- my husband and I
8 tried to assemble bunk beds, which wasn't going
9 well, so we were in the bedroom assembling the beds
10 and MINOR1 and Kyle were sitting on the love seat
11 out in the den area. The other children were out
12 there, but they were very, very close together
13 again; again, arm wrapped around each other.

14 Q. All right. And did they stay at your mother's
15 house very long?

16 A. They didn't. Right after my mother got
17 custody, the flood came. And my mother did take
18 them and her camper to my brother's house where she
19 parked the camper in the backyard during the flood.

20 Q. Okay. And that's your brother David Rogers and
21 his wife Angela?

22 A. Angela, correct.

23 Q. And during the period of time when they were
24 all staying at your brother's -- on your brother's
25 property, did you ever go visit them?

1 A. I think we visited. We didn't spend a great
2 amount of time. You know, we didn't go in the
3 camper or anything; we would stay in the house. But
4 we did visit, yes.

5 Q. Okay. Did you have the opportunity to see
6 MINOR1 and the defendant together during that time
7 period?

8 A. We did. And, again, just observing the things.
9 We -- and, like I said, we didn't go in the camper
10 or anything, we were just in the house. But they
11 would always be -- when we did see them, MINOR1 and
12 Kyle would always be in close proximity of each
13 other.

14 Q. So that was a common theme, during the period
15 of time that you saw them together?

16 A. Yes.

17 Q. And it was more so Kyle and MINOR1 than any of
18 the other kids?

19 A. Yes.

20 Q. Did you ever really see MINOR1 alone?

21 A. Alone?

22 Q. Yes. Without --

23 A. Without Kyle or any of the children? No, I
24 didn't.

25 Q. Do you recall any other times seeing them

1 together in public?

2 A. We -- my husband and I did see them -- I can't
3 put a date on it. But we were out eating at
4 Shealy's Bar-B-Que in Batesburg. We did run into
5 Kyle and MINOR1 They were leaving when we were
6 going in. And they appeared to be on a date. We
7 checked with my sister to see, you know, why they
8 were out by themselves, and she said they were
9 getting food for the others. But they, obviously,
10 were enjoying themselves and they -- they didn't
11 look like they were worried about taking food back
12 to the other children.

13 Q. What were they doing when you saw them?

14 A. They were holding hands and they -- I mean,
15 they just acted like they were on a date.

16 Q. What did they do when they saw y'all?

17 A. Maybe there was a brief glance. There wasn't a
18 lot being exchanged.

19 Q. Did they continue to hold hands?

20 A. I don't remember. I don't think -- I don't
21 remember.

22 Q. Okay. I think that's all the questions I have
23 at this time. Please answer any questions the
24 Defense has.

25 THE COURT: Cross-examination?

1 MR. BISHOP: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BISHOP:

4 Q. Mrs. Berry, around the time that your
5 brother-in-law Kerry was in rehab, I guess, soon to
6 get out, what type of relationship did you have with
7 your sister and her children? Was it fairly close?

8 A. Our relationship has always been strained
9 because of Kerry's well-known drinking problem. We
10 go through periods where we may not speak and then
11 we do speak. But at the time when he was in
12 rehab -- and he didn't come home until June of that
13 year, I remember that, of 2015. We did -- we did,
14 you know, spend time together.

15 Q. He came home, you said, in June of 2015?

16 A. Uh-huh. On Father's Day weekend.

17 Q. Did Kyle move in shortly before that?

18 A. I think he moved in around May of that year.

19 Q. Around May of that year. And what makes you
20 remember that?

21 A. Just because we -- we had seen him at the
22 house. I know it was after the confirmation when I
23 suspected that he had moved into the house. And the
24 confirmation was on April the 20th. But I think by
25 May, we kept seeing his car there a lot more than --

1 well, like I said, I never went in their house; I
2 never saw him -- you know, any of his things over
3 there but, like, just his physical presence. If he
4 wasn't living there, he was staying there a lot.

5 Q. Okay. And I believe that you gave a voluntary
6 statement around October of that year. Is that -- I
7 know this was about four years ago.

8 A. I did, yes.

9 Q. And was that consistent with what you said then
10 about the time frame, the timeline?

11 A. I believe it was, yes.

12 Q. You said you saw Kyle and **MINOR1** acting
13 inappropriately at church. That was on the
14 confirmation Sunday?

15 A. Right, on April the 20th. Actually, we'd seen
16 that before because we -- as Catholics, we have to
17 go to CCD classes to be educated before we could be
18 confirmed. So we were there -- we were at our local
19 church in Ward every Sunday. So they -- he did
20 accompany them many a Sunday. But I do remember,
21 distinctly, at confirmation, that it was very
22 inappropriate.

23 Q. Okay. And inappropriate, you mean -- I believe
24 you testified, holding hands and --

25 A. Staring at each other, lovingly glancing in

1 each other's eyes.

2 Q. Obviously, you wouldn't see anything sexual
3 going on in church.

4 A. I hope not. I do hope not.

5 Q. The other instances where you say they're
6 acting inappropriately, you saw them eating at
7 Shealy's?

8 A. I don't remember a date for that. But we
9 did -- my husband and I both saw them.

10 Q. Once again, a public place with many people in
11 there?

12 A. Right.

13 Q. Did you ever see them at the -- do you go to
14 the Relay For Life?

15 A. I do go to the Relay For Life, yes. My
16 daughter dances there.

17 Q. Did you attend in 2015?

18 A. I'm sure I did. We go every year.

19 Q. Okay. Would you remember if you saw Kyle and
20 **MINOR1** there?

21 A. Honestly, I don't remember, that year, if I saw
22 them or not.

23 Q. I know this is a long time ago.

24 A. Yeah, it is.

25 Q. About four years.

1 In all of your contact with Kyle and **MINOR1**,
2 whether it be at your sister's house or at your
3 mother's house, did you ever witness any sexual
4 behavior between the two?

5 A. I noticed a lot of hanging off of each other; I
6 noticed a lot of sexual glances. I didn't notice --
7 I never noticed any -- I didn't see any kissing; I
8 didn't see any -- anything sexual happening.

9 I did see a lot of, like, arm around each
10 other, hanging off of each other, very close sitting
11 to one another. I noticed glances and smiles back
12 and forth between each other, things that boyfriend
13 and girlfriend would do, lovers would do. But, no,
14 I didn't see anything sexual.

15 MS. BISHOP: No further questions.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. MCNAIR:

19 Q. He asked you about whether or not you saw
20 sexual activity. Your testimony was that you saw
21 them predominantly at church, correct?

22 A. Right.

23 Q. All right. You didn't go to the Way house?

24 A. I didn't.

25 Q. So you didn't know how they behaved inside the

1 house?

2 A. I don't.

3 Q. All right. He asked you about when Kyle moved
4 into the residence. You said you thought May. But
5 you're not sure about that, are you?

6 A. I'm not certain. But in May is when I started
7 seeing the car day and night, all times of the day.

8 Q. Okay. He asked you if that was consistent with
9 your previous written statement, which I want to
10 show you now to read to refresh your memory.

11 A. Okay.

12 Q. And read that first sentence.

13 A. Around March, mid to end, Kyle Way started
14 visiting the home of Donna Rogers --

15 Q. You can stop right there.

16 Okay. So your written statement, you put that
17 he moved in or started visiting the home around
18 March of 2015, right?

19 A. (Nods head).

20 Q. Okay. So that would have been when you started
21 noticing his car at the Way household, right?

22 A. Right.

23 Q. But as far as him actually staying there, you
24 wouldn't know because you didn't really go into
25 their house?

1 A. Correct.

2 Q. And you mentioned that Kerry returned from
3 rehab on Father's Day weekend. Do you remember the
4 date?

5 A. It was either June the 18th or 19th. My
6 brother's birthday is June [REDACTED], and Father's
7 Day weekend is that weekend. And the only reason I
8 remember that is because I thought it was terrible
9 that their alcoholic father was coming home on
10 Father's Day.

11 Q. Okay. And when you saw them at Shealy's, did
12 anybody seem to know who they were there?

13 A. No, other than my husband and myself.

14 Q. All right. Thank you.

15 THE COURT: Recross?

16 MR. BISHOP: Briefly, Your Honor.

17 RE CROSS-EXAMINATION

18 BY MR. BISHOP:

19 Q. I believe the solicitor said that you said that
20 he moved in -- I believe your statement says started
21 visiting --

22 A. Started visiting.

23 Q. -- is that correct?

24 A. Correct. And then I -- I think I -- he -- I
25 think I -- I think I said he actually moved in

1 around May.

2 Q. If I --

3 A. Can I --

4 Q. Yes. If it would refresh your memory --

5 A. Please.

6 Q. If you could, just read the first sentence of
7 the second page.

8 A. Kyle moved in with Donna and the children, I
9 think, in May. It was well before Kerry returned
10 from rehab on June 18th or 19th.

11 Q. Thank you. And what's the date of that
12 statement?

13 A. October the 14th of 2015.

14 Q. Would you agree that your memory would probably
15 be a lot sharper that October versus now as to what
16 happened --

17 A. Absolutely.

18 Q. -- four or five months before?

19 MR. BISHOP: No further questions.

20 THE COURT: All right. The witness may step
21 down. Thank you.

22 State may call its next witness.

23 MR. MCNAIR: State calls David Rogers.

24 DAVID ROGERS

25 being first duly sworn, testified as follows:

1 THE WITNESS: Yes.

2 DIRECT EXAMINATION

3 BY MR. MCNAIR:

4 Q. David, will you please state your full name for
5 the record.

6 A. Kenneth David Rogers.

7 Q. And will you just explain to the jury -- I
8 think everybody kind of understands the
9 relationships here now. But you are Donna's
10 brother, correct?

11 A. Yes, sir.

12 Q. And you're MINOR1's uncle?

13 A. Yes, sir.

14 Q. And your mother is Julia Rogers?

15 A. Yes, sir.

16 Q. And your sister is Dana?

17 A. Yes, sir.

18 Q. Now, David, where do you work?

19 A. I work for Blanchard Equipment --

20 Q. How long --

21 A. -- in Aiken.

22 Q. Okay. And what do you do for Blanchard?

23 A. Parts manager.

24 Q. How long have you been doing that?

25 A. With Blanchard Equipment, almost three years.

1 The former name was Derrick Equipment. And I was
2 there six years before then.

3 Q. And your wife, Angela, what does she do?

4 A. She's a bank teller for Regions Bank in
5 Johnston.

6 Q. Do y'all have any children together?

7 A. Together, no, sir. I have three stepchildren.

8 Q. Three stepchildren. Those are her children?

9 A. Yes, sir.

10 Q. Gotcha. Now, are you and Angela involved in
11 any other youth activities or extracurricular
12 activities?

13 A. We have been involved with a Scout troop here
14 in town, in Saluda. She's been the Cub Master of
15 the Cub Scouts for six years. I'm an assistant
16 Scout Master of the Boy Scouts for about the last
17 seven years -- seven or eight years.

18 Q. All right. Were your kids involved in that?

19 A. Yes.

20 Q. Is that how you got involved?

21 A. With --

22 Q. The Boy Scouts.

23 A. I came through the Scout program when I was a
24 kid. And then, later on, the boys were kind of
25 looking for something to do once we got married. So

1 we kind of -- that's how I got back involved with
2 Scouts.

3 Q. Now, when did you first meet the defendant Kyle
4 Way?

5 A. The very first meeting I had was back when he
6 was a young man in foster -- or under the custody of
7 my sister Donna and Kerry --

8 Q. Okay. So --

9 A. -- for a brief period of time.

10 Q. All right. I guess, in relation to when this
11 incident came about, did he kind of come back into
12 your lives at some point?

13 A. He had came back around with -- he had three
14 kids of his own. We were down at my mom's house at
15 the lake swimming, you know.

16 Q. Okay. So everybody was there at the lake
17 together. Was that sometime in 2014?

18 A. Yes.

19 Q. Where y'all met Kyle and his girlfriend and his
20 three children, right?

21 A. Yes.

22 Q. All right. Where do you go to church?

23 A. St. Williams Catholic Church in Ward.

24 Q. Is that the same church that Donna goes to?

25 A. Yes, sir.

1 Q. Would you regularly go to church?

2 A. Yes, sir.

3 Q. And would Donna regularly go to church with her
4 kids?

5 A. Yes, she would.

6 Q. Do you remember seeing the defendant and MINOR1
7 together at church?

8 A. Yes, sir.

9 Q. Do you remember when the first time you
10 remember seeing them together was?

11 A. A specific date, I couldn't give you an actual
12 date.

13 Q. Did you attend MINOR2's confirmation?

14 A. Yes, I did.

15 Q. And that was April 20th of 2015?

16 A. I believe that would be correct.

17 Q. Do you recall seeing the defendant and MINOR1
18 together that day?

19 A. Yes, sir.

20 Q. What do you recall about that?

21 A. A distinct closeness, closer than, really,
22 siblings should be.

23 Q. If you were to describe their relationship
24 based on what you saw, how would you describe it?

25 A. Almost like a couple, so to speak, rather than

1 siblings. Instead of, like, a brother and sister or
2 even cousins, how you normally have that bond, they
3 seemed much closer than that, to me.

4 Q. Okay. Would you describe it as romantic?
5 Sexual?

6 A. I could say romantic. I mean, as far as the
7 sexual nature, I wasn't around in private moments.

8 Q. Right, right, right.

9 A. But definitely close enough together where you
10 could say probably a romantic relationship, yes.

11 Q. Did you know how old Mr. Way was at the time?

12 A. I'd say mid to upper 20s.

13 Q. And how old was MINOR1?

14 A. Very early teenager, 12, 13.

15 Q. Well, other than the fact that they were
16 brother and sister, did that concern you, the age
17 difference?

18 A. Yes, sir.

19 Q. How did you feel about that?

20 A. You know, to me, it's just basically you have a
21 child and you have an adult man, you know, and it's
22 just wrong.

23 Q. Did that cause you concern?

24 A. Yes, sir, absolutely.

25 Q. What did -- did y'all discuss what to do about

1 it?

2 A. Amongst ourselves, we have talked about it.
3 You know, we even had discussions of -- from time to
4 time, with other family members and all. And, you
5 know, all of us were kind of on the same page that
6 what we were seeing is not natural and it's not
7 right.

8 Q. But you didn't feel you had the power to do
9 anything about it?

10 A. I really had no authority or say-so. It was,
11 more or less -- for me, you could see it; but I was
12 handcuffed and unable to do anything about it.

13 Q. Okay. Can you just elaborate on exactly kind
14 of what you remember seeing at church on April 20th?

15 A. I saw Mr. Way and MINOR1 sitting very close
16 together, holding hands together, arm in arm, arms
17 draped around each other, almost more of a
18 date-night-type thing instead of -- you know, like I
19 said, instead of a sibling relationship, to me.

20 Q. Was that the first time you had seen that type
21 of behavior between them?

22 A. I would not say the first time. No, sir.

23 Q. Did you know that he had moved -- did you know
24 when he had moved into their house?

25 A. Specific dates, I couldn't give you on that.

1 I, you know, kind of caught on after a period of
2 time noticing he was around a good bit whenever we'd
3 go down to -- Donna lives next door to my mom's
4 house. So we'd go down there basically every
5 weekend through the summer months when it was warm
6 enough to get in the water.

7 Q. Okay. So you may have noticed that behavior at
8 church prior to that confirmation --

9 A. Yes.

10 Q. -- on April 20th?

11 A. Yes, sir.

12 Q. Okay. And then on that day, I guess, were
13 there more people at church that noticed it or
14 something?

15 A. Yes, sir. We were even asked by a few folks at
16 church and -- you know, is that MINOR1's boyfriend?
17 And --

18 MR. BISHOP: Objection; hearsay.

19 THE COURT: Rephrase your question.

20 BY MR. MCNAIR:

21 Q. So, I guess, just to answer my question, were
22 there more people at church on April 20th than
23 normal?

24 A. Yes, sir, absolutely.

25 Q. Why was that?

1 A. Confirmation with our church is a big deal.
2 That's when, basically, they're confirmed they are
3 becoming adults in the church. So it is a larger
4 deal; big enough that -- actually, it's not held at
5 our church. It was held at a church in Aiken. So
6 we got the bishop to come up from Charleston so --

7 Q. So is it fair to say more people saw that
8 behavior on that day than previous church services?

9 A. Yes, sir.

10 Q. And that became an issue on that day?

11 A. Yes, sir.

12 Q. All right. Did you continue to see that
13 behavior after that day?

14 A. Yes, sir, we did.

15 Q. Were you aware of when, obviously, the children
16 went into your mother's custody in October?

17 A. Yes, sir.

18 Q. All right. And did they end up coming to your
19 property?

20 A. Yes, they did.

21 Q. Do you remember when that was exactly?

22 A. Exact date, no. The best recollection I got is
23 right around the time that we had the big flood, the
24 thousand-year flood that we had several years ago.

25 Q. Okay. Do you remember what day it was on, like

1 a Friday or a Saturday?

2 A. Friday or Saturday, one of the two.

3 Q. All right. And who all showed up at your
4 house?

5 A. My mom was there; Laura was there; MINOR1,
6 MINOR2. Kyle came up and had his three children
7 with him as well.

8 Q. So he came with them and had his three
9 children?

10 A. Yes.

11 Q. What were the living arrangements?

12 A. At my property, Mom had a camper we had set up
13 out in the backyard. She was staying in there. Her
14 and Laura and MINOR1 and -- Laura, MINOR1 --

15 Q. MINOR3?

16 A. Yeah. All of that -- those were there. We
17 tried to keep Kyle and his children -- if I'm not
18 mistaken, we had them inside the house because, you
19 know, there's not enough room in the camper to put
20 them. You know, you put five people in a 26-foot
21 travel trailer, you got wall-to-wall people.

22 Q. I gotcha. How long was the defendant there
23 with his kids at your house?

24 A. A week, maybe two weeks.

25 Q. Are you sure about that? I'm talking about

1 with his kids.

2 A. With his kids?

3 Q. With his kids.

4 A. Okay.

5 Q. Not with Donna's kids. With his kids.

6 A. I think his kids predominantly over the
7 weekend. He had to take them back.

8 Q. Okay. So Julia and MINOR1 and Laura and
9 MINOR3 were all staying in the camper on your
10 property?

11 A. Yes.

12 Q. And then the weekend they got there, Kyle had
13 had his own kids, correct?

14 A. Correct.

15 Q. All right. And where were they staying?

16 A. We made room inside of our house. I live in a
17 three-bedroom double-wide trailer.

18 Q. Just for that weekend that he had his kids?

19 A. Right.

20 Q. Now, who was living with you at that time?

21 A. It would have been myself, my wife. And, out
22 of our three kids, I had one that was still at home.
23 And it was Tyler, so he had a room to himself.

24 Q. Okay. Do you remember seeing anything that you
25 thought was unusual between the defendant and MINOR1

1 when they first were there that weekend and he had
2 his kids with him?

3 A. The closeness of the two of them, you know,
4 basically, when they would sit on my couch. We'd
5 watch TV because it was pouring down rain on the
6 weekend and there was nothing you could do.
7 Basically, all of them sitting on top of each other,
8 you know, with their arm draped around each other.

9 Q. All right. Did you observe **MINOR1** interacting
10 with his children?

11 A. Yes, I did.

12 Q. What did you observe about that?

13 A. It was almost like a motherly deal, you know.
14 Whenever we'd eat or whatnot there, she'd get up and
15 help fix the kids' plates, assist them going to the
16 restroom and things. It was more of a motherly role
17 than really like a cousin-type deal.

18 Q. Now, at some point, was Mr. Way asked to leave
19 your residence?

20 A. There was a point where we talked with him and
21 told him that, with him and **MINOR1**, that the
22 relationship is not healthy and can't happen --

23 Q. Let's back up. Did something happen that
24 caused y'all to talk to him about leaving your
25 residence?

1 A. Okay. My mom had gone out to the trailer out
2 in the backyard. When she opened the door, she saw
3 the two of them basically laying on the bed in the
4 trailer. She came back in and spoke with myself and
5 Angela, and then we decided something had to be done
6 at this point in time and it needed to be done now.

7 So, basically, she went back out and we got the
8 two of them to come in. And all the other children,
9 we got them into the camper so that they were not
10 present at the time.

11 Q. All right. And do you know if you talked to
12 Kyle by himself or with **MINOR1** present?

13 A. We talked to them both together.

14 Q. Are you sure about that?

15 A. We did discuss it with the both of them
16 together and then we did have a discussion with him
17 separately as well.

18 Q. Okay. And tell me --

19 A. But we did discuss it together.

20 Q. And what did you tell the defendant when y'all
21 met with him?

22 A. We said that we had to have some separation;
23 you know, what's going on is not a brother and
24 sister relationship. We definitely went past this,
25 that they needed to have some separation and some

1 separate space instead of being with each other.

2 Q. What was his response to that?

3 A. We didn't have a whole lot of a response. He
4 said he was working on getting an apartment in
5 Greenwood; that he has to have his utilities and all
6 turned on at the time. But he then decided that he
7 could pack up and leave that evening to go.

8 Q. Did you tell him how you felt about what you
9 had seen about the way they had been interacting?

10 A. Everything that I said was that it was
11 inappropriate --

12 Q. Inappropriate?

13 A. Yes.

14 Q. All right. And what was his response when you
15 told him you thought it was inappropriate?

16 A. Just kind of indifference.

17 Q. Did he deny that it was inappropriate?

18 A. No, sir.

19 Q. Did he tell you that he was just pretending to
20 be her boyfriend to make her cool?

21 A. No, sir, not on that one.

22 Q. What did he do after you told him that?

23 A. After we had that discussion, he packed up and
24 left that evening and --

25 Q. Have you ever heard from him since?

1 A. I have not seen him since that evening. No.

2 Q. That's all the questions that I have. Please
3 answer anything that Mr. Bishop has.

4 THE COURT: Cross-examination?

5 MR. BISHOP: Briefly, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. BISHOP:

8 Q. Mr. Rogers, on the date of the confirmation at
9 church, we've heard testimony, as well as yours,
10 that Kyle and MINOR1 were sitting together. Just
11 for clarity's sake, they weren't the only ones
12 sitting together; is that correct? Were other
13 family members around them?

14 A. Other family members were there. They were
15 sitting several rows behind them.

16 Q. Was it a full congregation?

17 A. That church wasn't full. That's a very large
18 church down there that they had that in.

19 Q. But, I mean, they were in the open; a lot of
20 people could see them?

21 A. True. Yes, sir.

22 Q. Is it possible that MINOR2 was sitting with
23 them as well?

24 A. It could be possible.

25 Q. You testified that, at one point in time, the

1 family came together to have some conversations, I
2 guess, about the relationship that Kyle and MINOR1
3 were forming. Did anything sexual come up in that
4 relationship [sic]?

5 A. To my knowledge, no. I have no knowledge of
6 anything sexual. I mean, I could see what was
7 happening outside.

8 Q. I understand this is not your place, but -- and
9 you wouldn't say anything. But do you know if
10 anyone else approached them or confronted them about
11 this after that conversation?

12 A. I think so. Actually, I think my sister did.

13 Q. Okay. Your sister. And that's Donna?

14 A. Donna, probably. Dana probably did as well.

15 Q. You had mentioned, I think, Julia seeing them
16 in the trailer. You never saw Kyle and MINOR1 in
17 the trailer, did you?

18 A. No. No, sir. Not as far as going out there
19 and opening that door, no.

20 Q. And the night of the incident where, I guess,
21 the confrontation arose, you don't know who all was
22 in that trailer? You don't know whether there could
23 have been other people in there instead of just Kyle
24 and MINOR1?

25 A. There may have been another child in there,

1 down on the other end of the trailer.

2 Q. You also testified that MINOR1 would interact
3 with Kyle's children. Did MINOR2 interact with them
4 as well?

5 A. At some times, I would say, as far as, you
6 know, possibly helping here or there.

7 Q. When you confronted Kyle, I believe you said he
8 was indifferent. And I believe you described -- is
9 it fair to describe what you witnessed with Kyle and
10 MINOR1, that -- weird? Would you say -- you said
11 it's inappropriate; is that correct?

12 A. Yes. I do believe it was inappropriate.

13 Q. You never witnessed any sexual acts between the
14 two or him committing any sexual acts against her?

15 A. Personally, no.

16 Q. Did he admit to anything sexual when you
17 confronted him that night?

18 A. No.

19 MS. BISHOP: No further questions, Your Honor.

20 MR. MCNAIR: Nothing further, Your Honor.

21 THE COURT: All right. The witness may step
22 down. Thank you.

23 MR. MCNAIR: The State calls Angela Rogers.

24 ANGELA ROGERS

25 being first duly sworn, testified as follows:

1 THE WITNESS: I do.

2 DIRECT EXAMINATION

3 BY MR. MCNAIR:

4 Q. Ms. Rogers, how are you doing today?

5 A. I'm good.

6 Q. Could you please state your name for the
7 record.

8 A. Angela Rogers.

9 Q. And you are Donna's sister-in-law, correct?

10 A. Correct.

11 Q. All right. And your husband David --

12 A. Yes.

13 Q. -- just testified?

14 Everybody understands all the relationships at
15 this point. So when did you first meet the
16 defendant Mr. Way?

17 A. I met him at the lake -- I'm not sure exactly
18 when -- that summer before all this happened. He
19 came down for a weekend. He had his girlfriend and
20 his three children with him. And I just remember
21 going and us trying to find bathing suits for the
22 kids so that they could play in the water with us.

23 Q. Okay. Was that the summer of 2014?

24 A. Yes.

25 Q. Okay. Did you know how old Mr. Way was?

1 A. I wasn't sure exactly. I knew he was older. I
2 knew he was from a relationship before he and Donna
3 got married.

4 Q. Okay.

5 A. And that was all before I married into the
6 family in 2007.

7 Q. Okay. So you and David got married in 2007?

8 A. Correct.

9 Q. When you saw Mr. Way at the lake, how old did
10 you think he was?

11 A. He was well into his 20s, I mean, old enough to
12 have three kids and --

13 Q. Okay. A grown man?

14 A. Yes, a man.

15 Q. After that, did you learn that he had moved
16 into Donna Way's home?

17 A. I knew he was hanging around there. He was
18 there when we would go to the lake on the weekends
19 because it's all family land.

20 Q. Okay.

21 A. So when we were there on the weekends, he was
22 typically always there. So, yes, it was assumed
23 that he was staying with them.

24 Q. Did you have much interaction with him?

25 A. Not a lot of interaction. Most of the time

1 when we were at the lake, they would wander off by
2 themselves.

3 Q. When you say they, who are you talking about?

4 A. Kyle and MINOR1

5 Q. Do you remember when that was, when you thought
6 he was living in the house?

7 A. That was the end of that summer in 2015.

8 Q. Okay. Sometime in 2015?

9 A. Yes.

10 Q. All right. And you said when you were at the
11 lake together, that he and MINOR1 would go off by
12 themselves?

13 A. Correct.

14 Q. Did you --

15 A. Just go on walking, just disappearing. I
16 mean --

17 Q. Is it fair to say they wouldn't hang around the
18 rest of y'all?

19 A. Correct.

20 Q. Did you see him do that with any of the other
21 kids?

22 A. No. Typically, it was him and MINOR1.

23 Occasionally, MINOR2 would walk with them. But,
24 typically, it was -- it was always the two of them.

25 Q. Now, when is the first time you remember seeing

1 them together and seeing something that concerned
2 you?

3 A. At the confirmation at the Catholic church from
4 MINOR2 and Morgan, which is my other niece, I
5 remember them being there and just kind of hanging
6 on each other. And it was just awkward that they
7 were together like that. And we even had friends
8 who asked, is that MINOR1's boyfriend? And we were
9 like, no, that's her half-brother. That's --

10 Q. Okay. Now, did you go to the same church as
11 your husband and Donna?

12 A. No, I go to a different -- I'm not Catholic. I
13 go to the Church of Christ in Aiken. So, on special
14 occasions and stuff like that, I would go with him
15 and he goes, occasionally, with me. That's not
16 uncommon.

17 Q. Okay. So is that the first time you really got
18 to observe MINOR1 and Kyle together, at church?

19 A. Yes.

20 Q. And, I guess, where were they sitting in
21 relation to where you were sitting?

22 A. They were a few rows behind us. And I remember
23 going and talking to them and telling them, you
24 know, y'all need to have some space, this doesn't
25 look right, and y'all need to come up here with the

1 rest of the family. And they stayed back behind us;
2 they didn't want to move up with the family.

3 Q. Okay. And how were they sitting together?

4 A. I mean, as my father would say, you couldn't
5 squeeze a Bible between them.

6 Q. Okay. And you testified you also saw them kind
7 of hanging off one another and holding hands?

8 A. Definitely hanging on each other, just, like,
9 laying on each other's shoulders, and definitely
10 draped on each other, like a boyfriend and
11 girlfriend would do.

12 Q. Okay. And when you say a boyfriend and
13 girlfriend, can you elaborate on what type of
14 relationship that is?

15 A. I mean --

16 Q. Was it like a loving, brother-sister
17 relationship, or is it more like a romantic-type
18 relationship?

19 A. I've never held my brother's hand or laid my
20 head on my brother's shoulder and never draped
21 myself on my brother. That's not something that I
22 would consider brotherly or sisterly.

23 Q. How did you feel about that?

24 A. I thought it was awkward; I thought it was
25 wrong. And I told both Kyle and MINOR1 that day

1 that this didn't look right; y'all need to have some
2 space between you.

3 Q. And did you discuss how you felt about it with
4 other people?

5 A. David and I discussed it, and Dana and I
6 discussed it. But I don't typically butt in with
7 the family, just because it's the -- I'm the in-law
8 or the outlaw or whatever you want to call me. And
9 so I try to -- I try to help where I can, but I
10 didn't insert myself into the situation.

11 Q. Okay. Now, after that confirmation -- and that
12 was on April 20th, right?

13 A. Yes.

14 Q. Okay. Did you have the opportunity to see them
15 together again?

16 A. Not until October, when they came to our house.
17 They --

18 Q. And let me stop you there. Do you remember
19 when they first got to your house?

20 A. It was the weekend of the big flood, the
21 historical flood in South Carolina.

22 Q. All right.

23 A. And I remember that because I live in a small
24 double-wide trailer and I had my son in there, my
25 husband, my mother-in-law, Donna's four kids, and

1 then Kyle and his three kids. So --

2 Q. Do you remember what day of the week they
3 showed up to your house?

4 A. I believe it was a Friday, but I'm not
5 100-percent on that. But I do know they were there
6 through the entire weekend.

7 Q. All right. Would seeing your statement refresh
8 your memory as to what date that was?

9 A. Yes. I do think it's in that. It was on
10 October the 2nd.

11 Q. Okay. So October 2nd, which you believe to be
12 a Friday, is when they all showed up at your house?

13 A. Correct.

14 Q. And who all was it again?

15 A. It was my mother-in-law Julia, Donna's four
16 children, and Kyle and his three children.

17 Q. Okay. And how long did Kyle and his three
18 children stay?

19 A. Kyle had custody of them for that weekend. I
20 think him and his girlfriend or ex-wife, whatever,
21 were separated, so he had them for the weekend. And
22 I know he kept them there through Sunday afternoon
23 and had to take them back Sunday night.

24 Q. Okay. Where was everybody sleeping that
25 weekend?

1 A. In the camper that my mother-in-law owns in my
2 backyard.

3 Q. So you recall the defendant and his kids also
4 sleeping in that camper?

5 A. Yes.

6 Q. All right. Where would everybody eat, shower,
7 and do all that type of stuff?

8 A. Inside my house.

9 Q. So they do all that in your house and then go
10 sleep in the camper?

11 A. Correct.

12 Q. During the time that Mr. Way was there with his
13 kids, did you see he and MINOR1 interact together?

14 A. I mean, I have a small house, so we were all --
15 it's open concept, so you can see kitchen, living
16 room, dining room, so you could see them sitting
17 very closely together on the couch and watching TV
18 and hanging out. And the kids play in there in the
19 floor. But there was constant whispering and
20 chitchatting back and forth, but they didn't want
21 anybody to hear what they were saying or anything.

22 Q. Okay. And did you observe MINOR1 interacting
23 with his children?

24 A. Yes. She helped, like, fix their plates and
25 made sure they got to the table and were eating

1 and -- almost kind of a mother hen, kind of, of
2 helping him take care of the kids.

3 Q. Did you ever observe **MINOR1** wearing a ring?

4 A. She -- I don't know the exact point that she
5 got the ring. But, yes, she did have a diamond ring
6 that she wore on her wedding band finger. She had
7 that.

8 Q. Was she wearing that this weekend when she was
9 with Mr. Way at your home?

10 A. I'm not 100-percent on that.

11 Q. But, at some point, you saw her wearing a
12 diamond ring on her wedding --

13 A. I do remember her having a ring. Yes.

14 Q. All right. So did Mr. Way leave at some point
15 that weekend with his children?

16 A. On Sunday afternoon, he went to take his
17 children home. He wanted **MINOR1** to ride with him.
18 The two of them were going to take the children
19 home. And I advised that that not be allowed
20 because we had a -- the governor had placed a curfew
21 on everyone, and there was no way that he was going
22 to make it to Greenwood and back to our house before
23 the curfew was in place.

