

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable Daniel McLeod Coble, Circuit Court Judge

NAKIA K. JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000553

APPENDIX

KATHRINE H. HUDGINS
Senior 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

D. RUSSELL BARLOW
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State of South Carolina

Court of General Sessions

County of Kershaw

State	)	
	)	
	)	Transcript of Record
v.	)	2014-GS-28-419; 420; 910
	)	
Nakia Johnson	)	
	)	
<u>Defendant.</u>	)	

June 22 - 26, 2015
Kershaw, South Carolina

B E F O R E:

The Honorable Dayet A. Early, III, Judge; and a jury.

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

Nicole Simpson, Assist. Solicitor
Attorney for the State

Kathryn Cavanaugh, Assist. Solicitor
Attorney for the State

Virgin Johnson, Jr., Esquire
Attorney for the Defendant

Corey Williams, Esquire
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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1 (The following proceedings were held June
2 22-26, 2015.)

3 THE COURT: Madam Solicitor, you may call your
4 first case.

5 MS. SIMPSON: Thank you, Your Honor.

6 At this time, the State would call State vs.
7 Nakia Johnson.

8 THE COURT: Pass up the indictments, please,
9 ma'am.

10 MS. SIMPSON: Yes, sir.

11 THE COURT: Ladies and gentlemen of the jury
12 panel, the first case we're going to deal with, the
13 State has called for trial the State of South
14 Carolina vs. Nakia -- that's N-A-K-I-A -- Karreim --
15 K-A-R-R-E-I-M -- Johnson -- J-O-H-N-S-O-N. He's
16 charged in three indictments; Indictment 419 with
17 the offense of criminal sexual conduct with a minor
18 in the first degree; Indictment 420, an indictment
19 for criminal sexual conduct with a minor in the
20 second degree; and in Indictment 910, an indictment
21 for lewd act upon a minor child.

22 Ladies and gentlemen, Mr. Johnson has pled not
23 guilty to all three indictments, and under our
24 constitution, he's presumed to be innocent unless
25 the State is able to prove to a jury of 12 people,

1 beyond a reasonable doubt, the elements of the three
2 offenses outlined in the three indictments.

3 The fact that he's been indicted and charged
4 and arrested and brought into the courtroom, that's
5 not evidence in the case; that's simply the formal
6 documents by way this case comes into the courtroom.
7 So we're going now to select a jury to determine
8 whether or not the State is able to prove to that
9 jury, beyond a reasonable doubt, all elements of all
10 three indictments.

11 In order to do that, I have to ask some
12 questions. If any of the questions apply to you,
13 once again, please stand and identify yourself by
14 name and number and answer the question.

15 Mr. Johnson, would you please stand and face
16 the jury panel.

17 Thank you. You may be seated.

18 Do I have any member of the jury panel who is
19 related by blood or marriage or do you now or have
20 you in the past had a close personal or social
21 relationship with Mr. Nakia Karreim Johnson? If so,
22 please stand.

23 Do not get frightened with the next question.
24 The lawyers are required to list all potential
25 witnesses; that does not necessarily mean they'll

1 call all of them. But let me give you the names of
2 the potential witnesses in the trial of the case.
3 Please listen carefully because at the conclusion of
4 reading the list of the potential witnesses, I will
5 once again ask you that same question: Are you
6 related by blood or marriage now or in the past or
7 do you now or have you in the past had a close
8 personal or social relationship with any of the
9 potential witnesses?

10 If the witnesses are in the courtroom, please
11 stand as I call your name. Dr. James Ruffin,
12 R-U-F-F-I-N; Chris Phillips, Chief Marvin Williams,
13 Brenda Taylor, Thomas Riser, Nikki Chisolm, a
14 representative from AT&T unnamed, I assume some type
15 of records custodian.

16 MR. JOHNSON: Yes, Your Honor.

17 THE COURT: Lieutenant Patrick Hickmon, Jerry
18 Barnwell, William West, Ron Fountain, Rick Bailey,
19 Bark [sic], B-A-R-K, Cave.

20 You are, sir?

21 MR. BAILEY: I'm Investigator Rick Bailey, Your
22 Honor.

23 THE COURT: Thank you.

24 Stephanie M. Stanley, Paul Meah, M-E-A-H; David
25 Kellin, Laurie Caldwell, Valerie Williams, Melissa

1 Hall, Louise Pinkney. Some of these names might be
2 redundant: Investigator Steve Knafelc,
3 K-N-A-F-E-L-C; Katherine Iseman, Mary Beth Eubanks,
4 Karen Price, Chris Phillips, Lieutenant Patrick
5 Harmon, Investigator David Capps, SLED Agent James
6 Ethridge, SLED Agent John Branham, SLED Agent
7 Richard Johnson, SLED Captain Ryan Neil, SLED
8 employee Valerie Williams, SLED employee Nikki
9 Hughes, SLED employee Betty Butler, SLED employee
10 Stephanie Stanley, SLED employee Britt Dove, SLED
11 employee Bart Cave, SLED employee Patricia Crooks,
12 SLED employee Amy Stephens, Laurie Caldwell -- I've
13 already called her -- David Kellin, Temple Halt
14 [sic], Minor [REDACTED] William Hall, Stacey Hall,
15 Melissa Hall, Rhonda Smart, Dr. Susan Luberoff,
16 L-U-B-E-R-O-F-F; Dr. Alison Foster, and Ron
17 Fountain.

18 Any member of the jury panel related by blood
19 or marriage or do you now or have you in the past
20 had a close personal or social relationship with any
21 of the witnesses? If so, please stand.

22 The State of South Carolina will be represented
23 by two assistant solicitors from the Fifth Circuit,
24 MS. Nicole Simpson and Ms. Kathryn Cavanaugh.

25 Mr. Johnson is represented by Virgin Johnson

1 from the lower part of the state in Hampton County
2 with his associate or partner Mr. Corey Williams,
3 also from the lower part of the state; Hampton
4 County, Barnwell County, Orangeburg County.

5 Question: Any member of the jury panel now or
6 in the past had legal services performed for you by
7 any of the lawyers? If so, please stand.

8 Do I have any member of the jury panel who is
9 related by blood or marriage or do you now or have
10 you in the past had a close personal relationship
11 with any of the lawyers in the case? If so, please
12 stand.

13 Ladies and gentlemen, it's alleged -- and these
14 are simply allegations. But it is alleged in these
15 indictments that here in Kershaw County, between
16 January 1 of the year 2007 and October 15 of the
17 year 2010 that the defendant allegedly engaged in
18 sexual battery -- which I will define to you -- with
19 a minor who was under the age of 11; her name is
20 Minor -- Minor That's the
21 indictment for criminal sexual conduct with a minor
22 in the first degree.

23 The indictment for criminal sexual conduct with
24 a minor in the second degree, it is further alleged
25 that Mr. Johnson did, here in Kershaw County,

1 between October 16 of 2010 and October 11 of 2011,
2 engaged in sexual battery with a child who was 14
3 years of age or less, but more than 11 or at least
4 11 -- between 11 and 14; same child, Minor

5 And the third indictment is the indictment for
6 lewd act upon a child. It is alleged that
7 Mr. Johnson, being over 14 years of age, between
8 January 1 of 2007 and October 11, 2011, committed
9 certain lewd and lascivious acts upon the body of
10 that child who was less than 16, the child being
11 Minor with intent of arousing or appealing
12 to or satisfying lust, passions or social desires of
13 both the defendant and/or the victim; in other
14 words, this is a case that it's alleged that the
15 defendant has committed sexual battery at various
16 times, committed lewd acts at various times here in
17 Kershaw County, going back as far as January 1,
18 2007, running through October 11, 2011. That's
19 simply allegations.

20 The State has the burden of proving those
21 allegations to you beyond a reasonable doubt. But
22 my question is this: Do I have any member of the
23 jury panel who has heard anything about this case,
24 read anything about it, seen it on the internet, TV;
25 anybody talk with you, discussed it with you, know

1 any of the facts, know anything at all about this
2 case? If so, please stand.

3 Do I have any member of the jury panel who was
4 a member of the Kershaw County Grand Jury during the
5 year of May 2014? If so, please stand.

6 Ladies and gentlemen, let me sort of tell you
7 how the system works. When we have a case such as
8 this or any criminal case in the state -- I go all
9 over the state trying cases. We were in Aiken last
10 week trying -- I forgot what it was. But it's the
11 same whether we're in Richland County or Charleston
12 County or wherever.

13 When we try a case under our system, we have
14 two judges in the trial of the case. The law makes
15 my position -- I'm the judge of the law in the case.
16 I tell you or I instruct you what the law is and you
17 take an oath to accept the law as I give it to you.
18 So I'm the judge of the law in the case.

19 My other responsibility is to make sure the
20 lawyers play within the rules; and that simply means
21 they have to ask their questions so their questions
22 comply with the rules of evidence. And as long as
23 they do that, then whatever is testified here on the
24 witness stand is admitted; those are facts that are
25 admitted to the trial of the case. And it is not

1 unusual for one person to say one thing, it's
2 admitted, proper questions, and the next witness say
3 something completely different, it's admitted, it's
4 a proper question, but you got one person saying one
5 thing and one person saying another, and then you'll
6 have witnesses all the way in between.

7 So that's where the second judge comes in, and
8 that second judge is the most important judge in the
9 trial of the case. And that judge is the judge of
10 the facts. That judge listens to the witnesses and
11 uses their common sense to determine the
12 believability or the credibility of the witnesses
13 who testify in the case and determine what the true
14 facts are, and then take those through facts and
15 apply it to the law as I give it to you. And then
16 you'll be in a position to render a true and just
17 verdict. The word verdict means to speak the truth.

18 That judge is you; 12 jurors collectively
19 acting as one, you are the judges of the facts. You
20 are the judges of the facts. You have the most
21 important job in the courtroom. We have a wonderful
22 system of justice when someone is accused of a
23 crime, they plead not guilty, they come before 12
24 citizens of the community to decide what the true
25 facts are. They don't come before a dictator or a

1 firing squad or other element, they use citizens of
2 their own community to make that decision.

3 So having explained that, my question is
4 simple: Do I have any member of this jury panel who
5 for any reason whatsoever is unable to perform this
6 civic duty of listening to the evidence and
7 determining what evidence convinces you of its truth
8 and applying those true facts to the law as I give
9 it to you? It may be a personal belief, it may be
10 something that's happened to you in your past, it
11 may be a religious belief, a political belief, any
12 kind of belief. Do I have anyone who cannot perform
13 this important civic duty because of some belief? I
14 need to know now before we get into the trial of the
15 case.

16 POTENTIAL JUROR: Can I approach the bench?

17 THE COURT: You may.

18 Good morning. What is your name, ma'am?

19 POTENTIAL JUROR: Judy Logan.

20 THE COURT: What's your number?

21 POTENTIAL JUROR: 96.

22 THE COURT: What's going on, Ms. Logan?

23 POTENTIAL JUROR: I was abused as a child, so
24 I'm very prejudiced about it.

25 THE COURT: I understand. It's oftentimes in

1 these types of cases we have that situation.

2 POTENTIAL JUROR: I'd be very partial.

3 THE COURT: All right. What's your number?

4 POTENTIAL JUROR: 96.

5 THE COURT: All right. 96 is excused.

6 POTENTIAL JUROR: Thank you.

7 THE COURT: Good morning.

8 POTENTIAL JUROR: Good morning. I was abused
9 as a child.

10 THE COURT: What number are you?

11 POTENTIAL JUROR: 15.

12 THE COURT: All right. Number 15 is excused.
13 Good morning. How are you?

14 POTENTIAL JUROR: Doing fine. Carolyn Drake,
15 number 42. I was involved in domestic violence and
16 emotionally I just can't do this.

17 THE COURT: Thank you. I'll excuse you. That
18 was 42.

19 Good morning.

20 POTENTIAL JUROR: Good morning.

21 THE COURT: Your name?

22 POTENTIAL JUROR: (Whispers in Court's ear.)

23 THE COURT: What number are you?

24 POTENTIAL JUROR: 116.

25 THE COURT: 116. Yes, ma'am, you can tell me.

1 POTENTIAL JUROR: (Whispers in Court's ear.)
2 THE COURT: I understand. You don't need to
3 tell me any more.
4 POTENTIAL JUROR: Thank you.
5 THE COURT: 116 is excused.
6 POTENTIAL JUROR: I'm dismissed?
7 THE COURT: No, ma'am. You're excused from
8 this trial. But I got two juries to pick. So you
9 might can help me on the second one.
10 Good morning.
11 POTENTIAL JUROR: Good morning. Child
12 molestation --
13 THE COURT: What number?
14 POTENTIAL JUROR: 144.
15 THE COURT: And you just don't think you can
16 serve on this trial?
17 POTENTIAL JUROR: I don't think I can be
18 honest.
19 THE COURT: Thank you. Have a seat and I'll
20 see if we can use you on the next one.
21 Good morning. How are you?
22 POTENTIAL JUROR: Good morning.
23 THE COURT: What's your number?
24 POTENTIAL JUROR: 158.
25 THE COURT: What's going on, Ms. Smith?