24 And with **MINOR1** being under the age and in my
25 mother-in-law's custody, I told her she was the

1 responsible party if something were to happen and
2 they got -- if they were still out past that curfew,
3 that she would be responsible for whatever happened.
4 So I suggested that she not be allowed to take them.
5 And she didn't need to be going. I mean, there was
6 no --

7 Q. Right.

8 A. -- sense for her to go.

9 Q. Was Mr. Way present for that conversation that
10 you were having with your mother-in-law?

11 A. They were all in the house. Like I said, I've
12 got a small house, so they had to have heard us
13 talking about it. They didn't say anything about
14 the conversation. But you could tell they didn't
15 like the fact that we said that MINOR1 couldn't ride
16 with him.

17 Q. And when you say they didn't like the fact, who
18 are you referring to?

19 A. Kyle and MINOR1 both. They --

20 Q. What did he do that made you think he didn't
21 like it?

22 A. Nothing was said. It was just the attitude of
23 just okay, and like a -- he didn't really say
24 anything. He just --

25 Q. Do you know if he had a place in Greenwood at

1 that time to stay?

2 A. It was my understanding that he had put a
3 deposit on a trailer in Greenwood, but he had not
4 had the power turned on or moved his stuff into it.
5 And that was part of the reason as why he was still
6 staying with Donna and the children and then why he
7 ended up at our house.

8 Q. Okay. So that was your understanding of why he
9 had to bring his kids to your house?

10 A. Correct.

11 Q. Now, during the time he was staying at your
12 house, did something happen that caused y'all to
13 have a talk with him?

14 A. Yes. He stayed past that weekend. We would
15 all go to work and come back, and he would be back
16 at our house every night. And, after a few days, it
17 just was obvious that the relationship was not a
18 healthy relationship, not what a brother and sister
19 should have.

20 And so the children had all come in and gotten
21 showers. We had had supper. Everybody was getting
22 ready for bed. And they -- as they got ready for
23 bed, they went out to the camper to start getting
24 their -- just getting laid down and rested and, you
25 know, stuff out for school the next morning and all.

1 And my mother-in-law went out, and both Kyle
2 and **MINOR1** were both laying on the bed. When you
3 open the camper door, the bed is just right to the
4 right of the door --

5 MR. BISHOP: Objection; hearsay.

6 MR. MCNAIR: All right. I'll clarify.

7 THE COURT: That's a little narrative. Let's
8 break it up a little bit.

9 MR. MCNAIR: I'll clarify, Your Honor.

10 BY MR. MCNAIR:

11 Q. Now, you didn't see any of what you just
12 testified to, right?

13 A. I did not see it, no. I did not see them
14 laying on the bed.

15 Q. All right. You were made aware of that?

16 A. Yes.

17 Q. By who?

18 A. By my mother-in-law.

19 Q. Okay. And what did y'all decide to do as a
20 result of that?

21 A. We decided that we needed to have a
22 conversation with Kyle. So we asked Kyle, after all
23 the kids had gone to bed, for him to come into the
24 house. My husband David, my mother-in-law Julia,
25 myself, and Kyle all had a discussion.

1 Q. Was MINOR1 present for this conversation?

2 A. No.

3 Q. And what did y'all tell him?

4 A. We told Kyle that it was time that he go ahead
5 and get the power turned on at his place in
6 Greenwood and that he needed to get moved in by the
7 weekend and that it was -- they needed some space in
8 between them.

9 I understand the childhood was not
10 picture-perfect and that the relationship that he
11 had with his siblings was not in the ordinary
12 fashion, and that if he --

13 Q. How -- let me stop you right there. How did
14 you describe to him the way you viewed his behavior
15 with MINOR1?

16 A. I told him that they were too close and that it
17 looked like there were things going on between the
18 two of them that should not be going on between
19 them.

20 Q. Okay. And what was his response to you saying
21 that?

22 A. He didn't really say anything at all.

23 Q. All right. He did not deny that?

24 A. No, sir, he did not deny it.

25 Q. All right. And he didn't tell you he was

1 pretending to be her boyfriend?

2 A. No.

3 Q. So what happened after that conversation?

4 A. After that conversation, he went out to the
5 camper and got all of his stuff. And he left that
6 night. When he left, MINOR1 was almost
7 brokenhearted with her actions. She was screaming
8 at the top of her lungs in the camper. I could
9 stand inside my house at the sliding glass door and
10 hear her with the door closed on the camper,
11 screaming.

12 And so I went out to the camper and asked her
13 to get her stuff and to come inside; that she needed
14 some separation and she needed to calm down. And so
15 she came into the house with me.

16 When she came into the house, we sat on the
17 couch and we talked, just MINOR1 and I. My husband
18 went to bed; everybody else was in the camper. My
19 son had -- he wasn't having no part of it; he was in
20 his room with the door closed.

21 And so MINOR1 and I had a conversation. And I
22 told her that for all actions, there are
23 consequences, and her consequence for her actions
24 that night was that I needed her phone. And I
25 explained to her that all three of my children, if

1 at any time I took their phone, I had the right to
2 go through it because I was a parent and that was my
3 job. And so I asked her for the code for her phone,
4 and she willingly gave me the code to her phone.

5 Q. All right. Do you remember what the code to
6 her phone was?

7 A. I believe it was 0313. It was something simple
8 like that.

9 Q. Okay. March 13th, 0313?

10 A. Something simple like that. I don't remember
11 exactly. But it is in my statement. I do remember
12 giving it to the police.

13 Q. Just to make sure we're certain, I'll let you
14 refresh your memory of your statement.

15 A. Yes. It was 0313.

16 Q. Okay. That was the code to her phone?

17 A. Correct.

18 Q. And did you get into her phone?

19 A. I did.

20 Q. What did you see?

21 A. I read through her text messages. She had
22 Kyle -- he was labeled in there, I believe, as Hubby
23 or something along that lines. But it was very,
24 very evident that the two of them had -- were
25 referring to each other as husband and wife.

1 I remember reading texts of him calling her
2 Wifey and her telling him "good night Hubby" and
3 things like that in the text messages.

4 Q. And what did you do as a result of seeing those
5 messages?

6 A. Well, it was late at night; everybody was in
7 bed. So, the next morning, I discussed it with my
8 husband and I discussed it with Dana, my
9 sister-in-law. And we decided that it was time that
10 it be taken to the police for them to have a look at
11 it. And that's when I turned it all over, at that
12 point.

13 Q. Okay. You turned that phone over to the
14 police?

15 A. Yes, sir, I did.

16 Q. I'm going to show you State's Exhibit 4 that's
17 in evidence. You tell me whether or not this
18 appears to be the phone you looked at.

19 A. Yes, sir, it is.

20 Q. That's the phone you took from MINOR1?

21 A. Yes, sir.

22 Q. And turned over to the police?

23 A. Yes, sir.

24 Q. All right. And you called the police, I guess,
25 the next morning, after you talked to MINOR1?

1 A. I came to Saluda to the police -- the sheriff's
2 office and filed a report and gave them the phone.

3 Q. Okay. So, just to summarize your testimony,
4 the first time you really saw MINOR1 and the
5 defendant interacting together was April 20th at
6 church?

7 A. Yes.

8 Q. And the next time was when they arrived at your
9 house?

10 A. For that weekend.

11 Q. That weekend?

12 A. Uh-huh.

13 Q. Okay. And then as soon as you had the
14 authority to do something about it, you did?

15 A. Absolutely.

16 Q. You called the police?

17 A. Yes.

18 Q. Thank you.

19 MR. MCNAIR: That's all I have, Your Honor.

20 THE COURT: Cross-examination?

21 MR. BISHOP: Just briefly.

22 CROSS-EXAMINATION

23 BY MR. BISHOP:

24 Q. Ms. Rogers, when Kyle brought his children to
25 your house, I guess, for the weekend during the

1 flood --

2 A. Yes.

3 Q. -- you said they stayed in the camper; is that
4 correct?

5 A. Yes.

6 Q. So they didn't stay in the house at all?

7 A. During the day, they would be in the house
8 playing and all. But, for sleeping, they stayed in
9 the camper.

10 Q. And who all stayed in the camper at night, to
11 the best of your recollection?

12 A. Julia, the four children, and Kyle and his
13 three children.

14 Q. And this was a -- like a trailer-camper, like a
15 fifth wheel or was it -- about what size camper was
16 this?

17 A. I don't know. That's not my --

18 Q. Small enough where you'd probably know who all
19 was in there, if somebody --

20 A. Oh, absolutely. You would know everybody that
21 was in there.

22 Q. You had also mentioned them in church acting
23 inappropriately, I think, kind of close to each
24 other, and things like that.

25 A. Correct.

1 Q. You said they were sitting behind you. How did
2 you notice this in church?

3 A. Well, I mean, before church started, it was
4 obvious. But then there were also other people
5 behind them. I mean, who doesn't sit with their arm
6 on the back of the pew and turn around and back
7 occasionally? I mean, they're children. You have
8 to check on children in church. So --

9 Q. And were -- I'm sorry to interrupt.

10 Were they sitting alone or was MINOR2 with them
11 or were there any other family members with them?

12 A. I believe MINOR2 was sitting with them. But
13 MINOR2 was not draped all over him.

14 Q. When you confronted Kyle on the night that he
15 left, you didn't bring up any allegations of sex or
16 any kind of sexual acts with MINOR1, did you?

17 A. I did not make any accusations. I told him
18 that the relationship looked inappropriate from me
19 looking in.

20 Q. And I believe your testimony is that he didn't
21 deny it. But what he didn't deny was that you felt
22 like they were having an inappropriate relationship;
23 is that correct?

24 A. He did not confirm nor deny it.

25 Q. But you didn't bring up any allegations of sex

1 or sex with MINOR1?

2 A. I did not.

3 Q. When you got her phone and reviewed it, did you
4 see any conversations regarding any type of sex or
5 sexual acts or them talking about it between the
6 two, from your observations of the phone that you
7 took?

8 A. You know, it's been three years since I went
9 through those texts.

10 Q. I know.

11 A. So I'm not going to say -- I don't recall all
12 of the texts that I read. I do recall the labels
13 that they had given each other.

14 Q. I understand. I understand.

15 MS. BISHOP: No further questions.

16 THE COURT: Redirect?

17 MR. MCNAIR: Very briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. MCNAIR:

20 Q. Now, the time you saw them together at church
21 on April 20th, that was MINOR2's confirmation,
22 right?

23 A. Correct.

24 Q. So she's getting confirmed, so she's not
25 sitting --

1 A. Oh, she was not sitting with them. It would
2 have been Laura that would have been sitting with
3 them.

4 Q. All right. And when you describe MINOR1
5 hanging off of him, now, is this just MINOR1 hanging
6 off him or was this mutual?

7 A. It was mutual.

8 Q. So he -- okay. So she's not the one just
9 hanging off him and he's not reciprocating, right?

10 A. Oh, no. He wasn't pushing it away.

11 Q. Okay.

12 A. It was very much the two of them.

13 Q. All right. And you're not in any way, shape,
14 or form saying MINOR1 is to blame for this or
15 instigated this?

16 A. MINOR1 was a child.

17 Q. Exactly.

18 A. MINOR1 was being taken advantage of for not
19 knowing that that wasn't how you were supposed to
20 act. I mean --

21 Q. She was 13, right?

22 A. Exactly.

23 Q. And he was a grown man with three kids?

24 A. Exactly.

25 MR. MCNAIR: Nothing further, Your Honor.

1 THE COURT: Any recross?

2 MR. BISHOP: No, Your Honor.

3 THE COURT: All right. The witness may step
4 down.

5 MR. MCNAIR: Judge, may we approach?

6 THE COURT: Yes, sir.

7 (Sidebar conference.)

8 THE COURT: All right. Ladies and gentlemen,
9 we've reached a point in the day where other
10 witnesses may take some more time. And I don't want
11 to keep you too late today, so we're going to go
12 ahead and wrap up for the day now. I'll ask that
13 you be back in your jury room again at 9:15 in the
14 morning, which you were today. I appreciate that.
15 That way, we can probably start with the next
16 witness at 9:30 tomorrow morning.

17 While you're home tonight, when you are in your
18 jury room, and when you exit the courtroom now,
19 please don't discuss the case or do any independent
20 research of the law or the parties involved. And
21 we'll see you tomorrow morning at 9:15. Thank you.

22 (The jury exits the courtroom at 3:56 PM.)

23 THE COURT: All right. We'll be in recess
24 until the morning. Anything else for the record?

25 MR. MCNAIR: No, Your Honor.

1 MR. BISHOP: No, Your Honor.

2 THE COURT: Thank you. See y'all in the
3 morning.

4 (The proceedings held November 20, 2019, are
5 contained in a separate transcript and was reported
6 by another State Court Reporter.)

7 -- END OF TRANSCRIPT OF RECORD --

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh 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 the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Saluda County, South Carolina, on the 18th and 19th of November, 2019.

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

February 1, 2021

s/ *Bethanie K. Creppon*Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 KYLE WAYNE WAY,)
)
 DEFENDANT.)
 _____)

2019-GS-41-00344

TRANSCRIPT OF RECORD

NOVEMBER 20, 2019
SALUDA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WALTON J. McLEOD, IV

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

ATTORNEYS FOR PLAINTIFF:

MELANIE DARKO, ASST. SOL.
ROBBY McNAIR, ASST. SOL.

ATTORNEY FOR DEFENDANT:

JOHN A. BISHOP, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>		<u>PAGE NO.</u>
KATHERINE CHAPPELL		
DIRECT BY MS. DARKO	-----	6
CROSS BY MR. BISHOP	-----	22
KENNETH CLARK		
DIRECT BY MR. McNAIR	-----	24
CROSS BY MR. BISHOP	-----	55
JOSHUA PRICE		
DIRECT BY MR. McNAIR	-----	56
CROSS BY MR. BISHOP	-----	68
JEREMY HEMBREE		
DIRECT BY MR. McNAIR	-----	69
CROSS BY MR. BISHOP	-----	91
MINOR2 [REDACTED]		
DIRECT BY MS. DARKO	-----	92
CROSS BY MR. BISHOP	-----	101
REDIRECT BY MS. DARKO	-----	103
MOTIONS	-----	104
DEFENDANT'S ADVISEMENT OF RIGHTS	-----	106
KYLE WAY		
DIRECT BY MR. BISHOP	-----	109
CROSS BY MR. McNAIR	-----	176
REDIRECT BY MR. BISHOP	-----	215

INDEX

<u>WITNESS</u>		<u>PAGE NO.</u>
MYRON JONES		
DIRECT BY MR. BISHOP	-----	217
CROSS BY MR. McNAIR	-----	222
MOTIONS	-----	224
CERTIFICATE OF REPORTER	-----	225

STATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-24	KANDA WAY FB BUSINESS RECORDS ---	X	32
S-31	MOTOROLA EXTRACTION REPORT ---	X	75
S-32	CALL LOG BETWEEN V&D ---	X	75
S-33	D'S CERTIFIED DRIVING RECORD ---	X	67
S-34	D'S WRITTEN STATEMENT ---	X	60
S-35	VAGINA DIAGRAM -----	X	12
S-36	PHONE EXTRACTION -----	69	X

DEFENDANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
D-2	PHOTO -----	133	134

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

1 **THE COURT:** We ended yesterday -- I believe the State had
2 called five witnesses. Are we prepared to get started again
3 today?

4 **MR. McNAIR:** Yes, sir, Your Honor.

5 **THE COURT:** All right. Anything else before we get the
6 jury out here?

7 MR. McNAIR: Nothing from ---

8 **THE COURT:** All right. Let's bring them out, please.

9 (Whereupon the jury entered the courtroom at 9:46 am)

10 **THE COURT:** Okay. Mr. Foreman, ladies and gentlemen of
11 the jury, welcome back. I hope you had a nice evening. We're
12 just going to pick up where we left off yesterday in the
13 State's case in chief. And we'll take a break, obviously,
14 hopefully midmorning or so. Madam Solicitor.

15 **MS. DARKO:** The State calls Dr. Kate Chappell.

16 KATHERINE CHAPPELL, M.D.,

17 being duly sworn testified as follows;

18 DIRECT EXAMINATION BY MS. DARKO:

19 Q. Good morning, Dr. Chappell. If you could just state your
20 full name for the record.

21 A. Katherine Chappell.

22 Q. And where are you currently employed and in what
23 capacity?

24 A. So I'm a clinical associate professor at the University
25 of South Carolina in the College of Nursing.

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

7

1 Q. Okay. And do you do any type of -- in your special
2 practice do you do any exams associated with pediatric nurse
3 practitioners?

4 A. Yes. So part of my job with the College of Nursing is
5 working as a pediatric nurse practitioner at a child advocacy
6 center.

7 Q. Okay. And what's a child advocacy center?

8 A. So that's a center where -- in South Carolina we're lucky
9 because we have a pretty good number of them. It's a center
10 where children go to give an interview if there's -- maybe
11 they've been a witness to a crime or they've possibly been the
12 victim of a crime.

13 They also get their medical exam to kind of make sure
14 that they're healthy head to toe and that we understand
15 anything related to their possible exposure. And they also
16 can get counseling there. So it's supposed to be kind of in
17 one house.

18 Q. And you mentioned that you're a certified nurse
19 practitioner. What led to your certification in the field?

20 A. So I have a nursing degree, a bachelor's degree in
21 nursing. And then I have a master's degree, which is
22 pediatric nurse practitioner primary care.

23 Q. And you mentioned what the advocacy center does. Have
24 you had the opportunity to treat and assess child sex abuse
25 cases?

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

8

1 A. Yes. I treat and assess children with all types of child
2 maltreatment allegations including child sexual abuse.

3 Q. And what specific training have you received in order to
4 conduct physical examinations related to child sexual abuse?

5 A. So in addition to my pediatric nurse practitioner
6 training, I'm trained for well visits and sick visits. I also
7 attended a national training that's about three days' worth of
8 training. And then in our State we kind of go a little bit
9 beyond the requirements. And so I spent about a week and a
10 half training one on one with child abuse pediatricians. And
11 then we continue to do chart review and case review to kind of
12 look at findings and make sure that everybody in the State is
13 on the same page, the nurse practitioners and the physicians
14 who provide these exams.

15 Q. And you kind of touched on your educational background
16 already, but what educational background do you have that led
17 you to the medical field in general?

18 A. So I have a bachelor's degree in nursing, as I said, and
19 then I have a master's degree in pediatric primary care. And
20 then I have a PhD in nursing research.

21 Q. And is it possible going back to your doing these
22 examinations to estimate how many examinations you've done
23 related to child sexual assault?

24 A. So I don't have it separated out by child sexual abuse,
25 but I've conducted around 615 exams since 2011. The majority

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

9

1 of those are child sexual abuse.

2 Q. And have you testified as an expert in court with regard
3 to your findings in such cases?

4 A. Yes.

5 Q. And have you had an opportunity to study medical
6 literature related to child sexual abuse findings?

7 A. Yes, both in our initial training and then on an ongoing
8 basis. We have continuing education requirements.

9 Q. And that's continuing education requirements, that's
10 within a clinical setting as well?

11 A. Yes.

12 Q. Okay.

13 **MS. DARKO:** At this time, Your Honor, the State offers
14 Kate Chappell as an expert in the field of child sexual abuse
15 examinations.

16 **MR. BISHOP:** No objection.

17 **THE COURT:** All right. Ladies and gentlemen, normally a
18 person cannot give opinion testimony. When a person testifies
19 they have to talk about what they saw, or heard, or personally
20 observed, or something of that nature. However, there is an
21 exception when someone is qualified because of education or
22 experience, they're permitted to give their opinion in certain
23 areas if the court qualifies them that way. This witness will
24 be qualified in child abuse ...

25 **MS. DARKO:** Yes, Your Honor. Child sexual abuse

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

10

1 examinations.

2 **THE COURT:** ... child sexual abuse examinations and to
3 give opinion testimony in that area. That doesn't mean you
4 have to accept the witness' opinion, but it's evidence for you
5 to use in any way you see fit. Thank you.

6 **DIRECT EXAMINATION BY MS. DARKO CONTINUED:**

7 Q. Okay. Dr. Chappell, I want to start by asking you about
8 the female anatomy generally. What is meant by the term
9 hymen?

10 A. So the hymen is a piece of soft tissue that sort of
11 protects the vagina from, you know, just exposures, whether it
12 be germs or any other things that may kind of try to come in
13 just like we have kind of protective membranes in our ears to
14 keep things from getting in there. So it's a protective soft
15 tissue, although it does have an opening.

16 Q. Okay. And you said that that has an opening?

17 A. Um-hum (affirmative).

18 Q. What is the physiological purpose of that opening?

19 A. So from birth females have to have an opening in their
20 hymen. If they don't, then we actually have to do minor
21 surgery to create an opening because from birth there may be
22 discharge that needs to get out of that area or if -- when you
23 start your period, you also have to be able to get that out.

24 Q. And so the hymenal opening is there in children in their
25 early adolescent prior to them being sexually active, is that

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

11

1 ---

2 A. Yes. Every female is born with a hymen if they're
3 genetically normal.

4 Q. And how is the hymen impacted by penetration, if at all?

5 A. So it is a very -- like I said, it's soft tissue. So it
6 is flexible. So if anything was to try to penetrate that
7 area, again, there is an opening. So it will sort of
8 sometimes flex or sometimes it will tear acutely related to
9 penetration.

10 Q. What are some common misconceptions about the hymen?

11 A. So one I kind of already said is that there is an opening
12 from the start. There should be an opening there rather than
13 some people do kind of think of it as -- like it's closed over
14 and then that perhaps consensual sex would break that. It's
15 open from the beginning.

16 Q. Is the phrase intact used by medical experts in your
17 field who conduct examinations?

18 A. We don't really consider that to be a accurate term
19 because it sets in your mind that something has to be
20 completely covered over to be intact. So it's not a word that
21 we use.

22 **MS. DARKO:** Permission to approach the witness, Your
23 Honor.

24 **THE COURT:** Yes, ma'am.

25 Q. Dr. Chappell, I'm showing you what's been marked as

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

12

1 State's 35 for ID only. Do you recognize what's depicted in
2 this demonstrative?

3 A. Yes.

4 Q. And what is it?

5 A. It's a drawing that outlines the specific areas of the
6 female genitalia.

7 Q. And it is a fair and accurate depiction of that area of
8 the female anatomy?

9 A. Yes.

10 Q. And would it assist you in your testimony here today?

11 A. It would.

12 **MS. DARKO:** Your Honor, at this time State moves State's
13 35 into evidence.

14 **MR. BISHOP:** No objection.

15 **THE COURT:** State's exhibit 35 is admitted into evidence
16 without objection.

17 (Whereupon State's exhibit 35 was admitted into evidence)

18 **MS. DARKO:** Permission to publish.

19 **THE COURT:** Yes, ma'am.

20 **MS. DARKO:** And at this time may the witness step down to
21 give a portion of her testimony, Your Honor?

22 **THE COURT:** Yes, ma'am. Doctor, if you could just be
23 sure that you speak with a clear voice so we can still hear
24 everything.

25 Q. If you could just take us through exactly what we're

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

13

1 looking at here and identify the hymenal area, Dr. Chappell.

2 A. Sure. So we're looking at kind of an overview of the
3 female anatomy. And typically what you're going to see if
4 you're not doing an exam is you're just going to see kind of
5 those outer labia and then the little inner labia.

6 You can sort of see those outside folds. It's very
7 protective of this area so that if someone falls or those kind
8 of things so they don't get any injuries to this area. And
9 then typically when I'm doing my exam, this is about what I
10 would see because I'm just going to have my hands like right
11 here.

12 And so as you get more into the inner area inside of the
13 labia you have -- you really have to think of this part as
14 three dimensional. So that's what I tell my students, you've
15 got to think of it as three dimensional.

16 And the hymen is almost the screen door, if you will. It
17 does have a hole, opening, that we wouldn't want in a screen
18 door, but it's kind of that opening before you get to the
19 vagina. So a lot of people incorrectly say, oh, the vagina,
20 but the vagina is in the back and you really don't usually see
21 someone's vagina.

22 So the hymen is sort of -- you see this opening. And
23 it's got this tissue that, in this case, goes all the way
24 around. And then we also are looking at -- this is called the
25 vestibular fossa or the fossa navicularis layers, a long set

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

14

1 of words, but it's basically that front area. If you think
2 about the screen door at the porch, that's kind of the porch
3 stoop, so to speak.

4 And then you get into the posterior fourchette, which is
5 where we transition out of the genital area and heads towards
6 the anal area.

7 Q. Thank you, Dr. Chappell.

8 A. Um-hum (affirmative).

9 Q. Will you tell us whether hymenal tissue changes over
10 time?

11 A. It does. When babies are first born they have a lot of
12 mom's estrogen. So sometimes that tissue can be almost a
13 little bit softer and a little bit puffier, so to speak. And
14 then as mom's estrogen recedes, then it's going to be very
15 sensitive to touch. And then as puberty comes in and estrogen
16 of the female's own shows up, then that tissue is going to
17 again begin to change.

18 Q. And when you're speaking of these changes, is one of
19 those changes allowing for more elasticity?

20 A. Somewhat. It's moreso that it's not as sensitive to
21 touch. Before estrogen shows up it's a lot like if you were
22 to touch the inside of your eyelid, it would really kind of
23 burn or sting. Whereas once estrogen comes, that tissue --
24 just that touch isn't going to necessarily be painful or
25 hurtful.

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

15

1 Q. And as you're talking about the onset of puberty and the
2 hymenal changes can you tell us whether or not in this case
3 you had an opportunity to conduct a medical examination of
4 [REDACTED] MINORI [REDACTED]?

5 A. Yes.

6 Q. Do you recall the date of that examination?

7 A. That was June 2016.

8 Q. And how was it that MINORI, she goes by her middle name,
9 ended up with a referral for a medical examination by you?

10 A. So she had completed a forensic interview where she
11 disclosed sexual abuse including penetration. And so she was
12 referred for a medical to make sure that, again, she was
13 physically healthy and well and also whether her behaviors
14 were okay.

15 Q. And you've explained the purpose of the advocacy center
16 and the sorts of things that are done there. Just for
17 clarification, what's the difference between the examinations
18 that you conduct in say a sexual assault evidence collection
19 exam or a SANE exam?

20 A. So a SANE nurse is in an emergency department. And so
21 that is an RN versus a physician or a nurse practitioner. And
22 that RN is specially trained to collect -- I want to say it's
23 about 20 steps in the kit. But they're specially trained to
24 collect swabs that are going to gather DNA and other acute
25 evidence.

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

16

1 Sometimes there may be something like a hair that they
2 need to collect or something like that that's not the child's
3 or the adult's because they also can do exams with adults.
4 That's going to be in the first couple of days after a
5 disclosure if someone both realizes that something
6 inappropriate happened and is able to access that healthcare
7 service.

8 Q. And when you're talking about that kit and the 20 steps,
9 would that be something outside of your expertise or
10 professionals who deal with these sorts of cases may refer to
11 as a rape kit or may have heard that? Is that a common term?

12 A. Right. A lot of times people will call it a rape kit,
13 yes.

14 Q. And during the course of your examination do you do any
15 evidence collection such as swabbing the body for DNA?

16 A. I do not.

17 Q. And why is that?

18 A. So for little kids who haven't hit puberty yet, that
19 evidence really is gone within about two days. And then even
20 for older kids, adolescents, and adults, it's about three days
21 whenever you really start to lose the value of collecting DNA
22 or any other body fluid kind of samples that might be someone
23 else's.

24 Q. So it's -- three days is the window for collecting ---

25 A. Um-hum (affirmative).

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

17

1 Q. --- DNA evidence in these cases from the last sexual
2 encounter?

3 A. Correct.

4 Q. And what pubertoral stage that you referred to as Tanner
5 Stages was **MINORI** in at the time of your examination?

6 A. She was at stage 4 out of 5.

7 Q. And what is that stage?

8 A. So that means that estrogen has shown up and that her
9 tissues are essentially very close to being mature, kind of
10 the last stage with 5 as the breasts have completely
11 developed, they're not going to grow any further and that
12 everywhere that hair is going to spread kind of down onto the
13 legs is done. So she was kind of just before that.

14 Q. And so you noticed the onset of puberty in **MINORI**, is
15 that ---

16 A. Oh, yeah, she was definitely past that.

17 Q. And what, if anything, does hymenal development tell you
18 about the onset of puberty? Kind of already got into this.

19 A. Yeah. I mean, we look moreso at breast development and
20 hair growth distribution when we're thinking about Tanner
21 Stages. But you will notice hymenal changes as that estrogen
22 is making those things happen, it's going to make the hymen
23 begin to change more towards this softer tissue.

24 Q. And would you always expect to find evidence of trauma
25 following sexual intercourse?

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

18

1 A. Rarely would I expect to find trauma.

2 Q. And what can you tell us about the specific tissue in the
3 vaginal area within the introitus -- within the vaginal
4 opening and its ability to heal?

5 A. So because it is soft tissue, it's very similar -- I
6 often -- when I'm teaching students I compare it to the inside
7 of your mouth in that if you get an acute injury, some of
8 those acute injuries will heal very quickly, someone may not
9 even be able to tell that even if you were to get punched in
10 the face, sometimes you can't tell. Sometimes there's
11 swelling. Sometimes there's a longer lasting scar such as if
12 a nose got broken in the course of that.

13 Q. So that vaginal tissue is similar to the tissue on the
14 interior of your mouth?

15 A. Um-hum (affirmative).

16 Q. And what about women who have actually given birth to a
17 child, is there literature to support that hymenal tissue is
18 still present in some cases for women who've given birth?

19 A. Yes. A lot of women will still have some hymenal tissue
20 after birth. And there have been some cases, I've never seen
21 one, but there have been some cases that -- where even with
22 birth the hymen didn't necessarily have a indicator or a
23 healed scar from that. You can see it more with the cervix up
24 above.

25 Q. And just taking you back to the examinations. You've

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

19

1 already explained the difference between an evidence
2 collection examination and the type of examination that you'd
3 do. So you've mentioned that in addition to doing the medical
4 exam you also perform an overall exam to assess the well-being
5 of the child, is that right?

6 A. Yes.

7 Q. And did you perform that portion of the exam on MINORI?

8 A. Yes. So my exam is always going to be head to toe
9 because the entire child's health is what I'm concerned with
10 and their entire well-being. So I don't go in a head to toe
11 order because that's not actually the most comfortable order
12 for people to immediately be in their face, but I do examine
13 all the parts of the body.

14 Q. And what, if anything, can you tell us about the
15 cumulative effect of the symptoms that are reported to you
16 that include physical, emotional, that's the entire scope of
17 your exam in MINORI's case?

18 A. So her physical exam was normal. And she, that day, was
19 cooperative. And she was a little nervous, a little
20 apprehensive. And mom had discussed with me before I saw
21 MINORI that MINORI had maybe had some anger recently, some
22 fighting with family members.

23 But, you know, just hearing that from one person, it's
24 hard to know whether that truly was an additional symptom that
25 she was coping with something or I believe she was 15 and 16

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

20

1 at the time that mom was describing that, so that happens.

2 Q. And you note your findings in your report?

3 A. Yes.

4 Q. During **MINORI**'s testimony earlier this week she reported
5 that -- she came to see you about six months after the end of
6 her -- when her brother was having sex with her and she
7 recorded having what she self-diagnosed as a urinary tract
8 infection that began right after the defendant began having
9 sex with her. Do you -- is there anything medically notable
10 about that to you that you can explain to the Court?

11 A. So -- and you said she thought that she had ---

12 Q. Thought.

13 A. --- a urinary tract infection?

14 Q. Yes, self-diagnosis.

15 A. Okay. So anyone who's ever had a urinary tract infection
16 knows that there can be burning and, you know, you can feel
17 like you need to urinate a lot and those kinds of things. So
18 that can happen with any irritation of the tissues. It's not
19 always a urinary tract infection.

20 Those symptoms of sort of burning or pain with peeing,
21 those kinds of things aren't necessarily diagnostic of sexual
22 abuse. Obviously they mean a lot of things. And that's why
23 we like to evaluate them. But it is sensible that if she had
24 some irritation in that area she could have -- she could have
25 felt pain and burning.

KATHERINE CHAPPELL - DIRECT EXAMINATION BY MS. DARKO

21

1 The other possibility, which there's no way to know with
2 the time-frame that I saw her, is that she could have possibly
3 had a sexually transmitted infection or even possibly a
4 urinary tract infection from that additional friction or
5 activity.

6 Q. And she testified that she was stealing antibiotics from
7 her mother to sort of self-treat whatever was going on there.
8 If that were the case it would not be something that would be
9 visible to you six months later in your exam?

10 A. Correct.

11 Q. Okay.

12 A. And many of those infections, our bodies are -- have a
13 strong immune system and we're able to resolve those
14 infections on our own in most cases. It just takes a bit
15 longer.

16 Q. And can you tell us whether there's anything medically
17 significant in what she reported as it relates to a history of
18 sexual abuse within your examination?

19 A. Can you clarify ---

20 Q. I can rephrase.

21 A. --- the question?

22 Q. Yeah. All things considered, can you tell us within a
23 reasonable degree of medical certainty, can a normal exam such
24 as **MINORI**'s case, the physical exam, be consistent with her
25 history of sexual abuse?

KATHERINE CHAPPELL - CROSS-EXAMINATION BY MR. BISHOP

22

1 A. So as I said before, it's not surprising, it's, in fact,
2 expected that the physical exam is going to be normal. From
3 the literature on forensic child abuse we know that for a
4 child who has not seen us within the first few days of an
5 alleged contact, more than 95 percent of them are going to
6 have a normal physical exam, kind of thinking about that soft
7 tissue and how quickly it heals. That evidence is based on --
8 or that literature is based on both examining kind of what all
9 the normals are for little babies when they're born, what
10 their hymens look like 'cause they're in the hospital.

11 And so we know that there are a lot of different ways
12 that that part of the body can look just like a nose or an
13 ear, we all have different ones. But it's also based on even
14 cases where we've got video evidence or direct witness
15 evidence of an assault, when we see that child perhaps weeks
16 or months later, it's very expected that it's going to be a
17 normal physical exam.

18 **MS. DARKO:** Nothing further for this witness, Your Honor.

19 Q. Please answer any questions from the defense.

20 **THE COURT:** Cross-examination.

21 **CROSS-EXAMINATION BY MR. BISHOP:**

22 Q. Good morning, Dr. Chappell.

23 A. Good morning.

24 Q. You indicated during **MINORI**'s exam that her pubertal, I
25 think that's the right word, stage was 4 out of 5.

KATHERINE CHAPPELL - CROSS-EXAMINATION BY MR. BISHOP

23

1 A. Um-hum (affirmative).

2 Q. Is that something normal? I believe she was 15 years old
3 at the time. Is that normal for someone her age?

4 A. It's within normal limits, yeah.

5 Q. You also testified that she said that she may have had
6 some type of urinary tract infection prior to coming to you.
7 You have not seen any evidence that she actually did, have
8 you?

9 A. She did not discuss that with me.

10 Q. Okay. I'm sorry, she testified that she possibly had.
11 In your experience is that -- what could cause that in someone
12 that age?

13 A. Those symptoms?

14 Q. Symptoms.

15 A. So, again, it could be a urinary tract infection.
16 Females are more susceptible to urinary tract infections just
17 because things are closer together. You know, when you think
18 about E. coli is the most common bacteria and that comes from
19 bowel movements, so it's closer together.

20 It can come from irritation. Sometimes even just
21 changing soap can cause those symptoms. Not a urinary tract
22 infection, but the symptoms. And then also any sort of
23 friction or -- and even in consensual sex there's situations
24 where somebody will be more susceptible to a urinary tract
25 infection if they don't urinate soon after.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

24

1 Q. I understand. So there's multiple potential causes aside
2 from sexual activity that could cause a urinary tract
3 infection?

4 A. The symptoms.

5 Q. Or the symptoms, yes, ma'am.

6 A. Um-hum (affirmative).

7 Q. And just to clarify, when did you conduct this
8 examination of **MINORI**?

9 A. This was in 2016, June.

10 Q. Okay.

11 **MR. BISHOP:** No further questions.

12 **THE COURT:** Any redirect?

13 **MS. DARKO:** Nothing further for this witness.

14 **THE COURT:** Doctor, you may step down.

15 **MR. McNAIR:** Your Honor, the State calls Detective
16 Kenneth Clark.

17 **KENNETH CLARK,** being duly
18 sworn testified as follows;

19 **DIRECT EXAMINATION BY MR. McNAIR:**

20 Q. Detective Clark, would you state your full name for the
21 record, please?

22 A. Kenneth Clark.

23 Q. All right. Would you give the jury a little bit of
24 background of your experience in law enforcement?

25 A. I started my career in 1997 with the Saluda County

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

25

1 Sheriff's Office. I was here until 2012, left for a spell,
2 came back in 2014 and have currently moved to Charleston where
3 I work for the Mount Pleasant Police Department.

4 Q. All right. What's your primary responsibilities for the
5 Mount Pleasant Police Department?

6 A. I work -- I'm a detective in the Criminal Investigations
7 Bureau. I work generally any case that comes about, but my
8 general caseload is anything dealing with child sexual
9 assaults, physical assaults, and internet crimes against
10 children.

11 Q. Okay. And are you on any special task forces involving
12 crimes against children?

13 A. Yes. I'm on the South Carolina Attorney General's
14 Internet Crimes Against Children Task Force.

15 Q. All right. How long have you been doing that?

16 A. I started with the Task Force in 2014.

17 Q. And when you were with Saluda what types of cases were
18 you investigating back in 2015?

19 A. Back in 2015 I was working child sexual assaults and
20 physical assaults.

21 Q. All right. Now how did you first become involved in this
22 case or when did you first become involved?

23 A. In this case I became involved in January of 2015.

24 Q. All right. When was this incident first reported to law
25 enforcement?

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

1 A. This incident was reported in October of 2015.

2 Q. All right. So you came on after it initially had been
3 reported?

4 A. Yes.

5 Q. All right. And what information had been obtained at the
6 time that you became involved?

7 A. When I received the case file from Captain Toby Horne
8 there were witness statements from family members and a cell
9 phone that had been turned over from the victim.

10 Q. All right. And had that phone been what's called
11 extracted?

12 A. Yes.

13 Q. The information taken off the phone?

14 A. Yes.

15 Q. Okay. And did you review all that information and
16 witness interviews?

17 A. Yes.

18 Q. Now had anybody spoken to the defendant at the time you
19 got involved?

20 A. No.

21 Q. Had the victim been sent to what's known as a forensic
22 interview?

23 A. No.

24 Q. Okay. And in sexual assault cases involving minors where
25 are they sent to be interviewed?

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

27

1 A. They go to a child advocacy center.

2 Q. And why do we send them to a place like that?

3 A. South Carolina had a high rate of child sexual assaults.

4 So they actually wrote a law to where each child that's

5 physically or sexually assaulted must go to a child advocacy

6 center. It's more of a child friendly environment. And it

7 also is video and audio recorded and done by a certified child

8 forensic interviewer.

9 Q. Okay. So those interviewers are -- they actually are
10 specially trained in interviewing children?

11 A. Yes.

12 Q. All right. Now when was -- I guess as a law enforcement
13 officer are you able to attend those interviews?

14 A. Yes.

15 Q. Are you actually in the room as the interviews are
16 occurring?

17 A. No. Only in the room are the victim being interviewed
18 and the child forensic interviewer. I am in a room next door
19 that is -- a video camera is shooting a live feed where I'm
20 able to observe the forensic interview.

21 Q. Okay. Now when was **MINORI** first forensic interview in
22 this case?

23 A. **MINORI**'s interview, I believe, was in May of 2016.

24 Q. Okay. So that is seven months after this incident was
25 reported?

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

28

1 A. Correct.

2 Q. Okay. Is that usual or unusual for it to take that long
3 for a forensic interview?

4 A. It's not unusual per se because back at that time there
5 was such a heavy caseload for Saluda County. It would be four
6 to six weeks before you could ever get an interview for a
7 child unless it was an absolute emergency where there was
8 disclosure within a very recent time-frame.

9 Q. Okay. Now you observed that forensic interview in May of
10 2016, right?

11 A. Yes.

12 Q. You were watching it on a TV screen as it was happening
13 live in the room?

14 A. Yes.

15 Q. Was that interview able to be completed at that time?

16 A. Not at that time, no.

17 Q. And why not?

18 A. The interview -- normally a child forensic interview
19 would last maybe an hour, maybe a little over an hour. This
20 interview was going on about two and a half hours. And the
21 emotional state of the victim -- myself and the child forensic
22 interviewer at that point decided to just break off the
23 interview, put the victim in counseling and revisit the
24 interview at a later date.

25 Q. All right. So it was stopped because of her emotional

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

29

1 state?

2 A. Yes.

3 Q. And y'all felt it was necessary to send her to counseling
4 prior to a follow-up interview?

5 A. Yes.

6 Q. All right. And was a follow-up interview eventually
7 done?

8 A. Eventually, yes, sir.

9 Q. Do you know when it was done?

10 A. I do not.

11 Q. All right. Were you with the sheriff's department at the
12 time a second forensic interview was done?

13 A. I was not.

14 Q. And when did you leave the sheriff's department?

15 A. I left the sheriff's office November of 2016.

16 Q. Okay. And prior to leaving were you actually out of
17 service for some reason?

18 A. I was. I injured my shoulder, and I had two surgeries on
19 my shoulder. At one point I came back and did light duty, but
20 after the second surgery they wouldn't allow me to come back
21 to do light duty and investigate these cases. So I basically
22 was a member of the sheriff's office, but not functioning.

23 Q. Okay. And around about what time were you effectively
24 just out of service?

25 A. That would have been around, I think, June -- first of

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

30

1 June or late, end of May.

2 Q. Okay. So shortly after this forensic interview you were
3 out of service?

4 A. Yes.

5 Q. Now was what's known as a SANE exam ever done in this
6 case?

7 A. Not in this case.

8 Q. All right. And what's the standard procedure of when a
9 SANE exam is requested?

10 A. A SANE exam is done on victims of child sexual assaults
11 generally if they're reported within 72 hours of the assault.
12 It is a very intrusive medical exam that is basically an
13 evidentiary gathering exam to where they also check for
14 bruising, scarring, any kind of damage. But they're also at
15 that point trying to get any evidence they can that would help
16 the case. But it's only done generally within 72 hours of a
17 report.

18 Q. Okay. So within three days of the most recent sexual
19 assault?

20 A. Correct.

21 Q. All right. And in this case was there any evidence that
22 a sexual assault had occurred within three days of it being
23 reported to law enforcement?

24 A. No.

25 Q. All right. Now during the course of your investigation

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

31

1 did you also obtain records for a Facebook account in the name
2 of Kanda Way?

3 A. I did.

4 Q. And why did you obtain records for that?

5 A. When I first received the case, that was around January
6 1st of 2016, on the 15th of January I conducted an interview
7 on one of the victim's friend, Madison R[REDACTED]. And during that
8 interview it had came out that there was a cell phone that was
9 taken at the school.

10 And at that point, you know, in her words, she -- the
11 victim was scared people would see what was on the phone. So
12 we ended up getting that cell phone. And then there was
13 information about Facebook.

14 Q. All right. We'll get to the cell phone in a minute. I'm
15 going to show you State's exhibit 24 that's been marked for ID
16 and ask can you recognize that?

17 A. Yes.

18 Q. And what is that?

19 A. This is part of the records received from Facebook.

20 Q. All right. And what does that document show?

21 A. It shows the registered email. It shows the registration
22 date and the date the account became inactive.

23 Q. And that's for the Facebook records pertaining to the
24 Kanda Way ---

25 A. Yes.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

32

1 Q. --- account?

2 MR. McNAIR: Your Honor, we'd offer State's 24 into
3 evidence at this time.

4 THE COURT: Without objection?

5 MR. BISHOP: No objection, Your Honor.

6 THE COURT: State's exhibit 24 is admitted into evidence.
7 (Whereupon State's exhibit 24 was admitted into evidence)

8 Q. All right. And just based on this record when was the
9 Kanda Way Facebook account activated?

10 A. The registration date, as you can see, is 11/17 of '15.

11 Q. All right. That's shown right here?

12 A. Yes.

13 Q. And what is the email address associated with this
14 account?

15 A. Cowboyandmermaid31315@yahoo.com.

16 Q. 31315 as in March 13th, 2015?

17 A. Yes.

18 Q. Now did you -- these records came from Facebook, correct?

19 A. From Facebook.

20 Q. Did you also go online and view the public profile of
21 this account back in 2015?

22 A. Yes. We have to do that. When you send off a search
23 warrant to Facebook, you physically have to go to that
24 Facebook account, copy and paste the URL and send it to
25 Facebook.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

33

1 Q. All right. I'm going to show you what's in evidence as
2 State's 22. Do you recognize that?

3 A. Yes.

4 Q. And what is that?

5 A. This would have been the profile page or picture
6 associated with this Facebook account.

7 Q. Okay. So that's what you saw when you pulled it up on
8 your computer back in 2015?

9 A. Yes.

10 Q. All right. And can you identify the two people in the
11 picture next to the married couple?

12 A. Yes. That would be the victim and defendant, **MINORI** and
13 Kyle Way.

14 Q. All right. And it's hard to see, but was there a
15 birthdate that was on this page?

16 A. It was. And it was -- I don't remember the exact date.

17 Q. All right. It says born on -- what does that appear to
18 be to you?

19 A. August 6th or something, 2001.

20 Q. All right. Were you ever -- did you ever learn the
21 defendant's birthday?

22 A. I did, but I can't remember it off the top of my head.

23 Q. All right. Does **██████** **██████** 1987 ---

24 A. That sounds correct.

25 Q. All right. And the victim's birthday has been testified

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

34

1 to being [REDACTED] [REDACTED], 2001? Do you recall that?

2 A. Yes.

3 Q. Okay. So August [REDACTED] would be the first part of his
4 birthday. 2001 would be the year she was born?

5 A. Correct.

6 Q. All right. That's the birthday associated with this
7 Facebook account?

8 A. Yes.

9 Q. And it also has a married date.

10 A. Correct.

11 Q. And it's hard to see on this. Do you remember what it
12 was on the computer when you could see it better?

13 A. It was 3/13 of '15.

14 Q. Do you know who created this Facebook account?

15 A. From the records we received and initial text messages it
16 was made by the defendant.

17 Q. All right. So the defendant created a Facebook account
18 called Kanda Way with his picture and the victim's picture on
19 it with a married date of 3/13/15 and a birthdate of -- a
20 combined birthdate of his birthday and the victim's birthday?

21 A. Yes.

22 Q. Now how many friends did this Facebook page have?

23 A. I have no idea on the number of friends. It was not a
24 lot.

25 Q. Would these be the friends associated ---

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

35

1 A. That would be.

2 Q. All right. Now have you recently gone back to that
3 Facebook page on a computer to view the current profile pic?

4 A. Yes.

5 Q. I'll show you State's 25. What is that?

6 A. That is the profile picture associated with it now.

7 Q. All right. And what's it say there at the bottom?

8 A. Got married March 13th, 2015.

9 Q. You know what that sign means? The hand?

10 A. I believe it's the I love you in sign language.

11 Q. All right. State's 1, does that appear to be the same
12 sign on the defendant's shirt?

13 A. Yes.

14 Q. Now you mentioned -- how many phones were recovered in
15 this case that belonged to the victim?

16 A. Two to my knowledge.

17 Q. Okay. And the first one was the one turned over by the
18 victim's aunt, Angela Rogers?

19 A. Correct.

20 Q. All right. You've viewed the information off of that
21 phone?

22 A. Correct.

23 Q. And then did you recover a phone yourself?

24 A. Correct.

25 Q. All right. Where did you recover that phone from?

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

36

1 A. I recovered that phone from Saluda High School.

2 Q. And how did you know to go to Saluda High School to get
3 that phone?

4 A. During the interview with the victim's friend, Madison
5 R■■■■, she had advised that the phone was taken from the victim
6 and placed in -- they had a box where when they took your cell
7 phone and put it in, you got it back at the end of the year.

8 Q. All right. I'm going to show you State's 19 that's
9 already in evidence. Does this appear to be the phone that
10 you recovered from the school?

11 A. Yes.

12 Q. And what did you do with this phone after you got it from
13 the school?

14 A. I got an additional search warrant for the extraction of
15 that phone.

16 Q. All right. And were you present when this phone was
17 extracted and the information obtained off of it?

18 A. I was.

19 Q. And did you review the text messages that came off of
20 that phone?

21 A. I did.

22 Q. I'm going to show you State's 20 that is in evidence.
23 And I've shown you a copy of this prior to today. Just take a
24 look at that and verify that those are the messages that came
25 off of that phone on the -- from the phone extraction.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

37

1 A. Yes.

2 Q. Okay.

3 MR. McNAIR: I beg the Court's indulgence for one second.

4 (Pause)

5 Q. I'm going to give you a copy of this so the jury can see
6 what you're reading, okay?

7 (Pause)

8 Q. All right. Now this was the phone recovered from the
9 school belonging to MINORI. What number is she communicating
10 with on this phone?

11 A. 864-321-0519.

12 Q. All right. And that number has been saved as Baby?

13 A. Correct.

14 Q. Now is that the same number that was saved as My Baby on
15 the Motorola phone?

16 A. Correct.

17 Q. Is it the same number?

18 A. I don't know without looking at that one.

19 Q. Okay. All right. Is it the same number as 864-323-3[REDACTED]?

20 A. No.

21 Q. All right. So this would be a different number that the
22 defendant would be communicating from at this time?

23 A. Correct.

24 Q. Let's -- the first text message on this phone is what
25 date?

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

38

1 A. It is 11/17 of 2015.

2 Q. Okay. Now would you just read through texts 5 through 99
3 just to give the jury kind of a flavor of the type of messages
4 that were being sent back and forth?

5 A. Okay. Starting with text message 5, this would be an
6 outbox going out to the number. I might dye my hair. I know
7 the day I see that Imma run to you and hug you so tight. Then
8 Imma cry because I miss you so much.

9 Q. All right. Will you just please -- if it's a sent
10 message, that would be coming from the victim, right?

11 A. Correct.

12 Q. And if it's a red message, that would be coming from the
13 defendant?

14 A. Correct.

15 Q. So would you just kind of distinguish between the two and
16 say when it's the victim speaking versus the defendant?

17 A. Okay. And picking up on 7 would be coming in to the
18 victim. No, you're beautiful how you are. Sent in: I am,
19 too. You see, I'm gonna cry, that's a fact. And no matter if
20 you dye it, you will always be beautiful.

21 Sent out: Awe, baby. Out: Angie made me get highlights
22 or h-lights. Inbox: I know you look amazing like always.
23 You are the most beautiful girl to me in the world. I
24 promise, no lie. I'm lucky to have you as my wife.

25 Inbox: Send me a pic, please. I want to see you. I

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

39

1 send you one tonight when I look good.

2 Going out: Okay, baby. And I don't look good right now.

3 Out: ---

4 Q. So he's telling her he's going to send her a pic?

5 A. Correct. That came in.

6 Q. Okay.

7 A. All right. Going out to the defendant: I'll send you

8 one later. Inbox: You always look beautiful, always. Inbox:

9 To me I'm going to wake up beside you every morning and kiss

10 you and tell you how beautiful you are every day. Outbox:

11 Awe, phone's about to die.

12 Inbox: What can you talk on phone? Inbox: What you

13 been doing on it? Mine at 70. Outbox: I been talking to you

14 and nothing else. Inbox: Can you talk on the phone? I'm on

15 lunch.

16 Inbox: I put you as my wife in my contacts. Outbox:

17 Awe. Inbox: ILY. So much -- so much sorry for crying.

18 Q. ILY, I love you?

19 A. That's what the abbreviations are for.

20 Q. Okay.

21 A. Outbox: It's okay. Inbox: -- or outbox continued: I

22 really love you. My tears are from the pain not seeing you.

23 Inbox: I miss you so much. Outbox: Awe, baby, I miss you,

24 too -- miss you much, too.

25 Inbox: I'm happy to know I have you forever. Inbox:

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

40

1 You're my wife and nothing gonna change that. Outbox: I
2 know. Inbox: Awe. Outbox: My heart hurts because I can't
3 see you. Inbox: We gonna see each other this weekend I hope.
4 Just try to text me. Inbox: We have to soon. And I need to
5 kiss you.

6 Q. All right. So that's the defendant telling the victim
7 that he needs to kiss her?

8 A. Correct. Outbox: Same here. Inbox: Awe, we gonna make
9 it happen. Inbox: To see you, hold you, kiss you, I would
10 faint and cry. Outbox: Awe. Inbox: I'm serious I'm gonna
11 cry.

12 Outbox: We had a fire drill. Inbox: Darn, save the
13 phone so you can tell me good night. Inbox: I wish you could
14 charge it. Outbox: I don't know or IDK if he's here or not I
15 might be able to. Inbox: K.

16 Inbox: IKY. Inbox: ILY. Outbox: ILY, too. Inbox:
17 Days I don't hear from you I cry. Inbox: I miss good morning
18 and good night texts. Outbox: Me t-i-o, should -- too.

19 Outbox: ILYSM. Inbox: Awe. Outbox: It's true. Inbox:
20 Really? I love you so much. Outbox: Imma charge phone. I
21 love you. Inbox: I love you, too. Outbox: I love you so
22 much.

23 Outbox: It says battery fully charged. Inbox: That's
24 good. I love you. If you get time at home alone, text me.
25 Inbox: Didn't get caught. I love you so much.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

41

1 Outbox: It's IKTSM. I'm not sure what that one is.

2 Outbox: I love you so much. Inbox: You're forever my

3 beautiful wife. Inbox: I love you, too.

4 Inbox: You never sent me a pic. Inbox: Be careful

5 where you hide the phone or hide phone. Inbox: I love you so

6 much, wife, with all my heart. Outbox: Same here, but

7 husband. Inbox: Awe, made me smile. Outbox: Awe, good.

8 Inbox: I love you, baby. Outbox: I love you, too,

9 baby. Outbox: What you doing? Why -- WD, what you doin?

10 Inbox: Missing my baby. Inbox: What you doin? Outbox: In

11 the car. Outbox: On the way to dance studio. Inbox: Don't

12 get caught.

13 Q. All right. So that's the defendant telling the victim

14 don't get caught?

15 A. Correct.

16 Q. And these messages are on November 17th?

17 A. Correct.

18 Q. And this is after this incident has been reported to law

19 enforcement in October of 2015, correct?

20 A. Correct.

21 Q. All right.

22 A. Inbox: I love you, baby. Outbox: I love you, too,

23 babe. Inbox: Forever. Inbox: So ready for our future

24 together. Outbox: Me, too. Inbox: Love you so much, baby.

25 Outbox: I love you so much, too, baby.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

42

1 Inbox: I'm getting a puppy Friday, German Shepard.

2 Outbox: Awe. How old, baby? Outbox: I'm cold. Inbox: Six
3 weeks. What's a good name? Wear the hoodie I bought you.

4 You want to go to 90?

5 Q. 99.

6 A. Okay. Outbox: Girl or boy? Inbox: Boy. Inbox: Wear
7 the hoodie I bought you. Inbox: Where you at? Outbox:
8 Okay, baby. And I like the name Roscoe or Sam. Outbox: In
9 Lexington. Inbox: I like Sam. Outbox: Name him Sam and
10 send me a pic of him when you get him. Inbox: I like both.
11 You pick. You name our dog.

12 Q. All right. Is that 99?

13 A. That's 99.

14 Q. All right. Now if you can just skip over to 119 and read
15 119 through 134.

16 A. 119 is an inbox: I really hope and pray you love me as
17 much as I love you. I would die for you right now because
18 once I realized that I wanted to spend the rest of my life
19 with -- I want the rest of my life to start as soon as
20 possible. Words will never tell or show how much I love you,
21 but my tears, my feelings express it. You're my life. And I
22 wouldn't have it any other way or with anyone else. I love
23 you, baby.

24 Q. All right.

25 A. 120 is blank. It was a sent.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

43

1 Q. Does that indicate possibly a picture?

2 A. Yes. 121's an inbox: Wow, baby, you are so beautiful.

3 Q. All right. So that is him responding to a picture she
4 sent, wow, baby, you are so beautiful?

5 A. Correct. Inbox: I'm crying, really I am. I miss you,
6 baby. Inbox: You're so hot. I'm lucky to be married to you.

7 Outbox: Awe, baby. Grandma bought me that dress. Inbox:
8 For what? Thought you didn't wear dresses. Inbox: What's
9 the dress for? Outbox: I don't. It's for chorus and when I
10 sing at the recital.

11 Inbox: Darn, you are beautiful. Y'all have to sing in
12 front of the school in chorus? Outbox: Yes. Inbox: I hope
13 I get to get to recital. I love to hear you singing. Wish I
14 was singing with you. I stopped singing. Was too heartbroken
15 to remind me of you too much. Outbox: Awe, baby, I stopped
16 singing for a while.

17 Inbox: I want to be with you now holding you, kissing
18 you. Life isn't fair. I want to come home to you every day
19 for the rest of my life. That would make me happy. Outbox:
20 Same here. Inbox: Really, baby? It's been an awesome --
21 it's been awesome getting to talk to you again. It's like I
22 lost everything and now I have it back.

23 Q. All right. You can just skip on to number 410.

24 A. All right. 410, inbox: I will, too. I love you so
25 much. Sharing Facebook is awesome. I think makes me feel

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

44

1 better, too, t-o-i. Inbox: I can post stuff about you and
2 you can see it and our friends. No more brother/sister. It's
3 more than that. Outbox: ---

4 Q. And, I guess, when they're talking about sharing
5 Facebook, is it your understanding that's the Kanda Way
6 account ---

7 A. Correct.

8 Q. --- that he's referencing?

9 A. Correct.

10 Q. All right. I jumped out of order. So let's back up and
11 go back to 146 and then keep it in order from there on out.

12 A. 146 is an inbox: You're important in my life. And if I
13 have to help with money for you to come see me, I am, end of
14 story. We are married. I look out for you and you look out
15 for me.

16 Q. All right. Go to 154 through 181.

17 A. 154 is an inbox: Making a Facebook email is don't laugh,
18 cowboyandmermaid31315@yahoo.com, password kyleandMINORI.

19 Q. All right. And that's a message sent by the defendant to
20 the victim, correct?

21 A. That is.

22 Q. And that's the same email that we just saw on the
23 registration page for the Kanda Way Facebook account?

24 A. Correct.

25 Q. All right.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

45

1 A. 155 is an inbox: You can add your friends and I add mine
2 and then no secrets. We'll be keep. I love you, baby.

3 Outbox: I love you, too, baby. And, yes, I will.

4 Inbox: I don't know what I'm doing on here. You gonna
5 have to fix the pictures, lol. Outbox: Yeah. Outbox: Lol.

6 Outbox: I'm logged into it. Inbox: I'm serous, I have to
7 delete my old one and you, too. Okay, baby?

8 Q. So that would be the defendant telling her to delete her
9 Facebook account?

10 A. Correct. Inbox: Look at what I posted. Outbox: Okay,
11 baby. Outbox: Awe, baby, I saw it. Inbox: I mean it, you
12 are. Inbox: You have to change profile pic and cover screen
13 after you delete your old one. I will -- got to get my
14 friends off. Outbox: Okay.

15 Inbox: I love you. Inbox: Tell me why do you wear
16 rings on right hand now. Really? Inbox: Baby, really?
17 Inbox: I bet you do that at school, too. Now I'm hurt again.
18 Inbox: And you get mad 'cause I took mine off for a pic.
19 Wow.

20 Q. All right. Those are all texts from the defendant to the
21 victim asking about her ring?

22 A. Correct. Outbox: WTF, it's always on my left hand.
23 Inbox: I'm crying again. I'm gonna do something stupid to
24 myself now. Sorry. Inbox: I looked back at the pic you sent
25 me and it's not. Outbox: I was about to poison myself.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

46

1 Outbox: I'm crying my heart out. Inbox: I'm sorry. Really,
2 I am. It looked like it was. I'm stupid. I love you. Love
3 me that much. I'm sorry, baby. Outbox: Yes, I do.

4 Inbox: Please, I'm sorry. I just don't want to lose
5 you. And I want everyone to know I'm not your brother, I'm
6 your husband. So let's start saying boyfriend and girlfriend.
7 Like you said, I'm not family, I'm your husband, okay? Inbox:
8 No more brother unless it's family asking.

9 Q. All right. You can stop there. And let's jump to 188
10 through 228.

11 A. Inbox: I'm so glad and happy I get to talk to you again.
12 Makes me want to cry knowing I still have you. Just be
13 careful with phone 'cause can't lose you or never hearing from
14 you again. Outbox: I know, baby. My heart broke when you
15 said about the ring.

16 Inbox: I'm truly sorry. Mine did same about Tanner and
17 knowing you did lie to me. Inbox: All I want is honest.

18 Inbox: Being engaged, we both deserve to be. Outbox: I
19 know, baby. And so you took the ring off and lied to me and
20 said you still wear it but on the right hand. That just broke
21 my heart again. Outbox: But I understand why. Outbox: Tell
22 me the truth. Is it on your left hand now or right?

23 Inbox: I didn't lie. I took it off to take a picture to
24 put on Facebook. Okay. That's the truth. And I'm sorry for
25 saying you had it on the other hand. Inbox: Yes, it is. I

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

47

1 promise.

2 Inbox: Please trust me, baby. I love you. Outbox: I
3 do trust you. Inbox: You heard me crying. I love you.
4 Outbox: Awe, baby. Inbox: The truth is better. Inbox: I
5 can't believe you started to like Tanner and you told me you
6 didn't. I just want truth. And it's okay if you did as long
7 as you leave him alone now and promise it's only me now.

8 Q. All right. And is it your understanding Tanner was a
9 middle school boy?

10 A. Correct.

11 Q. Okay.

12 A. Inbox: Lies ruin a relationship. Well, it's marriage
13 for us. Now we're married. Outbox: I know. I am having --
14 or leaving him alone now. And I'm sorry about that. Inbox:
15 Okay. That's all you had to tell me. I trust you. I just
16 want truth. And that goes for me. I promise it's only you,
17 always been only you. Just can't take hearing you are round
18 him. They told me so many things about y'all. But it's okay
19 'cause I love you. Just don't let it happen no more and me
20 not taking ring off, I promise. Do you?

21 Outbox: I promise. Inbox: Did you kiss him or hold
22 hands? Outbox: NI. Outbox: No. Outbox: And I changed the
23 pic. Inbox: Okay. I'm sorry you're sorry. That's fine. We
24 gonna get officially married and live together forever, okay?

25 Inbox: Tomorrow get your friends off you want and delete

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

1 your old one. And I will, too. No lies okay for now on.

2 Okay, promise. Outbox: ---

3 Q. He's telling her to get her friends off of Facebook?

4 A. Correct. Outbox: I promise to. Inbox: I know we won't

5 be able to see each other. And it's going to be a long three

6 years, but after those three years, me and you together

7 forever. Wow, I'm ready. Inbox: ---

8 Q. Investigator, could I ask you real quick, what is the age

9 of consent in South Carolina?

10 A. The age of consent in South Carolina is 16.

11 Q. Okay. And she was 13 at this time?

12 A. Correct. Inbox: I'm gonna try to sneak down and see

13 you. Outbox: Me, too. And look what I have, what I posted.

14 Inbox: I have to -- I have to kiss you. Outbox: Same here.

15 Inbox: I commented on it.

16 Inbox: This is cool sharing a Facebook. Outbox: Yes,

17 it is. Inbox: I can write you and you can write me. And our

18 friends can see it. I love you. Outbox: I love you, too.

19 Inbox: I'm tired of hiding us just from family. We will be

20 -- we will, but anybody else I don't want to no more. You're

21 my wife and I'm proud to tell it.

22 Outbox: Awe, baby, that made me smile. Inbox: I'm

23 serious. It's our life, not theirs. So if I'm on phone, it's

24 no more sister unless around family. Is that okay with you?

25 Outbox: Yes.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

49

1 Q. All right. Now you can skip to 235 and go to 251.

2 A. 235 is an inbox which is blank.

3 Q. All right. And what's the next text after that?

4 A. The next text is outbox: You look hot, baby. And you're
5 not wearing a shirt.

6 Q. All right. Just stop right there. And that was the
7 victim telling the defendant he looked hot not wearing a
8 shirt?

9 A. Correct.

10 Q. All right. I'm going to show you what's been in evidence
11 as State's 21. Have you seen that photo before?

12 A. Correct.

13 Q. All right. Was this photo obtained off of that phone?

14 A. Correct.

15 Q. Is this the photo that was sent prior to getting that
16 message from the victim?

17 A. Correct.

18 Q. Okay. And that's the defendant, correct?

19 A. Correct.

20 Q. All right. You can continue.

21 A. 237 is an inbox: Mine horrible, no shower. If you get
22 caught with phone they will know now. You might need to look
23 at it and delete it. I send you more. Outbox: And you got
24 the same phone. Inbox: Took it off for you. Outbox: Awe,
25 baby.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

50

1 Inbox: Yeah, it's cheap, but as long as I can talk to
2 you I don't care what phone it is. Don't cover that beautiful
3 face, please. You're hot. Outbox: No, I'm not. Inbox:
4 Blank. Inbox: Baby, what I used to tell you. Please don't
5 say that you are to me, I promise.

6 Outbox: Awe, baby, it hot. No, I'm not. And I want to
7 kiss you so bad. Outbox: You're hot. Inbox: You are. I
8 promise, trust me, you're beautiful, the most beautiful girl
9 in the world to me. Inbox: No lying, you are sexy. Inbox:
10 Not yet. Wait til I keep working out and start getting my abs
11 again.

12 Outbox: I don't care about abs. I just want you and the
13 way you are. Inbox: I know, but I'm working out. That's
14 what I do after work now and talk to you and watch movies. I
15 have to make time go by fast cause three years is long time,
16 but if I talk to you, know what you're doing and see you,
17 we're going to make it regardless, we would be with less
18 heartache.

19 Q. All right. You can skip down to 257 through 261.

20 A. 257, inbox: I know times are hard not being able to come
21 to see me. I think that's why the Tanner thing happened. You
22 needed someone to make you feel loved. I'm sorry for not
23 being there when I couldn't. But promise me if something
24 happened and I couldn't talk you wouldn't do that no more.
25 I'm gonna come get you when you turn 17. I promise to love

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

51

1 only you.