1 POTENTIAL JUROR: Your Honor, Friday I spoke to
2 you because -- about my mom. She passed away.

3 THE COURT: Okay. So you need to be off on
4 Friday?

5 POTENTIAL JUROR: Yes, because I won't be back
6 until Sunday.

7 THE COURT: I'll make sure you're not here on
8 Friday.

9 POTENTIAL JUROR: Good morning.

10 THE COURT: Good morning. Name, please?

11 POTENTIAL JUROR: Wyatt Ogle, number 129.

12 THE COURT: Yes, sir.

13 POTENTIAL JUROR: When I was younger, my dad
14 was arrested for sexual abuse allegations.

15 THE COURT: And you think that would influence
16 you not being able to be fair?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: All right. 129 is excused for this
19 trial. You have to stay with me now.

20 Good morning. What's your number?

21 POTENTIAL JUROR: 109. I think I know one the
22 officers.

23 THE COURT: Which one?

24 POTENTIAL JUROR: Officer Bailey.

25 THE COURT: It's not unusual to know witnesses.

1 The fact that you know him, would that keep you from
2 being able to listen to everybody and decide the
3 case based on what you hear in the courtroom?

4 POTENTIAL JUROR: No, sir.

5 THE COURT: You can do that; right?

6 POTENTIAL JUROR: Yes, sir.

7 THE COURT: Thank you very much.

8 Ladies and gentlemen, I forgot to mention one
9 witness, **Nakia J. [REDACTED]**. Anybody related by blood or
10 marriage now or in the past or have a close personal
11 relationship with **Nakia J. [REDACTED]**?

12 The last question I asked about any personal
13 beliefs that would keep you from being a fair and
14 impartial juror in this case, obviously these types
15 of cases are difficult cases, to be honest with you,
16 and oftentimes people have life experiences that
17 preclude them from just being able to be objective
18 and fair because some things that they've
19 experienced personally. If anyone who did not come
20 up has had personal experiences that you think would
21 keep you from being fair and impartial, I would ask
22 that you come up now. I know most people have come
23 up already, but anyone who did not come up, I would
24 welcome that at this time.

25 All right. Bear with me just a few more

1 minutes and we'll be ready to draw the jury. Other
2 than the people who have been up here, do I have any
3 member of the jury panel, you or any member of your
4 family ever been the victim of a sexual assault?
5 All right. Do you want to talk to me personally or
6 up here -- those who have been the victim of a
7 sexual assault, if they would come forward, please.
8 Those of you who have just raised your hand, walk up
9 here, if you would, please.

10 POTENTIAL JUROR: Good morning, Your Honor.

11 THE COURT: Your number, please?

12 POTENTIAL JUROR: 26, John Clarke. My
13 step-daughter was sexually assaulted about seven
14 years ago.

15 THE COURT: The fact that you went through that
16 with your step-daughter, would you be able to set
17 that aside and be a fair and impartial juror and
18 decide this case?

19 POTENTIAL JUROR: Yes, sir. It was actually
20 before I became her step-dad. I just wanted to make
21 sure you knew that.

22 THE COURT: Thank you very much.

23 Good morning.

24 POTENTIAL JUROR: 163, Kevin Stogner. My
25 mother was sexually assaulted by her grandfather.

1 THE COURT: Your mother by her grandmother?

2 POTENTIAL JUROR: Her grandfather.

3 THE COURT: The fact that you've had the
4 experience in your family, would you be able to set
5 that aside and decide this case based solely on the
6 evidence that's presented in the courtroom?

7 POTENTIAL JUROR: I think so.

8 THE COURT: Thank you very much.

9 Good morning. How are you?

10 POTENTIAL JUROR: Fine.

11 THE COURT: What's your number, please?

12 POTENTIAL JUROR: 78 --

13 THE COURT: Tell me what's going on.

14 POTENTIAL JUROR: I had a sister and my
15 daughter that were raped.

16 THE COURT: The fact that you've been through
17 that experience, would you be able to set that aside
18 and decide this case based solely on what you hear
19 in the courtroom?

20 POTENTIAL JUROR: Yes, sir.

21 THE COURT: Thank you. You may have a seat.

22 Anyone else who want to speak to me in private?

23 Yes, sir.

24 POTENTIAL JUROR: Wesly Duncan, number 48.

25 THE COURT: Mr. Duncan, how are you?

1 POTENTIAL JUROR: I'm just fine.

2 THE COURT: What's your situation?

3 POTENTIAL JUROR: My daughter was raped.

4 THE COURT: And the fact that you had to go
5 through that unpleasant experience, would you be
6 able to set that aside and decide this case based
7 solely on what's presented in the courtroom.

8 POTENTIAL JUROR: I'll try.

9 THE COURT: I know you'll try. I need to know
10 yes or no.

11 POTENTIAL JUROR: Yes.

12 THE COURT: Thank you. You may be seated.

13 Anybody else who wants to discuss anything
14 personal in nature with me?

15 All right. Do I have any member of the jury
16 panel, you or your immediately family is employed in
17 law enforcement? In other words, you got a husband
18 or wife or children or brothers or sisters and so
19 forth that work in law enforcement, sheriff's
20 department, highway patrol, SLED, FBI? Anyone with
21 family in law enforcement, please stand.

22 Yes, sir, on the front.

23 POTENTIAL JUROR: Clifford Belmore, my
24 son-in-law is a Massachusetts State Trooper.

25 THE COURT: Your number, please.

1 POTENTIAL JUROR: Number 6.

2 THE COURT: Sir, the fact that you have a
3 son-in-law that's a Massachusetts State Trooper,
4 would that in any way keep you from being a fair and
5 impartial juror?

6 POTENTIAL JUROR: I think it would, sir.

7 THE COURT: The fact that he's in law
8 enforcement would keep you from being a good citizen
9 and --

10 POTENTIAL JUROR: Well, just that I've heard a
11 lot of stories and I --

12 THE COURT: What's your number?

13 POTENTIAL JUROR: Number 6.

14 THE COURT: Set him aside from this case.
15 Stay with me though.

16 Your name and number?

17 POTENTIAL JUROR: John Clarke, number 26. My
18 wife works as a 911 dispatcher for Kershaw County.

19 THE COURT: Is this a county sheriff's case?

20 MS. SIMPSON: Yes, Your Honor.

21 THE COURT: All right. What's your number,
22 sir?

23 POTENTIAL JUROR: 26.

24 THE COURT: I'm going to excuse 26 for this
25 case. His wife works for the sheriff's department.

1 Yes, ma'am.

2 POTENTIAL JUROR: I don't know if it counts or
3 not, but I have a brother-in-law who is a judge.

4 THE COURT: Where is he a judge?

5 POTENTIAL JUROR: He works here, Kershaw
6 County.

7 THE COURT: Is he a magistrate?

8 POTENTIAL JUROR: I don't know.

9 UNIDENTIFIED SPEAKER: I think that's Judge
10 Davis, Judge.

11 THE COURT: And your name, ma'am?

12 POTENTIAL JUROR: Wanda S. Carter, Juror 23.

13 THE COURT: Ms. Carter, the fact that you have
14 a brother who is a judge, would that in any way keep
15 you from being able to sit and listen to the
16 evidence and decide this case based on what you hear
17 in this courtroom?

18 POTENTIAL JUROR: No problem.

19 THE COURT: I didn't think so. Thank you.

20 Yes, ma'am.

21 POTENTIAL JUROR: Juror 47, Tsiporaha Duncan.
22 My sister is a law enforcement victim advocate for
23 the City of Columbia.

24 THE COURT: And the fact that you have a sister
25 that works in law enforcement for the City of

1 Columbia, would that in any way keep you from being
2 a fair and impartial juror?

3 POTENTIAL JUROR: No, Your Honor.

4 THE COURT: Thank you.

5 You, sir.

6 POTENTIAL JUROR: Juror 154, Joseph
7 Satterfield. I have a niece that's a Richland
8 County sheriff's deputy.

9 THE COURT: The fact that you have a niece with
10 the Richland County Sheriff's Department, would that
11 in any way preclude you from being a fair and
12 impartial juror?

13 POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you. You may be seated.

15 Do I have any member of the jury panel that is
16 a member of or a contributor to organizations that
17 have as their primary function the enforcement of
18 law; CAVE, MADD, SADD, or any other sort of similar
19 organizations? If so, please stand.

20 Ladies and gentlemen, I will conclude with
21 this: My job, my main job as a judge, is to ensure
22 that when someone is accused of a crime, that they
23 receive a fair trial. And at the heart of that fair
24 trial is a jury that can be fair and impartial and
25 try this case solely based on the evidence that's

1 presented in the courtroom, not influenced by
2 anything on the outside.

3 So my last question to you is this: Do I have
4 any member of the jury panel who knows of any reason
5 whatsoever, other than those I've already excused,
6 why he or she cannot serve as a juror and perform
7 your task of determining what the true facts are and
8 be fair both to the State and to the defendant?
9 Does anybody know of any reason in the world that
10 you can't do that, under the sun, in the world?

11 Any additional questions by the State?

12 MS. SIMPSON: Yes, Your Honor. May we
13 approach?

14 THE COURT: Yes, ma'am.

15 (Sidebar conference.)

16 THE COURT: Any additional questions by the
17 Defense? I know you have presented to me a voir
18 dire, and we'll make that part of the record. Even
19 though I didn't ask all of it specifically, I think
20 I covered substantively everything. But you can
21 make that part of the record so you're protected on
22 that, Mr. Johnson.

23 MR. JOHNSON: Thank you, Your Honor.

24 THE COURT: Any member of the jury panel, you
25 or your immediate family belong to an organization

1 known as the Innocence Project or anything similar
2 to that which supports prisoners' rights?

3 Any additional questions by the State?

4 MS. SIMPSON: No, Your Honor.

5 THE COURT: And you can make the one I didn't
6 ask part of the record, and you're protected on
7 that.

8 MS. SIMPSON: Thank you.

9 THE COURT: All right. Ladies and gentlemen,
10 the way we draw a case in general sessions, a
11 criminal case, is this: The Clerk now is
12 programming in the computer -- believe it or not,
13 for about 35 years as I practiced and became a judge
14 11 years ago, you go around the state and people
15 have cigar boxes or a little box up there and they
16 reach up and draw the names out. And there used to
17 be a statute that said it had to be by a blind
18 person or a child under the age of seven. I think
19 they finally got rid of that. But, lo and behold,
20 all of the counties have gone to computers. And we
21 now put them in the computer and it's a random
22 selection. And once we get the random selection
23 completed, the Clerk will call your name.

24 If you are called, would you please come down
25 through that little gate over here and stand right

1 in front of the attorneys table. They'll show you
2 where. And the State has five strikes, the
3 defendant has ten. And they can strike you for most
4 any reason or no reason at all, except within
5 certain bounds and the lawyers all know what the
6 bounds are. So don't get offended if you're struck.

7 What we'll do is go through that exercise until
8 we end up with 12 jurors and two alternates. So as
9 your name is called, please come forward.

10 THE CLERK: Number 13, Kimberley D. Branham.

11 (Ms. Branham comes forward.)

12 THE CLERK: What say the State?

13 MS. SIMPSON: Please present this juror.

14 THE CLERK: What say the Defense?

15 MR. JOHNSON: Please swear the juror.

16 THE CLERK: Thank you.

17 Number 78, Eugene W. Johnson.

18 (Mr. Johnson comes forward.)

19 THE CLERK: What say the State?

20 MS. SIMPSON: Please excuse the juror.

21 THE CLERK: Thank you.

22 172, Deloris A. Thompson.

23 (Ms. Thompson comes forward.)

24 THE CLERK: What say the State?

25 MS. SIMPSON: Please present the juror.

1 THE CLERK: What say the Defense?

2 MR. JOHNSON: Please excuse Ms. Thompson from
3 this trial.

4 THE CLERK: Thank you.

5 Number 47, Tsiporaha D. Duncan.

6 (Ms. Duncan comes forward.)

7 THE CLERK: What say the State?

8 MS. SIMPSON: Please present the juror.

9 THE CLERK: What say the Defense?

10 MR. JOHNSON: Please excuse number 47, please.

11 THE CLERK: Thank you.

12 Number 91, Todd A. Leger, Jr.

13 (Mr. Leger comes forward.)

14 THE CLERK: What say the State?

15 MS. SIMPSON: Please excuse the juror.

16 THE CLERK: Thank you.

17 Number 48, Wesly K. Duncan.

18 (Mr. Duncan comes forward.)