2 Inbox: I can't live without you. I won't. Outbox:

3 Same here. And I promise. Outbox: WYD, what you doin? Who

4 you talking to, babe? Inbox: Me, too. I only want you and

5 being married to you. I'm making you a promise. You know

6 cheating now is having an affair. We are married. No more

7 lies. No affairs. Only truth and good times will come.

8 Q. All right. You can skip down to 267 through 269.

9 A. 267, outbox: Baby, you mean the world to me. If I ever

10 lost you I'd have no other choice but to kill myself. Inbox:

11 Knowing one day holding you, kissing you, going in public

12 holding you is what I want. I miss our dates. I miss kissing

13 you in front of people, holding your hand while driving,

14 singing in the car with you holding you -- with you holding

15 you while watching movies. I miss it. But one day nobody can

16 say, no, stop that 'cause you're gonna be all mine. I hate

17 how things turned out. But your grandma is a botch and only

18 cares about herself, not y'all. I love you and will always.

19 Here's my book, bet that, lol.

20 Inbox: Awe, baby, that's sweet. You truly are amazing

21 wife. I couldn't ask for a better wife or would I want one.

22 Q. All right. You can skip to 275 through 277.

23 A. Inbox: The rest of our lives together will be my proof.

24 I'm gonna make you feel lucky every day, bring you breakfast

25 in bed, kiss you, hold you, make you feel loved every second.

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

52

1 Outbox: Awe, baby.

2 Inbox: This is our poem, our love story. We gonna sit
3 down one day and tell our kids about our story, what we went
4 through. And they are gonna be amazed by it and say y'all
5 truly were in love to last that long.

6 Q. All right. 294 through 303.

7 A. 294, outbox: I love you, too. Sweet dreams. I'm gonna
8 go to bed after I cry myself to sleep. Just can't see my
9 ready bear. I miss sleeping with him in my bed. Inbox: Your
10 what? Inbox: Don't cry. One day I'll be right beside you
11 holding you tight. Outbox: My teddy bear, which is you,
12 babe. Outbox: I need you so I can sleep without crying.

13 Inbox: I be right beside you one day, I promise, and hold you
14 tight. Outbox: Promise? Baby I need you to be able to sleep
15 and get a great night's rest. Outbox: I'm letting my phone
16 charge all night. Inbox: I cry, too. I know it's hard, but
17 I'm never gonna -- I leave you or hurt you and hope you
18 wouldn't either no more. I'm gonna sleep by your side forever
19 one day. Inbox: Just don't get caught please. Outbox: ---

20 Q. All right. That's good. If you'll skip to 321 through
21 336.

22 A. 321, inbox: You can call, I don't care. Just please
23 don't get caught. Inbox: Can't make it without talking to
24 you. Outbox: I can't call, we bout to leave. Inbox: K. I
25 love you. Outbox: I'm sorry. I really want to hear your

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

53

1 voice, babe. Inbox: It's okay. At lunch you will.

2 Inbox: I'm glad we can text now. Outbox: Me, too.

3 Inbox: I kiss my every night and everything -- and every
4 morning, too, and say I love you MINORI. Inbox: My ring.

5 Outbox: Awe. Inbox: I love you so much. Outbox: I love
6 you so much, too.

7 Inbox: What you doing babe? Outbox: Getting ready for
8 school and texting my husband. What you doin? Inbox:
9 Picking up Peewee for work, texting my wife and missing you.

10 Q. All right. You can skip to 363 through 376.

11 A. 363 is outbox: My friend, Richard, can't come near me
12 anymore. Inbox: Why? Inbox: Please don't be liking no one
13 else. Outbox: Because he was touching me -- touching my leg.
14 And I told him to stop, and he didn't do. I told Zachariah.
15 And she told him -- told stay the duck away from me. And I'm
16 not liking no one else. Outbox: Only you forever and always.

17 Inbox: Tell teacher. Inbox: I can't lose you. Outbox:
18 I am. Outbox: And you're not going to lose me. Inbox: Ho
19 would feel if s-girl touched my leg. Inbox: You be mad, too.
20 Inbox: I meant how. Inbox: I cuss his ass out. Outbox:
21 ---

22 Q. Okay. That's good.

23 A. Okay.

24 Q. Skip to 387 through 390.

25 A. 387, inbox: You've been saying baby. Inbox: You're

KENNETH CLARK - DIRECT EXAMINATION BY MR. McNAIR

54

1 wife to me. Outbox: I know, but I like it when you call me
2 baby. Inbox: I do, too. You are my baby.

3 Q. All right. Now 408 through 414.

4 A. 408, outbox: I'm deleting my Facebook or FB account.

5 Inbox: Just thinking about that day seeing my beautiful wife
6 walking down to marry me, wow, makes me tear up. Really, I
7 can't wait, baby. Inbox: I will, too. I love you so much.
8 Sharing Facebook is awesome. I think makes me feel better,
9 too.

10 Inbox: I can post stuff bout you and -- you can see it
11 and our friends. No more brother/sister, it's more than that.

12 Outbox: I know. My account is deactivated. Inbox: Okay. I
13 will do mine. Inbox: Thank you. Makes me feel better
14 sharing one. You agree? Outbox: Promise ---

15 Q. All right. That's good. So when is the last text
16 message that was sent or retrieved on that phone? What's the
17 date?

18 A. November 18, 2015.

19 Q. All right. And is it your understanding that that is
20 when that phone was taken at her school?

21 A. Correct.

22 Q. Okay. That's all the questions I have for you. If you
23 would, please answer any questions that Mr. Bishop has.

24 A. Yes, sir.

25 **THE COURT:** Cross-examination.

KENNETH CLARK - CROSS-EXAMINATION BY MR. BISHOP

55

1 CROSS-EXAMINATION BY MR. BISHOP:

2 Q. Detective Clark, I take it through the course of your
3 investigation and in preparation for trial you reviewed
4 everything that was taken off of that phone, is that correct?

5 A. I -- correct. Yes.

6 Q. And I know you didn't read everything that ---

7 A. Correct.

8 Q. --- was sent and received, but you have either in
9 preparation or when you extracted the phone did you see any
10 messages either received or sent discussing or talking about
11 any sexual acts or any sexual activity?

12 A. No, sir.

13 Q. And you've reviewed all the pictures sent and received,
14 is that correct?

15 A. Correct.

16 Q. Did you find any pictures of either my client, the
17 victim, or of anyone else that were sexually explicit?

18 A. No, sir.

19 Q. During the course of your investigation were you able to
20 meet with my client to discuss this Facebook account and these
21 messages?

22 A. No, sir.

23 Q. So he wasn't able to confirm or deny that he made this or
24 helped the victim make this?

25 A. No, sir.

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

56

1 **MR. BISHOP:** No further questions.

2 **THE COURT:** Any redirect?

3 **MR. McNAIR:** Nothing further.

4 **THE COURT:** All right. The witness may step down.

5 **MR. McNAIR:** Your Honor, the State calls Josh Price.

6 **JOSHUA PRICE,** being duly

7 sworn testified as follows;

8 **MR. McNAIR:** I beg the Court's indulgence for one second.

9 (Pause)

10 **DIRECT EXAMINATION BY MR. McNAIR:**

11 Q. Captain Price, would you state your full name for the
12 record, please.

13 A. Joshua Price.

14 Q. All right. And where do you work?

15 A. The Saluda County Sheriff's Office.

16 Q. How long have you been with the sheriff's department?

17 A. I came to work for the sheriff's office in 2012, the
18 beginning of 2012.

19 Q. Okay. Now when did you first become involved in this
20 case?

21 A. Roughly February of 2017.

22 Q. Okay. And this case was first reported in October of
23 2015, is that correct?

24 A. That's correct.

25 Q. All right. And how did this case come to land on your

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

57

1 desk?

2 A. In the beginning of 2017 I was promoted to investigator
3 from the supervisor on road patrol. I started off the first
4 Sexual Assault Investigator Division at the sheriff's office.
5 This was a case at the time Captain Toby Horne had on his
6 desk. And it was one of the first cases at that time that I
7 began to review as open cases of sexual assault allegations.

8 Q. Okay. So after Investigator Clark left the sheriff's
9 department it went to Toby Horne for a period of time?

10 A. That's correct until I received it in roughly February of
11 2017.

12 Q. All right. Now once you got involved in this case what
13 information did you review?

14 A. I reviewed all the information, most of everything that
15 has been testified to today, the reports, all the witness
16 statements. There were multiple forensic interviews done. I
17 reviewed those. I also reviewed cell phone records from two
18 separate cell phone dumps that have been testified to today
19 along with Facebook records that Detective Clark just
20 testified to.

21 Q. Okay. And Investigator Clark just testified to a
22 forensic interview of the victim in May of 2016.

23 A. That's correct.

24 Q. And was there a second forensic interview that was done
25 in this case ---

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

58

1 A. There was. In December of 2016 there was a separate
2 forensic interview conducted with the victim.

3 Q. All right. Have you reviewed both of those interviews?

4 A. Yes, sir.

5 Q. All right. And had two phones belonging to the victim
6 been recovered at the time you got involved?

7 A. Yes, sir.

8 Q. And did you review all the information from those phones?

9 A. I did.

10 Q. Had the defendant ever been talked to by law enforcement
11 prior to you becoming involved?

12 A. No, he had not.

13 Q. All right. Did you talk to the defendant?

14 A. I did.

15 Q. And explain to the jury -- how did you make contact with
16 the defendant?

17 A. After reviewing the evidence that I had, this was
18 definitely a case that the defendant hadn't been talked to at
19 this point. So one of the first things I did was, you know, I
20 picked up the phone and I called him. And I told him what we
21 were investigating, what the allegations were and that I
22 wanted to interview him at the sheriff's office and give him
23 an opportunity to speak with me. He agreed to. He came to
24 the sheriff's office. Myself and Toby Horne interviewed him
25 at the sheriff's office. And he was read his Miranda rights

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

59

1 before the interview.

2 Q. Okay. And what was the date of that interview? Do you
3 have that in your notes?

4 A. I believe it was March the 3rd, 2017.

5 Q. Okay. Now when you met with him was he under arrest at
6 that time?

7 A. He was not.

8 Q. Okay. And you said you advised him of what's called his
9 Miranda rights?

10 A. Yes, sir.

11 Q. And did he agree to waive those rights and speak with
12 you?

13 A. He did.

14 Q. And did he also give a statement?

15 A. He did.

16 Q. I'm going to show you what's been marked as State's 34.
17 And it's -- you take a look at this and tell us whether or not
18 you can identify that.

19 A. I can.

20 Q. And what is that?

21 A. This is -- the first two pages is the written statement
22 provided by the defendant to myself. And the third page is
23 the waiver of rights on our standard Saluda County Sheriff's
24 Office waiver of rights form where the defendant signed
25 stating he understood his rights.

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

60

1 Q. Okay. Do you have a copy of this statement with you?

2 A. I do.

3 MR. McNAIR: Your Honor, we'd move to admit State's 34
4 into evidence at this point.

5 MR. BISHOP: No objection.

6 THE COURT: All right. State's exhibit number 34 is
7 admitted into evidence.

8 (Whereupon State's exhibit 34 was admitted into evidence)

9 Q. All right. So looking at this statement, State's 34,
10 what is this page here?

11 A. This is our standard Saluda County Sheriff's Office
12 waiver of rights form.

13 Q. And how would you have shown or read that to the
14 defendant?

15 A. What I would have done was I would have first of all
16 given him this page. He signed it. He filled in his
17 information.

18 And then that would be -- I would sit down and tell, you
19 know, tell him -- I would put this in front of him and I would
20 say, all right, I, sign your name here, am 29 years old, my
21 date of birth is [REDACTED] [REDACTED] [REDACTED], 1987. I live at [REDACTED] [REDACTED]
22 Drive, Greenwood, South Carolina, 29649. I finished the
23 twelfth grade in school, and I can read.

24 I've been told by Captain Horne, who I understand is a
25 law enforcement officer that he or she would like to question

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

61

1 me concerning the crime of CSC with a minor. At this time the
2 defendant would have written the top line. I would have
3 filled in the offense of CSC with a minor.

4 And then I would have went over these rights with him. I
5 would have stated to him I have a right to remain silent.
6 That means -- I would have told him these are your -- the
7 officer has explained the rights to me, and I understand that
8 I have the right to remain silent. That means I do not have
9 to answer -- or say anything or answer any questions.
10 Anything I say may be used against me in the court of law.

11 I have the right to talk with an attorney and to have an
12 attorney here with me now and to advise me and help me during
13 questioning. If I want to have an attorney with me before and
14 during questioning and cannot afford to pay an attorney, one
15 will be provided to me at no cost.

16 If I decide to answer questions now without an attorney,
17 I still have the right to stop answering questions whenever I
18 want to. I also have the right to stop answering questions
19 until I have spoken with an attorney.

20 Q. All right. And did he appear to understand all of his
21 rights?

22 A. He did. I told him if you understand these rights which
23 I have just said to you, please initial in the box next to
24 each one of those rights. So that is the defendant's initials
25 next to each one of the Miranda rights as I read them ---

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

62

1 Q. Okay. He filled out the top portion where it shows his
2 name and his date of birth?

3 A. Correct.

4 Q. All right. And then after he waived his rights did he
5 then provide you with a written statement?

6 A. He did.

7 Q. All right. Let's -- would you just read that statement
8 for the jury.

9 A. Yes. This started at the Relay of Life here in Saluda
10 when a friend of MINORI came up and asked me if I was her
11 boyfriend. Then she said you look like her brother. And I
12 said yeah. She thought I was cute like most of her friends
13 did. After that we started texting like boyfriend and
14 girlfriend.

15 She was getting picked on at school and that's why it
16 started. I admit I got carried away, even got to the point
17 where we started texting husband and wife. After doing all
18 this she started not getting picked on, so I kept up with it.

19 I know I was wrong to keep up with it, but I didn't want
20 her to have the life I did. They have been through enough
21 just like I have. I did make a Facebook account to try to
22 keep in touch with her because ---

23 Q. Before you move on, when he's talking about I did make a
24 Facebook account, what Facebook account was he referring to?

25 A. That would be the Kanda Way Facebook account.

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

63

1 Q. All right.

2 A. I did make a Facebook account to try to keep up -- keep
3 in touch with her because I was told that living with Julia
4 was bad and that she treated them wrong and wasn't feeding
5 them right. Was told they only ate doughnuts for supper some
6 nights.

7 I know all the texts we sent looks so wrong, but it was
8 nothing more than a brother trying to make his family safe
9 from bullying in school. I tried to leave multiple times but
10 was asked to stay because I was helping the girls with their
11 grades at the house.

12 The girls always wanted -- the girls wanted always to go
13 with me somewhere if I was going somewhere. So Julia kept
14 saying they were attached to me. The feelings for them were
15 getting stronger, but not in a bad manner. I just wanted to
16 make their lives better.

17 The house, my dad, and their mom are horrible. They
18 treated me bad. I just moved in because I was put on child
19 support and the girls wanted to leave or run away. So I was
20 trying to help things get better and was told I was -- and I
21 told -- and was told I was, but I guess I wasn't.

22 MINORI had a phone -- MINORI had a phone from me, cheap
23 phone, which got took from school. She has tried to get in
24 touch with me. After that I had told her I shouldn't talk to
25 her, but I still did because I was worried about them because

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

64

1 of what was going on in their life.

2 I should have knew better than to start this texting like
3 her -- like boyfriend and girlfriend, but I was trying to help
4 her out in life because she has had a bad life. Feelings that
5 were expressed in text messages wasn't how it looks. I love
6 my sisters and brother and don't want this to turn out like
7 this.

8 We all need to solve this because of what I'm getting
9 accused of isn't what happened. Some things are right, but
10 sex and beer isn't what happened. She has told me times she
11 drank at school and liked it.

12 We haven't had a normal brother and sister relationship
13 because of our past. She is my sister, and I love her in a
14 family way, nothing more. I was so wrong for texting the way
15 I did, and there is nothing to change that. But I [sic] sorry
16 for people accusing me of this.

17 Q. Okay. Now did you ask him about anything else that was
18 not in this written statement?

19 A. Yes, I did.

20 Q. And what did you ask him?

21 A. I asked him about, you know, a sexual relationship that
22 occurred between him and the victim. I went over text
23 messages with him that y'all've heard testified here today.
24 During that he said, well, I have held hands with her on two
25 occasions and that he has kissed her on two occasions.

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

65

1 Q. Okay. And did he say anything more about the feelings he
2 had for the victim?

3 A. He stated that he did have feelings for the victim that
4 were more than a normal brother and sister relationship.

5 Q. But that was somewhat different than he'd put in his
6 written statement, right?

7 A. It was.

8 Q. All right.

9 A. And what was interviewed, you know, what was said at that
10 time, you know, after we had interviewed him, then he wrote
11 his statement. And so he didn't put those things in his
12 written statement. Of course, I'm not going to change his
13 statement once he, ---

14 Q. Okay.

15 A. --- you know, that was what he signed.

16 Q. So you talked to him beforehand about this, ---

17 A. Sure.

18 Q. --- and then you had him give a written statement?

19 A. Yes, sir.

20 Q. Okay. But prior to the written statement he said he had
21 feelings for his sister that were a little more than brother
22 and sister, ---

23 A. Yes.

24 Q. --- essentially?

25 A. Yes.

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

66

1 Q. Now did you have all the text messages at the time that
2 you talked to the defendant?

3 A. I did.

4 Q. And did you ask him about certain text messages?

5 A. I did.

6 Q. Did he acknowledge he sent those text messages?

7 A. He did.

8 Q. All right.

9 A. He also acknowledged that he created the Facebook account
10 and that he provided a phone for his sister.

11 Q. And the phone that was recovered from the school, the LG
12 phone, he acknowledged that he'd given the victim that phone?

13 A. Yes.

14 Q. And that he sent the messages on that phone?

15 A. Yes.

16 Q. And the same with the Motorola phone that was recovered
17 from the victim's aunt, he acknowledged he'd sent those
18 messages?

19 A. Yes.

20 Q. And he said he'd kissed her on two occasions?

21 A. Yes, sir.

22 Q. Did he elaborate on what type of kiss?

23 A. Mouth to mouth. A kiss from mouth to mouth.

24 Q. He acknowledged that he had kissed his sister on the
25 mouth?

JOSHUA PRICE - DIRECT EXAMINATION BY MR. McNAIR

67

1 A. Yes.

2 Q. His 13 year old sister?

3 A. Yes.

4 Q. Now I'm going to show you State's 33. Did you obtain
5 records from the DMV pertaining to the defendant?

6 A. I did.

7 Q. I'm going to show you State's 33 and ask if you can
8 identify that?

9 A. I can.

10 Q. And is that a certified copy of his DMV record?

11 A. Yes, sir, it is.

12 Q. All right.

13 **MR. McNAIR:** Your Honor, we'd move State's 33 into
14 evidence at this point.

15 **THE COURT:** Without objection?

16 **MR. BISHOP:** No objection.

17 **THE COURT:** State's exhibit 33 is admitted into evidence
18 without objection.

19 (Whereupon State's exhibit 33 was admitted into evidence)

20 Q. All right. Is his birthdate on this record?

21 A. It is. His date of birth is [REDACTED] [REDACTED] [REDACTED] of 1987.

22 Q. Okay. So in 2015 he would have been 27 turning 28 in
23 August?

24 A. Roughly during this time he would have been 27, 28. At
25 the same time the victim would have been 13, 14.

JOSHUA PRICE - CROSS-EXAMINATION BY MR. BISHOP

1 Q. Okay. I believe that's all the questions I have at this
2 time. Please answer any questions Mr. Bishop has.

3 **THE COURT:** Cross-examination.

4 **CROSS-EXAMINATION BY MR. BISHOP:**

5 Q. Captain Price, when my client came up you said that he --
6 and you've read his written statement that he gave, also made
7 some verbal statements to you, is that correct?

8 A. Yes, sir.

9 Q. You talked about the kiss where he kissed his sister.
10 When he told you that did he classify it as a peck?

11 A. I think when I went into detail I asked him how did he
12 kiss her. And that's -- I think he said, you know, a peck
13 kiss, you know, (witness indicated a kiss).

14 Q. Do you recall if it was the day -- if he told you it was
15 the day he was leaving the family home?

16 A. No, that was not what he said.

17 Q. Anywhere in his statement and in his -- of what he told
18 you, was there any mention of any type of sexual activity with

19 **MINORI** [REDACTED]?

20 A. No.

21 Q. And, in fact, I believe his statement explicitly denies
22 that, is that correct?

23 A. That's correct.

24 **MR. BISHOP:** No further questions.

25 **THE COURT:** All right. Any redirect?

24 JEREMY HEMBREE, being duly
25 sworn testified as follows:

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

70

1 DIRECT EXAMINATION BY MR. McNAIR:

2 Q. Detective Hembree, will you please state your full name
3 for the record.

4 A. Jeremy Hembree.

5 Q. All right. And where are you employed?

6 A. The Aiken Department of Public Safety in Aiken, South
7 Carolina.

8 Q. And how long have you been with Aiken?

9 A. I've been with the department since 1998 and on the law
10 enforcement side of that since 2001.

11 Q. Okay. And what is your current position there?

12 A. I am a criminal investigator.

13 Q. And how long have you been an investigator there?

14 A. Since June of 2013.

15 Q. Okay. Now as part of your job do you regularly analyze
16 things like cell phones?

17 A. I do.

18 Q. And you regularly perform what's known as phone
19 extractions?

20 A. I do.

21 Q. Can you explain to the jury what a phone extraction is?

22 A. We take a phone either under a consent to search or via
23 the search warrant and hook it to a machine where it
24 forensically makes a copy of everything that's on that device
25 or has ever been on that device and then puts it into a

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

71

1 computer program where it's readable for me to view. And then
2 I analyze the information that comes from that extraction.

3 Q. Okay. And when you do an extraction does it change or
4 alter the underlying data in the phone?

5 A. No, sir.

6 Q. All right. It just extracts information from the phone?

7 A. That's correct.

8 Q. And you can get information including deleted
9 information?

10 A. That's correct.

11 Q. All right. And then using your software you can then
12 generate reports based on that data, correct?

13 A. That's correct.

14 Q. All right. How many phone extractions do you think
15 you've done?

16 A. In excess of a thousand.

17 Q. And have you had specialized training in doing phone
18 extractions?

19 A. That's correct.

20 Q. All right. And can you tell the jury a little bit about
21 your experience doing that, what classes or education you have
22 regarding forensic extractions?

23 A. The company we use is called Cellebrite. They have a
24 track that is mandated that they -- that any user of the
25 device completes prior to beginning those extractions. And

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

72

1 it's approximately a hundred hours' worth of training. And
2 then during that training process they give you sample
3 extractions to complete.

4 And then the testing for that is based off of extractions
5 they send us to review and locate the data that they ask for
6 during those test questions is the initial training. And
7 since then I've received and obtained several other
8 certifications through their process as well as probably in
9 excess of another hundred, hundred and fifty hours of webinar
10 trainings and classes.

11 Q. Okay. Have you been qualified as an expert before in
12 general sessions court?

13 A. I have.

14 Q. All right. How many times?

15 A. One.

16 Q. All right. And do you remember what you were qualified
17 in?

18 A. Forensic device examination and cell phones.

19 Q. All right.

20 **MR. McNAIR:** Your Honor, at this time we'd offer
21 Investigator Hembree as an expert in the forensic examination
22 of digital devices including cell phones.

23 **THE COURT:** All right. Ladies and gentlemen, this
24 witness will be qualified in the area of forensic examination
25 of digital cell phones ...

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

73

1 **MR. McNAIR:** Digital devices ---

2 **THE COURT:** ... digital devices ...

3 **MR. McNAIR:** --- including cell phones.

4 **THE COURT:** ... including cell phones and give opinion
5 testimony in that area. That does not mean you must accept
6 the opinion, but it's evidence for you to use in any way you
7 see fit.

8 **MR. BISHOP:** No objection.

9 **MR. McNAIR:** Thank you, Your Honor.

10 Q. I'm going to show you what's been marked as State's
11 exhibit 4. Did you perform a phone extraction on that device?

12 A. I did.

13 Q. What day did you do a phone extraction on that device?

14 A. It was the first part of November of 2019.

15 Q. Okay. And I'm going to show you a disk marked as State's
16 36. Can you identify that disk?

17 A. I can.

18 Q. What is that?

19 A. It is the disk that contains the -- what we call a UFED
20 report, which is the extraction report for the information
21 taken from the phone.

22 Q. All right. And from the information that you took from
23 that phone were you able to generate other reports?

24 A. I was.

25 Q. I'm going to show you State's 31. What is that?

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

74

1 A. That is a isolated extraction report that contained SMS
2 messages, which is computer terminology for a text message.

3 Q. Okay. And that's text messages between who?

4 A. The phone, which belongs to the victim, and a telephone
5 number of 864-323-██████████ And stored in that -- that number is
6 stored in this device as My Baby.

7 Q. All right. And are you aware that this phone has been
8 identified as belonging to MINORI ████████, the victim?

9 A. That's correct.

10 Q. And the phone number that you just said identified as My
11 Baby has been identified as the defendant?

12 A. That's correct.

13 Q. All right. And what type of format does that record in?

14 A. PDF.

15 Q. I guess what type -- how is it organized?

16 A. I got you. Oldest to newest.

17 Q. Okay. So from oldest to newest text messages between the
18 victim and the defendant, correct?

19 A. That's correct.

20 MR. McNAIR: Your Honor, at this time we'd offer State's
21 exhibit 31 into evidence.

22 THE COURT: Without objection?

23 MR. BISHOP: No objection.

24 THE COURT: All right. State's exhibit number 31 is
25 admitted into evidence.

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

75

1 (Whereupon State's exhibit 31 was admitted into evidence)

2 Q. All right. And State's 32, can you tell us what this is?

3 A. It's also an isolated portion of the cell phone
4 extraction report containing the call log between the --
5 information taken from the device and the aforementioned
6 telephone number, which was still marked as My Baby.

7 Q. Okay. So those were all the phone calls between the
8 victim's phone and the number identified as belonging to the
9 defendant, correct?

10 A. That's correct.

11 Q. And is that in time-line format as well?

12 A. That's correct.

13 **MR. McNAIR:** Your Honor, we'd offer State's 32 into
14 evidence at this point.

15 **THE COURT:** Without objection?

16 **MR. BISHOP:** Without objection.

17 **THE COURT:** All right. State's exhibit 32 is admitted
18 into evidence without objection.

19 (Whereupon State's exhibit 32 was admitted into evidence)

20 Q. All right. And these are the official reports generated
21 by your software system?

22 A. That's correct.

23 Q. Did you also assist in the preparation of another report
24 that was in a little easier to read format?

25 A. I did.

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

76

1 Q. I'm going to show you State's 7. Do you recognize that?

2 A. I do.

3 Q. And is that a summary exhibit or, I guess, just an
4 exhibit -- another format of the text messages that we just
5 talked about in State's 32?

6 A. That's correct.

7 Q. Okay. And that's already in evidence. If you want to --
8 let me give you a copy of this ---

9 A. Okay.

10 Q. --- so the jury can see what we're talking about. And
11 just to be clear, this contains the exact same information as
12 your report, correct?

13 A. That's correct.

14 Q. Now when you do a phone extraction are you able to verify
15 the date and time information is correct?

16 A. I do. I go back to the device itself and look at the
17 times that are listed as the events occurring on the device.
18 And then I compare that to what's in the report. And that is
19 the only data that I can manipulate or change. And that's to
20 get the correct time related to the device with the report.

21 Q. Okay. And were you able to verify the dates and times on
22 this report were accurate?

23 A. They're correct.

24 Q. Let me draw your attention to some texts. I just want
25 you to read them out loud for the jury. Let's start with 1

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

77

1 through 21. And this is -- this was a Motorola phone,
2 correct?

3 A. That's correct.

4 Q. All right. If you would just read 1 through 21 aloud.

5 A. Number 1 is an incoming message. It states: We see.

6 And then the next one is a receipt or a sent message: I want
7 you here. Incoming: I wish I was. Another incoming: I'm
8 getting shower now. I'll text you when I get off if you are
9 awake. Okay, my love? If not, good night. I love you and
10 sweet dreams. I love you, too, babe. Good night, babe. I
11 love you. Sleep good. Sweet dreams. You, too.

12 Just got out. I love you so much. I love you with all
13 my heart. It is -- what's -- it's a arrow sign with a 3,
14 which is typically shorthand for a heart. You up yet? Hey,
15 babe. Was wondering if you are okay. You usually text me
16 back by now. I love you. I love you, too. And I just woke
17 up. I miss -- I'm missing you too much already. Awe. Okay.

18 I'm at work already. About to get started. I have to
19 start early on Mondays. I love you so much. Ready for this
20 weekend to get here now. Thanks for making me happy. I hope
21 I make you happy like you make me. You make me really happy.
22 Have good day at school. I love you so much.

23 Q. All right. Now when was the first text communication on
24 this phone between the victim and the defendant?

25 A. March 26th of 2015 at 5:41 am.

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

78

1 Q. Okay. And when was the first text referencing loving the
2 victim?

3 A. Item number 5 on April 12th, 2015 at 11:09 pm.

4 Q. Okay. So by April 12th he is telling the victim he loves
5 her. All right. Can we move to text 76 through 78? And I
6 didn't have you explain this, but what does the color coding
7 mean on this?

8 A. Blue is incoming from the telephone number related to My
9 Baby. And the pink is sent from the device.

10 Q. Okay. All right. So if you will read 76 through 78.

11 A. 76 starts as a sent message: I'm sorry for everything.
12 Imma stop wearing your clothes because it makes you mad. I'm
13 sorry. Okay. And ILYSM is shorthand for I love you so much.

14 Then 77: I have no socks. Yeah, I'm mad. Following,
15 78: That's why I'm sorry. Okay. If I just stop wearing your
16 clothes you'll be more happy. And I'm sorry about wearing
17 your socks. IMML, another symbol, and see.

18 Q. All right. Now can you move on to number 91 through 133?

19 A. Number 91 is an incoming. It states: I love to kiss
20 you. Followed by: I want that so bad right now. Me, too.
21 Soon I will be able to do that whenever I want and hold you.

22 Apparently everyone but me saw you leave this morning. I
23 know I can't wait. I waved bye. You looked at me. Me
24 either. I don't remember. I'm sorry. ILY, which is short
25 for I love you. It's okay. It's not your fault. And ILY,

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

79

1 short for I love you, too.

2 I'm ready to move out. Me, too. Just think, lay down by
3 you, hold you, cuddle. Gonna be awesome. Just got to find
4 out about homeschool, how to do it. Yeah. If we do
5 homeschool, then you know we have to go take the test for it
6 in Saluda, right? How often? Like in May, three or four
7 days. Okay. We figure something out. Yeah.

8 Then also in May I get to take my permit test for
9 driving. Yeah, I know. WYD, which is short for what you
10 doing? Followed by: Don't forget to call her, babe. I will,
11 ILY, again, for I love you. Have a good day my beautiful
12 wife. ILY. I love you, too. Have a great day my hot and
13 wonderful and amazing husband.

14 We're at number 114: Babe, Tanner's mom wants me to go
15 to her beauty salon so I can help her out. She wants me to
16 help cut people's hair and dye their hair. I was wondering if
17 I do go, if it's okay. Will you? Following this with you.
18 Text me and let me know if it's okay with you because if it's
19 not I'm not gonna go. I'm going back to class. ILYSM, which
20 again is -- short for I love you so much.

21 Incoming at this point: I don't know. I wish you
22 wouldn't do -- I wish you wouldn't, but do what makes you
23 happy. You aren't gonna be around Saluda much. Do you really
24 love me or you want someone else like Tanner? Just wondering.
25 I've been feeling like lately you like someone else at school.

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

80

1 I hope not.

2 You and me are engaged. I know I'm not muscular and all,
3 but I want you happy. Seems like you like Tanner now, asking
4 to go over to his house. But do what makes you happy.

5 Sent message: I don't like him, I love you. I love you
6 too much to lose you, babe. Incoming: We gonna be okay, ILY,
7 short for I love you, too.

8 Sent messages: You're all I want. I'm not going to his
9 house. I love you too much. And I want to see you when I
10 come home after school today. Call me when you get off.

11 ILYSM, I love you so much, too much to lose you. I love you
12 more than anything in the world and more than anyone in the
13 world. Babe, I love you, no one else. Please believe that.
14 Babe, ILYSM, I love you so much, too much to lose you. I'd
15 kill myself if I lost you. I can't wait to move in with you,
16 babe. Call me after work right when you get off. ILY, I love
17 you.

18 Incoming: I love you, too. I just want you happy. I'm
19 not perfect. Don't look great. I'm just trying to love you
20 the best I know how. I'm so in love with you. I don't want
21 nobody else.

22 Q. All right. Now if you'd skip to 170 through 180.

23 A. 170 is an incoming message: I want you to live with me,
24 but it's not up to me. Yeah, my heart hurts, too, but I don't
25 know what to do. Sent message: I know. I want to just run

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

81

1 away and live with t-o-u.

2 Incoming: You can't run away. Sent: Why? No one will
3 stop me. Incoming: You're right. But if something happened
4 to you I would be -- I believe it's supposed to be saying
5 crushed. 177 is I can't stay here, not without you.

6 Incoming: Crushed. Sent: I'm c-r-u-s-j-e-d without you
7 here. And then incoming: That's what you have to tell her
8 and your mom that you're scared and feel safe with me and you
9 want a better life.