19 THE CLERK: What say the State?

20 MS. SIMPSON: Please present the juror.

21 THE CLERK: What say the Defense?

22 MR. JOHNSON: Please excuse the juror from this
23 trial.

24 THE CLERK: Thank you.

25 Number 81, Jason O. Jordan.

1 (Mr. Jordan comes forward.)
2 THE CLERK: What say the State?
3 MS. SIMPSON: Please present the juror.
4 THE CLERK: What say for the Defense?
5 MR. JOHNSON: Please swear the juror.
6 THE CLERK: Thank you.
7 Number 35, Timothy F. Davis.
8 (Mr. Davis comes forward.)
9 THE CLERK: What say the State?
10 MS. SIMPSON: Please present the juror.
11 THE CLERK: What say the Defense?
12 MR. JOHNSON: Please swear the juror.
13 THE CLERK: Thank you.
14 Number 23, Wanda S. Carter.
15 (Ms. Carter comes forward.)
16 THE CLERK: What say the State?
17 MS. SIMPSON: Please present the juror.
18 THE CLERK: What say the defense?
19 MR. JOHNSON: Please swear the juror.
20 THE CLERK: Thank you.
21 Number 5, Shannon D. Bailey.
22 (Ms. Bailey comes forward.)
23 THE CLERK: What say the State?
24 MS. SIMPSON: Please present the juror.
25 THE CLERK: What say the Defense?

1 MR. JOHNSON: Please swear the juror.
2 THE CLERK: Thank you.
3 Number 151, Charlie M. Salmond.
4 (Mr. Salmond comes forward.)
5 THE CLERK: What say the State?
6 MS. SIMPSON: Please excuse the juror.
7 THE CLERK: Thank you.
8 Number 22, Lisa M. Carter.
9 (Ms. Carter comes forward.)
10 THE CLERK: What say the State?
11 MS. SIMPSON: Please present the juror.
12 THE CLERK: What say the Defense?
13 MR. JOHNSON: Please excuse Ms. Carter from the
14 trial.
15 THE CLERK: Thank you.
16 Number 141, Davis S. Price.
17 (Mr. Price comes forward.)
18 THE CLERK: What say the State?
19 MS. SIMPSON: Please present the juror.
20 THE CLERK: What say the Defense?
21 MR. JOHNSON: Please swear the juror.
22 THE CLERK: Thank you.
23 Number 33, Katinia B. Davis.
24 (Ms. Davis comes forward.)
25 THE CLERK: What say the State?

1 MS. SIMPSON: Please present the juror.
2 THE CLERK: What say the Defense?
3 MR. JOHNSON: Please swear the juror.
4 THE CLERK: Thank you.
5 Number 154, Joseph S. Satterfield.
6 (Mr. Satterfield comes forward.)
7 THE CLERK: What say the State?
8 MS. SIMPSON: Please present the juror.
9 THE CLERK: What say the Defense?
10 MR. JOHNSON: Please excuse Mr. Satterfield
11 from this trial.
12 THE CLERK: Thank you.
13 Number 101, Charlene M. Martin.
14 (Ms. Martin comes forward.)
15 THE CLERK: What say the State?
16 MS. SIMPSON: Please present the juror.
17 THE CLERK: What say the Defense?
18 MR. JOHNSON: Please swear the juror.
19 THE CLERK: Thank you.
20 Number 97, Paula S. Lyles.
21 (Ms. Lyles comes forward.)
22 THE CLERK: What say the State?
23 MS. SIMPSON: Please present the juror.
24 THE CLERK: What say the Defense?
25 MR. JOHNSON: Please swear the juror.

1 THE CLERK: Thank you.
2 Number 75, Jamelia James.
3 (Ms. James comes forward.)
4 THE CLERK: What say the State?
5 MS. SIMPSON: Please present the juror.
6 THE CLERK: What say the Defense?
7 MR. JOHNSON: Please swear the juror.
8 THE CLERK: Thank you.
9 Number 38, Irving G. Dial, Jr.
10 (Mr. Dial comes forward.)
11 THE CLERK: What say the State?
12 MS. SIMPSON: Please present the juror.
13 THE CLERK: What say the Defense?
14 MR. JOHNSON: I'm sorry. I could not hear his
15 number. Could you please tell me?
16 THE CLERK: 38.
17 MR. JOHNSON: Please swear the juror.
18 THE CLERK: Thank you.
19 184, Denice M. Waris.
20 (Ms. Waris comes forward.)
21 THE CLERK: What say the State?
22 MS. SIMPSON: What was her number?
23 THE CLERK: 184.
24 MS. SIMPSON: Please present the juror.
25 THE CLERK: What say the defense?

1 MR. JOHNSON: Please excuse the juror.
2 THE CLERK: Thank you.
3 Number 138, Christopher S. Philyaw.
4 (Mr. Philyaw comes forward.)
5 THE CLERK: What say the State?
6 MS. SIMPSON: Please present the juror.
7 THE CLERK: What say the Defense?
8 MR. JOHNSON: Please swear the juror.
9 THE CLERK: Thank you.
10 THE COURT: Two alternates; two and one.
11 THE CLERK: Number 186, William R. Weir, Jr.
12 (Mr. Weir comes forward.)
13 THE CLERK: What say the State?
14 MS. SIMPSON: Please excuse the juror.
15 THE CLERK: Thank you.
16 Number 107, Victor A. Martinez.
17 (Mr. Martinez comes forward.)
18 THE CLERK: Does the State challenge this
19 juror?
20 MS. SIMPSON: Please present the juror.
21 MR. JOHNSON: Please swear the juror.
22 THE CLERK: Thank you.
23 Number 80, Earnest D. Jones.
24 (Mr. Jones comes forward.)
25 THE CLERK: What say the State?

1 MS. SIMPSON: Please excuse the juror.

2 THE CLERK: Thank you.

3 Number 161, Caitlin B. Sowell.

4 (Ms. Sowell comes forward.)

5 THE CLERK: Does the State challenge this
6 juror?

7 MS. SIMPSON: Please present this juror.

8 THE CLERK: What say the Defense?

9 MR. JOHNSON: Please swear the juror.

10 THE CLERK: Thank you.

11 THE COURT: Any motions by the State in
12 connection with the selection of the jury?

13 MS. SIMPSON: No, Your Honor.

14 THE COURT: Mr. Johnson?

15 MR. JOHNSON: None, Your Honor.

16 THE COURT: Thank you.

17 All right. I'm going to let y'all step back in
18 the jury room for just a second and I'll be back in
19 about five minutes to tell you what time to report
20 back.

21 Ladies and gentlemen of the jury panel, I'm
22 going to ask you to do something I normally don't
23 do: Step out in the hall for about five minutes and
24 that may -- we got one matter we've got to discuss,
25 and it may preclude us from having to use you at

1 all. Give me ten minutes.

2 (Jury panel exits the courtroom at 12:05 PM.)

3 (Jury panel enters the courtroom at 12:12 PM.)

4 THE COURT: Ladies and gentlemen of the jury
5 panel, in order to be efficient with your time, it
6 may very well be that I will not need you anymore
7 this week, but I won't know until this afternoon.
8 So I'm not going to sit here and pick another jury
9 if I don't need it. I'm about 90-percent sure I
10 will not need you; however, out of an abundance of
11 caution, will you please call back after 6:00 this
12 evening to receive the message which will either be
13 you're excused for the balance of the week or that
14 Judge needs you at such-and-such time. There's no
15 sense in sitting here waiting til we get everything
16 ironed out if I don't need you.

17 So I've already got one jury. This case will
18 probably take us a couple days to try, so if I need
19 you, it won't be until sometime Thursday. We'll
20 see. But I don't want you sitting here and waiting
21 for us to make all those decisions. If I don't get
22 to see you again, I thank you for being here. Thank
23 y'all very much. It's nice being up here in Camden.
24 I tell you just quickly, I hold court all over the
25 state, but you've got one of the best Clerks of

1 Court in the state. She's just so sweet and nice,
2 and she's trying to fatten me up with all these
3 pastries and donuts every morning. But I've enjoyed
4 being with Ms. McDonald and the court personnel;
5 they're wonderful.

6 So I'll let you go now. Call back after 6:00
7 this afternoon for instructions. Have a pleasant
8 afternoon. If you don't have to come back,
9 Ms. McDonald will mail you a substantial check, but
10 I wouldn't go out and buy a new car this afternoon.
11 If anyone needs a work excuse for today --

12 THE CLERK: We only give an excuse if they're
13 excused for the rest of the week. So --

14 THE COURT: What about a work excuse for them
15 not being at work today?

16 THE CLERK: No, sir, we don't usually do that.
17 But we will --

18 THE COURT: Well, if you have a problem with an
19 employer, you call me and I'll take care of it for
20 you. Thank you very much. I enjoyed being with
21 you.

22 Everyone else, please remain seated.

23 (Jury panel excused at 12:21 PM.)

24 THE COURT: Mr. Bailiff, ask Juror 75 to step
25 in here a second.

1 (Juror No. 75, Jamilla James, enters the
2 courtroom.)

3 THE COURT: Ms. James, how are you?

4 MS. JAMES: Fine.

5 THE COURT: When you were selected to sit,
6 there was a little bit of laughter going on between
7 you and the jurors out there. Do you know anybody
8 in this trial?

9 MS. JAMES: No, sir.

10 THE COURT: What was all that laughter about?

11 MS. JAMES: We saw the lady's reaction. Her
12 lip poked out.

13 THE COURT: You don't know the defendant or his
14 family or anybody like that?

15 MS. JAMES: No, sir.

16 THE COURT: Any of the victims or witnesses or
17 anything like that?

18 MS. JAMES: No, sir.

19 THE COURT: It was a lip poked out. That's all
20 it was. Any questions from either side?

21 MS. SIMPSON: Nothing from the State.

22 MR. JOHNSON: Nothing from the Defense.

23 THE COURT: Thank you, ma'am.

24 All right. Bring all the jurors back out,
25 please.

1 (Jury enters the courtroom at 12:24 PM.)

2 THE COURT: All right. Ladies and gentlemen,
3 it's 12:30. Court personnel, lawyers, judges, you
4 have to eat, so that would take us to 12:30, 1:30,
5 right around quarter to 2:00 or 2:00. I've got two
6 hours --

7 MS. SIMPSON: At least.

8 THE COURT: -- at least --

9 MS. SIMPSON: A little more.

10 THE COURT: -- a good two hours of some
11 pretrial rulings that I have to make, plus I've got
12 two telephone conferences back in chambers I've got
13 to take care of, plus we've got a plea we've got to
14 do. I don't want you to have to -- you know, I
15 think the quickest we could get started would be
16 3:30 or 4:00, and that's really pushing it, and then
17 we'd only go for an hour.

18 Would it suit to get started in the morning at
19 9:00? Is that an imposition? And that way they'll
20 have everything in line ready to go and we'll have
21 all of the pretrial rulings out of the way. We're
22 going to start right at 9:15. Your wonderful Clerk
23 will have you some hot coffee and perhaps some
24 donuts in the morning. You can't bring those into
25 the courtroom, so if you want to indulge in those

1 high calories, be here a little earlier than that.
2 And we'll probably get -- you know, tomorrow, move
3 it right along and speed things up. We'll probably
4 order lunch so you won't have a long lunch break,
5 everybody can do a quick lunch break and keep on
6 going.

7 So I'll see you ready to go at 9:15 in the
8 morning. If you want your breakfast, come a little
9 earlier. Normally what I do is try to work right up
10 till about 5:00. Depending on where we are, it
11 might a little before or after 5:00. But we don't
12 go until 8:00 or anything like that. I have to
13 consider your family and court personnel's families.
14 So that's about how we'll do tomorrow, and then
15 we'll sort of see where we are and decide on when --
16 decide on Thursday.

17 I look forward to working with you. Don't
18 discuss the case, don't let anybody discuss it with
19 you. I hadn't seen anybody from the press in here,
20 but if there's anything in the newspapers, don't
21 read it or look at it. We want to try this case
22 based solely on what was presented by the lawyers in
23 the courtroom. You do your job and I'll do mine and
24 we'll be in a position to resolve this matter.

25 Have a pleasant evening. The bailiffs will

1 show you how to get out and get back up here to
2 where you are. Thank you and we'll see you ready to
3 go at 9:15 in the morning.

4 (Jury excused for the day at 12:27 PM.)

5 THE COURT: We're going to take a quick
6 bathroom break and do this plea so you can get back
7 to Columbia, then a couple telephone conferences.
8 Why don't we say we'll start back at 1:30? All
9 right.

10 (Trial in recess 12:28 PM - 2:14 PM.)

11 THE COURT: Ms. Simpson.

12 MS. SIMPSON: Yes, Your Honor. May it please
13 the Court.

14 With respect to the State's pretrial motion, we
15 do have Jackson v. Denno. And I believe the
16 interview was actually audio and video recorded.
17 And we do have Investigator Rick Bailey here to
18 testify as well as Lieutenant Hickmon who witnessed
19 the advice of rights in this case.

20 THE COURT: All right. You may proceed.

21 MS. SIMPSON: State calls Investigator Rick
22 Bailey.

23

24

25

RICK BAILEY

1 being first duly sworn, testified as follows:

2 THE WITNESS: Yes, ma'am, I do.

3 THE CLERK: Thank you. Please have a seat and
4 state your full name for the record.

5 DIRECT EXAMINATION

6 BY MS. SIMPSON:

7 Q. Investigator Bailey, where are you employed?

8 A. Kershaw County Sheriff's Department.

9 Q. And how long have you been with the sheriff's
10 department?

11 A. Since 1998 with the sheriff's office.

12 Q. And what's your current position there?

13 A. Sergeant in the criminal investigation
14 division.

15 Q. Turning your attention back to 2011, October,
16 did you have occasion to become involved in this
17 case?

18 A. Yes, ma'am, I did.

19 Q. Were you actually assigned lead investigator --
20 as the lead?

21 A. I was the on-call investigator that evening and
22 I was called out.

23 Q. And at some point did you make contact with the
24 defendant, Nakia Johnson?

25 A. Yes, ma'am.

1 Q. Tell us about the circumstances surrounding
2 this case and how you made contact with him.

3 A. On the night in question, I believe, without
4 looking at my notes, it was October 11th, I was
5 called by the supervisor of the shift relating that
6 there was an alleged sexual assault or a possible
7 sexual assault.

8 I responded to that scene where I made contact
9 with the road patrol officers and the mother of the
10 alleged victim in this case.

11 Q. And who is the victim that was named?

12 A. Minor Minor

13 Q. You made contact with her mother, Ms. Hall?

14 A. Ms. Pam Hall.

15 Q. And what did you do after you made contact with
16 them and spoke with the officer?

17 A. After I spoke with them and gathered
18 information from Ms. Hall that was related to her by
19 her daughter and also spoke with the deputies that
20 were on scene together to gather information that
21 they had, Ms. Pam Hall and Minor were taken to
22 the Kershaw County Medical Center for what we call
23 the protocol kit to be done.

24 I met them down there, spoke to them just a
25 little bit more, and we were advised by the Kershaw

1 County Medical Center that because of the age of the
2 victim, they would not be able to perform that
3 protocol kit; therefore, she was transferred to
4 Palmetto Health by two of our victim's advocates.

5 I went back to the sheriff's office and met
6 with other investigators and administrative staff,
7 and made we contact with Mr. Johnson and, I think,
8 his chief of police where he was at.

9 Q. Okay. And did you actually know Mr. Nakia
10 Johnson, the defendant, prior to this case?

11 A. We were co-employees at the Kershaw County
12 Sheriff's Office. We were on the same shift.

13 Q. Okay. So you were familiar with him and knew
14 him prior and had a relationship with him?

15 A. He's an old friend of mine.

16 Q. Okay. And when you made contact with him, did
17 you advise him what you were calling him about?

18 A. I advised him, but I think he had some kind of
19 indication of what may be going on.

20 Q. Okay. And did he actually agree to come speak
21 with you in this case?

22 A. Yes, ma'am, he did. He agreed to come back to
23 meet with us at the sheriff's office.

24 Q. Do you recall when that was?

25 A. That was on the night or the evening of, I

IN-CAMERA EXAMINATION OF RICK BAILEY BY MS. SIMPSON

45

1 believe, October 11th, without looking at my notes.

2 Q. And was he actually interviewed at that time?

3 A. During the late evening hours of the 11th into
4 the morning hours of the 12th, if I'm not mistaken.

5 Q. Okay. And was there another officer present
6 with you during this interview?

7 A. Lieutenant Hickmon with the Lee County
8 Sheriff's Office.

9 THE COURT: Hickmon, H-I-C-K-M-A-N?

10 THE WITNESS: -M-O-N, sir.

11 BY MS. SIMPSON:

12 Q. Okay. And he's with the Lee County Sheriff's
13 Office?

14 A. Yes, ma'am, Lee County.

15 Q. Investigator Bailey -- or Sergeant Bailey, was
16 he actually under arrest when he first arrived to
17 the sheriff's department?

18 A. No, ma'am, he was not under arrest.

19 Q. And did you advise him about the nature once he
20 got there of what your going to be interviewing him
21 about?

22 A. Yes, ma'am.

23 Q. And did he agree to speak with you freely and
24 voluntarily?

25 A. Yes, ma'am. He was Mirandized and he agreed to

1 speak with us.

2 Q. With respect to Mirandizing him of his
3 rights -- let me back up just a little bit. What
4 was -- was the defendant still a police officer at
5 that time?

6 A. Yes, ma'am. I believe it was, if I'm not
7 mistaken, Fairfax Police Department.

8 Q. Okay. And you had worked with him and he was
9 an officer with you as well?

10 A. Yes, ma'am.

11 Q. And so he was pretty familiar with Miranda and
12 advisement of rights?

13 A. I should hope.

14 THE COURT: You had worked with him where?

15 THE WITNESS: Here at Kershaw County Sheriff's
16 Office, sir.

17 BY MS. SIMPSON:

18 Q. And did you actually advise him both verbally
19 and in writing?

20 A. Yes, ma'am, I did.

21 Q. I'm going to show you --

22 MS. SIMPSON: And if we could mark this as
23 State's Exhibit 1.

24 (State's Exhibit No. 1 marked for
25 identification.)

1 BY MS. SIMPSON:

2 Q. Do you recognize what's in State's Exhibit 1?

3 A. Yes, ma'am. This is a Statement of Miranda
4 Rights form that we have at the Kershaw County
5 Sheriff's Office.

6 Q. And did you actually read -- tell the judge how
7 you read over those rights or went over them with
8 him.

9 A. I've done the same procedure ever since I've
10 been an investigator. They're listed 1 through 5
11 and -- at the top part of the page, Your Honor.
12 After I read each one, I check off acknowledging
13 that they understood what I've read to them. 1
14 through 5 has been checked off and signed by me as
15 the officer that had actually initiated or gave the
16 Miranda warning.

17 After the Miranda warning, I read what they
18 call the waiver of rights. I read those aloud to
19 him to make sure he understood. He affirmed that he
20 did understand and did sign with his name.

21 Q. And what exactly are the rights that he agreed
22 to waive? If you can read, just 1 through 5 for us.

23 A. Yes, ma'am. You have the right to remain
24 silent. Anything you say can and will be used
25 against you in a court of law. You have the right

1 to talk to a lawyer and have him or her present with
2 you while you're being questioned. If you cannot
3 afford to hire a lawyer, one will be appointed to
4 represent you before any questions, if you wish.

5 You can decide at any time to exercise these rights
6 and not answer any questions or make any statements.

7 Q. And then the waiver of rights, if you can read
8 that as well.

9 A. Yes, ma'am. This is to certify that I have
10 read or have had read to me the above statement of
11 my rights. I understand each of these rights and
12 having these rights in mind, I waive them and
13 willingly make a statement. No promises or threats
14 have been made to me and no pressure or coercion of
15 any kind has been used against me.

16 Q. And did he acknowledge this waiver by signing
17 the document?

18 A. He did sign the form, yes, ma'am.

19 Q. So did he agree to speak with you freely and
20 voluntarily?

21 A. Yes, ma'am, he did.

22 Q. And did he appear to be under the influence of
23 anything; alcohol or drugs, anything of that nature?

24 A. Not to me, no, ma'am.

25 Q. And his education level, he seemed to appear to

1 understand what was going on?

2 A. Coherent and understanding.

3 Q. And did he ask for a lawyer at any point?

4 A. No, ma'am.

5 Q. And was this interview -- and let me also back
6 up a little bit. The advisement of rights that you
7 just read, your interviews, are they audio and video
8 recorded?

9 A. Every time possible. Not every time. But,
10 yes, ma'am, this one was.

11 Q. This one was?

12 A. Yes, ma'am.

13 Q. And on that recording, is the advisement of
14 rights actually on the recording itself?

15 A. The 1 through 5 I don't remember being on there
16 after reviewing it lately. I was actually given the
17 interview. I did not cut the video, someone else
18 cut the video for me. I was advised that those
19 Miranda warnings, that part of it was not recorded.
20 It was done, but it didn't appear on the recording.

21 THE COURT: Was the waiver recorded?

22 THE WITNESS: No, sir. Whoever cut the video
23 cut the first minute or so off the video.

24 THE COURT: Which included the Miranda rights
25 and the waiver?

1 THE WITNESS: Not the waiver, just the Miranda
2 rights.

3 THE COURT: Thank you.

4 (State's Exhibit No. 2 marked for
5 identification.)

6 BY MS. SIMPSON:

7 Q. Let me show you what's been marked as State's
8 Exhibit 2 for identification. Do you recognize
9 this?

10 A. Yes, ma'am. This the DVD-R from my case file
11 of my interview with Mr. Johnson.

12 Q. And does it fairly and accurately reflect what
13 occurred on that day?

14 A. Yes, ma'am.

15 MS. SIMPSON: Your Honor, I'd offer to publish
16 State's Exhibit 2 at this time as well as for ID
17 purposes.

18 THE COURT: Any objection, Mr. Virgin Johnson?

19 MR. JOHNSON: No objection to publishing the
20 DVD.

21 (State's Exhibit No. 2 admitted in to
22 evidence.)

23 BY MS. SIMPSON:

24 Q. And during the course of this interview, did he
25 ever ask for water or to use the restroom or

1 anything of that nature?

2 A. No, ma'am, not that I remember.

3 Q. And if he had, would you have allowed him to go
4 to the bathroom or to get some water?

5 A. Absolutely. While it was a formal interview,
6 because of our relationship in the past, there would
7 have been no problem.

8 Q. And during the course of this interview, was he
9 ever actually arrested at this point, like
10 throughout the interview?

11 A. He was not arrested until after the interview
12 was over.

13 Q. Okay. At what point did you determine he was
14 going to be placed under arrest?

15 A. At the conclusion of the interview.

16 Q. Okay. And at any point did you threaten or
17 coerce him to talk to you?

18 A. No, ma'am.

19 Q. So at all times he spoke with you freely and
20 voluntarily?

21 A. Yes, ma'am.

22 (State's Exhibit No. 2 published to his Honor.)

23 BY MS. SIMPSON:

24 Q. Sergeant Bailey, just a couple questions. You
25 mentioned earlier that the waiver was actually not

1 on the video, but we see here that he did waive his
2 rights.

3 A. Yes, ma'am.

4 Q. And it's contained in the video.

5 Additionally, at what point -- he wasn't under
6 arrest prior, but he was taken into custody at the
7 end of this interview; correct?

8 A. Yes, ma'am.

9 Q. And subsequently served with arrest warrants?

10 A. Yes, ma'am.

11 Q. But at all times during this interview, when he
12 spoke with you, he was talking to you freely and
13 voluntarily?

14 A. Yes, ma'am. He was not placed under arrest
15 until after the interview was over.

16 Q. And at no point did he ask for an attorney?

17 A. No, ma'am.

18 Q. Thank you. Nothing further.

19 THE COURT: Cross, Mr. Johnson?

20 MR. JOHNSON: Your Honor, just a few questions.

21 CROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q. Sergeant Bailey, you had the warrant before he
24 got back to Kershaw County, didn't you?

25 A. I believe there was a warrant arrest done, but

1 it was not served. That was going to be up to my
2 discretion whether that was served or not.

3 Q. Yes, sir. But the warrant was already done; is
4 that correct?

5 A. Yes, sir, there was one --

6 Q. And you wouldn't do a warrant without intent to
7 serve somebody with the warrant; is that correct?

8 A. I have that option.

9 Q. Yes, sir. Okay. And when he got back, you
10 didn't tell him -- when you were talking to him, you
11 didn't tell him that he had a warrant for his arrest
12 out, did you?

13 A. I don't believe I did.

14 Q. Okay. And had you told him that, do you think
15 he would have given a voluntary statement?

16 A. I honestly can't answer that for you.

17 Q. Okay. Did you give him an opportunity to have
18 the choice to do that?

19 A. I'm not sure I understand.

20 Q. Okay. Did you give him the opportunity to have
21 the choice whether he could give a voluntary
22 statement or not by informing him he had a warrant?

23 A. I didn't inform him he had a warrant, but he
24 was given the chance to give a voluntary statement.

25 Q. Okay. And, like you said, you and he were

1 friends. Do you think the fact that he so willingly
2 talked, not knowing he had a warrant, was because of
3 your friendship?

4 A. I couldn't answer that for you either.

5 Q. At what time was the warrant done?

6 THE COURT: What time was what?

7 MR. JOHNSON: The warrant done.

8 THE COURT: What time was the warrant done?

9 THE WITNESS: Honestly, Judge, I don't know.
10 Sometime during that day. This went on from
11 sometime in that afternoon on up until the morning
12 hours of the next day. They don't timestamp the
13 warrants, Your Honor.