10 Q. All right. Now 196 through 199.

11 A. 196 is sent: It's about to be our seven month
12 anniversary. Incoming: ---

13 Q. What's the date on -- what's the date on that?

14 A. October 9th of 2015.

15 Q. All right. So seven months prior would be around March,
16 2015?

17 A. That's correct.

18 Q. Okay.

19 A. 197 is u-k, I believe for you know. Sent: What? And
20 then 199 is incoming: I know.

21 Q. Okay. Now 217 through 239.

22 A. 217 is a sent message. What did I do? I know you're mad
23 at me about something. Tell w-h-t-a you're mad about and what
24 do we have to talk about. Incoming: Not mad at you. I want
25 to -- want you to live with me. I'm just sad.

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

82

1 Sent: You're acting like you're made [sic] at me.

2 That's why I keep asking what did I do. And I am sad, too.

3 Incoming: I'm not mad. Sent: You promise? Incoming: Yeah.

4 Sent: I love you and only you, babe. You're my husband and
5 that's what I want. I only want my husband, no one else.

6 Incoming: I don't want to lose you. I'm scared. I will
7 if I leave [sic] in Greenwood without you. 225 is sent

8 message: Babe, you're never gonna lose me. I'm yours

9 forever. Incoming: I know, but three years is too long. And
10 I can't come down but on weekends. Sent: Babe, I'm yours
11 forever. I'm never gonna lose you. And you're never gonna
12 lose me.

13 Incoming: Just depressed. Imma be real bad in trailer
14 alone. You don't know, three years is long, you see. Sent:
15 Call me every day. In: I know how you're gonna feel. BX,
16 which is short for because, that is how Imma feeling. And I'm
17 willing to wait that long, bc for because, I love you way too
18 much to lose you. My feelings are never gonna change.

19 231, incoming: You don't know that. And then sent
20 message: Babe, I know myself, though I'm never gonna change
21 how I feel about you. Incoming: Long distance relationships
22 don't never work. I'm just scared. What number did you tell
23 me to stop at?

24 Q. 239.

25 A. All right. Then incoming, or excuse me, sent message:

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

83

1 Babe, I'm willing to do whatever I have to do just to be with
2 you. And I know you're gonna call me every day. And Imma
3 call you every day and tell you I love you and that I miss
4 you. Incoming: I know. And I kiss you every day. It's
5 awful. I hate being in trailer alone.

6 Sent: I know how you feel. Babe, that's how Imma feel
7 and is already feeling. Incoming: Yeah. Outgoing -- or
8 sent: Babe, I promise on my life and soul in death that I'm
9 never gonna leave you babe. I'm yours forever. Incoming:
10 I'm done. Tried long distance. I'm fucking scared, just
11 depressed.

12 Q. All right. Now 252 through 299.

13 A. 252 is an incoming on October the 9th, 2015: I can't
14 live without you. This sucks. My life is fucking ruined.
15 Sent message: Damn it, there's another one. And please don't
16 kill yourself. Please, babe. You know how bad that would
17 hurt me and so I mind. But I'm just glad I have you in my
18 life.

19 Incoming: I'm not going to kill myself. Just be fucking
20 depressed. Sent: I'm going to quit singing because Tyler
21 Berry told me I couldn't sing today. And me, too. I'm gonna
22 be so depressed until I get to call you every day after work
23 and after school.

24 Incoming: You are all I want and thought that you would
25 leave when I did but can't. Calling is not what I want. I

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

85

1 sent message at 9:35 pm.

2 Q. Okay. If you'll continue to 299.

3 A. 276 is a sent message: You're all I want. We are
4 married. ILYSM, I love you so much. Babe seeing you cry
5 makes me cry literally. Incoming: I'm just heartbroken. I'm
6 sorry. Just too sensitive. It feels like I'm losing you.

7 Sent: You will always have me. I'm your wife. And now
8 you know how I felt every time you said you were leaving. And
9 now it hurts so bad that you're actually leaving. I don't
10 want you to go. Please don't go. I'm crying. Please don't
11 go. Please. My heart hurts too bad knowing that you're
12 actually leaving.

13 Incoming: This is hard. Just think if you don't come
14 three years. Only seeing you on weekends is fucking hard to
15 me, excuse me, for me. Me, too, but I can't stay. Sent
16 message: Sent here for me. Same. I don't want to stay here
17 without you. It's too hard.

18 Incoming: Maybe you can go. We see you might have to
19 cry a lot. Sent: I hope I do because I can't stay here not
20 without you. I want you and only you. It is hard. Excuse
21 me. Incoming: It is hard but we are married now, so we will
22 find a way.

23 Sent: I know. I can't stop crying being scared. And I
24 want you here holding me. Incoming: I know I want that but
25 they gonna say you're a teenager. I'm 28 and I might try to

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

86

1 do stuff with you. Sent: But what if they don't?

2 Incoming: Your mom and our dad will say stuff like, dad

3 walking in the house, I was all over you in bed. Sent: I

4 know, but what if they don't say nothing about that?

5 Incoming: That night. Sent: Look over here. And then

6 incoming: They will do anything to keep you there.

7 Q. All right. 359 through 364.

8 A. 359 is a sent message: I don't want you to leave. My

9 heart breaking every time I think about it. Incoming: Mine,

10 too. Sent: I can't live without you. Incoming: You'll

11 always have me. Sent: I know but it's going to be hard not

12 seeing you or kissing you every day. Incoming: I know it is.

13 I get kissing on weekends but maybe you can come live with me.

14 Maybe might not be right now, but maybe soon.

15 Q. Is that to 396?

16 A. 396, I'm sorry.

17 Q. All right. 431 through 444.

18 A. 431?

19 Q. Yeah.

20 A. 431 is a sent message: I'm not gonna stay here, not

21 without you. It hurts too bad knowing you're leaving. 432 is

22 incoming: What you gonna do? Talk to Peterson? I don't know

23 is an incoming message. I don't know, which was IDK is short

24 for I don't know. Call Ms. Peterson and try to see if I can

25 go back to the house because I'm not staying here.

24 heart. Sent: ILY, I love you, too, babe with all my heart.

25 Incoming: Awe. Sent: It true. Incoming: Me, too.

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

88

1 Sent: WYD. Incoming: Thinking about my sexy wife.

2 Sent: Awe, who's that? Incoming: **MINORI** my loving
3 wife.

4 Q. Okay. Now 496 through 507. We're almost done.

5 A. 496 ...

6 Q. Through 507.

7 A. Is an incoming message: We have rings now. We are
8 married. I just have to wait for you to come live with me.

9 And it's gonna be hard but you are totally worth the wait, I
10 promise. Sent: Same here. In: That made me smile like
11 never before. Incoming: Keep doing good in school. And
12 before you know it we will be together forever. Sent: I know
13 I'm trying. Incoming: I know you are.

14 Incoming: You are my life now. And I don't want it no
15 other way. Me with you is my happiness. Sent: Awe. Same
16 here babe. Incoming: Awe. Sent: It's true. Incoming: I
17 know baby. Sent: Good. I'm glad you know because it's true.
18 Incoming: Me, too. Hope you know you're my wife, not
19 girlfriend no more.

20 Q. All right. 511 through 516.

21 A. 511 is a sent: ILY for I love you deeply, too. And I
22 hope you know that you're not my boyfriend no more, you're my
23 husband. Incoming: I'm gonna get started. I hope you have a
24 great day and see my beautiful wife soon. ILY for I love you
25 forever. In: I do know.

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

89

1 Sent: I hope you have a great day. And I can't wait to
2 see my hot husband soon. ILY, I love you forever. Incoming:
3 Awe. You are the best. Sent: No, I'm not, bc for because,
4 you're the best.

5 Q. All right. And 577 until the end.

6 A. 577 is a sent on October 12th, 2015: We are staying at
7 the camper. Call me. Incoming: Call me. You don't want to
8 text me. Sent: I do. We just got here. Call me. IDK for I
9 don't know. She won't tell me. But we haven't picked any
10 clothes, so I guess we are. Please come. Please. Imma cry
11 if we don't get to see each other tonight. Text me please.
12 Thought you would have texted me back, but okay. Incoming:
13 In camper.

14 Q. All right. So that would be a message from the defendant
15 to the victim on October 12th saying in camper?

16 A. That's correct.

17 Q. Okay.

18 A. At 7:47 pm. Sent: Come inside please. Incoming: Damn.
19 No I'm not. Sent: ILYSM for I love you so much. Incoming:
20 ILY, I love you, too. Sent: WYD for what you doing?
21 Incoming: Missing you. Think I'm gonna try to get things on
22 at my house because this is bull. I can't do nothing with
23 y'all.

24 Sent: I know but I do -- want you moving too soon babe.
25 ILYSM for I love you so much. I'm done with life. I want

JEREMY HEMBREE - DIRECT EXAMINATION BY MR. McNAIR

90

1 you. I'm crying. I love you so much. They had the same talk
2 with me. Incoming: She said for me to leave 'cause we too
3 close n MINOR2 I can't see y'all no more.

4 Sent: I want to leave. And Angie told me that she said
5 for you not to leave. I called mom. Incoming: Julia said
6 leave. Sent: That's what Angie told me. And I don't want
7 you to go babe. I'm heartbroken and crying so bad. Please go
8 to sleep at the house in my room at mom and dad's please.
9 Text me please baby.

10 Q. All right. And that was the last text sent between those
11 two on this phone, correct, on October 12th?

12 A. That's correct, at 10:50 pm.

13 Q. All right. That's about all -- let me ask you about the
14 call log that you got from this phone which is State's 32.
15 How many calls -- first of all, what date range does this call
16 log cover?

17 A. It begins on May 19th of 2015 and ends on October 16th,
18 2015.

19 Q. Okay. And those are just all the calls between the
20 victim's phone and the defendant, correct?

21 A. That's correct.

22 Q. And how many calls were made in that approximately five
23 month period between those two?

24 A. Three hundred and twenty.

25 Q. Three hundred and twenty?

JEREMY HEMBREE - CROSS-EXAMINATION BY MR. BISHOP

91

1 A. Yes, sir.

2 Q. All right. And just very briefly, if you would, look at
3 State's 5, 6, 8, 9, 10, 11, 12 and 13. And if you would just
4 verify that all of these documents came from your extraction
5 that you did on that phone.

6 (Pause)

7 A. They are.

8 Q. All right. And what do those reflect?

9 A. They are Facebook messages between several individuals
10 and the profile belonging to the victim, **MINORI** [REDACTED]

11 Q. Okay. And all of those Facebook messages came throughout
12 the extraction you did on that phone, correct?

13 A. That's correct.

14 Q. All right. And I neglected to point out -- have you read
15 one text and then we're done, text 396.

16 A. 396 is an incoming message, or excuse me, a sent message:
17 Hey babe, please don't laugh at me. I have to pee really bad
18 and I was trying to -- g to hold it, it in. It didn't work
19 out. So now I'm waiting on mom and dad to bring me clothes.
20 I can't hold my pee in no more because of the tract infection
21 I think I had.

22 Q. Right. Thank you, detective. Please answer any
23 questions the defense may have.

24 **THE COURT:** Cross-examination.

25 **CROSS-EXAMINATION BY MR. BISHOP:**

- DIRECT EXAMINATION BY MS. DARKO

1 Q. Just briefly, Detective Hembree. I assume that you have
2 reviewed this entire phone log or phone dump, I guess, as they
3 call it, everything that was on the phone. Did you observe or
4 did you see the text messages between the defendant and the
5 victim referring to sex, or any sexual acts, or having sex?

6 A. I did not.

7 Q. Did you find any explicit photographs sent or received
8 from either party?

9 A. I did not.

10 **MR. BISHOP:** No further questions.

11 **THE COURT:** Any redirect?

12 **MR. McNAIR:** No, sir, Your Honor.

13 **THE COURT:** All right. The witness may step down.

14 **MS. DARKO:** Your Honor, the State calls **MINOR2** to the
15 stand.

16 **MINOR2**, being duly
17 sworn testified as follows;

18 **DIRECT EXAMINATION BY MS. DARKO:**

19 Q. Good morning, **MINOR2**. Will you state your full name for
20 the record.

21 A. **MINOR2**.

22 Q. And, **MINOR2**, where do you currently attend school?

23 A. Saluda High School.

24 Q. And how old are you?

25 A. Sixteen.

1 Q. And do you do anything outside of attending school during
2 the day?

3 A. I dance and I work.

4 Q. Okay. How long have you been dancing?

5 A. About 15 years, I believe.

6 Q. And how many days a week do you dance?

7 A. Right now it's just one day.

8 Q. Okay. And you said that you've been doing that for 15
9 years. Was that something that you were doing back in sixth
10 grade?

11 A. Yes, ma'am.

12 Q. And how old were you then?

13 A. About 12, I believe.

14 Q. And we're familiar with all of the people in your family.

15 MINORI is your older sister. How old would she have been at
16 that time?

17 A. Thirteen.

18 Q. And would this have been about back in 2015?

19 A. Yes, ma'am.

20 Q. And that's also the time the defendant came to live with
21 y'all?

22 A. Yes, ma'am.

23 Q. When the defendant came to live in your home did you
24 notice anything unusual about his relationship with your
25 sister, MINORI?

MINOR2

- DIRECT EXAMINATION BY MS. DARKO

1 A. Not at first.

2 Q. And about how long after he came into your life did you
3 start to notice things?

4 A. Probably about a week later.

5 Q. Okay. And what sorts of things would you notice?

6 A. He would follow her around like she was a puppy -- like
7 he was a puppy.

8 Q. And did he follow you around?

9 A. No, ma'am.

10 Q. Did he treat you the same as he treated MINORI?

11 A. No.

12 Q. And did he treat your other siblings the same as he
13 treated MINORI?

14 A. No, ma'am.

15 Q. Did anything that you saw between MINORI and the
16 defendant make you uncomfortable?

17 A. Yes, ma'am.

18 Q. And what sorts of things made you uncomfortable?

19 A. He would put his arms around her. There was a incident
20 where I walked into her bedroom and her pants were off.

21 Q. Okay. And when -- do you remember what time of day this
22 was?

23 A. It was probably -- I believe we had just gotten out of
24 school that day.

25 Q. Okay.

1 A. So probably around like five or four.

2 Q. And when you walked on this -- in on this what did you
3 do?

4 A. I told her to put her pants back on and come out in the
5 living room.

6 Q. And what did she do in response to that?

7 A. She covered herself up and her face turned red and she
8 was embarrassed.

9 Q. What did Kyle do, if anything?

10 A. He just gave me a angry look.

11 Q. And did your sister come out to the living room?

12 A. Yes, ma'am.

13 Q. And did you guys have any conversation about what you had
14 just seen?

15 A. I tried to talk to her about it, but she wouldn't talk
16 about it.

17 Q. She didn't want to discuss it?

18 A. (Negative nod).

19 Q. And at any time did -- was she concerned that you were
20 going to tell someone?

21 A. Yes, ma'am. She actually asked me not to tell anybody.

22 Q. And so you did have some discussion about what you saw?

23 A. Yes, ma'am.

24 Q. And did you threaten to tell somebody?

25 A. I told her I felt like it was the right thing to tell

1 somebody, but she didn't want me to.

2 Q. Okay. And ultimately did you tell anybody?

3 A. No, ma'am.

4 Q. Did you have any conversations with Kyle about MINORI?

5 A. He would ask some questions about her.

6 Q. Okay. What sorts of questions would he ask?

7 A. Sometimes it was about her undergarments.

8 Q. Okay.

9 A. Other times it was if she was talking to any guys at
10 school.

11 Q. Okay. And about -- was this one time that he asked these
12 sorts of questions or was it multiple times?

13 A. It was multiple times.

14 Q. And that's with regard to who she's hanging out with at
15 school and as well as questions about her undergarments?

16 A. Yes, ma'am.

17 Q. Did the defendant ever buy clothing for MINORI?

18 A. Yes, ma'am.

19 Q. And would you react to him asking about her
20 undergarments?

21 A. I thought it was very inappropriate.

22 Q. And what sorts of questions was he asking?

23 A. Like the design, type, size.

24 Q. Okay. And when you're talking about undergarments are
25 you talking about underwear, underpants?

1 A. Both.

2 Q. Okay. And you say that he was asking about -- when you
3 say both are you also talking about a bra?

4 A. Yes, ma'am.

5 Q. And he would inquire not only as to size -- did he ever
6 say why he needed this information?

7 A. Something about Megan had some clothes and other like
8 undergarments and all that she would like to give us.

9 Q. Was it customary for you to accept underwear from a third
10 party as a hand-me-down?

11 A. No, ma'am.

12 Q. And who is Megan?

13 A. Megan is his ex-fiancé, I believe. I don't recall them
14 being married.

15 Q. And do you know whether or not he had children with her?

16 A. Yes, ma'am. He had two and then Mason.

17 Q. So he was telling you that he had underwear from his
18 fiancé that he wanted to give to your sister?

19 A. Well, at the time they were no longer together.

20 Q. Okay. How old, again, was your sister at this time?

21 A. Thirteen.

22 Q. And do you know about how old the defendant was?

23 A. I don't remember his age.

24 Q. During the time that the defendant was staying in your
25 home where was he sleeping at?

MINOR2

- DIRECT EXAMINATION BY MS. DARKO

98

1 A. Supposed to be in the living room.

2 Q. And when you say supposed to be, why do you say that?

3 A. Because on various occasions he was actually sleeping in
4 MINOR1's room.

5 Q. And how do you know that?

6 A. Because I could hear him going in there at night.

7 Q. And when you say hear him going in there at night, can
8 you describe to me what things you would hear.

9 A. I could hear the door being opened and shut, noises in
10 the bedroom.

11 Q. Okay. And upon hearing these things did you tell anybody
12 about them?

13 A. No. I just kind of kept it to myself.

14 Q. And why did you not tell anybody about it?

15 A. Because I wasn't a hundred percent sure what was going
16 on.

17 Q. And when he was telling you these things, asking you
18 about who MINOR1 was speaking to and questions about her
19 underpants, where would these conversations take place?

20 A. In my bedroom.

21 Q. And where was MINOR1 at this time?

22 A. She was either in the shower or outside.

23 Q. And how often would -- would you ever be alone with the
24 defendant?

25 A. Not a lot.

1 Q. Okay. And why not?

2 A. Because I had a feeling about what was going on. And I
3 felt uncomfortable around him.

4 Q. On these occasions when you say that you could hear Kyle
5 go into MINOR1's bedroom did -- were you able to confirm that
6 he was not on the couch?

7 A. Yes, ma'am.

8 Q. Okay. And how were you able to confirm that?

9 A. 'Cause it was one night I had enough of hearing the door
10 being opened and shut, I decided to go out in the living room
11 -- the first time I heard the door open and shut I went out in
12 the living room and acted like I was going to go get me
13 something to eat, and he was not in the living room.

14 Q. And during this time did your mom typically go to bed
15 before y'all?

16 A. Yes, ma'am.

17 Q. And so you're staying up later than your mom?

18 A. Yes, ma'am.

19 Q. And what time did you have to get up in the morning?

20 A. Around 6:00.

21 Q. Why -- and what time of night was he going into her
22 bedroom?

23 A. Sometimes it would be late. Sometimes it would be
24 whenever we all went into our rooms.

25 Q. Okay. And when it's late why were you staying up that

MINOR2

- DIRECT EXAMINATION BY MS. DARKO

100

1 late?

2 A. To see what was going to happen. Like in case MINOR1
3 called out for help or something, somebody could go and help.

4 Q. You were worried about your sister?

5 A. Yes, ma'am.

6 Q. On the occasion that you walked in on the defendant and
7 MINOR1, you described her as wearing -- being in her
8 underpants, ---

9 A. Yes, ma'am.

10 Q. --- and can you described how she was positioned on the
11 bed?

12 A. She was -- her back was against the wall and she was on
13 her knees.

14 Q. Okay. And did she have a covering on top?

15 A. Yes, ma'am. She still had her t-shirt on.

16 Q. Okay. And do you remember where Kyle was positioned?

17 A. He was laying on the bed underneath the cover.

18 Q. And do you -- would you have been able to tell what he
19 was wearing?

20 A. I believe he had a shirt on. I'm not a hundred percent
21 sure on that.

22 Q. And about how often would you hear the sounds that he was
23 going into your sister's bedroom at night?

24 A. About every night.

25 Q. And this is between the period of time when he first

MINOR2 - CROSS-EXAMINATION BY MR. BISHOP

101

1 moves into the home around March of 2015?

2 A. (Affirmative nod).

3 Q. And is this up and through the time you were placed with
4 your grandmother?

5 A. (Affirmative nod).

6 Q. And that was October 2015?

7 A. Yes, ma'am.

8 Q. Nothing further. Please answer any questions from the
9 defense.

10 **THE COURT:** Cross-examination.

11 **CROSS-EXAMINATION BY MR. BISHOP:**

12 Q. **MINOR2**, do you recall why Kyle moved into the house with
13 your family?

14 A. He said he needed a place for him and his kids to go
15 because he could no longer live in the house that him and
16 Megan used to live in.

17 Q. That's what he told you?

18 A. Yes.

19 Q. Did he and his kids come there?

20 A. He came. The kids came about every other weekend.

21 Q. Was this when your dad was in rehab?

22 A. Yes.

23 Q. Was it close to when he got out of rehab?

24 A. I don't recall the time period there.

25 Q. I know this happened a long time ago and it's probably

1 harder to remember what happened then -- now than shortly
2 after, but do you remember giving a forensic interview in
3 October of 2015?

4 A. Yes.

5 Q. Do you remember some of the questions that were asked of
6 you?

7 A. Yes.

8 Q. Were you asked that did you suspect or see anything that
9 was going on between Kyle and MINORI?

10 A. Yes.

11 Q. And do you recall what you said?

12 A. Yes. I told her -- I said no.

13 Q. You said no?

14 A. Yes.

15 Q. All right. And were you also asked about the sleeping
16 arrangements?

17 A. Yes.

18 Q. Do you recall what you said then?

19 A. Yes. I lied to that, too.

20 Q. Why did you lie about that?

21 A. Because I was 12. And as a 12 year old you're scared of
22 everything.

23 Q. Who were you lying for?

24 A. For my sister who was scared.

25 Q. So you were lying for your sister then?

1 A. Yes.

2 Q. And this was after Kyle moved out?

3 A. Yes.

4 Q. Are you lying for your sister today?

5 A. Nope.

6 Q. Have you been told what to say today?

7 A. Nope.

8 **MR. BISHOP:** No further questions.

9 **THE COURT:** Any redirect?

10 **REDIRECT EXAMINATION BY MS. DARKO:**

11 Q. **MINOR2**, when you gave your forensic interview do you
12 remember what you said about who was in what bedrooms?

13 A. I believe I said me and **MINOR1** were in my room and Kyle
14 was in **MINOR1**'s room.

15 Q. And do you remember why you said that in particular?

16 A. Because -- I honestly don't remember.

17 Q. But that wasn't the truth?

18 A. No, ma'am.

19 Q. And what was the actual bedding arrangement during the
20 time that he was staying there?

21 A. Me and **MINOR1** had our separate bedrooms. Like I was in
22 one room, **MINOR1** was in the other. Kyle was to sleep in the
23 living room.

24 Q. You mentioned that as a 12 year old you were afraid of
25 everything. Were you afraid of Kyle?

MOTIONS

1 A. Yes.

2 Q. Why?

3 A. Because he was supposed to be a brother, someone we could
4 trust. And he was hurting **MINORI**.

5 Q. No further questions.

6 **THE COURT:** Recross?

7 **MR. BISHOP:** Nothing further, Your Honor.

8 **THE COURT:** All right. The witness may step down.

9 **MR. McNAIR:** Your Honor, at this time the State rests.

10 **THE COURT:** All right. Ladies and gentlemen, I've got
11 some matters to take up with the attorneys. So we'll go ahead
12 and take our lunch break now. It's 12:30. Let's get started
13 this afternoon at 1:45. So please be back in the jury room
14 prior to 1:45, okay? Thank you very much. Please don't
15 discuss the case while you're out.

16 (Whereupon the jury exited the courtroom at 12:33 pm)

17 **THE COURT:** All right. Mr. Bishop, anything?

18 **MR. BISHOP:** Your Honor, at this point the defense would
19 just move for a directed verdict.

20 **THE COURT:** Anything else?

21 **MR. BISHOP:** No, Your Honor.

22 **THE COURT:** All right. Does the State have any response?

23 **MR. McNAIR:** Your Honor, I think there's more than
24 sufficient evidence. I think based on the testimony of **MINORI**
25 alone, if the jury finds her credible, they could convict him

MOTIONS

105

1 of CSC, second and third.

2 In addition, there's substantial circumstantial evidence
3 with the text messages, the testimony that **MINOR2** just saw
4 them together in bed with **MINOR1** wearing her underwear all
5 that type of stuff. His statements to law enforcement about
6 having kissed her, that alone could be the elements of a CSC,
7 third, as well as their ages. She was 13 and turned 14 during
8 the time-frame this happened. He was 28 and turned 29 in
9 2015. So all those elements are met. There's plenty of
10 evidence the jury could convict him on.

11 **THE COURT:** Defendant's motion for a directed verdict is
12 denied. All right. We'll see you back in a little over an
13 hour. In fact, we can -- do you intend to put him up first?

14 **MR. BISHOP:** Yes, Your Honor.

15 **THE COURT:** We can do this now real quick -- or we'll do
16 it right before we bring the jury out as far as telling him
17 his rights and all that.

18 **MR. BISHOP:** Okay.

19 **THE COURT:** Thank you. All right. We'll see you in
20 about an hour. Thank you.

21 (Whereupon court was in recess at 12:37 pm)

22 (Whereupon court reconvened at 1:47 pm)

23 **THE COURT:** All right. Please be seated, ladies and
24 gentlemen. Thank you. Mr. Bishop, your client intends to
25 testify, is that correct?

DEFENDANT'S ADVISEMENT OF RIGHTS

1 **MR. BISHOP:** That's correct, Your Honor.

2 **THE COURT:** Madam Clerk, would you please put the
3 defendant under oath.

4 **MADAM CLERK:** Raise your right hand. Do you swear or
5 affirm the testimony you're about to give the Court will be
6 the truth, the whole truth and nothing but the truth so help
7 you God?

8 **MR. WAY:** Yes, ma'am.

9 **MADAM CLERK:** Thank you.

10 **THE COURT:** All right. Mr. Way, good afternoon. At this
11 time I'm going to explain to you certain rights you have. If
12 you do not understand anything I explain, please let me know.
13 If you want me to explain anything in more detail, please let
14 me know. Do you understand that?

15 **MR. WAY:** Yes, sir.

16 **THE COURT:** All right. We've now reached the stage in
17 the trial where you may present your defense. You have the
18 right to claim the protections given to you by the Fifth
19 Amendment to the Constitution of the United States.

20 This Amendment states in part that no person shall be
21 compelled in any criminal case to be a witness against
22 himself. This means you cannot be required to testify in this
23 case. You have the right to testify on your own behalf.
24 However, no one can make you testify. This is a personal
25 right and no one can waive this right except you.

DEFENDANT'S ADVISEMENT OF RIGHTS

107

1 If you decide to testify, you would be subject to the
2 same rules that govern other witnesses. And you may be
3 examined and cross-examined on any relevant issue in this
4 case.

5 In addition, if you have any convictions involving
6 dishonesty, or a false statement, or for crimes punishable by
7 inprisonment for more than one year and this Court determines
8 that the probative value of admitting this evidence outweighs
9 its prejudicial effect to you, the solicitor will be able to
10 introduce your record to attack your credibility. Do you
11 understand that?

12 **MR. WAY:** Yes, sir.

13 **THE COURT:** All right. If you decide to testify, this
14 decision on your part must be freely, voluntarily and
15 intelligently made with knowledge of the protections given to
16 you by the Fifth Amendment and the consequences of your
17 decision to testify.

18 If you decide not to testify, I will instruct the jurors
19 that they cannot give the fact that you did not testify any
20 consideration whatsoever and that there is to be absolutely no
21 prejudice to you because you did not testify. It is left
22 entirely up to you whether or not you testify.

23 You may talk with your attorney, family and friends, or
24 anyone else, but the final decision will be left entirely up
25 to you. Mr. Way, do you understand what I've explained to

DEFENDANT'S ADVISEMENT OF RIGHTS

1 you?

2 **MR. WAY:** Yes, sir.

3 **THE COURT:** Do you have any questions about what I've
4 explained to you?

5 **MR. WAY:** No, sir.

6 **THE COURT:** Have you discussed with your lawyer whether
7 or not you should testify?

8 **MR. WAY:** Yes, sir.

9 **THE COURT:** Do you wish to talk with your lawyer any
10 more?

11 **MR. WAY:** No, sir.

12 **THE COURT:** Okay. Do you wish to testify?

13 **MR. WAY:** Yes, sir.

14 **THE COURT:** All right. Thank you. Anything else before
15 we bring the jury out?

16 **MR. McNAIR:** No, sir, Your Honor.

17 **THE COURT:** Ordinarily we would go through a defendant's
18 past criminal record at this point, but it's my understanding
19 he does not have one. Is that correct, Mr. Bishop?

20 **MR. BISHOP:** That's my understanding, Your Honor.

21 **THE COURT:** Okay.

22 **MR. McNAIR:** That's correct.

23 **THE COURT:** All right. 1:50, let's go ahead and bring
24 them back out.

25 (Whereupon the jury entered the courtroom at 1:51 pm)

25 Q. Kyle, I want to talk about your upbringing. Can you tell

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

110

1 me who your parents are?

2 A. My mom -- me and my mom, we've had a rough relationship.

3 But her name is Shonna Dixon. And she's recently got married,

4 so Hollobarrow (ph.) is her last name now. And my dad is

5 Kerry Way.

6 Q. And is he also the father of the alleged victim here?

7 A. Yes, sir.

8 Q. Where did you live when you were growing up?

9 A. I lived a lot of places. When I was with my mom, she was

10 doing drugs. So I sort of got took from her. So I went into

11 foster care. And I got took from -- I think I went to foster

12 care for about two weeks.

13 And then her friend wanted us. So we went to go live

14 with her friend. And I didn't know who my dad was at the

15 time. So it was her and me finding out who my dad was.

16 Q. And how old were you at this time?

17 A. Roughly -- I'm not really, really sure about the age, but

18 probably about seven, somewhere up in there.

19 Q. And you testified you were in foster care?

20 A. I was, yes, sir.

21 Q. Did you eventually go move in with your father?

22 A. I did eventually, but I moved in with my grandma first.

23 Q. Okay. How old were you when you moved in with your

24 grandmother?

25 A. About the same, about eight, somewhere up in there, eight

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

111

1 or nine.

2 Q. And how long did you live with her?

3 A. I don't know for exact how long I lived with my grandma
4 before I went with my dad, but I know I stayed there probably
5 a couple of months, probably, somewhere in there.

6 Q. Okay. So you were around eight or nine when you moved in
7 with your dad?

8 A. Yes, sir.

9 Q. Who else did you live with at that time?

10 A. It was my dad and Ms. Donna Way.

11 Q. Where did y'all live?

12 A. 158 Lookout Point. They had just got a trailer. They
13 had just bought land. It was on the lake, Lake Murray.

14 Q. How long did this last?

15 A. I stayed there probably -- probably about a -- I don't
16 know the exact time, but probably about a year or so, maybe.

17 Q. Can you describe what your home life was like while you
18 were there?

19 A. It was rough. I got abused.

20 Q. When you say abused ---

21 A. I can call multiple times where -- my dad had bought me
22 -- I was into sports. And I remember a time when my dad had
23 bought me a net that you could throw the baseball at, and it
24 was supposed to come back to you.

25 And I remember a time he was outside, and I threw it, and

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

112

1 it came back, and I didn't catch it. The ball -- I couldn't
2 find the ball. The grass was kind of high. And he had gotten
3 mad at me 'cause I couldn't find it 'cause he had came and
4 tried to help me, and he had punched me in my stomach.

5 And there's been other times where like for Christmas one
6 time I remember they were sleeping in. And I know -- a little
7 kid gets up, he wants to go in there, he wants to open his
8 presents, but, yeah, I wanted to do that, but I'm very
9 considerate of others, so I let them sleep.

10 I didn't go in there and I didn't -- and this was on
11 Christmas day. And they had gotten up and they had gotten mad
12 at me. And he didn't even let me open my Christmas presents
13 then 'cause he had gotten mad because I didn't go in there and
14 wake them up because it was Christmas. And he had punched me
15 then, too.

16 Q. So the abuse you're describing is physical abuse?

17 A. Yes, sir.

18 Q. It was from your father?

19 A. Yes, sir.

20 Q. Was he drinking a lot when you lived with him?

21 A. He was drinking some, yes, sir.

22 Q. So he would abuse you whether he was drinking or not?

23 A. Yes, sir. But it was not only him that abused me, it was
24 Ms. Donna, too.

25 Q. How did she abuse you?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

113

1 A. They were paying for my lunch when I was at school. And
2 I wasn't getting free lunch when I was with them, but I was
3 getting discounted lunch. And they -- they sent a letter with
4 me to get to them. And I didn't give it to them in time and
5 it added up. And I guess they sent them a letter. And she
6 had slapped me.