14 BY MR. JOHNSON:

15 Q. Is that the original DVD?

16 A. I'm sorry?

17 Q. Is that the original DVD?

18 A. That's the one from my case file, yes, sir.

19 Q. Okay. That's the complete DVD?

20 A. As it was handed over to me. I didn't actually
21 make the recording. But it was in my case file that
22 was handed to me.

23 MR. JOHNSON: Your Honor, at this time, this is
24 about voluntariness. And, of course, I've been
25 around long enough to -- to see the video, so I'm

1 not going to ask useless questions.

2 THE COURT: Redirect?

3 MS. SIMPSON: No, Your Honor. And I'm a little
4 confused because it was understanding -- did you
5 just say you weren't asking useless --

6 MR. JOHNSON: There's no need for me to
7 continue to ask questions after I heard his
8 testimony, that -- the Denno hearing is about
9 voluntariness.

10 THE COURT: That's correct.

11 MR. JOHNSON: After I heard his testimony -- I
12 mean, I've been around the court long enough to know
13 that that's enough -- that his statement could be
14 found voluntary, so no need for me to ask a bunch
15 of questions the --

16 THE COURT: You certainly have the opportunity
17 to ask whatever questions you'd like.

18 MR. JOHNSON: Your Honor, as far as the
19 voluntariness part of it, I have no more questions.

20 THE COURT: Any more questions as to anything
21 else about it?

22 MR. JOHNSON: Your Honor, I have some more
23 questions, but I think we'll have that
24 opportunity at trial tomorrow. I think he'll be
25 back on the stand then.

1 THE COURT: Mr. Virgin Johnson, this is the
2 Jackson v. Denno hearing. You have the opportunity
3 to ask whatever questions you think are necessary to
4 protect your client.

5 MR. JOHNSON: At this point in time, Your
6 Honor, no, sir.

7 THE COURT: Thank you.
8 Anything on redirect?

9 MS. SIMPSON: No, Your Honor.

10 THE COURT: Thank you.
11 You may step down.

12 Next witness, please.

13 MS. SIMPSON: State calls Lieutenant Hickmon.

14 THE COURT: Mr. Hickmon, please.

15 MS. SIMPSON: And, Your Honor, just --

16 THE COURT: Please give 1 and 2 for
17 identification to the court reporter.

18 MS. SIMPSON: Your Honor, just so the record is
19 clear, it's still my understanding that the Defense
20 is still objecting to the voluntariness of the
21 statement. I'm a little confused.

22 THE COURT: You'll just have to stay confused.
23 I've given him the opportunity to ask what he wants
24 to ask, and he's asked.

25 MS. SIMPSON: All right. Thank you, Your

1 Honor.

2 PATRICK HICKMON

3 being first duly sworn, testified as follows:

4 THE WITNESS: I do.

5 THE CLERK: Thank you. Please have a seat and
6 state your full name for the record.

7 THE WITNESS: Patrick Hickmon.

8 THE COURT: Before you testify, Mr. Virgin
9 Johnson, you're saying that as far as the Jackson v.
10 Denno goes that you have no objection to me finding
11 by the preponderance or greater weight of the
12 evidence that he had his Miranda rights read to him,
13 he's waived them and, as far as voluntariness goes,
14 by the preponderance or greater weight of the
15 evidence, that it is voluntary, that it would come
16 into the trial for the jury to determine beyond a
17 reasonable doubt that it was voluntary? Is that
18 what you're saying?

19 MR. JOHNSON: Yes, Your Honor, that's what I'm
20 saying.

21 MS. SIMPSON: Then, Your Honor, I don't think
22 we necessarily need Mr. Hickmon.

23 THE COURT: You may step down.

24 Does that take care of that?

25 MS. SIMPSON: Yes, Your Honor.

1 THE COURT: All right. I will find, under
2 Jackson v. Denno, that there is evidence by the
3 preponderance or greater weight of the evidence that
4 voluntary -- is ultimately for the jury to determine
5 whether or not it's been proven beyond a reasonable
6 doubt whether or not it was voluntary. Miranda
7 rights were given and he waived his Miranda rights.

8 The State will be allowed to admit it into
9 evidence, and the jury can give it whatever weight,
10 if any, it chooses to do so, even though I caution
11 both the State and the defendant, I, quite frankly,
12 had a very, very difficult time understanding it. I
13 had to go along with the transcript. I don't know
14 if you have a transcript for all of the jurors or --

15 MS. SIMPSON: Your Honor, we'd be happy to make
16 copies and provide them.

17 THE COURT: I'm just saying it was very
18 difficult for me. It might not be for someone else.
19 I don't know. Anything else?

20 MS. SIMPSON: Nothing with respect to
21 statements. That would be all that we're seeking to
22 introduce against Mr. Johnson. And I believe that's
23 all of the statements he actually made to law
24 enforcement.

25 THE COURT: All right. Any additional pretrial

1 motions?

2 MS. SIMPSON: Yes, Your Honor. We have the --
3 as far as the State's motion, both of the
4 interviewers who conducted the interviews of Nakiah J.
5 [REDACTED] as well as Minor [REDACTED] the victim in this
6 case, present and able to testify. We don't
7 necessarily have to publish their videos at this
8 time, but they've been here the duration of the
9 afternoon, so if we could continue with questioning
10 on those witnesses.

11 THE COURT: You may.

12 MS. SIMPSON: State calls David Kellin.

13 DAVID KELLIN

14 being first duly sworn, testified as follows:

15 THE WITNESS: I do.

16 THE CLERK: Thank you. Please have a seat and
17 state your full name for the record.

18 THE WITNESS: Mahlon David Kellin.

19 EXAMINATION

20 BY MS. SIMPSON:

21 Q. Mr. Kellin, where are you currently employed?

22 A. I work part-time at Palmetto Citizens Against
23 Sexual Assault in Lancaster.

24 Q. And back in 2011, where were you working?

25 A. Family Resource Center here in Camden.

1 Q. Okay. And what was your position with the
2 Family Resource Center?

3 A. I was a counselor.

4 Q. And as a counselor at the Family Resource
5 Center -- that was here in Kershaw at the time?

6 A. Yes.

7 Q. What did y'all do at the Family Resource
8 Center?

9 A. We conducted interviews of children who have
10 made allegations about sexual assault or physical
11 assault as requested by the police department, as
12 well as counseling for them.

13 Q. Okay. And so you actually conducted the
14 interviews as well as counseling sessions?

15 A. They're kept separate. So if I did the
16 interview with the child, I did not serve as a
17 counselor.

18 Q. Okay. And did you have -- tell the judge a
19 little bit about your educational background and
20 training.

21 A. Okay. I have a master's degree in social work
22 from University of South Carolina. I've been
23 trained in ChildFirst Interviewing, that was in '08.
24 I also had extended interviewing training through
25 the national center in Huntsville as well as taken

1 mass training here in interviewing here in South
2 Carolina multiple times.

3 Q. And how many interviews of children have you --
4 would you say you've conducted?

5 A. Seventy-five.

6 Q. Seventy-five. And did you have occasion to
7 conduct an interview of someone involved in this
8 case?

9 A. I did.

10 Q. Who was that?

11 A. Minor

12 Q. And do you recall how that case came to be?

13 A. Investigator Bailey referred her to our center
14 for an interview.

15 Q. Okay. And tell the judge a little bit about
16 how you conduct your interview as far as where
17 and --

18 A. At the Family Resource Center here, there's a
19 special room set aside with recording equipment
20 where we met with the child. The interview is a
21 low-key type of interview just to try to help build
22 rapport with the child and help the child to discuss
23 any issues that they had. We do it in a non-leading
24 way just to -- if they have anything that they need
25 to say, they say it. We don't define for them to

1 say.

2 Q. Okay. And this interview, is it documented or
3 preserved in some way?

4 A. It's recorded on a DVD.

5 Q. Okay. And with respect to your questioning,
6 you said --

7 THE COURT: Is the DVD audio and visual?

8 THE WITNESS: Yes, it is.

9 (State's Exhibit No. 3 marked for
10 identification.)

11 BY MS. SIMPSON:

12 Q. I'm going to show you what's been marked for
13 identification purposes as State's Exhibit 3. Do
14 you recognize this?

15 A. That would be the interview DVD. I'm not sure
16 if that's a -- that's a copy of one. I gave mine to
17 Investigator Bailey.

18 Q. Okay. But you've reviewed the forensic
19 interview of Minor prior to testifying here
20 today; correct?

21 A. I have.

22 Q. And so the video accurately reflects the
23 interview and what went on?

24 A. Yes.

25 Q. In the course of your interview, does how you

1 conduct your interview kind of vary somewhat
2 dependent upon the child's age and, you know, their
3 abilities as far as --

4 A. It depends on development of the child as well
5 as their -- if they're ill or uncomfortable or
6 reserved. Also, if there comes a time when there is
7 information that comes out before we would have
8 asked it in our process, we don't go back,
9 generally, too far in our process and jump ahead.

10 So, like, if a disclosure comes out before we'd
11 be looking at where disclosures would normally come
12 out in interviews, we don't go back and do the other
13 pieces again to make sure they're there; we take
14 that disclosure and continue from there.

15 Q. Okay. And in this interview with Minor
16 having reviewed the interview, do you recall whether
17 she was able to provide you with some information
18 regarding the sexual assault that occurred?

19 A. She did.

20 Q. And did she give you a detailed account at that
21 time?

22 A. She did.

23 Q. And at some point during this -- I believe you
24 mentioned illness a little bit earlier. Did that
25 have some affect on Minor's interview?

1 A. She had to leave the interview twice stating
2 she had to throw up.

3 Q. And at some point did you make a determination
4 that it would be appropriate to cease the interview
5 at that point?

6 A. After the second time, I felt like we need to
7 wrap up at that point and started to wrap up the
8 interview.

9 Q. But with respect to her interview and the
10 questioning throughout it, did it exhibit, I guess,
11 internal coherent -- was it coherent with itself?

12 A. Yes.

13 THE COURT: What do you mean by internal
14 coherence?

15 MS. SIMPSON: Was --

16 THE COURT: I'm asking him.

17 THE WITNESS: That what she said seemed to
18 follow logical course; that what she was saying
19 didn't seem to be disjointed or mismatched, I guess
20 is the way I would put it.

21 THE COURT: Sort of flowed.

22 THE WITNESS: Flowed from one piece to another,
23 yes.

24 MS. SIMPSON: Your Honor, at this time -- and I
25 would offer --

1 BY MS. SIMPSON:

2 Q. And did you have -- what was Minor's

3 age at the time of this interview?

4 A. Eleven years old.

5 Q. She was 11 years old. And do you recall her
6 date of birth?

7 A. I have it in my notes, if I can refer.

8 I have her date of birth as

9 THE COURT: what?

10 THE WITNESS:

11 THE COURT: What was the date of the interview?

12 THE WITNESS: The interview was 10/12/2011. So
13 she had just turned 11 years old.

14 MS. SIMPSON: Your Honor, I believe as far as
15 testimony, that would be all the State has. I don't
16 know if you want to publish it now or if Defense
17 wants to cross-examine Mr. Kellin.

18 EXAMINATION

19 BY THE COURT:

20 Q. Give me your educational background. You said
21 you had a Master's in what?

22 A. In social work.

23 Q. And undergraduate degree in what?

24 A. Psychology.

25 Q. From where?

1 A. Lander University.

2 Q. When?

3 A. That was in 1990 when I graduated from Lander;
4 1992 when I graduated from USC.

5 Q. Any education subsequent to that?

6 A. I've had multiple courses, educationally, since
7 then; no further degrees.

8 Q. How many interviews have you conducted of this
9 type and nature?

10 A. Seventy-five.

11 Q. How many of those interviews have been used in
12 court?

13 A. Probably about 10 to 15.

14 Q. How many times have you testified in court?

15 A. About five.

16 THE COURT: Mr. Johnson.

17 MR. JOHNSON: Your Honor, may it please the
18 Court.

19 EXAMINATION

20 BY MR. JOHNSON:

21 Q. First of all, let's get straight about the age.
22 What day you said she was born; what month and what
23 year?

24 A. I have in my records [REDACTED] -- date of birth,

25 [REDACTED]

1 Q. Okay. And that would make her either, I think,
2 [REDACTED]?

3 A. Right.

4 Q. How many interviews you said you have you done
5 now?

6 A. Seventy-five is what my numbers are.

7 Q. Okay. And I guess you have your background and
8 training in doing these types of interviews and
9 things?

10 A. Yes.

11 Q. Okay. In doing your training, aren't there
12 certain things that should not be done as far as
13 leading questions? Isn't that true?

14 A. Yes.

15 Q. And are there certain things that should not be
16 done as far as questions that would be suggestive as
17 to a direction that a child should answer a
18 question?

19 A. Yes.

20 Q. And when a child is being interviewed, if
21 there's confusion, isn't it -- the proper thing to
22 clear that up to make sure you got the right
23 disclosure?

24 A. Yes.

25 Q. Okay. And in this particular case with

1 Minor wasn't there a good bit of confusion and
2 not giving straight answers?

3 A. As far as -- can you explain further what you
4 mean? Because to me, a child that age, there is
5 confusion.

6 Q. Okay. Well, there were choppy questions, there
7 were short answers, there was going back and
8 forth --

9 MS. SIMPSON: Objection, Your Honor.

10 MR. JOHNSON: Your Honor --

11 THE COURT: Hold on.

12 What's your objection?

13 MS. SIMPSON: He's saying there were this,
14 there was this, there was this. I just want to make
15 sure there was a question because the witness was
16 actually asking for some clarity as to what he
17 meant.

18 THE COURT: Well, you know he's on
19 cross-examination and he can lead on
20 cross-examination, and I think that's what he was
21 doing. Overruled.

22 BY MR. JOHNSON:

23 Q. Again, there were choppy questions -- choppy
24 answers. Weren't there some choppy answers?

25 A. There were some choppy answers.

1 Q. Okay. There were some answers with some
2 unclarity where she would jump from one place and
3 then go back and say something altogether different;
4 isn't that true?

5 A. I'm not exactly -- having not reviewed the
6 video to this day, I can't explain that -- I'm not
7 clear on that. But I do know children do jump
8 around and do give short one-answer questions -- or
9 short answers. And it's not my job as an
10 interviewer to try and pull that more out of her,
11 but to let her tell me as much as she can within her
12 own frame.

13 Q. If the information she's giving you is from
14 place to place and unclear, it's not your job to
15 help clear it up? I just want to make sure that's
16 what --

17 A. It's my job to take her statement as much as I
18 can; not to form her statement for her.

19 Q. And it is your job or any interviewer's job to
20 suggest the direction or suggest a leading question
21 either?

22 A. We don't suggest, you know, answers. We
23 don't -- we stay away from leading questions. There
24 are some questions we will give options, but that's
25 not a -- for us, that's not the primary way to go.

1 We try to go open-ended first and then to where we
2 give two options or three options and then ask the
3 child to continue from there; but not to -- like, if
4 a child doesn't tell me exactly where someone was or
5 what day or what time, I try and ask them to help
6 clarify that, but it's not my job to pinpoint into
7 the exact date or time. My job is to allow them the
8 opportunity to communicate what they feel they can
9 communicate.

10 Q. Okay. And one of the things, I think, you're
11 trained in is -- children try to please -- in their
12 answers try please the adults, particularly if the
13 adults give some kind of suggestive answers to them.
14 Would you agree with that?

15 A. I can think that children, yes, are trying to
16 please adults as much as they can.

17 Q. Okay. And many times in these types of
18 situations, when children give their answers, the
19 question that comes behind that answer can direct
20 them in one direction or another?

21 A. I'm not sure on all interviews. In the
22 interviews I've had, if I ask a question and it
23 takes an answer to that and then the next question I
24 have is following up with that same question or a
25 similar question, I don't try to direct what the

1 child says, but I will follow up from one question
2 to the next.

3 MR. JOHNSON: Your Honor, I ask the Court, in
4 this particular case, is it possible for us to view
5 the video while he's on the stand? Because I think
6 that would --

7 MS. SIMPSON: I agree. I mean, Your Honor, I
8 was going to offer to publish it, I just didn't know
9 the order in which -- you know, we'll be happy to
10 publish it now.

11 THE COURT: I'll allow you to do that. The
12 best way to do it is to play it and, Mr. Virgin
13 Johnson, if you want it stopped at some point in
14 time to ask him a question --

15 MR. JOHNSON: Yes, sir.

16 THE COURT: We'll have someone operating it.
17 They'll stop it and you can ask the questions. And,
18 obviously, I have to watch it to determine whether
19 or not it was elicited by leading questions, whether
20 or not it represents a detailed account of the
21 offense, and whether or not it has, quote, internal
22 coherence.

23 Before we get started, does anyone need a
24 bathroom break? Everyone okay? All right.

25 Mr. Johnson, do you need the whole statement

1 published or just certain portions of it or -- how
2 do you want to do it?

3 MR. JOHNSON: Your Honor, I would like the
4 Court to review the whole tape because I think --
5 you know, I think, in reviewing the cases, they look
6 at the totality of the whole tape. There are
7 questions all the way through that I may ask --
8 there are points all the way through the tape that I
9 may ask questions.

10 THE COURT: All right. If you need to ask a
11 question, just raise your hand and we'll stop the
12 tape.

13 MR. JOHNSON: Thank you, sir.

14 (Video played for his Honor.)

15 THE COURT: Stop, please.

16 Question?

17 MR. JOHNSON: Yes, sir.

18 BY MR. JOHNSON:

19 Q. You ask her did she tell the truth. But where
20 is the -- what assessment did you do to see whether
21 she's telling the truth or not?

22 A. At that time, that Tom Lamb book that was used
23 was no longer being used for forensic interviewing.
24 It was just a statement that was asked during the
25 interviewing about if they're willing to tell the

1 truth.

2 Q. Okay. So what's done now is, you don't do an
3 assessment, you just ask a question and you accept
4 what they say?

5 A. Yes.

6 Q. Okay. Thank you.

7 (Video resumed for his Honor.)

8 THE COURT: Stop, please.

9 Yes, sir.

10 BY MR. JOHNSON:

11 Q. Again, when you asked her what was her position
12 and she said she liked to play basketball, did you
13 not pick up the fact that she didn't -- from that
14 tape, that she didn't understand the positions on
15 the court because she said she played on defense in
16 basketball? When I was a boy, they had it where you
17 could do defense and offense. But now it's not
18 defense and offense, it's everybody runs up and down
19 the court. Did that not trigger any thinking in
20 you?

21 A. No. I just asked about a position to see if
22 that was a position she played.

23 Q. All right. And then you came back and
24 suggested guard.

25 A. That was a position I suggested, but that

1 wasn't an indicator for her to say that. I was just
2 starting to -- trying to figure out which position
3 she was playing.

4 Q. Couldn't that be interpreted as leading her,
5 helping her to get through her questions? I mean,
6 if you're waiting for her to disclose, why would you
7 say anything?

8 A. I can't answer that. That was a part of us
9 building some rapport.

10 MR. JOHNSON: That's all I'm going to ask on
11 the question.

12 THE COURT: Mr. Johnson, I think the Court has
13 to make a determination whether the statement was
14 elicited by a leading question. And, obviously, I
15 think I know the difference between a leading
16 question and a direct question, and I'll have to
17 make that determination at the end. That will not
18 preclude you from asking the questions, but that's
19 one of the factors the statute requires that I look
20 to determine whether or not it guarantees
21 trustworthiness of the statement.

22 MR. JOHNSON: Yes, sir.

23 THE COURT: Move along.

24 (Video resumed for his Honor.)

25 MS. SIMPSON: Your Honor, if it's okay with the

1 Defense, we can fast-forward a little bit while
2 they're not in the room.

3 MR. JOHNSON: That's fine.

4 MS. SIMPSON: Okay.

5 (Video fast-forwarded.)

6 MR. JOHNSON: Here we go again allowing -- Your
7 Honor, he asked her how many times he touched. In
8 the disclosure, you're supposed to let the child do
9 that. I just wanted to stop right there. That's my
10 point, that's leading. To -- I -- that's a -- to
11 me, that's a suggestive statement and I just --

12 THE COURT: Wait a minute. Are you arguing to
13 me or are you asking him a question?

14 MR. JOHNSON: Well, Your Honor, I was arguing
15 to you, but I should have been asking him.

16 THE COURT: Not arguing, but...

17 MR. JOHNSON: Yes, sir.

18 THE COURT: You just wanted to point that out
19 to me?

20 BY MR. JOHNSON:

21 Q. Was that not a suggestive statement?

22 A. It's one of our standard types of questions
23 that we ask after an implication of touching and how
24 many times were you touched.

25 Q. But how many times -- if the child is

1 disclosing, wouldn't it for the child to say rather
2 than you to say a number?

3 A. And if they answer one time or six times or 100
4 times, that's the child's option. That's as open as
5 we get with that question.

6 THE COURT: How many times did he touch is not
7 a leading question.

8 Move along.

9 (Video resumed for his Honor.)

10 (Video paused.)

11 THE COURT: Mr. Johnson.

12 BY MR. JOHNSON:

13 Q. Okay. Now, in this query of questions, when
14 you asked one time at the beach, one time at the
15 truck, where else? Shouldn't you have allowed her
16 to say if there were some other places?

17 A. I can't speak to that. I asked as open a
18 question as I could at the time.

19 MR. JOHNSON: Your Honor, that's all.

20 THE COURT: Thank you.

21 Continue on, please.

22 (Video resumed for his Honor.)

23 MR. JOHNSON: Your Honor --

24 (Video paused.)

25 THE COURT: Mr. Johnson.

1 BY MR. JOHNSON:

2 Q. Did she -- I don't think she -- I'm asking you,
3 did you hear her say anything about sitting on his
4 lap at that time? Where did that come from?

5 A. I think just before she said --

6 THE COURT: She said, he told me to sit on his
7 lap.

8 Move along.

9 (Video resumed for his Honor.)

10 MR. JOHNSON: Your Honor.

11 (Video paused.)

12 THE COURT: Mr. Johnson.

13 BY MR. JOHNSON:

14 Q. When you asked her did she feel like he was
15 trying to do that, did she indicate that before
16 that?

17 A. I'll refer to my notes here.

18 THE COURT: What's the question?

19 MR. JOHNSON: I asked him -- he told her -- he
20 asked her about, when he did it, what she was doing.
21 And what he was doing is -- I was trying to get from
22 him -- elicit from him, was he suggesting, when --
23 in asking his questions, would it be possible his
24 question to suggest an answer in that colliquative
25 questions.

1 THE WITNESS: Well, what I asked, right before
2 she said he was trying, was, well, you felt like he
3 was trying to do that, did he say something? So it
4 was questioning to her if she felt like he was
5 trying. And she responded that she felt like he was
6 trying.

7 BY MR. JOHNSON:

8 Q. But she didn't say he was trying.

9 A. She did not say he was trying.

10 THE COURT: All right. Move along.

11 (Video resumed for his Honor.)

12 THE COURT: All right. Let's move it up to the
13 time she comes back, please.

14 Any objection, Mr. Johnson?

15 MR. JOHNSON: No objection.

16 THE COURT: And for the record, this is when
17 she goes to the restroom the second time for her
18 stomachache.

19 Hold on, please, ma'am.

20 (Video paused.)

21 BY MR. JOHNSON:

22 Q. Was that question leading or suggestive: Was
23 there any time that he put -- touched your bottom
24 with his hand?

25 A. I didn't think of it as leading. But that

1 would be, I think, for the trier of fact to
2 determine.

3 THE COURT: Move along.

4 (Video resumed for his Honor.)

5 THE COURT: Hold on one minute, please.

6 (Video paused.)

7 BY MR. JOHNSON:

8 Q. Was that question -- the last two questions,
9 suggestive or leading?

10 A. When we ask multiple-option questions, that's
11 the way we leave it open for them to come up with a
12 response. In interviewing, we typically will ask
13 inside or outside and allow them the option. We
14 don't consider that a leading question.

15 THE COURT: She had opened that up by saying:
16 He was taking his hands and digging it in my pants.
17 He then just asked, was it front or back? And she
18 said the back. Inside or outside?

19 I don't find that to be leading.

20 Go ahead.

21 (Video resumed for his Honor.)

22 THE COURT: Hold on a second, please.

23 (Video paused.)

24 BY MR. JOHNSON:

25 Q. Did know if he did it to anybody, was that

1 suggestive or leading question about somebody that
2 she wasn't even talking about?

3 A. It's one of the questions we ask to see if
4 there's an expansion of activity by somebody. We
5 don't consider that a leading question.

6 (Video resumed for his Honor.)

7 THE COURT: Pause it, please, ma'am.

8 (Video paused.)

9 BY MR. JOHNSON:

10 Q. Did he ever show you pictures or magazines, was
11 that suggestive or leading?

12 A. That's one of our questions that we ask towards
13 the end of an interview to see if there's any
14 expansion of other areas of abuse.

15 Q. But you would agree with me, she was not
16 talking about pictures or anything.

17 A. She was not talking about pictures at that
18 time.

19 (Video resumed for his Honor.)

20 MR. JOHNSON: Your Honor, again --

21 (Video paused.)

22 BY MR. JOHNSON:

23 Q. Do you think that question was leading or
24 suggestive?

25 A. No, sir.

1 (Video resumed.)