7 Q. So you sustained physical abuse while you were living
8 with your father from both your father and Donna Way, is that
9 correct?

10 A. Yes, sir.

11 Q. Did you eventually move out?

12 A. I didn't move out, I got took out.

13 Q. Taken by who?

14 A. DSS.

15 Q. Why did they open an investigation?

16 A. I went to school, I don't remember exactly what grade. I
17 think I might have been in -- I don't know, it was elementary
18 or middle school, somewhere up in there. And when I went to
19 school I had a big bruise on my face.

20 And the police officer came, they took a picture of it.
21 And I had told them what had happened. And they had took me
22 to DSS that day.

23 Q. And where did you go from DSS custody?

24 A. I went to stay with a woman named Edith Rowe, who was a
25 foster parent, and her husband. And she had another foster

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

114

1 daughter there and another foster son there.

2 Q. After that through high school where were you living?

3 A. I stayed there for -- it was probably about ten years I
4 stayed in foster care with her. Well, actually, it was ten
5 years, but I'll back up a little bit because I forgot a little
6 part.

7 I went there initially, and I probably stayed there for
8 about two weeks. And then my grandma, which is the one that I
9 did live with to start with, she had come and she had Donna,
10 which is my dad's mom, and she came and got me. I went to go
11 stay with her.

12 And I admit, I was not a good kid then. I was into
13 stealing really bad, really bad. And -- and I stole from her
14 while I was living there, and she caught me.

15 She called me in there and she told -- I had it in my
16 bookbag. And she asked me why did I have it. And I told her
17 that I took it from her. And she said that she couldn't have
18 that. So she brought me back to Saluda.

19 Q. Okay. And you never lived with your grandmother again?

20 A. No, sir.

21 Q. Did she pass away?

22 A. She did. And I didn't get to tell her that I was sorry
23 for doing what I did.

24 Q. But you eventually graduated high school, is that
25 correct?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

115

1 A. Yes, sir.

2 Q. And became a father?

3 A. I did.

4 Q. How many children did you or how many children did you
5 have with your first fiancé or girlfriend?

6 A. We had two kids together. And we had some problems. We
7 had our ups and downs just like every other couple does. And
8 initially we were together probably -- I want to say probably
9 about eight years together, we were together.

10 And within those eight years, the last three years was
11 really, really rough for me. She had -- we'd had our third
12 kid, which I thought was mine, and she had came out and told
13 me that he was not mine. And even though I took care of him
14 for three years, it hurt because that was my son, too.

15 Q. And then that relationship eventually ended?

16 A. It did because when I found out about her having another
17 kid by another man, I couldn't do it no more.

18 Q. Were these the three children that you heard some
19 testimony about that would come with you to Saluda on
20 occasion?

21 A. Yes, sir.

22 Q. Okay. And how many children do you have now?

23 A. I have another one. His name is Aiden. And I have one
24 on the way.

25 Q. And you are currently engaged?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

116

1 A. I am.

2 Q. And both those children are with your fiancé?

3 A. Yes, sir.

4 Q. When did you first find out about your half siblings,
5 Laura, MINOR1, MINOR2, and MINOR3?

6 A. I knew about Laura. I don't know the exact time-frame,
7 but when I was in foster care, I don't know the exact days or
8 I don't even know the years, but I knew about Laura 'cause I
9 knew that she was going to have to have, I think, some kind of
10 surgery with her eyes is from what I was told.

11 And then I don't remember the exact year, but I remember
12 that somebody had reached out to me about my dad. And I don't
13 remember her name, but her last name was Way. So she was
14 married into the Way family.

15 And I got in contact with my dad and re-established that.
16 And while I was with my ex still, we would go down on weekends
17 with my kids. So ...

18 Q. So when you found out about the others, MINOR1, MINOR2,
19 and MINOR3, ---

20 A. Yes, sir.

21 Q. --- where were you living?

22 A. I was living in Greenwood.

23 Q. Living in Greenwood.

24 A. Yes, sir.

25 Q. With whom were you living with?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

117

1 A. With my ex.

2 Q. And your children?

3 A. Yes, sir.

4 Q. Okay. When did you first meet MINOR1, MINOR2, and
5 MINOR3?

6 A. I don't know the exact year, but I know it was in the
7 summertime. My kids would come. We did go swimming with
8 them, but that was only on weekends.

9 Q. Okay. You said you would start going -- would you start
10 seeing them on the weekends while you were still living in
11 Greenwood?

12 A. I did.

13 Q. And you would take your children with you?

14 A. I did. And my ex would come most of the time.

15 Q. What would y'all generally do on the weekends, your
16 family and their family?

17 A. Most of the time we just went and swam in the lake, most
18 of the time, or they would spend time with my kids 'cause they
19 really enjoyed seeing them.

20 Q. How often would you see them after that before you moved
21 down there?

22 A. Me and my ex, when all that happened, she probably left
23 sometime in February of 2015.

24 Q. Okay.

25 A. And that's when she had left and moved out. And then I

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

118

1 did get a roommate for a little while. His name was Marshall.

2 He worked with me. Marshall Roberts.

3 And I don't know the exact day that he actually left, but
4 it was -- it was sometime in March, I believe. March or
5 April, somewhere up in there that he did leave.

6 Q. Leave where?

7 A. He went back to Iowa because his mom -- his mom was
8 having problems, too, and he wanted to be closer with his mom.
9 And he -- I actually had bought a car from him that was at my
10 house that didn't have no tag on it.

11 Q. Did you -- so you were still living in Greenwood?

12 A. Yes, sir.

13 Q. Would you still go down to Saluda to see the Ways?

14 A. There was a -- there was a time that Marshall went with
15 me one time down there. And I had got a message from **MINORI**.
16 And she had said that some things was going on in the house
17 and her mom had slapped her. And she was outside at her
18 grandmas, and she was going to run away. And she asked me
19 could I come get her.

20 Q. How did she -- how did she send you this message?

21 A. It was on the phone.

22 Q. How did she get your number?

23 A. I think she got it off of my Facebook 'cause I always had
24 my number on my Facebook.

25 Q. Okay. But you hadn't formed any type of relationship

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

119

1 with her before then? I mean, you knew her as a half sibling,
2 but you'd never really gotten to know her, is that correct?

3 A. That is correct.

4 Q. So when she reached out to you what did she say?

5 A. She had told me that her mama slapped her and that she
6 was going to run away. And she asked could I come get her.
7 And I couldn't just come get her.

8 So I told her that me and Marshall was going to come down
9 there and I wanted to see what was going on because I wanted
10 to find out for myself. I just didn't want to take her side
11 of the story.

12 Q. And when was this?

13 A. When Marshall was my roommate, sometime between February
14 and March.

15 Q. Okay. And did you eventually start coming down there
16 before you moved to Saluda?

17 A. Yes, I did. After Marshall left sometime in that, I
18 still had my place for a little while. I don't remember how
19 long, but it wasn't that long.

20 Q. Um-hum (affirmative).

21 A. And I went down there on the weekends on occasion, but
22 every other weekend my kids would be with me, too.

23 Q. Did you ever spend the night there before moving in?

24 A. No, I did not.

25 Q. We've heard a few different reasons and her testimony is

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

1 that different people asked you to move down. Why was the
2 reason you actually -- what was the reason you actually moved
3 to Saluda?

4 A. Well, there was a couple of reasons, actually. One
5 reason was I did get served child support papers. And I
6 couldn't afford the place that I was in. So that was one
7 reason.

8 Q. Um-hum (affirmative).

9 A. And I was told that before my dad came back from rehab,
10 and I think he came back sometime in June, that another adult
11 had to be present in the house.

12 Q. Who told you this?

13 A. Ms. Donna did.

14 Q. So your father was in rehab at this time?

15 A. Correct. Yes, sir.

16 Q. How long before he was supposed to get out, do you
17 remember?

18 A. That I moved in or out?

19 Q. Yeah. Well, that she contacted you and then you
20 essentially moved in?

21 A. I think she had told me about this and I moved in almost
22 about the same time. So I probably moved in -- it was the end
23 of May.

24 Q. And you said end of May?

25 A. End of May.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

121

1 Q. Of what year?

2 A. 2015.

3 Q. How can you be sure of this?

4 A. Because my dad -- it was a couple of weeks before my dad
5 got out of rehab. And my dad got out -- I don't know -- I
6 think it was June 13 or 15, one of them days. I know it was
7 like two weeks before that.

8 Q. When you moved down there, who was residing in the Way
9 house?

10 A. When I moved in it was me, Laura stayed over to her
11 grandma's, but she would come over occasionally, but she --
12 she slept at her grandma's house. So it was me, MINOR3,
13 MINOR2 MINOR1, and Ms. Donna.

14 Q. I want to back up just briefly. Between the time you
15 were visiting and the time you moved in you started spending
16 more time with your half siblings, is that correct?

17 A. I did. But I did spend more time with MINOR1 and MINOR2,
18 both of them the same.

19 Q. Is that because Laura wasn't living there?

20 A. That is correct.

21 Q. And why did you not spend as much time with MINOR3?

22 A. MINOR3 most of the time was either at a friend's house
23 or something. But I'm not saying I didn't spend time with him
24 because I did. I mean, we would go outside and throw a
25 baseball or something, but I did spend more time with the two

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

122

1 girls.

2 Q. About how old was he at the time?

3 A. Probably eight or nine, something like that.

4 Q. When was the first time that you and MINOR1 hung out and
5 talked?

6 A. Well, actually -- I don't know if you consider it hanging
7 out, but when I was home with my kids, we would all go to the
8 lake. And she would help with the kids and stuff. MINOR2
9 would be there, too, so ...

10 Q. So there were more people there?

11 A. Yes, correct.

12 Q. Did she ever open up to you about some things that were
13 going on in her life?

14 A. She did. It actually started that day that I mentioned
15 with Marshall. That's actually when she had started telling
16 me stuff like -- we went down there and she said her mom had
17 hit her. And then after I moved in she got more into what was
18 really going on.

19 Q. But y'all talked and she told you what was going on
20 before you moved in, is that correct?

21 A. Yes, that is correct.

22 Q. Did she talk about harming herself?

23 A. She did, yes, sir.

24 Q. Did you think it was possible that she would do it, hurt
25 herself?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

123

1 A. Yes, because I witnessed it myself. I seen it with my
2 own eyes.

3 Q. And just to be clear, during this time before you moved
4 in the two of you were communicating via text message or
5 Facebook?

6 A. Correct.

7 Q. Did you attend the Relay for Life in Saluda in 2015?

8 A. I did, yes, sir.

9 Q. Was this before you moved down here?

10 A. It was before I moved, yes, sir.

11 Q. Okay. Do you remember approximately what time of year it
12 was?

13 A. Sometime in April. That's when the Relay for Life was.

14 Q. Where was it?

15 A. It was actually by the -- I think it's the -- where I
16 actually met Mr. Price and all that, it was in the recreation
17 field where the track is.

18 Q. That's here in town?

19 A. That's in Saluda, yes, sir.

20 Q. Were other family members there?

21 A. Yes, sir. Well, the kids were taking dance. So that's
22 the reason we went in the first place. **MINOR3** was -- **MINOR3**
23 had to dance and **MINOR2** had to go dance. So Laura was there,
24 too. Everybody was there except for my dad.

25 Q. Did you hang out with **MINOR1** some at the Relay for Life?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

124

1 A. Me, Laura, and MINORI all -- we walked around the track.
2 So Laura went to be with her friends. And it was me and
3 MINOR2 for a little bit and then she went to go be with her
4 friends.

5 And then as I was walking some -- I don't know who she
6 was, some girl came up and she had tapped me on the shoulder
7 and told me that MINORI had told them that I was her
8 boyfriend.

9 Q. Okay. How did you feel about that?

10 A. At first I thought it was wrong. I told them that I was
11 her brother. And then she said you're cute like most girls
12 ---

13 Q. Who said that?

14 A. Whoever the girl was. I don't know who she was, one of
15 MINORI's friends. And then she ran back off. And then MINORI
16 came back up to me and told me that she had told them that I
17 was her boyfriend and that I was like 17 years old.

18 Q. And you went along with this?

19 A. I didn't at first. I didn't go along with it. I didn't
20 think it was right at first. But she was telling me that she
21 was getting bullied in school a lot. And I witnessed it
22 myself when she used to cut herself. And when I used to live
23 in the house myself, I know how it is. I know how bad it can
24 be.

25 Q. Did she tell you why she was being bullied?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

125

1 A. She'd get bullied because of what I've been through when
2 I lived there. Like she was getting abused.

3 Q. You were bullied as well?

4 A. Yes, sir.

5 Q. When you were young?

6 A. Yes, sir.

7 Q. What did you initially tell her whenever she was going
8 along with this boyfriend/girlfriend label?

9 A. Well, to start with it was -- it was actually her idea to
10 start it. And I didn't want to go along with it at first.

11 And she had told me that she would go to school if I was to
12 start it and she would show some of her friends, and then the
13 people that were bullying her would stop bullying her. So I
14 did go along with it. And I know that it looked weird.

15 Q. You said show her friends. What do you mean?

16 A. The people -- the people that was bullying her, some of
17 her friends were bullying her that she considered friends.

18 And I don't believe that was friends, the way friends should
19 treat other friends.

20 Q. So you started this fake relationship?

21 A. Yes, sir.

22 Q. You understand how this could be perceived?

23 A. Yes, sir. That's why I said it looks weird.

24 Q. All right. How did this relationship form
25 electronically?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

126

1 A. It started with like just text messages. And it got into
2 Facebook messages because she had told me the -- I meant the
3 messages wasn't believable enough. So, yes, we did send some
4 Facebook messages.

5 Q. Okay. And this is still before you moved in? The
6 beginning of this ---

7 A. Yes.

8 Q. --- fake relationship?

9 A. Yes. This was in April.

10 Q. Okay.

11 A. This was in April that it started.

12 Q. So you say it was through text messages. Was this just
13 for the two of you to see?

14 A. No, sir.

15 Q. So what ---

16 A. This was for her -- I meant, I wasn't at school with her,
17 so I don't know who she would show. But after this allegedly
18 had started she had said that things were getting better with
19 the bullying and getting picked on.

20 Q. And why was that?

21 A. Because like the thing that happened at Relay for Life,
22 I'm assuming, because the girl thought I was cute and they
23 thought that I was her boyfriend.

24 Q. They didn't know you were her brother?

25 A. At the time, no. But eventually later on she did tell --

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

127

1 I don't know -- her name is Princess. I don't know her last
2 name or nothing, but she had told Princess and Jacari -- I
3 don't remember her name correct. And then a girl named
4 Brianna knew about it.

5 Q. Did you eventually move into the Way house in Saluda?

6 A. Yes, sir.

7 Q. And your testimony was this was what time of year?

8 A. End of May.

9 Q. So not in March as was alleged?

10 A. No, sir. I still was with my roommate in March.

11 Q. And you stated -- whose idea was it for you to move in?

12 A. It was actually Donna's idea for me to move in because
13 another adult had to be present when my dad was coming home.
14 So I moved in two weeks -- a couple of weeks before he came
15 home.

16 Q. But not **MINORI**'s idea?

17 A. No, sir.

18 Q. Not your idea?

19 A. No, sir.

20 Q. Even with the child support issue going on?

21 A. No, sir. But that was another reason why I wanted to
22 move in, though, I admit.

23 Q. How did you initially feel about moving in?

24 A. Actually it was kind of overwhelming that I'm coming into
25 my sisters' and trying to re-establish this connection that I

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

128

1 had lost with my dad and Ms. Donna. And I know -- I'm a very
2 forgiving person, so I know what happened to me. And even
3 though -- even though I went through it and it hurt me, I
4 wanted to make amends and try again.

5 Q. Did you feel like you could possibly help out while you
6 were there?

7 A. Yes, sir, help with their grades and stuff.

8 Q. When you first moved in what was the understanding about
9 the sleeping arrangement in the house?

10 A. When I first moved in I was told that I was going to get
11 a bedroom, and that was going to be where **MINOR1**'s room was.
12 But when I moved in me and **MINOR3** was going to share a room
13 and her and **MINOR2** was going to share a room.

14 Q. Okay.

15 **MR. BISHOP:** Permission to approach, Your Honor?

16 **THE COURT:** Yes, sir.

17 Q. Kyle, I want to show you what's been marked as State's
18 exhibit 14. Is that an accurate depiction of the layout of
19 the house?

20 A. Yes, sir.

21 **MR. BISHOP:** Your Honor, may my client approach the
22 screen?

23 **THE COURT:** Yes, sir.

24 (Pause)

25 Q. Describe to me what was supposed to be the initial

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

129

1 sleeping arrangement when you arrived at the house.

2 A. This was my room. And it was MINOR1's room, but this
3 room was given to me to stay here. This was MINOR2's room.
4 And her bed actually was a big wooden bed that had another bed
5 that did slide out. And MINOR1 was going to sleep in that
6 bed, but the house is a mess. There was spiders and stuff.
7 So she didn't want to sleep in it. So she slept in the same
8 bed as MINOR1. This is the bathroom, of course. And this is
9 Ms. Donna and my dad's room.

10 Q. And where did MINOR3 sleep?

11 A. MINOR3 slept in the bed with her mom ---

12 Q. Did he ---

13 A. --- with his mom.

14 Q. I believe there was testimony that he sometimes slept --
15 fell asleep on the couch?

16 A. He did occasionally. He would sleep on there.
17 Sometimes, like most of the time she would take him -- pick
18 him up and take him to bed.

19 Q. So the room on the bottom left, that became your bedroom?

20 A. Correct. Yes, sir.

21 Q. Did you put your stuff in there?

22 A. I did. I had my PlayStation and my clothes and stuff.
23 Yes, sir.

24 Q. What type of bed was in there?

25 A. It was like a twin bed. It was an old, old bed. And it

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

130

1 had metal -- it was a metal rail bed.

2 Q. Okay. And where were MINOR2 and MINOR1 sleeping?

3 A. In this room.

4 Q. Did these sleeping arrangements ever change?

5 A. No, sir. The only -- the only thing that ever -- was if
6 Laura came home, she would sleep on the couch sometimes when
7 she came home from her grandma's.

8 Q. Okay. You can sit back down.

9 (Pause)

10 Q. Approximately how long did you live at Donna and Kerry
11 Way's home?

12 A. So I move in at the end of May. And I don't know the
13 exact date, but I think the kids had got took October the 2nd.
14 So that night that they had got took, I actually was on my way
15 home. I had my kids with me.

16 And MINOR1 told me that she was -- she didn't want to be
17 in the house 'cause dad was in there. And dad -- my dad
18 wasn't supposed to be in the house. He was supposed to be in
19 the camper. That's why another adult had to be present.

20 So she had called the caseworker, Ms. Patterson, I
21 believe. And when I got there with my kids, cops were already
22 there. And MINOR1 and my dad and them was outside. And they
23 had told me that the kids were getting took because my dad was
24 found inside the house and he wasn't supposed to be in the
25 house.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

131

1 Q. Kyle, I'll get back to that. I want to back up a little
2 bit ---

3 A. Okay.

4 Q. --- just to talk about the time that you were in the
5 house and what went on.

6 A. Okay.

7 Q. Where were you working at this time?

8 A. Velux in Greenwood.

9 Q. Where you still currently work?

10 A. Yes, sir.

11 Q. What was your work schedule?

12 A. Then I had to go in about -- I had to be there by six or
13 6:30. And Monday through Thursday I -- see, when you work at
14 Velux, you have like a production schedule. So I can say I
15 got off at like 4:15 'cause was like a normal day, but
16 sometimes we could work til like 4:30 or a little over
17 sometimes. It depends on what our schedule was, our
18 production schedule.

19 Q. So what time would you normally leave for work?

20 A. Ms. Donna would get up before I did. So she got up
21 probably about 5:00. And before she left she'd wake me up and
22 told me to make sure at least the girls were up.

23 Q. Um-hum (affirmative).

24 A. So I would make sure they were up before I left. But I
25 had to leave shortly after her to be at work 'cause it's an

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

132

1 hour drive.

2 Q. What time would you normally arrive back home?

3 A. Normally 5:45 to 6:45, somewhere in that time-frame. It
4 depends on how long it took me to work my schedule.

5 Q. So what did you do with family most days during the week?

6 A. During the week? Most of the time we were all at the
7 house. And in the summer -- summertime, then we were going
8 swimming, doing activities outside. I actually brought my
9 basketball goal from my house. So we would play basketball.

10 Q. And who would you spend most of the time with?

11 A. Most of the time it was just me, MINOR1, and MINOR2
12 'cause Laura -- Laura was never home. We would -- she was
13 always at her grandma's house. And MINOR3 ---

14 Q. So you ---

15 A. MINOR3 was most of the time was at a friend's house or
16 he'd be on an iPad or something.

17 Q. And on the weekends who would you normally hang out with
18 in the family?

19 A. Most of the time on the weekends it was pretty much all
20 of us at the house, but, like I said, I did spend a lot of
21 time with MINOR1 and MINOR2.

22 Q. During this time did you continue this electronic
23 relationship, whatever you want to call it, as boyfriend and
24 girlfriend?

25 A. I did, yes, sir.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

133

1 Q. And why was this still going on?

2 A. Because she still was getting bullied. But like I said,
3 it had gotten better, so I didn't want it to stop. So I
4 didn't want her to say -- to go back to what it was doing,
5 getting bullied and stuff, so we kept going.

6 Q. Did you ---

7 A. And I know it looked weird.

8 Q. So you thought you were helping her out by keeping this
9 going?

10 A. She had told me that it was helping. And I was told -- I
11 was told by Ms. Donna that me being there was helping and
12 their grades were getting better.

13 Q. So things started going better for the Way children?

14 A. That's what I was told and that's what I observed, yes,
15 sir.

16 Q. Did they seem to enjoy themselves around you?

17 A. Yes, sir.

18 Q. Did y'all go out and do things together?

19 A. All of us did most of the time, yeah. There was
20 sometimes that if I wanted to run to the store or something
21 that one of the girls would want to ride with me or both of
22 them wanted to ride with me, they did.

23 (Whereupon Defendant's exhibit 2 was marked for
24 identification)

25 **MR. BISHOP:** Your Honor, may I have continued permission

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

134

1 to approach?

2 **THE COURT:** Yes, sir.

3 Q. Kyle, I'm going to show you what's been marked for
4 identification purposes as Defendant's exhibit 2. Can you
5 explain what that depicts?

6 A. What it shows?

7 Q. Yes.

8 A. It shows me, **MINOR2**, Laura, and **MINOR1** all together. And
9 **MINOR3** was there, too, but he was off to the side, but he is
10 in another picture.

11 Q. And did you post that?

12 A. I did, yes, sir.

13 Q. To what?

14 A. To the Facebook.

15 Q. Okay. Is that a fair and accurate representation of the
16 picture that you posted to Facebook?

17 A. Yes, sir.

18 **MR. BISHOP:** Your Honor, I would move to have this
19 admitted as Defendant's exhibit 2.

20 **THE COURT:** Without objection?

21 **MR. McNAIR:** Without objection.

22 **THE COURT:** Okay. Defendant's exhibit 2 is admitted into
23 evidence.

24 (Whereupon Defendant's exhibit 2 was admitted into
25 evidence)

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

135

1 **MR. BISHOP:** Permission to publish?

2 **THE COURT:** Yes, sir.

3 Q. Kyle, you may not be able to read it, but there's an
4 uploaded date on there. Can you see that?

5 A. Yes, sir.

6 Q. What date is that?

7 A. 7/18/2015.

8 Q. And you and all your siblings -- do you remember where
9 you were?

10 A. That actually was at the Huddle House in Saluda before it
11 closed down.

12 Q. So y'all just went out one day?

13 A. Yeah, we all went out to eat, and I paid for it.

14 Q. Everyone appear to look happy in that picture?

15 A. Yes, sir.

16 Q. Were y'all just out having fun?

17 A. I think we was just going out to eat, pretty much just
18 having a good time all together.

19 Q. Is that a typical thing y'all would do as a family?

20 A. We didn't do it a whole lot to be honest. I mean, we
21 didn't all just go out all together like that, but we did
22 occasionally.

23 Q. Is it fair to say y'all would usually have fun together
24 when all y'all hung out?

25 A. We did, yes, sir.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

136

1 Q. So it appears that y'all grew closer together as you
2 lived in the home, is that correct?

3 A. Yes, sir.

4 Q. Would you say you grew closer to all your siblings?

5 A. I was closer to MINOR1 and MINOR2 than I was my other two
6 siblings.

7 Q. You testified as to the sleeping arrangements. Was there
8 ever a time when you and MINOR1 slept in the same room, same
9 bedroom?

10 A. There was, yes, sir. The time that my dad had came home
11 from rehab and he was not allowed to come into the home,
12 that's why another adult had to be present, in the room that I
13 stayed in -- my dad was coming into the home and they were
14 scared of my dad still, her and MINOR2 both were. So both of
15 them would come into my room. And MINOR2, she would sleep on
16 the floor. And MINOR1 asked could she sleep in the bed. And
17 I told her she could if she slept opposite of me.

18 Q. What does that mean?

19 A. That means with my head one way and her head one way.

20 Q. And what room is this?

21 A. That is the room that was technically mine.

22 Q. Okay. Who else slept in there with you?

23 A. Nobody.

24 Q. No, when MINOR1 was in the room with you ---

25 A. Oh, it was us three. Yeah, it was me, MINOR1, and

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

137

1 **MINOR2** .

2 Q. Where did **MINOR2** sleep?

3 A. On the floor right by the bed.

4 Q. How -- about how many times did they do this?

5 A. It didn't happen a whole lot. Probably -- since my dad
6 was there, probably about three or four times.

7 Q. And the reasoning for this is that they were scared?

8 A. Of my dad, yes, sir.

9 Q. And he was not supposed to be in the house?

10 A. He was not. That's why another adult had to be present.

11 Q. Did things ever go bad while you were in the house with
12 everyone there?

13 A. Yes, sir, it did.

14 Q. Did you ever threaten to leave?

15 A. Multiple times.

16 Q. But you didn't, did you?

17 A. I didn't -- I didn't leave. There was one night I could
18 tell you that was really, really bad. The light bill had got
19 up to three hundred something dollars. And he said it was my
20 fault because I had my PlayStation on and stuff.

21 So he had a talk with me, and he started cussing at me,
22 and he threatened me. So I did go into my room and I did get
23 my stuff, and I went outside. And **MINOR1** and **MINOR2** both came
24 out crying talking about they didn't want me to leave, but I
25 couldn't -- I couldn't deal with what -- I was getting put

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

138

1 back -- right back to what I tried to leave when my dad had
2 been abusive.

3 I mean, he didn't hit me -- I mean, he didn't hit me, but
4 he got loud. And I'm a very sensitive person. So I was out
5 there, the girls came out, they were crying. So Ms. Donna
6 came out then and told me not to leave because things have
7 gotten better at the house since I had been there.

8 Q. Do you remember -- this was obviously in 2015, is that
9 correct?

10 A. Yes, sir.

11 Q. Do you remember what time of year this was?

12 A. I can't give you an exact date.

13 Q. Who all wanted you to stay?

14 A. MINOR1, MINOR2, and Ms. Donna.

15 Q. All wanted you to stay at the house?

16 A. Correct. Yes, sir.

17 Q. While you were living at the house did you go to any
18 school events, dance events, extracurricular events for your
19 half siblings?

20 A. I did. Yes, sir. When they had, I guess you would call
21 it orientation or something, like when she was -- when MINOR1
22 was going into ninth grade, ---

23 Q. Um-hum (affirmative).

24 A. --- they were in the H room and they didn't want to take
25 her, so I volunteered myself to go with her. So I did. So we

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

139

1 went in there and everyone was in the H room.

2 Q. Was this still when this telephone/Facebook relationship
3 was going on?

4 A. Yes, sir.

5 Q. Did you go as her brother?

6 A. Yes, sir.

7 Q. So had her friends -- what did they know about you?
8 Texts?

9 A. Well, some of them didn't know I was her brother, but she
10 eventually had told Princess and Jacar -- I don't remember --
11 quite remember the other girl's name, but I think it's Jacar,
12 that I was her brother. So other people thought, I guess, we
13 were boyfriend and girlfriend because she was showing them the
14 messages. I mean, I didn't go to school with her, but that's
15 what she had told me.

16 Q. Would you agree generally that a text conversation is
17 mainly between the sender and the receiver?

18 A. A text conversation ---

19 Q. Correct.

20 A. --- is unless you show it to somebody.

21 Q. So why were you continuing this relationship through
22 texts?

23 A. Because she was getting bullied at school. And she would
24 come home crying sometimes. And I didn't want her -- I was
25 putting what I'd been through in her shoes, and I did not want

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

140

1 her going through what I went through. And I know that it
2 looked wrong that I did it, but I was trying to look out the
3 best interest for her.

4 Q. State's admitted some exhibits into evidence I want to
5 show you, State's exhibit number 9. Can you read that
6 conversation for me?

7 A. You want me to tell you who it's from and all that, too?

8 Q. Correct.

9 A. Tanner, it says hey. MINORI [REDACTED], it says MINORI's
10 asleep. MINORI [REDACTED], this is her boyfriend. And I'll tell her
11 you messaged her in the morning. And this all occurred at
12 around 11 -- almost 11:30-ish.

13 Q. Is the sender -- is that your number?

14 A. No, sir, it's not.

15 Q. Whose number is that?

16 A. I do not remember her number, but it's got MINORI [REDACTED] on
17 it, so I'm assuming it's her number.

18 Q. Did you send those messages?

19 A. No, sir. I had to go to work. So there's no way I'd be
20 up like that.

21 Q. What time of day is that again?

22 A. This is -- all right. So Tanner is sending it at 11:14.

23 And then it said MINORI sent one at 11:15. And then it said

24 MINORI sent another one at 11:21.

25 Q. Would you generally be with her and with her phone at

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

141

1 that time of day?

2 A. No, sir. There's no way I could get her phone. She
3 always had it.

4 Q. You never sent any messages?

5 A. No, sir.

6 Q. Okay. I'm going to show you what's been marked as
7 State's exhibit 11. If you could read starting with the
8 second message received down.

9 A. Second one. Okay. Thank you so much. You don't know
10 how much this means to me. Good night. You never -- you are
11 lol. Thanks once again. And it says, yeah, I am Kyle.

12 Q. And what number did that come from?

13 A. The same one that the previous one did.

14 Q. What time of day is that?

15 A. That's actually past midnight. So 12:04.

16 Q. Did you text someone from her phone saying you're Kyle?

17 A. Wait -- yeah, it says am. Sorry, I was looking at the
18 time. Say what?

19 Q. Is that something that was sent by you?

20 A. No, sir.

21 Q. Do you know why she would send something like that?

22 A. I don't even know the Dakota guy. So I don't know, but
23 it says this was sent at midnight. And then at 5:43 in the
24 morning another message was sent.

25 Q. Would you be up then?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

142

1 A. At that time? Yeah, I'd be up going to work.

2 Q. Not with MINOR1?

3 A. No, sir. I'd be gone -- I'd be heading to work by now.

4 Actually, yeah, 5:30 about when I leave. Donna got up at
5 five. So ...

6 Q. And what time is that sent?

7 A. 5:43.

8 Q. Kyle, you heard MINOR2's testimony earlier that she
9 walked in on you in the bed with MINOR1, only the two of you
10 in the room.

11 A. Yes, sir.

12 Q. Did that happen?

13 A. No, sir.

14 Q. You also heard that she testified that you asked her
15 about her undergarments and bras. Did you ever ask her about
16 that?

17 A. No, sir. I would never do something like that.

18 Q. I believe there was testimony at the time that she -- I
19 believe MINOR1 testified that she was not wearing bras at the
20 time you were in the house, is that correct?

21 A. That is right. She did testify to that.

22 Q. Did you offer to give them your ex -- give her your ex-
23 girlfriend's panties?

24 A. I did not. That would be disgusting.

25 Q. While you were living in the Way house did you ever have

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

143

- 1 any type of sexual relationship with MINOR1 [REDACTED]
- 2 A. No, sir.
- 3 Q. Never had any intercourse with her?
- 4 A. No, sir.
- 5 Q. Did she ever perform oral sex on you?
- 6 A. No, sir.
- 7 Q. Did you ever kiss her with your tongue?
- 8 A. No, sir.
- 9 Q. Did you ever physically assault her as she testified to?
- 10 A. No, sir.
- 11 Q. Did you ever notice that they were scared of you?
- 12 A. No, sir, they were never scared of me. They were scared
- 13 of my dad.
- 14 Q. Were they always willing to hang out with you?
- 15 A. Yes, sir. And any time that I would go somewhere, they
- 16 wanted to go with me.
- 17 Q. Were there ever times when you told either Laura, or
- 18 MINOR2, or MINOR3 that they couldn't hang out with you and
- 19 MINOR1?
- 20 A. Never.
- 21 Q. I want to talk about some other instances that have been
- 22 called inappropriate. You've heard testimony from multiple
- 23 witnesses about MINOR2's christening. Do you remember
- 24 approximately when that was?
- 25 A. Sometime in April.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

144

1 Q. Of what year?

2 A. 2015.

3 Q. Do you remember where that was held?

4 A. It was in a big old church. Aiken, I think. I think it
5 was Aiken.

6 Q. Would you often go to church with your family?

7 A. Yes, sir.

8 Q. Every Sunday?

9 A. Yes, sir, but it wasn't in Aiken. It was -- it's on -- I
10 mean, I don't know exactly how to get there, but ...

11 Q. You've heard testimony about your behavior in church and
12 how you were acting with MINOR1.

13 A. Yes, sir.

14 Q. Will you describe for me what was going on as you
15 remember it?

16 A. Well, they went to a Catholic church. So when we'd go to
17 sit in, everybody, I meant, we always sat together in their
18 church, always. Nobody sat separate. We all sat on the pew.
19 There might -- Laura and MINOR3 might sit behind us or -- but
20 MINOR2, and MINOR1, and me, and Donna would all sit together.
21 And then eventually when my dad had came home, we all sat
22 together.

23 And in a Catholic church the young -- the young teens are
24 -- the younger kids would have to go up and light candles.
25 And they had to do that almost -- almost majority every Sunday

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

145

1 because some other people wouldn't come. And then after
2 church in the Catholic church the priest would walk back down,
3 and you had to shake his hand. So the whole congregation
4 comes outside at once.

5 Q. This was before you moved into the house, is that
6 correct?

7 A. Yes, sir.

8 Q. Okay. Were you sitting with MINOR1 in church?

9 A. I sit with MINOR1 and MINOR2, both of them.

10 Q. Okay. I believe this was MINOR2's christening, is that
11 correct?

12 A. Yes, sir.

13 Q. So she ---

14 A. Oh, oh, in the -- I was going off of the church -- their
15 church.

16 Q. No, I'm talking about the Sunday that was testified to or
17 that was ---

18 A. So it was -- it was hers, so she was not sitting with me.
19 It was MINOR1 and Laura.

20 Q. Were you all over MINOR1?

21 A. No, I would not do that in church. No, sir.

22 Q. You would not do that in church?

23 A. Uh-uh (negative). I wouldn't do it, period. But I'm
24 saying I wouldn't -- they said I was doing it in church.

25 Q. Well, what would you consider inappropriate behavior in

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

146

1 church?

2 A. Anything, holding hands. The only thing they can say
3 that they would do, which not just saying the Aiken church,
4 I'm talking about their home church, is MINORI and MINOR2
5 would rest their head on my shoulders.

6 Q. Is it possible they were doing or she was doing that this
7 Sunday?

8 A. She might have did. But Ms. Julia and all them always
9 thought that was inappropriate.

10 Q. Did you consider it something siblings would do or did
11 you consider it something more than that?

12 A. I didn't see nothing wrong with it to be honest, just
13 holding your head on your shoulder.

14 Q. Let's talk about MINORI's birthday. I assume this is her
15 25th -- her birthday in 2015, is that correct?

16 A. Say that again.

17 Q. That was testified to when you took her shopping.

18 A. Oh, yes. Yes, sir, May.

19 Q. Did you, in fact, take her shopping?

20 A. I did. Yes, sir.

21 Q. Where did y'all go?

22 A. To the mall.

23 Q. What all did you -- or did she pick out what she wanted?

24 A. Yeah. I didn't tell her what to pick out or nothing. It
25 was her birthday, so she had to pick out what she wanted.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

147

1 Q. What did she pick out?

2 A. Some Hollister clothes. She wanted some little cheap
3 ring that I had gotten. So I did get her a little cheap ring.

4 Q. Is that the ring that they were talking about as a
5 wedding ring?

6 A. Yes, sir.

7 Q. But you bought it for MINORI?

8 A. For her birthday.

9 Q. Okay. Did you consider it some type of wedding ring?

10 A. No, sir. But in the text message we would -- like she
11 would wear it as one.

12 Q. Okay. And that was for your purposes or for others?

13 A. No, that was for others.

14 Q. Did you buy the others gifts?

15 A. I think -- I can't remember their birthdays, but I was
16 going to take one of them shopping. So I would have bought
17 all of them gifts. I just -- I don't remember.

18 Q. Is it possible you didn't live there during the others'
19 birthdays?

20 A. I probably didn't. But if I would have been there, yes,
21 I would have took them shopping. It's not fair to take one
22 and not the others.

23 Q. I believe there's testimony that you and MINORI were seen
24 at Sheely's. Did you ever go to Sheely's with MINORI?

25 A. We have been to Sheely's. Yes, sir.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

148

1 Q. Have you been just the two of you?

2 A. We have. Yes, sir.

3 Q. Where were the others?

4 A. Well, sometimes they would be at dance. So there was a
5 time when we were home alone. And most of the time when we
6 were home alone we're either going to do -- we're either going
7 to teach her -- I was trying to teach her how to cook most of
8 the time. But, yes, we did go out to eat that night and we
9 did pick up food for them.

10 Q. This is after MINORI was taking dance?

11 A. Yes, sir.

12 Q. Do you recall her doing any other extracurricular
13 activities while you lived there?

14 A. Yes, sir. She wanted to quit taking dance and started
15 singing or something like singing.

16 Q. When did you eventually leave the Way home? You began to
17 testify to this earlier.

18 A. The day I left was like October the 2nd, something like
19 that, when the kids had got took from them because my dad was
20 caught in the house and he wasn't supposed to be in there.

21 And MINORI had called Ms. Patterson.

22 Q. Who was Ms. Patterson?

23 A. The DSS caseworker.

24 Q. And MINORI called ---

25 A. At that time.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

149

1 Q. MINORI called her?

2 A. Yes, sir.

3 Q. Why did she call her on her father?

4 A. She had texted me before she actually called. And she
5 told me that dad was in the house and she was scared. So she
6 asked me what she should do. And I told her what she thought
7 she should do. And she called Ms. Patterson and they called
8 the cops.

9 Q. And where did you go?

10 A. I was on the way to the house when all this was going on.
11 So when I got there -- initially I had my kids with me. And
12 Ms. -- they went to Ms. Julia's -- they went to her -- they
13 were going to get into her house, but she had a camper that
14 she didn't want then because she and my dad didn't like each
15 other. And she said she was scared for them.

16 Q. Well, let me back up a second. So you all had to leave
17 your father's house?

18 A. Yes, sir, after they got took.

19 Q. They got took. Who is they?

20 A. The kids. All the kids.

21 Q. They were taken?

22 A. They were taken.

23 Q. By DSS?

24 A. Well, the police officer, but DSS, yes, sir.

25 Q. And where did they take them?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

1 A. They got put in Ms. Julia's care.

2 Q. Okay. And Ms. Julia is their grandmother?

3 A. Yes, sir.

4 Q. And that is Donna's mother?

5 A. Yes, sir.

6 Q. And they meaning **MINOR2** **MINOR1**, and **MINOR3**?

7 A. And Laura, yeah. Even though Laura wasn't there, so,
8 yes.

9 Q. So who all was living in Ms. Julia's house at this time?

10 A. Well, actually they didn't live in her house. They
11 stayed in the camper.

12 Q. Who all was staying in the camper?

13 A. Well, that night -- I think it was on a Friday. That's
14 when I had my kids. So that night -- the only people that
15 were in the camper that night was Julia, **MINOR3**, Laura,
16 **MINOR2**, and **MINOR1**. And my kids and me did sleep inside David
17 and them's house.

18 Q. And that's where the -- near where the camper's located?

19 A. Yes. They was in the back yard.

20 Q. Did Julia like you?

21 A. No, sir. She -- she hated me.

22 Q. Why is that?

23 A. She -- when I first got in contact with my siblings and I
24 started going back, she would tell them that I'm not even
25 their brother at all. She had mentioned that -- she had

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

151

1 mentioned that I would turn out just like my father.

2 Q. What does that mean?

3 A. Being an alcoholic and abusive.

4 Q. Are you an alcoholic?

5 A. No, sir. I do drink occasionally. Yes, I do.

6 Q. Are you abusive?

7 A. But I'm not an alcoholic.

8 Q. Are you abusive?

9 A. No, sir.

10 Q. You've heard some testimony about the camper incident.
11 Was this the night that you were asked -- the night you were
12 asked to leave Ms. Julia's house?

13 A. Yes. The day I was asked to leave -- let's see, the
14 exact date was October 12th.

15 Q. Can you explain what was going on that night that led up
16 to them asking you to leave?

17 A. Yes. They all was going in to get showers. And when
18 they all got done, they came back. And it was me, Laura,
19 **MINOR3**, **MINOR1**, and **MINOR2** all of us was in the camper. And
20 on one of the beds, the bed was made up, we was watching a
21 movie.

22 And **MINOR2** and **MINOR1**, I had one on this side, one on
23 this side. And her grandma walked in and said that that was
24 inappropriate and told me she wanted to have a talk with me,
25 and she told me to come inside. So I went inside. And she

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

152

1 told me that I had to leave.

2 Q. You said one on this side and one on that side. Who are
3 you referring to?

4 A. MINOR2 and MINOR1

5 Q. While you were there I believe there was some testimony
6 that you would bring your children down, is that correct? Or
7 they were staying -- were they staying there?

8 A. That first night -- that first weekend that we went to
9 the camper they did stay with us.

10 Q. Okay.

11 A. But we did not sleep in the camper that night, we slept
12 in the house.

13 Q. How old are these children?

14 A. At that time eight, seven, and six.

15 Q. Would they play with your half sisters?

16 A. They would.

17 Q. Would they spend time with all of them?

18 A. Pretty much. But they did spend more time with MINOR2
19 and MINOR1 because Laura, I meant, Laura did come over and
20 interact with them, but most of the time she wasn't at the
21 house.

22 Q. There was also testimony that maybe you and MINOR1 were
23 sitting too close together and sitting on a recliner together.
24 Do you recall this?

25 A. There was times that MINOR1 would sit right next to me in

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

153

1 the recliner, yes.

2 Q. Okay. So y'all would sit very closely?

3 A. I meant, it's a recliner. So not on my lap or nothing,
4 but it would be right next to each other, yes.

5 Q. Okay. Did you feel like this was inappropriate?

6 A. Not with everybody in there with us, no.

7 Q. Did y'all ever sit like this alone?

8 A. No, sir.

9 Q. Who all confronted you the night that you were kicked out
10 of Julia's house?

11 A. The night that I got kicked out I was inside. They told
12 me to come inside. So it was Julia, I think her name's
13 Angela, and I think Dana and David were in the house.

14 Q. Did you know what was going on or why they were -- wanted
15 to talk to you?

16 A. No. I didn't know nothing. I just knew that they told
17 me that I had to leave, get my stuff. So I went back out to
18 the camper and left. And that's what I did.

19 Q. Did they claim some type of inappropriate relationship
20 with you and MINORI?

21 A. They did not.

22 Q. Did they mention anything sexual?

23 A. They did not. They just said that us sitting on the bed
24 was inappropriate [sic] watching a movie together.

25 Q. Were you still having this fake electronic relationship

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

154

1 with MINORI?

2 A. Yes, sir.

3 Q. And y'all were texting back and forth?

4 A. Yes, sir.

5 Q. And why were you continuing to do this now?

6 A. 'Cause she was still getting picked on. And I didn't
7 want it to go back to the way it was.

8 Q. How did the kids react when you were kicked out on the
9 12th?

10 A. Well, I mean, I wasn't there, but from what I was told
11 MINORI was screaming and cussing. And they couldn't get her
12 to calm down.

13 Q. Where did you go?

14 A. I did initially go back to Ms. Donna and my dad's house.
15 And when I went back I told her that Julia had a talk with me
16 and she kicked me out. And I was told by Ms. Donna that it
17 would not be a good idea for me to stay there because they
18 were also in the process of trying to get the kids back
19 because they did get took.

20 Q. So where did you move to?

21 A. Well, I actually went to stay in the trailer that was
22 next to my ex because her family had two lake trailers. And
23 she told me I could stay there.

24 Q. Where is that?

25 A. It's on the lake, Lake Greenwood.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

155

1 Q. Throughout the course of these communications with MINORI
2 were some -- first of all, was this -- what phone did she have
3 during the time you left?

4 A. The phone that she initially had was the one that her mom
5 had gave her.

6 Q. Okay. Is that one of the phones that was ---

7 A. I believe it was the Motorola.

8 Q. And were you predominantly texting her as this older
9 boyfriend?

10 A. I was because she had initially told them that I was her
11 boyfriend at the Relay for Life and I was like 17 years old.

12 Q. Would you also text her some though as her brother?

13 A. I would occasionally, yes, sir.

14 Q. Okay.

15 A. She -- that's why I said eventually she did tell a girl
16 named Princess, and I don't know, I think her name was Jacari,
17 I don't really know her name, that I was her brother.

18 Q. What happened to that phone?

19 A. That phone -- October 12th when I was told to leave, I
20 don't know exactly what had happened, but I know it got took
21 by somebody.

22 Q. After you left did MINORI still try to contact you?

23 A. She did. After I left -- or I'm going to back up a
24 little bit. After I left Ms. Donna had told me to call the
25 caseworker when I went to work the next day because she said

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

156

1 that I needed to tell her that my -- their grandma was keeping
2 my siblings, my siblings from me. So that's exactly what I
3 did. So that's when I found out that I was getting accused of
4 this.

5 Q. What is this?

6 A. Allegedly having sex with MINORI.

7 Q. Before then you had no idea someone was accusing you of
8 this, is that correct?

9 A. I did not. I was just told to leave.

10 Q. Is that because it wasn't happening?

11 A. It wasn't happening.

12 Q. So how did MINORI or did MINORI eventually contact you?

13 A. She did eventually, yes, sir, after this.

14 Q. Okay. How did she contact you?

15 A. She had got in touch with a guy at my work. And she
16 would call and she would Facebook him. But most of the time
17 she would call. And he had came and told me when she was on
18 the phone one time when I was at work. And I knew I wasn't
19 supposed to talk to her, but he told me that it was -- she
20 said it was urgent.

21 Q. Why weren't you supposed to talk to her?

22 A. Because I was told not to talk to them or try to see
23 them.

24 Q. By who?

25 A. By the DSS caseworker when I had called her initially and

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

157

1 told her that Ms. Julia was trying to keep them from me.

2 Q. Were you worried about them?

3 A. Absolutely.

4 Q. Did you eventually purchase a second cell phone for

5 **MINORI**?

6 A. I did.

7 Q. And did you deliver it to where she was living?

8 A. Deliver it?

9 Q. Did you take it to her and take it to where she was
10 living?

11 A. Oh, I did. Yes, sir.

12 Q. Where did you put it -- where did you put it or leave it?

13 A. I left it outside her grandma's house by a jet ski, but
14 we did not -- we didn't see each other.

15 Q. Okay. Did you preprogram your number in that phone?

16 A. I did not. She -- she was messaging me from -- before I
17 took it so she would know that I didn't take it. She had
18 messaged me from some guy in the morning at school from some
19 phone.

20 Q. Now you understand you're a grown man in your 20's and
21 we're dealing with a teenager here. Did you think you maybe
22 shouldn't have taken her this phone for communication?

23 A. I shouldn't have, but when she had gotten in touch with
24 me with the guy at work, and I actually initially had talked
25 to her, she had told me that things were way worse than what

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

158

1 they were, and she did not want to be with her grandma. She
2 hated her grandma.

3 And she was talking about hurting herself again like I
4 had witnessed before of her cutting herself. And she was
5 saying that she was going to run away. And when I was in the
6 house I had the same thing, I wanted to run away, too. So I
7 did not want her to do that.

8 So -- but her mom -- she had told me that her mom was
9 supposed to give her a phone, but -- some kind of iPhone or
10 something, but she didn't give it to her or something in time.
11 So she had got in touch with me and asked me could I give her
12 one.

13 Q. You purchased this phone?

14 A. I did.

15 Q. Do you remember what type of phone it was?

16 A. It was a little cheap LG phone.

17 Q. That's the phone that's been admitted into evidence?

18 A. Yes, it is.

19 Q. Okay.

20 A. And I can tell you that when I did purchase it -- all
21 right. Her old phone was StraightTalk. So it was a
22 StraightTalk phone. And she put the card on herself.

23 Q. Did you preload it with any pictures, or any contacts, or
24 anything?

25 A. No, sir.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

159

1 Q. You didn't label yourself as babe or baby?

2 A. No, sir, not in the phone.

3 Q. Did you and **MINORI** start and continue to communicate
4 through this cell phone and this new number?

5 A. We did.

6 Q. Okay.

7 A. And the reason for it is because she had told me things
8 were way worse than what they were, like I said. And her
9 grandma, she hated her grandma. She had talked about cutting
10 herself again. And I already witnessed that with my own eyes
11 that she used to cut herself.

12 Q. You heard testimony that this romantic relationship, this
13 electronic romantic relationship, whatever you want to call
14 it, your fake couple continued on this phone. Why did you
15 keep that going? Or why was that continuing on?

16 A. Because she had told me, like I said, that things had
17 gotten really, really worse. And she was still getting
18 bullied. And her grandma supposedly was going around telling
19 people that she had had sex with her brother.

20 So I didn't want her to go through what I went through.
21 So she had asked me would I -- after I gave her this phone
22 would I keep up with the text messages so things would stay
23 the way they -- the way we were.

24 Q. To your knowledge was she showing others these messages?

25 A. I was told by her that she was.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

160

1 Q. Okay. And you kept this going?

2 A. Yes, sir.

3 Q. Even after you moved out?

4 A. Yes, sir.

5 Q. Okay. Kyle, I'm going to have you read some of these
6 messages that were earlier read by law enforcement. I'm going
7 to show you what's been marked as State's exhibit 20. If you
8 could flip to message number 119. Now would you agree that
9 you are Baby in this phone?

10 A. Yes, sir.

11 Q. Okay. Do you remember that being one of your prior
12 numbers?

13 A. I don't remember the number.

14 Q. Okay.

15 A. I just remember my first one.

16 Q. But reviewing this we could assume that you are Baby?

17 A. Yes.

18 Q. Okay. Number 119, is that something that this phone
19 received?

20 A. Yes.

21 Q. Okay. Read that.

22 A. I really -- I really hope and pray you love me as much as
23 I love you. I would die for you right now because once I
24 realized that I wanted to spend the rest of my life -- rest of
25 my life with -- I want the rest of my life to start as soon as

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

161

1 possible. Words will never tell or show you how much I love
2 you, but my tears are feelings expressed. You are my life and
3 I wouldn't have it any other way.

4 Q. Now does that sound to you like a text that a brother
5 would send his sister or half sister?

6 A. No, sir.

7 Q. Can you explain why you sent that?

8 A. I had sent these initially just like the previous first
9 phone because she was telling me that she was getting picked
10 on really, really bad.

11 Q. So how would -- how would ---

12 A. It had got to the point where she wanted to kill herself.

13 Q. So you were doing this as if you were in a relationship
14 with her?

15 A. Yes. I was pretending I was in a relationship with her.

16 Q. And you did this for what type of benefit to her?

17 A. So she would not harm herself or -- she said she was
18 going to run away all the time. And like I said I witnessed,
19 she used to cut herself.

20 Q. Flip over to 132. Can you read that message, please?

21 A. It says received. I want to be with you now holding you,
22 kissing you. Life isn't fair. I want to come home to you
23 every day for the rest of my life. That would make me happy.

24 Q. Is this around the -- and can you read the date for me?

25 A. 11/17.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

- 1 Q. Is this around the time ---
- 2 A. 2015.
- 3 Q. --- that y'all are acting like husband and wife as well
- 4 as boyfriend and girlfriend online?
- 5 A. It is the same time.
- 6 Q. Okay. Why would you send her something like this?
- 7 A. Same reason the other one. She would show people at
- 8 school. And I didn't go to school with her. I'm just going
- 9 by what I was told by her, but there was some people there --
- 10 I can't remember the girl's -- one of the ones I could
- 11 remember that -- Glady, Gladys, something like that, she was
- 12 one that always picked on her really, really bad. So she had
- 13 said I was cute one time.
- 14 Q. But you understand this is -- this is ---
- 15 A. It looks ---
- 16 Q. --- weird?
- 17 A. Yes. Yes, sir.
- 18 Q. Were you meaning this literally or were you kind of role
- 19 playing here?
- 20 A. This was role playing.
- 21 Q. Okay. So you -- would you ever spend time with MINORI
- 22 when you were with her holding her and kissing her?
- 23 A. No, sir. But I did spend time with her and MINORI --
- 24 yeah, MINOR2
- 25 Q. Before you moved out?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

163

1 A. Yeah.

2 Q. Before you were kicked out?

3 A. Not while this was going on. I'm just saying previous.

4 Q. Okay. Would you flip to 152. Would you read that,
5 please.

6 A. 152?

7 Q. Yes.

8 A. Just buy me something. I'll help with gas. If you want.
9 I love getting things from you. My ring is the best thing
10 anybody's ever bought me. I still wear it. Hairbow and blue
11 one. They love ---

12 Q. I know it's hard to read on that ---

13 A. Yeah.

14 Q. --- because it's broken up. So what ring is being
15 discussed there?

16 A. She -- she had gotten me a ring. I don't know exactly
17 where, but I think it was outside of a Walmart. They had like
18 a little -- like a little Christian thing. And they were
19 selling like five dollar little rings. And she had bought me
20 one.

21 Q. When did she buy you that?

22 A. I can't recall the date.

23 Q. When you were living with them?

24 A. Yes, it was when I was living with them ---

25 Q. And how did you perceive this ring? What was the ring

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

164

1 meant to be?

2 A. It was actually just a brother gift at first. And then
3 she wanted me to wear it like a husband and wife would. And
4 the ring that she initially got for her birthday, she would
5 wear it.

6 Q. The ring that she got for her birthday was a gift from
7 you?

8 A. Yes, sir.

9 Q. Okay. If I could get you to move to 180. I'm going to
10 let you read this one and a couple of more and then come back
11 and explain the context.

12 A. Okay.

13 Q. If you could read 180, please.

14 A. It says, please, I'm sorry. I just don't want to lose
15 you. And I want everybody to know I'm not your brother, I'm
16 your husband. So let's start saying boyfriend and girlfriend
17 like you said. I'm not family, you're my -- I'm your husband.

18 Q. Read that last sentence again.

19 A. I'm not your family, I'm your husband.

20 Q. Okay. And then move to 225. Read 225.

21 A. I'm tired of having -- hiding this from family. We will
22 -- but anybody -- anybody else, no more. You're my wife and
23 I'm proud to tell it.

24 Q. And then read 227, please.

25 A. I'm serious. It's our life, not -- not theirs. So if

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

165

1 I'm on the phone, it's no more sister unless around family.

2 That okay with you?

3 Q. Can you explain that? You talk about wanting to be
4 identified as brother and sister and then you talk about
5 husband and wife. Can you explain the context of those
6 messages?

7 A. Yes. How do I start this? At first, like I initially
8 said she had told her friends about I was her brother. And I
9 didn't want people -- now this is the phone -- the second
10 phone where the message came up on.

11 So she had told me that Julia was already accusing me,
12 her brother, of having sex with her. And she was a school
13 teacher. So MINORI had messaged me and said that -- this is a
14 mess. She had told me that she was getting bullied on because
15 people at school was telling her that I was her brother. So
16 when -- when was the first one so I can go back to it, if you
17 don't mind?

18 Q. The first one was 180.

19 A. So it's, please, I'm sorry. I don't want to lose you.

20 And I want everyone to know I'm not your brother. I was
21 saying that because at that time people were getting -- they
22 were thinking that I was her brother. And this is when I was
23 messaging like I wasn't her brother. So I didn't want her to
24 tell people that I was her brother at that time.

25 Q. Okay. And is this around the same time that y'all had a

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

166

1 joint Facebook account?

2 A. It is. It's actually the same day that -- it's actually
3 the same day that the fake Kanda was -- that -- yeah, it was
4 the same day.

5 Q. So you were keeping a relationship going -- who were you
6 supposed to be in this relationship for her friends? This
7 online relationship?

8 A. Initially it started all the way back til April in the
9 Relay for Life. She had told them that I was her boyfriend
10 and I was 17 years old.

11 Q. Okay. And so you continued to be this 17 year old?

12 A. Yes, sir.

13 Q. There were some testimony about three years. I think the
14 insinuation was that she would be old enough or the age of
15 consent. What was the point of her saying in messages three
16 years?

17 A. She was saying three years because when she had told them
18 initially that I was her boyfriend at the Relay for Life and I
19 was 17 that she was planning on moving out when she had turned
20 17 with this guy.

21 Q. And so what would that mean?

22 A. She was just telling them that she would move out and she
23 wanted to go live with this guy.

24 Q. Let's talk about the Kanda Way Facebook account. I'm
25 going to show you what's been marked as State's exhibit 24.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

167

1 Is that the date that that Facebook account was created? Is
2 there a date on there?

3 A. I see it says generated. Oh, yes. Uh-huh (affirmative).
4 It says registration.

5 Q. Um-hum (affirmative). What date is that?

6 A. 11/17/2015, the same day that the phone message on that
7 one.

8 Q. Who created that Facebook account?

9 A. I did create it.

10 Q. And why did you do that?

11 A. I created it because when she was getting picked on it
12 was my idea to make another Facebook so people could think
13 that we were not as a brother 'cause most people didn't know
14 who I was. But like I said, Princess, she had told, and
15 Jacari, I don't know the other girl's name she had told.

16 So most people didn't know that I was her brother. So we
17 had made a Facebook together. And I created it. And I knew
18 how to put a picture on a Facebook, but she had took two
19 pictures, one of me, one of her and put them together and put
20 it on there.

21 Q. If I could show you that picture would you recognize it?

22 A. Yes, sir.

23 Q. I'll show you what's been marked as State's exhibit 23.
24 Is that the picture in question?

25 A. Yes, sir.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

168

1 Q. Did you make this picture?

2 A. I didn't make the picture, but, I mean, it was a picture
3 of mine with a picture of hers.

4 Q. Okay. And this -- what was -- the reason for this
5 account to be made was to show some fake relationship?

6 A. Yes, that we were together. Yes.

7 Q. You understand this is still ---

8 A. It's very weird. Yes, sir, I understand.

9 Q. Who would post onto the account?

10 A. Both of us would, actually.

11 Q. So you both had access to it?

12 A. That is correct. I initially -- I initially when I had
13 made that Facebook I didn't want people to think that -- like
14 I said, some people thought I was her brother, but most people
15 didn't know I was her brother.

16 So I did act -- I did deactivate my Facebook so people
17 couldn't look it up to see that I was her brother. But they
18 knew the picture because of at the Relay for Life when it had
19 initially started what I looked like.

20 Q. Is that why the account had limited friends?

21 A. That is correct.

22 Q. So it's your testimony that you would post on there as
23 being in a fake romantic relationship with **MINORI** to show her
24 friends this?

25 A. Yes, sir. It was at April when the Relay for Life when

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

169

1 she was getting bullied, it started that day. And the
2 messages went all the way until November, sometime in November
3 -- around November the 17th, somewhere up in there.

4 Q. I'm going to back up one minute and come back to
5 Facebook. You've seen what's been marked as State's exhibit
6 21. Is that a picture of you?

7 A. Yes, sir.

8 Q. And what type of picture -- what was this picture
9 initially used for?

10 A. That picture's one that she -- she initially asked for a
11 picture. And it was actually when I -- I didn't send it like
12 -- I actually had a cheap phone, too. I don't -- that's why I
13 say I don't remember the number when we were messaging on that
14 phone.

15 And I didn't have no pictures on it, so she asked for a
16 picture. And -- to show her friends, I'm assuming. I didn't
17 go into why she wanted a picture. So I did send that one.
18 That was my profile picture at that time on that Facebook
19 before I deactivated it.

20 Q. And why did you choose that picture to send to her?

21 A. It was just the first -- I didn't have no pictures in my
22 phone. I got onto Facebook and there was my profile picture,
23 and I sent it. But after I sent it I knew that it was wrong.
24 And I told her -- I asked her would she delete it.

25 Q. You think it's inappropriate to send a pic without your

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

170

1 shirt on to your ---

2 A. I mean, it's not -- I mean, it's very -- it depends on
3 how you take it. I didn't mean it in inappropriate way, but
4 people could see it as inappropriate way, yes.

5 Q. I'm going to show you what's been marked as State's 25.
6 Is that on the Kanda Way Facebook profile?

7 A. It is.

8 Q. Who was that posted by?

9 A. I didn't -- I didn't do that one.

10 Q. Okay. You've heard testimony of March 13th, 2015 or
11 3/13/15. What does that date mean to you?

12 A. Well, at first I didn't realize until I read the notes
13 and refreshed my memory. But the date that is is when we was
14 at the Relay for Life and she had told people that we
15 allegedly started dating March 13th, 2015.

16 Q. But the Relay for Life was after that date?

17 A. It was, but she had told them -- she had told her friend
18 that's when the relationship had started, but we didn't text
19 message at all, that's just what she was telling them.

20 Q. So y'all kept that going?

21 A. Yes, sir, that date.

22 Q. So that's the only significance?

23 A. Yes, sir.

24 Q. Were you living in the Way home during that date?

25 A. No, sir.

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

171

1 Q. Were you living in the Way home during March?

2 A. No, sir.

3 Q. Did you have sex with MINORI on that date?

4 A. No, sir.

5 Q. You heard Captain Price talk about you coming up and
6 giving a statement.

7 A. I did. Yes, sir.

8 Q. You had already been made aware that there were
9 allegations against you of sex with MINORI, is that correct?

10 A. I did from Ms. Patterson.

11 Q. Which is DSS?

12 A. Yes, sir.

13 Q. Okay. Now this was about two years later, is that
14 correct, when you gave the statement?

15 A. Yes, somewhere up in there. Yes, sir.

16 Q. The statement that was read today that -- is that your
17 statement?

18 A. Yes, sir.

19 Q. Did you admit to anything sexually inappropriate in that
20 statement?

21 A. No, sir.

22 Q. Would you say your testimony today has been similar?

23 A. Yes, sir.

24 Q. Captain Price said that you talked about kissing your
25 sister or sisters. Can you elaborate on that or explain that?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

172

1 A. Yes, sir. The time that I described about my dad saying
2 that I ran the electric bill up because of my PlayStation,
3 that was the time that I was telling them I was going to
4 leave. So I did kiss them, not on the lips, but on the side
5 of the lips over here on the side. And I did describe it as a
6 peck.

7 Q. Okay. And did you talk about holding hands on a track?

8 A. I never said I held hands on that track at the school. I
9 did say that we went to Disney World, we -- me, her, and
10 **MINOR2** did hold hands.

11 Q. Okay. When did y'all go to Disney World?

12 A. I can't recall the date, but it was sometime before my
13 dad got out.

14 Q. Okay. And there was never a time when you were living in
15 the Way home where you perceived them of being scared of you
16 or you threatened or assaulted any of your siblings?

17 A. They've never been scared of me. They've always said
18 they were scared of my dad. Or occasionally **MINOR2** would say
19 that she's scared of her mom because she would slap them, too.

20 Q. Kyle, you understand how these Facebook and messaging
21 relationships can be perceived, don't you?

22 A. Yes, sir. It looks really bad. Yes, sir.

23 Q. Considering your relationship and age?

24 A. Yes, sir.

25 Q. Did you eventually stop doing this?

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

173

1 A. It had stopped -- I can't remember the exact date, but
2 after the second phone had gotten took, I did initially -- she
3 had contacted me again after the second phone got took to get
4 her another phone again. And I wasn't going to 'cause this
5 one's already got caught, and I didn't want -- but I initially
6 did eventually give her another phone.

7 Q. You eventually gave her another phone?

8 A. I did.

9 Q. When was this?

10 A. Probably -- it was sometime after that one got took. I
11 don't know the exact date.

12 Q. Why did you do this?

13 A. Because she had told me the same thing from the previous
14 phone that I had gotten her that she was going to run away.
15 And I didn't want her to run away or hurt herself.

16 Q. There were some texts between the two of you about you
17 coming to pick her up or her running away. Was this after you
18 were kicked out of Ms. Julia's house?

19 A. Pick her up to come run away?

20 Q. That was some communication y'all had.

21 A. Actually that was before.

22 Q. Okay.

23 A. The first message that I got was like in February when I
24 was with Marshall that her mom had slapped her and she was
25 going to run away ---

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

174

1 Q. But you -- but you never picked her up or ---

2 A. No. No, sir.

3 Q. In fact, you never -- did you ever see her after you were
4 kicked out of, I mean, up until this hearing or this trial?

5 A. No, sir, I never saw her.

6 Q. Did you -- you were told to stay away?

7 A. I was told to stay away.

8 Q. Even if you weren't would you have probably stayed away?

9 A. I would have stayed away.

10 Q. All right. The testimony that MINOR2 gave today of

11 MINOR1 being in the room with you, just the two of you, and
12 I'm a little unclear whether she was on top of you or in the
13 bed with you, did that ever happen?

14 A. No, sir.

15 Q. I'm going to ask you one more time, did you ever have any
16 type of sexual relationship with MINOR1 ?

17 A. No, sir.

18 Q. Did you ever kiss her in a way to arouse any type of
19 sexual pleasure, fantasies, or anything?

20 A. No, sir.

21 Q. Was MINOR1 -- was MINOR1 mad that you left?

22 A. From what I've been told, yes, she was.

23 Q. And do you think she's ever forgiven you for leaving and
24 not coming back?

25 A. Mostly I feel that ---

KYLE WAY - DIRECT EXAMINATION BY MR. BISHOP

175

1 **MR. McNAIR:** Objection. Speculation.

2 **THE COURT:** Sustained.

3 **MR. BISHOP:** Your Honor, no further questions.