2 THE COURT: Mr. Johnson, you may continue with
3 your questioning.

4 MR. JOHNSON: Your Honor, that's all of my
5 questions.

6 THE COURT: Redirect?

7 MS. SIMPSON: Just briefly, Your Honor.

8 EXAMINATION

9 BY MS. SIMPSON:

10 Q. With respect to leading questions, is it an
11 absolute rule that you never lead or are there
12 occasions where leading questions are appropriate
13 during the course of an interview with a child?

14 A. Depending on the age and development, there are
15 times when leading questions can be used, more
16 particularly with much younger children. But at any
17 point during an interview, if there calls for a
18 situation like that, you can ask a leading
19 question -- I don't believe that any of mine were
20 leading -- taken from the information that was
21 already given about what had been happening. I just
22 asked extended questions.

23 MS. SIMPSON: Nothing further, Your Honor.

24 THE COURT: You may step down.

25 Next witness.

1 MS. SIMPSON: Nothing with respect to this
2 issue; however, we do have a second interview, Your
3 Honor, and Valerie Moore -- I mean, Valerie Williams
4 with SLED --

5 THE COURT: We're going to take a short break
6 before we do that one so everybody can stretch their
7 legs and use the restroom. You want me to rule on
8 this one first or just do everything at the end?
9 I'll do everything at the end. All right let's
10 take -- it's close to 5:00. How long is this next
11 interview?

12 MS. SIMPSON: Well, the interview itself is an
13 hour. With respect to the witness testimony, Your
14 Honor, like I said, based on Defense's questioning,
15 we could potentially -- both defense counsel and
16 myself have actually reviewed the video, as well as,
17 of course, Ms. Williams. If we could do the
18 testimony now, Your Honor would have the video to
19 review to determine the nature of the questions as
20 to whether --

21 THE COURT: Certainly.

22 Mr. Johnson, you don't want to question her on
23 the interview itself like you did this one or do you
24 want me to just read it --

25 MR. JOHNSON: Your Honor, on that one

1 particularly, I think you can just read it and look
2 at the interview.

3 THE COURT: All right. So then after we do
4 that particular witness, what else do we have?

5 MS. SIMPSON: From that the State, I believe
6 that would be it, Your Honor, at this time.

7 THE COURT: Mr. Johnson, you have a couple of
8 motions.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: But we will not need any testimony
11 for your motions, will we?

12 MR. JOHNSON: No, sir.

13 THE COURT: So we can finish everything up by
14 6:00.

15 MS. SIMPSON: Yes, Your Honor.

16 MR. JOHNSON: Yes, sir.

17 THE COURT: Okay. Let's take a break for about
18 ten minutes and we'll finish it up.

19 (Brief recess.)

20 THE COURT: Okay. Ma'am, you may proceed.

21 MS. SIMPSON: Thank you, Your Honor.

22 The State calls Investigator Valerie Williams.

23 VALERIE WILLIAMS

24 being first duly sworn, testified as follows:

25 THE WITNESS: I do.

1 THE CLERK: Thank you. Have a seat in the
2 witness chair and state your full name for the
3 record.

4 THE COURT: How are you today?

5 THE WITNESS: I'm well, sir.

6 My name is Valerie Isham Williams, I-S-H-A-M.

7 EXAMINATION

8 BY MS. SIMPSON:

9 Q. Investigator Williams, where are you employed?

10 A. I'm currently employed with the South Carolina
11 Office of the Attorney General.

12 Q. Okay. And what is your position with the
13 Attorney General's Office?

14 A. My title is special investigator.

15 Q. And what types of cases do you investigate with
16 the Attorney General's Office?

17 A. Criminal matters. I'm assigned to the
18 prosecution, state grand jury section.

19 Q. And how long have you been with the Attorney
20 General's Office?

21 A. I started there in 2013.

22 Q. And prior to that, where were you employed?

23 A. I was -- I spent 15 years as a SLED agent.

24 Q. Okay. And at SLED, and turning your attention
25 to November of 2011, what was your position at that

1 time?

2 A. In 2011, I believe I was assigned to the Peedee
3 Region as a field agent. I conducted criminal
4 investigations and forensic interviews.

5 Q. By the term forensic interviews, what do you
6 mean by that?

7 A. Those are simply interviews that we conduct
8 with children or with adults who have some sort of
9 impaired mental state; children being anyone under
10 the age of 18. Those are -- we conduct those in a
11 manner that is semistructured.

12 I've been to several different types of
13 training, and my training in interviewing children
14 started back in 1994.

15 THE COURT: '94.

16 THE WITNESS: '94, yes, sir.

17 BY MS. SIMPSON:

18 Q. And are these essentially interviews as the
19 result of an investigation or are they investigative
20 interviews?

21 A. They can be. They can be either criminal
22 investigations or investigations being conducted by
23 the department of social services. I've been asked
24 to do both.

25 Q. So either a law enforcement agency or

1 department of social services or something like that
2 may refer to you for an interview?

3 A. That's correct.

4 Q. Did you -- how many interviews would you say
5 you've conducted of children over the course of your
6 career?

7 A. Since 1994, I stopped counting when I crossed
8 over 500.

9 THE COURT: When did you cross over 500?

10 THE WITNESS: Probably in 2010, sir.

11 THE COURT: So that's been over five years ago.

12 THE WITNESS: Yes, sir. I was actively
13 conducting them for the Sumter Police Department in
14 1994. For SLED, I was assigned to a couple
15 different forensic interviewing agencies to assist
16 their staff when they were overwhelmed, and I went
17 to those locations anywhere from once to twice a
18 week, just depending on how often I was needed. I
19 just stopped counting at that point.

20 BY MS. SIMPSON:

21 Q. Can you tell the jury a little bit about your
22 educational background and training?

23 A. I'm certified as a law enforcement officer. I
24 completed that certification in 1988 at the South
25 Carolina Criminal Justice Academy. I have a

1 bachelor's degree that I obtained from St. Leo
2 University in 1995, and --

3 THE COURT: Where is St. Leo?

4 THE WITNESS: St. Leo is -- the one I attended,
5 sir, is on Shaw Airforce Base.

6 THE COURT: Okay.

7 THE WITNESS: And I have a Master's in
8 Counseling Degree from South University.

9 THE COURT: Where is that?

10 THE WITNESS: Here in Columbia.

11 THE COURT: Thank you.

12 BY MS. SIMPSON:

13 Q. And do you participate in any specialized
14 training or take courses with respect to
15 interviewing children?

16 A. I have -- my first term was with Dr. Elizabeth
17 Rolsten [phonetic] who, at that time, ran the Low
18 Country Children's Center. It was a narrative type
19 of interviewing process that she taught at the
20 Criminal Justice Academy. That was in 1994.

21 After that, I took my first Finding Words
22 training. At that time it was called Child First at
23 the Assessment of Resource Center in Columbia -- I'm
24 sorry; it was either 2000 or 2001. And I've
25 participated in advanced training since that time,

1 both colloquiums through the American Professional
2 Society on the Abuse of Children, and just advanced
3 training with Finding Words that have been offered
4 either through the ARC or Corrin House of Minnesota
5 and other places.

6 Q. And have you testified before with respect to
7 interviewing children?

8 A. I have.

9 Q. And the interviews that you actually performed?

10 A. I have.

11 Q. Did you have occasion to become involved in
12 this case?

13 A. I did.

14 Q. How was this case referred to you and who did
15 you interview?

16 A. On the days that, as a SLED agent, I was
17 assigned to work in the Dickerson Center, which is
18 located in Columbia, I was just assigned cases that
19 they had scheduled for that day, and this happened
20 to be one of the cases.

21 Q. Did you actually interview two people involved
22 in this case?

23 A. I did.

24 Q. Who did you interview?

25 A. Nakia --

1 THE COURT: Spell that for me, please.

2 THE WITNESS: I believe it's similar to the
3 defendant's, sir; it's N-A-K-I-A, without the
4 H [sic], Johnson -- and her sister [Minor]

5 BY MS. SIMPSON:

6 Q. Okay. And I want to focus on -- and let me
7 back up. SLED did conduct an interview of [Minor]
8 but was that actually Agent Caldwell instead of
9 yourself?

10 A. Yes. I was observing that one. I was
11 interviewing [Nakiah J.]. I was interviewing [Nakiah J.] and
12 Agent Caldwell observed mine; and then when Agent
13 Caldwell interviewed [Minor] I observed hers.

14 Q. Okay. So you actually have another peer
15 observe the interview as well?

16 A. Yes, we do that.

17 Q. Was SLED actually involved in this
18 investigation?

19 A. The intake that we did, this was referred by
20 Agent John Branham.

21 Q. And is he with the South Carolina Law
22 Enforcement Division as well?

23 A. Like me, he's retired.

24 Q. Okay. And I want to focus on your interview
25 that you conducted with [Nakiah J.] Do you

1 recall the date of that interview with Nakiah J.

2 A. I know it was in March, but if you bear with
3 me, I can look. I apologize. I said March. That's
4 her date of birth. Her interview was November 9th
5 of 2011.

6 Q. And you actually already got to it, but what is
7 her date of birth?

8 A. It is March 18th, 2003.

9 Q. Okay. So that would have made her what age at
10 the time of your interview?

11 A. She was eight.

12 Q. And is this interview preserved in some format?

13 A. Yes; it was videotaped.

14 Q. Videotaped. Is there also audio as well?

15 A. There is.

16 Q. And is that protocol for your interviews of
17 children?

18 A. Yes.

19 MS. SIMPSON: Your Honor, at this time, I will
20 offer State's Exhibit 4 for identification purposes.

21 (State's Exhibit No. 4 marked for
22 identification.)

23 THE COURT: That's the audiotape or the DVD?

24 MS. SIMPSON: It is, of the forensic interview.

25 THE COURT: Any objection?

1 MR. JOHNSON: Just for identification?

2 THE COURT: Yes, sir.

3 MR. JOHNSON: No objection, Your Honor.

4 BY MS. SIMPSON:

5 Q. Now, with respect to State's Exhibit 4, which
6 is the forensic interview that you conducted, did
7 you have a chance to review that interview?

8 A. I did.

9 Q. And tell the Judge a little bit about how your
10 interview was conducted.

11 A. Your Honor, based on my training, I always
12 conduct interviews in a manner that allows me to
13 establish rapport with the child, to try and relax
14 them, because I'm an adult stranger and most kids
15 are taught not to talk to strangers. So even
16 though, just like taking them to a doctor
17 appointment, they're going to let their guard down a
18 little bit. So I want to talk to them about things
19 like school or pets and that sort of thing to relax
20 their guard.

21 Once I feel the child is opening up a little
22 bit, I begin to talk with them about their family
23 structure; who is in their family, who they live
24 with, where they live, that sort of thing. That
25 also serves the purpose of being able to establish

1 jurisdiction if we understand that this is a
2 criminal matter.

3 Then we go into talking about body parts. We
4 introduce pictures that are anatomically correct.
5 And depending where the child leads us -- we try to
6 always let the child lead the interview -- that's
7 how I form my next question. I have been trained in
8 the development of children, so I have some
9 understanding of where they're at certain ages, and
10 I form my questions along those lines.

11 Q. And with respect to the structure of your
12 interview, you said you let the child direct. Do
13 you attempt to avoid leading questions if possible?

14 A. As much as possible, absolutely.

15 Q. And do you also avoid questions that are
16 suggestive?

17 A. Yes.

18 Q. Or attempt to?

19 A. I try very hard to avoid suggestive questions,
20 yes.

21 Q. And in your review of **Nakiah J.'s** interview, tell
22 the jury about your questioning of her and what she
23 was being questioned on.

24 A. When **Nakiah J.** came in to the Dickerson Center, I
25 think my -- my understanding was that this was a

1 report that had gone to the police, and because it
2 crossed jurisdictional boundaries or potentially
3 did, SLED was involved -- because Mr. Johnson was a
4 police officer, SLED became involved -- and that the
5 allegation was inappropriate touching, not to
6 **Nakiah J.** but to her older sister.

7 Q. Okay. So she was actually being interviewed
8 from the perspective of a witness or a potential
9 witness?

10 A. Potentially, yes.

11 Q. And was she able to speak with you during this
12 interview?

13 A. She was.

14 Q. In a manner that was appropriate for her age
15 and development?

16 A. Yes.

17 Q. And did she provide you with information?

18 A. She did.

19 Q. Was she able to disclose to you anything
20 regarding the victim in this case, **Minor**

21 A. She was.

22 Q. And did she tell you what she observed with
23 respect to what happened to **Minor**

24 A. She did.

25 Q. And did she indicate who she saw -- let me back

1 up. Did she indicate, I guess, a potential
2 person -- another person involved in this case?

3 A. She was able to outline who was involved, yes.

4 Q. And was one of those people the defendant,
5 Nakia Johnson?

6 A. Yes.

7 Q. With respect to your interview of her, did you
8 actually utilize any type -- what did you utilize in
9 your interview?