4 **THE COURT:** All right.

5 Q. Please answer any questions the State may have.

6 **THE COURT:** Mr. McNair.

7 **MR. McNAIR:** You want to take a break?

8 **THE COURT:** Let's take five. We've been going over an
9 hour and a half. So let's take five to refresh yourselves and
10 get you right back in here. Please don't discuss the case.
11 Thank you.

12 **MR. BISHOP:** Can he step down? I'm sorry.

13 (Whereupon the jury exited the courtroom at 3:16 pm)

14 **THE COURT:** Mr. Way, you can step down, just don't
15 discuss your testimony with anyone.

16 **MR. WAY:** Yes, sir.

17 **MR. BISHOP:** I mean, if you want to stay up there, I know
18 you just had surgery.

19 **THE COURT:** All right, folks, we'll just take a very
20 short break.

21 (Whereupon court was in recess at 3:16 pm)

22 (Whereupon court reconvened at 3:26 pm)

23 **THE COURT:** All right. Let's bring the jury out.

24 Assuming they're ready, bring them out.

25 (Whereupon the jury entered the courtroom at 3:26 pm)

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

176

1 **THE COURT:** All right. Mr. Foreman, ladies and gentlemen
2 of the jury, we'll begin where we left off. We were about to
3 begin cross-examination. Mr. McNair.

4 **MR. McNAIR:** Thank you, Your Honor.

5 **CROSS-EXAMINATION BY MR. McNAIR:**

6 Q. Kyle, you initially testified that you are 28 today, but
7 you are actually 32, right?

8 A. Oh, yeah.

9 Q. Okay. You were 28 in 2015, right?

10 A. Yeah, you're right. Yes, sir.

11 Q. And **MINORI** was 13?

12 A. (Affirmative nod).

13 Q. And you had three kids?

14 A. I had -- two were mine.

15 Q. Two of your own, ---

16 A. Yes, sir.

17 Q. --- and one that you thought was yours?

18 A. Yes, sir.

19 Q. You testified that **MINORI** initially got your number off
20 of Facebook?

21 A. Yes, sir.

22 Q. And the first contact she had with you was over Facebook.
23 And she wanted you to come and get her because her mom ---

24 A. It wasn't on her Facebook.

25 Q. Huh?

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

177

1 A. It wasn't on her Facebook. She had texted me and told me
2 that her mom had hit her when I was with my roommate,
3 Marshall, and we had came down.

4 Q. And that was from her number that -- her number that you
5 continued to communicate with her on, right?

6 A. I don't remember -- yeah, sometime ago.

7 Q. Yeah. Okay. Look through all these text messages
8 between you and **MINORI** and you tell me where that text is.

9 (Pause)

10 A. I don't know if it was this phone then. I know for a
11 fact she did.

12 Q. This is her only phone that she ever had until you bought
13 her one.

14 A. She did message me. And me and Marshall went down there.

15 Q. So that message has vanished?

16 A. Or it might have been a Facebook message. I got a
17 message from her. I went down there with Marshall.

18 Q. All right. And we have all her Facebook messages between
19 you and her in evidence. Look through these and you tell me
20 where she says her mama slapped her.

21 A. It might not be in here, but she did.

22 Q. 'Cause it's a lie.

23 A. It's not a lie. It's not a lie. They did it to me.
24 They did it to them, too.

25 Q. If it's not on Facebook, it's not in her phone, where is

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

178

1 it?

2 A. She did do it.

3 Q. How dumb do you think these people are?

4 A. They don't have to be dumb. I'm not calling them dumb.

5 Q. You said at the Saluda Relay for Life you met her friends
6 and they thought you were ---

7 A. Well, I didn't meet her friends. Her friend came up and
8 tapped me on the shoulder. It was one friend.

9 Q. And she thought you were cute.

10 A. She did, yes, sir.

11 Q. All right. And some of those friends that you met were
12 still -- were the ones that bullied her, right?

13 A. I didn't meet no other friends there. I told you only
14 one girl came up and tapped me on the shoulder.

15 Q. And you told that friend you were her brother?

16 A. I did at the time, yes, sir.

17 Q. So at the Saluda Relay for Life what you're saying was in
18 March of 2015 everybody ---

19 A. No, ---

20 Q. --- knew you were her brother?

21 A. I didn't say March. That Relay for Life was in April.

22 Q. That's what you said -- you said that's why this date is
23 significant because it's ---

24 A. It is.

25 Q. --- when you met everybody at the Saluda Relay for Life.

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

179

1 **MR. BISHOP:** Objection.

2 **THE COURT:** I want ---

3 A. I ---

4 **THE COURT:** Hold on. Let me interrupt you for a minute.

5 I want the lawyer to have a chance to ask the question, ---

6 A. Okay.

7 **THE COURT:** --- but I want the witness to have a chance

8 to answer it. So let's not cut each other off. Thank you.

9 Q. Isn't that what you said about this date, that's when
10 everybody thought she was your boyfriend [sic], which was at
11 the Saluda Relay for Life?

12 A. All right. We was at a Relay for Life in April. That's
13 when the text messages started. She had -- a friend had
14 tapped me on the shoulder and told me that initially she had
15 told her that I was her boyfriend, I was 17 years old. And
16 that -- later on in the message, that was the second phone
17 that had got took, that number came up and that was
18 significant. That's the reason why.

19 Q. So best case scenario for you in March or April of 2015
20 you had told her friend you were her brother?

21 A. I didn't talk to her friend. She did the talking.

22 Q. You testified her friend came up to you ---

23 A. Her friend did that day.

24 Q. --- because **MINORI** told her you were ---

25 A. I don't know who she was.

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

180

1 Q. --- her boyfriend.

2 A. I don't know who she was.

3 Q. And you testified that you told that friend that you were
4 her brother.

5 A. I did tell her I was her brother.

6 Q. True or false, did you testify to that?

7 A. That is true. I did tell her I was her brother.

8 Q. Thank you. So in March or April of 2015 her friend knew
9 you were her brother?

10 A. Whoever that was ---

11 Q. True or false?

12 A. That is true then, yeah, in April. 'Cause I said ---

13 Q. So how do all these communications after March or April
14 of 2015 make her appear cool to her friends to be in a
15 relationship with her brother?

16 A. 'Cause that probably wasn't a friend that was bullying
17 her. I didn't know that girl.

18 Q. That girl probably -- she went to the same school, right?

19 A. Yeah, she was ---

20 Q. Okay.

21 A. --- one of her friends.

22 Q. So she knew all the other people at MINORI's school.

23 A. But why would MINORI tell her that I was her boyfriend?

24 Q. That's what you say.

25 A. That is what happened.

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

181

1 Q. MINORI didn't say that. You said that.

2 A. I did.

3 Q. Now your work schedule, you testified, was Monday through
4 Thursday from 4:15 to 4:30 is about when you get off, right?

5 A. Somewhere up in there is when I do get off, Monday
6 through Thursday.

7 Q. Monday through Thursday. I'm going to show you a
8 calendar of March 2015.

9 A. Okay.

10 Q. And what day is March 13th of 2015?

11 A. That is a Friday.

12 Q. Friday?

13 A. Yes.

14 Q. A day you didn't work?

15 A. I do work on Friday.

16 Q. A day that you considered your marriage date to a 13 year
17 old?

18 A. I do work on a Friday, though. Monday through Thursday's
19 different times from a Friday.

20 Q. Kyle, you can't just continue to change your story. You
21 can't keep telling lies to try to help yourself. You said you
22 worked Monday through Thursday.

23 A. It's different time for a Friday.

24 Q. Oh, so now it's -- so now you know you worked Friday on
25 March 13th of 2015?

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

182

1 A. I meant, I have my work -- my work stuff, so if you want
2 to see it wherever they are. I don't know where they are. My
3 work schedule for Friday, I get off at a different time, but I
4 go in the same time. I work five days a week.

5 Q. How dumb do you think these people are?

6 A. I mean, that's what the ---

7 Q. You just ---

8 A. --- Velux schedule is.

9 Q. You testified to something totally different than you
10 just testified to today sitting on that witness stand under
11 oath in front of these people.

12 A. I work Monday through Thursday, and I work Friday.

13 Q. Do you know what a lie is?

14 A. I do know what a lie is.

15 Q. Is it something that just changes depending on what
16 you're asked?

17 A. No.

18 Q. There's one ---

19 A. I'm not lying.

20 Q. --- truth, right? It's not ---

21 A. I'm not ---

22 Q. --- a complicated question.

23 A. --- lying. I'm not lying.

24 Q. You said that the reason you started this Kanda Way
25 Facebook page is because MINORI messaged you and told you she

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

183

1 was getting bullied even worse, right?

2 A. Well, yes. She didn't message, but she actually called
3 me. And that was the same day that the second phone had
4 gotten took. All this happened on the same day. Not ---

5 Q. This wasn't ---

6 A. --- got took.

7 Q. --- the day that ---

8 A. Well, not the second phone got took, but when I gave it
9 to her, which was on the 17th. That's the first day that on
10 the second phone she had started messaging. And that's the
11 same day that the Facebook got posted.

12 Q. Correct. Kanda Way was started on November the ---

13 A. 17th.

14 Q. --- 17th.

15 A. And that's the same day ---

16 Q. And that's the first text on the second phone, November
17 17th.

18 A. That is, yes, sir.

19 Q. So she messaged you from that phone to tell you she was
20 getting bullied even worse?

21 A. No, not -- she was texting me by a guy at work first.
22 She was calling me while I was at work.

23 Q. You said she messaged you.

24 A. Well, she was calling me.

25 Q. Okay. So that's changing now, too?

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

184

1 **MR. BISHOP:** Objection, Your Honor. I believe his
2 testimony was that she was calling him at work.

3 A. I did say that.

4 **THE COURT:** I'll let you address it on redirect.

5 Q. So March 13th of 2015 you got married to a 13 year old?

6 A. That is what it said, but that is not true.

7 Q. On November -- on November 17th you texted her I'm going
8 to get you another necklace Friday engraved saying our names
9 and 3/13/15 forever, correct?

10 A. That was on the second phone, correct. That's what was
11 so significant about that because she had told people that's
12 -- when we had first started dating.

13 Q. Well, by November you had been -- Julia had seen y'all in
14 bed and told you to leave, right?

15 A. But the way you describing in bed, we was on top of the
16 covers, but it wasn't just me and her.

17 Q. I'm not asking you how you were laying in bed, I'm asking
18 ---

19 A. Oh, okay.

20 Q. --- you that Julia had seen y'all in bed and just told
21 you to leave?

22 A. She did, yes, sir.

23 Q. All right. And then she was telling people she thought
24 you were having sex with **MINORI**, right?

25 A. That is right. That's what I was told by **MINORI**.

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

185

1 Q. So after she's telling people that how is this making
2 **MINORI** seem cool at school when her brother wants to buy her a
3 necklace with your names engraved on it saying 3/13/15
4 forever?

5 A. I don't think it says brother in that ---

6 Q. It says saying our names. Your name is Kyle Way and
7 everybody knew you were her brother in March of 2015?

8 A. Everybody didn't know I was her brother.

9 Q. How do you know?

10 A. I meant, I really don't, but how do you know that they
11 didn't?

12 Q. You told her friend at school that you were her brother.

13 A. That's one person.

14 Q. She had other friends.

15 A. How do you know that they were her friends? It's just
16 one person. She did mention -- I told you she mentioned the
17 Princess and Jacari that I was her brother, yes.

18 Q. Her two close friends at school?

19 A. (No response).

20 Q. Now you didn't want her to be brother [sic] to you, you
21 wanted her to be husband [sic], right?

22 A. On the second one, yes, because I didn't want them --
23 because of what was going, on and what Julia accused me of,
24 and saying that I was her brother, and she was having sex with
25 her brother.

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

186

1 Q. Well, actually you started talking about being her
2 husband prior to November, right?

3 A. I -- yes, we did.

4 Q. Okay.

5 A. That was at -- that all started during the Relay for Life
6 in April. That's when the text messages started about I love
7 you.

8 Q. No, I'm talking about being her husband.

9 A. Yeah, I know, but it gradually got to that.

10 Q. All right. So on November 17th you text her, I'm not
11 your brother, I'm your husband. So let's start saying
12 boyfriend and girlfriend like you said. I'm not your family,
13 I'm your husband, okay?

14 A. That was because some people did think that I was her
15 brother, but I didn't know everybody. Like I said, she had
16 told Princess and Jacari that I was her brother.

17 Q. And then another text on November 17th, no more brother
18 unless it's family asking.

19 A. They said that was in November, correct, on the second
20 phone, correct?

21 Q. That was November 17th.

22 A. Yes. That's because some of the people, like I said,
23 Julia had said that I was her brother and she was having sex
24 with her [sic]. And **MINORI** told me that at that time before I
25 gave her the phone that people were saying that she was having

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

187

1 sex with her brother. So I was trying to clarify that because
2 she was showing -- I don't know who she was showing. I didn't
3 want her -- them to think that I was her brother on that
4 second phone.

5 Q. Well, you sent a picture of yourself on the second phone?

6 A. I did.

7 Q. So, I mean, that's pretty obvious you're her brother when
8 you're sending a picture of yourself, isn't it? Tell me this,
9 even if you're not her brother is it cool for a 13 year old
10 girl to date a 28 year old man with three kids?

11 A. That is definitely not cool.

12 Q. Well, how is that making her cool to date a 28 year old
13 man?

14 A. She told them I was 17.

15 Q. That's a 28 year old man.

16 A. I meant, that is me, yes.

17 Q. October 12th, this is on the first phone, ---

18 A. Okay.

19 Q. --- before everything -- before you're saying everybody
20 knows you're her brother ---

21 A. Okay.

22 Q. --- you text I hope you know you're my wife, not
23 girlfriend no more.

24 A. Yes. That's -- that went along with playing -- like what
25 we were doing, playing like boyfriend and girlfriend ---

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

188

1 Q. It says it's cool for a middle schooler to be married.

2 A. It is not cool.

3 Q. Was it cool -- when you were in eighth grade was it cool
4 for people to get married to 28 year olds?

5 A. No.

6 Q. Okay. Have times changed that much that now that's cool
7 in middle school to be married?

8 A. No. But I told you the reason why we started was because
9 she was getting bullied.

10 Q. Excuse me?

11 A. She was getting bullied. And she was cutting herself.

12 Q. Don't you think she'd get bullied more if she were
13 married to a 28 year old man with three kids?

14 A. But didn't she say that -- well, by my saying that she
15 would say that she said it was getting better? And didn't
16 Donna tell me that things looked like they were getting
17 better?

18 Q. How would Donna know things were getting better at
19 school?

20 A. 'Cause of her attitude at home and her grades.

21 Q. Well, you were with her pretty much every day, right?

22 A. It wasn't just me and her, though. **MINOR2** would be with
23 us, too.

24 Q. Once again, you would agree with me it's not cool for a
25 13 year old middle schooler to be married?

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

189

1 A. I agree.

2 Q. Okay. And, in fact, that would cause somebody to get
3 bullied more, right?

4 A. That's not for me to say 'cause I don't know.

5 Q. You were attracted to her, weren't you?

6 A. No. She was my sister.

7 Q. Okay. On October 9th you said good night my sexy wife.

8 A. I told you, we were playing with the text message.

9 Q. On October 12th, good morning beautiful. October 12th,
10 thinking about my sexy wife. October 12th, you're the most
11 beautiful girl in the world, I promise. Then on November 17th
12 you said, you look amazing like always. You're the most
13 beautiful girl in the world to me. Then you said you're
14 forever my beautiful wife. No lying, you are sexy. You were
15 attracted to her.

16 A. Not me as her brother, but as a guy that I was supposed to
17 be at age 17 as she told them, correct. But not as her
18 brother.

19 Q. Well, half of those texts were sent before anybody ever
20 knew you were her brother.

21 A. Correct. Some of them did, but the Princess and Jacari,
22 whatever her name was.

23 Q. And you wanted her to send you pictures, didn't you?

24 A. She asked me for a picture.

25 Q. And you asked her for pictures. So how does her sending

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

190

1 a picture to you make her cool?

2 A. She was just showing friends that -- she was showing --
3 she's the one that asked me for it. And then ---

4 Q. She's saying, hey, look, I'll send a picture of myself to
5 my boyfriend ---

6 A. I don't know what she would say at school. I wasn't with
7 her.

8 Q. How does her sending a picture of herself to you make her
9 cool?

10 A. I don't know, ask her. I don't know.

11 Q. She sent you a pic on November 17th, and you said, wow,
12 baby, you are so beautiful.

13 A. As a reference I was not portried [sic] like I was not
14 her brother, I was her boyfriend ---

15 Q. Okay.

16 A. --- as the 17 year old from the previous phone.

17 Q. You said, you're hot. I'm lucky to be married to you.
18 Then she sent you a picture. And you said, don't cover that
19 beautiful place -- face, please, you are hot. Then on
20 November 17th you sent her a picture of you not wearing a
21 shirt. Then ---

22 A. I told them why I did that.

23 Q. Then you told her if you get caught with that phone, they
24 will know now. So you might need to look at it and delete it
25 and I'll send -- I'll send you more. What will they know? If

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

191

1 the purpose was to show people for her to be cool, what would
2 they know, Kyle?

3 A. I was talking about the family, but Laura and them
4 actually knew about the phone 'cause they all ---

5 Q. The family would know what?

6 A. That if they saw that picture they would know that it was
7 me. But I told you I was trying to portray myself as ---

8 Q. They would know that it was you doing what? Pretending
9 to be her boyfriend? Is that ---

10 A. I meant, yes, the family would.

11 Q. You're helping her, right? You ---

12 A. I was helping her, yes, correct.

13 Q. So why didn't you want them to know?

14 A. Because I was already told not to talk to them. But she
15 had asked me for that phone.

16 Q. You wanted to kiss her, too, didn't you?

17 A. That was portrayed in the text message, but not me, no.

18 Q. October 9th you texted, I want to kiss you. October 10th
19 you texted, I want to kiss you so bad. November 17th you
20 texted, I'm going to wake up beside you every morning and kiss
21 you and tell you how beautiful you are every day.

22 November 17th, I need to kiss you. November 17th, to see
23 you, hold you, kiss you. I would faint and cry. November
24 17th, I want to be with you now holding you, kissing you.
25 November 17th, I'm going to make you feel lucky every day,

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

192

1 bring you breakfast in bed, kiss you, hold you. And these
2 were messages that were sent late at night.

3 A. This was after, too, on the second phone.

4 Q. These were messages sent late at night. So if you're
5 sending them for her just to be cool at school, why are you
6 sending them late at night?

7 A. She was going to school and showing them the next day, I
8 guess. All I know is she wanted me to do it, so I did.

9 Q. All those messages ---

10 A. To help her.

11 Q. All of those you talk about wanting to kiss her one, two,
12 three, four, five times on November 17th. Do you have to send
13 that many messages if you're just trying to make her seem
14 cool? Can't you just say I miss you, I love you?

15 A. I could have, yes.

16 Q. But, no, you tell her multiple times over and over during
17 the course of this relationship that you want to kiss her
18 because that's what you wanted?

19 A. That is not what I wanted.

20 Q. Well, if it's not what you wanted why did you kiss her?

21 A. Because I told you I was portraying myself as a 17 year
22 old that she said I was her boyfriend. And I did not kiss
23 her. I told you that day that I was leaving I kissed her by
24 the side of the lips. And I considered it as a peck. And
25 that was because my dad had confronted me and was kicking me

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

193

1 out.

2 Q. You kissed her on the lips.

3 A. I did not say lips, I said on the side -- on the side
4 over here by her lips. And I ---

5 Q. You told ---

6 A. --- considered it ---

7 Q. --- Captain Price ---

8 A. --- as a ---

9 Q. --- you kissed her twice on the lips.

10 A. I never said that.

11 Q. You're denying that?

12 A. I didn't say that.

13 Q. So Captain Price is lying about that?

14 A. I called it a peck.

15 Q. A peck?

16 A. I did consider it as a peck, but it was not on the lips.

17 Q. All right.

18 A. And even -- he even said that I was holding hands at the
19 track at school. That was not true.

20 Q. Well, you do talk a lot about holding her hand. But you
21 have kissed her ---

22 A. No, I haven't.

23 Q. --- on the lips, right?

24 A. Have I? No, sir.

25 Q. All right. Let's read your texts.

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

194

1 A. Okay.

2 Q. October 9th, not kissing you every day is awful. I hate
3 being in the trailer alone. So you kissed her every day?

4 A. It says that in the text messages, yes, but as I have
5 told you, I was portraying myself as the boy that she said I
6 was as 17.

7 Q. All right. October 10th she texts you, it's going to be
8 hard not seeing you or kissing you every day. And you
9 responded, I know it is. I get kissing on weekends, but maybe
10 you can come live with me. Maybe not -- might not be right
11 now, but maybe soon.

12 A. I was portraying myself as a 17 year old still.

13 Q. Okay. And, again, it's cool for a 13 year old to move in
14 with a 28 year old man ---

15 A. It was ---

16 Q. --- to her friends?

17 A. That is not true. I meant, that's not cool. I wouldn't
18 think that was cool, no, sir. But they didn't know I was 28.

19 Q. When's it cool ---

20 A. I was this 17 year old.

21 Q. It's cool for a 13 year old to move in with a 17 year
22 old?

23 A. It is not, but that's what the whole thing started about
24 was a 17 year old boy she had told them that she was dating.

25 Q. All right. But this is making her cool because she's

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

195

1 going to move in with a 17 year old boy that everybody thought
2 you were at the Saluda Relay for Life, right?

3 A. Yes.

4 Q. Okay.

5 A. That's what ---

6 Q. All right. November 17th, I need to kiss you, to see
7 you, hold you, kiss you. I would faint and cry. We've read
8 those.

9 On October 11th she tells you I'm not staying here
10 without you. It hurts too bad knowing I can't kiss you, or
11 hold you, or see you every day. And you said, I know, me,
12 too. So y'all talked about kissing every day. Correct?

13 A. There was the kissing in the text message, yes.

14 Q. Okay. Then on November 17th you said, I miss our dates.
15 I miss kissing you in front of people, holding your hand while
16 driving, singing in the car with you and holding you while
17 watching movies. Again, we know the answer, this is all just
18 so she would appear to be cool to her middle school friends,
19 right?

20 A. I mean, it went along with all the other stuff. This is
21 the guy that was 17 years old.

22 Q. Seventeen year old that everybody ---

23 A. And she -- she would tell them she would go on dates and
24 stuff with him, yes.

25 Q. The wizard behind the curtain. Now you had also been in

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

196

1 bed with her, right?

2 A. I did say that we were like -- we were in the same bed,
3 but MINOR2 was in the bed, and we slept opposite is what I
4 said.

5 Q. So you what now?

6 A. All right. So when my dad initially came home he
7 couldn't be in the house. Another adult had to be present.
8 But he was coming in and out to use the bathroom and he was
9 not supposed to.

10 So they were scared of my dad. So MINOR2 and MINOR1 came
11 into the room that I was staying in. And MINOR2 slept on the
12 floor and MINOR1 asked could she sleep in the bed. And I told
13 her if she slept opposite of me.

14 Q. Okay. On October 9th you were talking about MINOR1
15 moving to Greenwood with you. And you told her that your mom
16 and dad will say stuff like walked in the house and I was all
17 over you in bed that night.

18 A. That's -- my dad had came in one time and said that he
19 saw us together. But no ---

20 Q. No, these are your words. I was all over you in bed that
21 night. Those are your words.

22 A. I was not all over her in bed that night. I tell you the
23 only time that we were in bed was when my dad was coming in
24 and out of the house. And he was not allowed to come in the
25 house.

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

197

1 Q. The only time you were all over her is when your dad was
2 coming in the house?

3 A. The only time we were in the bed -- then like when MINOR2
4 and them would come into the room and sleep on the floor is
5 when my dad would come in the house and he was allowed to come
6 in the house. And we was ---

7 Q. That's ---

8 A. --- sleeping opposite.

9 Q. I'm reading your words. Do you deny that you texted
10 that?

11 A. I'm not denying that, but that's still going off of when
12 I was portraying myself as a 17 year old boy, yes.

13 Q. Okay. So again, it's cool that her dad walked in while
14 you were all over her in bed that night?

15 A. That doesn't ---

16 Q. A 17 year old was all over ---

17 A. --- sound cool.

18 Q. --- a 13 year old in bed ---

19 A. That does not sound cool.

20 Q. --- and that that's cool to her friends. Got you.

21 October 17th she texted that she misses sleeping with you in
22 her bed. And you say, don't cry. One day I'll be right by
23 you holding you tight.

24 A. Portraying myself as 17, yes.

25 Q. 17?

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

198

1 A. Yes. That's what she initially said.

2 Q. All right. And you were also jealous of her talking to
3 other guys, weren't you?

4 A. I was not jealous of her talking to other guys. Me,
5 myself as Kyle, no.

6 Q. Well, tell me this, if she's getting bullied at school,
7 then if she met a guy or a guy her own age was interested in
8 her, doesn't that -- haven't you accomplished your objective?

9 A. If you're talking about in general the guy named Tanner,
10 one of her friends had actually messaged me now, me as her
11 brother, 'cause this is -- her name was Brianna -- I think her
12 name's Brianna [REDACTED] -- I don't know for a fact her last
13 name, but her first name's Brianna, she was somebody that knew
14 that I was her brother, I'm assuming.

15 So she had got in contact with me and told me that
16 Tanner, I don't know his last name, Tanner [REDACTED] or something
17 like that, which was a guy that [REDACTED] MINORI was talking to, and
18 they were talking about having sex.

19 Q. Who was talking about having sex?

20 A. Tanner and -- Tanner said that's what he was going to do
21 with [REDACTED] MINORI.

22 Q. Where'd you see that?

23 A. That was a -- that was a message.

24 Q. Facebook?

25 A. It was Facebook on my ---

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

199

1 Q. Are you going to be able to find that message if I give
2 you all the Facebook records?

3 A. I ---

4 Q. You think you can find it?

5 A. (No response).

6 Q. Or are you not sure about that?

7 A. I know that she had sent me a message. I can't tell you
8 directly -- I don't know if it was Facebook or what, but I did
9 get a message.

10 Q. All right.

11 A. I meant, how -- I don't -- how would I even know her name
12 because I didn't even know the girl until she messaged.

13 Q. Let's get back to how you felt about her talking to other
14 guys.

15 A. Okay.

16 Q. On October 9th she wanted to work at Tanner's mom's
17 salon. And you said, I don't know. I wish you wouldn't, but
18 do what makes you happy. You aren't going to be around Saluda
19 much. Do you really love me? Or you want someone else like
20 Tanner? Just wondering.

21 A. The same thing about portraying I was 17.

22 Q. Well, she's ---

23 A. That's what all these messages ---

24 Q. --- met a guy her own age now.

25 A. Yeah, but Tanner was the guy that I just told you that --

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

200

1 talking about having -- that Brianna told me they was going to
2 have sex. And I ---

3 Q. Well, ---

4 A. I didn't want that to happen.

5 Q. Okay. Wouldn't it be better for a 13 year old to have
6 sex with another 13 year old than with a ---

7 A. I meant ---

8 Q. --- 17 year old or a 28 year old man?

9 A. That would be, but it's not right for a 13 to have sex
10 with a 13 ---

11 Q. And it dang sure ain't right for a 28 year old man to
12 have sex with a 13 year old, is it?

13 A. You're right.

14 Q. Okay.

15 A. And that did not happen.

16 Q. That's real bad.

17 A. It didn't happen.

18 Q. That's real bad.

19 A. It is bad, but that didn't happen.

20 Q. You also said I've been feeling like lately you like
21 someone else at school. I hope not. You and me are engaged.

22 A. I told you, she had got a ring for her birthday. And she
23 had bought me a ring. And that's what she was telling people
24 at school.

25 Q. But here she is liking other people her own age at

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

201

1 school, why wouldn't you like that? If you wanted her to be
2 cool at school, ---

3 A. I didn't ---

4 Q. --- why wouldn't you like this? She's meeting guys.

5 A. I didn't care that she met other guys. It was just that
6 I told you about the Tanner.

7 Q. October 9th, I'm going to be scared about your exes at
8 school. What if you start to like them? So she had multiple
9 exes, I guess. She had ---

10 A. I'm assuming.

11 Q. --- multiple friends at school.

12 A. I'm assuming.

13 Q. Huh. November 17th, I can't believe you started liking
14 Tanner. You told me you didn't. I just want the truth. It's
15 okay if you did as long as you leave him alone now and promise
16 it's only me.

17 A. I told you I was portraying myself as a 17 year old ---

18 Q. A possessive -- a possessive 17 year old?

19 A. No, ---

20 Q. You wanted her just for you, huh?

21 A. No, I did not.

22 Q. Well, that's what you just said.

23 A. The text messages -- that is not what I wanted myself,
24 personally, no.

25 Q. So you're lying in your texts and you're lying on the

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

202

1 stand?

2 A. I'm not lying on the stand. I'm saying I was portraying
3 myself as a 17 year old. And I knew what Brianna had told me
4 about Tanner.

5 Q. Then you asked her, did you kiss him or hold hands? So
6 you're jealous of Tanner, aren't you?

7 A. I'm not jealous. I was just asking so I would know if
8 they had done something.

9 Q. Well, kissing or holding hands is pretty innocent
10 compared to what we're talking to here, isn't it?

11 A. I meant, yes.

12 Q. And you were scared she'd find somebody else other than
13 you, weren't you?

14 A. I was not.

15 Q. Well, on November 17th you texted her cheating now is
16 having an affair because we're married.

17 A. I was still portraying myself as a 17 year old.

18 Q. Then on November 18th she told you her friend Richard
19 touched her leg. And you said, please don't be liking no one
20 else. So this is another guy who apparently likes ---

21 A. Yeah, but ---

22 Q. --- her at this school.

23 A. --- technically 17 year old wasn't in school or nothing.
24 So ...

25 Q. But this is another guy that likes her at school. I

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

203

1 mean, she -- where's the bullying here?

2 A. The bullying ain't in there 'cause -- she was telling me
3 she was getting bullied. The message was to portray that she
4 would not get bullied because she had a boyfriend that was 17
5 that people thought was ---

6 Q. And of all these 609 messages we have from her Motorola
7 phone and the 509 messages from the LG phone all between you
8 and her where does she tell you she's being bullied?

9 A. She doesn't tell me in those. She had told me before the
10 text messages had started.

11 Q. Not once like, hey, your texts are working. Things are
12 much better at school. There's nothing like that, is there?

13 A. There's calls, though. She used to call me.

14 Q. And you got mad if she didn't wear this ring you bought
15 her, didn't you?

16 A. I was portraying, yes.

17 Q. Well, actually ---

18 A. I ain't going to say I got mad personally, but, yes, sir.

19 Q. Actually you were texting her about that in October. You
20 said, tell me why do you wear rings on your right hand now,
21 really. Then you said, I bet you do that at school, too. Now
22 I'm hurt again. So you're hurt she's not wearing the ring at
23 school. So if you're trying to pretend you're engaged to make
24 her cool, why are you hurt by that?

25 A. I wasn't hurt. I didn't mean it like that. This is the

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

204

1 guy that was supposed to be 17 years old.

2 Q. I'd like to meet this guy. And you wanted her to delete
3 her Facebook and her friends and have a joint account with you
4 with nine random people, correct?

5 A. Yes.

6 Q. Okay. And you ---

7 A. So it could portray the relationship better, yes, that
8 people didn't believe.

9 Q. All right. Well, I mean, on this Kanda Way Facebook site
10 it's got your picture who people knew -- who people had met
11 and knew to be her brother. Your picture is on here. So how
12 are you pretending when your picture is on here?

13 A. Everybody didn't know I was her brother. I told you it
14 was only like -- she only told like two ---

15 Q. Two of her ---

16 A. --- two or three people.

17 Q. At least three of her friends did, right?

18 A. Yes.

19 Q. The Saluda Relay for Life friend, ---

20 A. I didn't ---

21 Q. --- Princess, ---

22 A. --- go to school there, so I don't know.

23 Q. So at least three friends at her school knew you were her
24 brother?

25 A. Yes.

KYLE WAY - CROSS-EXAMINATION BY MR. McNAIR

205

1 Q. And middle schoolers talk. So if they saw your picture
2 and her picture on this site they would know that y'all are
3 pretending to be married.

4 A. So if they had saw it, why didn't nobody say nothing?

5 Q. Excuse me?

6 A. Why didn't nobody say nothing then?

7 Q. Well, you didn't go to middle school.

8 A. I did, but ---

9 Q. You wouldn't know.

10 A. --- you said they would talk.

11 Q. And you created a Facebook email for this Kanda Way site
12 called Cowboyandmermaid31315, right?

13 A. Yes, sir. Initially in April, that's when the alleged
14 like 17 year old came and they started dating that day.

15 Q. And you wanted her to delete her Facebook account and her
16 friends.

17 A. Yes. We both had talked about ---

18 Q. Like if you wanted her to be more popular, why wouldn't
19 you want all of her friends on her Facebook site to see her in
20 this happy relationship with this 17 year old mystery man?

21 A. She had accessed it -- access to it, too, so she could
22 put whoever she wanted to on it at that time.

23 Q. You had nine freaking friends on here who know -- who
24 y'all didn't even know. These are random people. So why did
25 you want her to delete her Facebook with all her friends who