10 A. During the course of my interviews, I always
11 use a whiteboard, and I try and use paper. I don't
12 like to use the large poster-type paper; I like
13 smaller sheets of paper so they can fit neatly in
14 the folder. And we draw on them while we talk. I
15 am not an artist. They're very simple stick
16 drawings. I -- I'm sorry. I lost the whole thread
17 of the question.

18 Q. As far as certain objects that may have been
19 utilized during the course of the interview for
20 purposes of either demonstration or your
21 understanding or the child's understanding of what
22 she was talking to you about.

23 A. Okay. So in addition to drawing, I utilize
24 anatomic drawings. And if it's appropriate, a child
25 has made some disclosures, I will use anatomically

1 correct dolls so that the child is allowed to
2 clarify what's going on.

3 Q. And did Nakiah J. actually use dolls in her
4 interview to describe what she observed between
5 Minor and the defendant, Nakia Johnson?

6 A. She was reluctant to at first, but at the end
7 of the interview we did.

8 Q. And what was the relationship between Nakiah J.
9 and the defendant?

10 A. She is his biological daughter.

11 MS. SIMPSON: I beg the Court's indulgence.

12 BY MS. SIMPSON:

13 Q. Was she able to give you certain details
14 regarding what she observed?

15 A. She was able to give a great deal of details.

16 Q. A great deal of details?

17 A. Yes.

18 MS. SIMPSON: Your Honor, at this time, that's
19 all I have for this witness.

20 THE COURT: Mr. Virgin Johnson.

21 MR. JOHNSON: Your Honor, if the Court is going
22 to review the tape tonight --

23 THE COURT: I'm going to review the transcript.

24 MR. JOHNSON: Just the transcript?

25 THE COURT: Will that suffice? I don't have a

1 computer that I can take home with me and I want to
2 do it tonight.

3 MR. JOHNSON: Yes, sir.

4 THE COURT: And you've reviewed it.

5 MR. JOHNSON: I've reviewed it. Your Honor,
6 they did one and I did one. I'll give you a copy of
7 mine also.

8 But if the Court is going to review that, I
9 don't have any questions for her right now, and
10 probably won't have any questions. But at this
11 point, Your Honor, until you read the transcript and
12 review that video, it's hard for me to ask her --

13 THE COURT: I understand. Obviously what I
14 have to determine under the appropriate statute is
15 basically -- you know what the requirements are.
16 And, obviously, the interview was conducted during
17 an investigative interview, it was audio and
18 visually recorded, I assume the child will be
19 subject to cross-examination. If the children are
20 not, then, obviously, it will not be admitted. And
21 then --

22 MR. JOHNSON: Your Honor, there's the other two
23 prongs; the last one is the trustworthiness, and
24 then I think the third prong -- if you read
25 the statute, there's a third prong --

1 THE COURT: Well, the third prong is I have to
2 make a determination whether it guarantees a
3 trustworthiness, which is whether or not there were
4 leading questions, training of the interviewer, and
5 a detailed account of the alleged offense, the
6 coherence of it, and that sort of thing. So that's
7 what I have to make a determination as to whether or
8 not it's admissible and whether or not it complies
9 with the statute.

10 Once I do that, then, obviously, in the trial
11 of the case it will be admitted and the jury can
12 give it whatever weight, if any, and you'll be able
13 to cross-examine the interviewers in front of the
14 jury as to anything you want to, as long as it's
15 relevant.

16 MR. JOHNSON: Yes, sir. And that's why, Your
17 Honor, I would want the Court to review that, and
18 I'll get a chance to cross-examine her later.

19 THE COURT: Well, if I rule it's appropriate
20 under the statute, obviously you can cross-examine
21 her during the trial of the case.

22 MR. JOHNSON: Yes, sir.

23 THE COURT: That's what you're talking about?

24 MR. JOHNSON: Yes, sir.

25 THE COURT: You'll be absolutely afforded that

1 opportunity.

2 MR. JOHNSON: Thank you.

3 MS. SIMPSON: And if Mr. Johnson doesn't have
4 any more questions for this witness, I do have one
5 more that I didn't ask.

6 THE COURT: Yes, ma'am.

7 EXAMINATION

8 BY MS. SIMPSON:

9 Q. With respect to Nakiah J. and what she observed,
10 did she actually observe or indicate to you that she
11 actually observed some type of a sexual assault on
12 Minor by the defendant?

13 A. She did.

14 MS. SIMPSON: Thank you, Your Honor.

15 THE COURT: All right. Ma'am, you may step
16 down.

17 And may I excuse this lady and the other
18 witness for the rest of the evening? Obviously they
19 got to be back tomorrow.

20 MR. JOHNSON: Yes, sir, Your Honor.

21 THE COURT: All right. Y'all are excused.
22 Anything else by the State?

23 MS. SIMPSON: No, Your Honor, not at this time.
24 Oh, I do want to put on the record, there are two
25 witnesses -- well, with respect to our Rule 5 and

1 discovery obligations, I did verbally turn over to
2 Mr. Johnson the substantive portions of -- and
3 relevant -- of our conversations and discussions
4 with Pamela Hall, the mother in this case. She did
5 give statements, so anything in addition to that, I
6 did give to him verbally, as well as Melissa Hall
7 one of the aunts in this case. She did not provide
8 a statement, but I indicated what the substance of
9 her testimony would, be as well as Stacey Hall,
10 another aunt in this case who would did not provide
11 a statement.

12 THE COURT: Thank you.

13 MS. SIMPSON: And I also turned over, during
14 the course of our interviews with the victim, some
15 additional statements that she made, particularly
16 with respect to certain things that the defendant
17 said to her.

18 THE COURT: Now, we had some discussions in
19 chambers earlier -- we have a lot of witnesses on
20 the witness list -- about a chain of custody. I'm
21 not sure what particular evidence you're trying to
22 get in. Mr. Virgin Johnson, did I understand that
23 you were not going to require them to provide every
24 witness in the chain?

25 MR. JOHNSON: I was not going to do that, Your

1 Honor.

2 THE COURT: So y'all will discuss that tonight
3 and you can see who you will not need, and that will
4 speed --

5 MS. CAVANAUGH: Yes, Your Honor. And just
6 so -- I apologize for interrupting. But just so
7 we're clear, there would be potentially three
8 different --

9 THE COURT: Chains.

10 MS. CAVANAUGH: Well, for our purposes, two
11 different chains, as far as the DNA analysis of the
12 CSC kit, and then the forensic examination of the
13 telephone that have the -- certain pictures on that
14 telephone. We've provided the chain to him.

15 THE COURT: So you're going to waive that?

16 MR. JOHNSON: Yes, sir. I've talked to all of
17 the people that did the test. I don't need a chain,
18 I don't need --

19 THE COURT: That's a good, seasoned lawyer. I
20 appreciate that.

21 All right. Anything else by the State?

22 MS. SIMPSON: No, Your Honor, nothing further
23 from the State.

24 THE COURT: All right.

25 Mr. Johnson, you have several motions.

1 MR. JOHNSON: Your Honor, mine are rather
2 quick. Number one is -- one motion I handed up is
3 the motion for an in-camera hearing to determine the
4 admissibility of any 404(b) evidence, Your Honor.

5 THE COURT: What do you anticipate?

6 MR. JOHNSON: The discussions of other acts
7 like this that were done in other counties that, in
8 my opinion, should not be admissible because they go
9 to his character.

10 THE COURT: Which one of you ladies want to
11 address that?

12 MS. CAVANAUGH: Your Honor, I will.

13 THE COURT: Ms. Cavanaugh.

14 MS. CAVANAUGH: As far as --

15 THE COURT: What he's talking about, there's
16 been some allegations that something may have taken
17 place int Fairfax and the beach and Bishopville. I
18 forget what --

19 MS. CAVANAUGH: Yes, sir, Your Honor. There
20 were allegations -- first of all, you had the
21 opportunity to view the victim's statement to David
22 Kellin, which he indicated these acts had been going
23 on for a period of three years.

24 As she indicated in the video, they lived in
25 different areas of the state and these acts occurred

1 in those different areas. We believe, under the
2 404(b), common scheme or plan, that those acts that
3 occurred outside of Kershaw County come in under
4 404(b), as well as the res gestae theory, Your
5 Honor. We have at least three cases on point --

6 THE COURT: If you would give me those cases so
7 I can review them tonight and I'll make a ruling in
8 the morning before we start.

9 MS. CAVANAUGH: Yes, sir, Your Honor.

10 THE COURT: And also please give it to
11 Mr. Virgin Johnson. And I keep saying Mr. Virgin
12 Johnson because the defendant's last name is Johnson
13 as well.

14 MR. JOHNSON: Your Honor, and, of course, the
15 next logical step, if the Court rules that it come
16 in, I'm going to move to the more prejudicial than
17 probative --

18 THE COURT: You want a 403 analysis.

19 MR. JOHNSON: Yes, sir.

20 THE COURT: All right. Let me -- I know what
21 you're talking about; the other alleged events that
22 took place that was testified to by the alleged
23 victim. Let me look at these cases tonight. I'll
24 make a ruling on that in the morning, and then I'll
25 also do -- if I decide to let them in, then I'll let

1 you make a 403 argument on prejudicial versus
2 probative. Fair enough?

3 MR. JOHNSON: Yes, sir.

4 MS. CAVANAUGH: Your Honor, I am handing up
5 State v. Weaverling, State v. Martucci, and
6 State v. Mathis.

7 THE COURT: Mr. Virgin Johnson, what else do we
8 have on the agenda?

9 MR. JOHNSON: Your Honor, my next motion is to
10 excuse testimony about delayed reporting. Part of
11 that -- Your Honor, they're --

12 THE COURT: About delayed reporting?

13 MR. JOHNSON: Yes, sir.

14 THE COURT: I hadn't heard anything come from
15 these interviewers about why there was delayed
16 reporting. Y'all intend to use an expert on that?

17 MS. SIMPSON: Yes, Your Honor. We provided him
18 with the expert's name, Dr. Allison Foster with the
19 Assessment & Resource Center in Columbia. We
20 provided him with her CV as well.

21 She is a blind expert, in essence, and would be
22 testifying to issues of child sexual assault. This
23 isn't really a delayed disclosure so much as
24 accidental. But it's also chronic abuse alleged in
25 this case, family dynamics, things of that nature,

1 for which expert testimony would be required. We're
2 not offering any of that testimony through the
3 forensic interviewers in this case; they will merely
4 be fact witnesses only, and limited to time and
5 place just as any other witness would be.

6 THE COURT: What's the name of the case that
7 just came out that --

8 MS. SIMPSON: Ohio vs. --

9 THE COURT: No. The State Supreme Court --

10 MS. SIMPSON: Oh, State v. Baker and State v.
11 Brown, I believe, addressed the issue.

12 THE COURT: You got those so I can look at them
13 tonight?

14 MS. SIMPSON: Yes, sir.

15 THE COURT: Mr. Virgin Mr. Johnson, I think the
16 way I need to do that is, like we do in any expert
17 witness, we would need some proffer.

18 When do you anticipate putting her up?

19 MS. SIMPSON: She will be much later in our
20 case, one of our towards-the-last witnesses. She'll
21 be right before our investigators.

22 THE COURT: So we can do a proffer, perhaps, at
23 lunchtime tomorrow? When is she going to be here?

24 MS. SIMPSON: It's my understanding that
25 Dr. Foster doesn't have any conflicts this week, so

1 she could be here at lunch for the proffer.

2 MR. JOHNSON: Your Honor, I --

3 THE COURT: We'll have to do a proffer and then
4 I will look at it in light of the cases. You can
5 make your argument at this time.

6 MR. JOHNSON: Your Honor, my last --

7 THE COURT: Hold on one second.

8 There was just one recent case that had long
9 dissent to three or four different opinions. Was
10 that the Baker case?

11 MR. JOHNSON: That's the Brown case. That's
12 the most --

13 THE COURT: Oh, that was Brown.

14 MR. JOHNSON: Brown is the most recent case.

15 THE COURT: No, I'm talking about Baker. That
16 was -- I'm talking about the one in Supreme Court.

17 MS. SIMPSON: The South Carolina Supreme Court?

18 THE COURT: Yes, ma'am. That's Baker, isn't
19 it? I'll review both of those tonight. And,
20 Mr. Johnson, I won't rule on that yet and you're
21 protected until we do a proffer on what exactly --
22 I'll read your memo along with these cases and any
23 cases you want me to read. Fair enough?

24 MR. JOHNSON: Yes, sir. And the other one,
25 Your Honor, I'm twicksing [phonetic] and tweening

1 because --

2 THE COURT: The other one, as you say, if I let
3 these statements in, that you want to reserve your
4 cross-examination of the victim and the witness
5 after these statements are put in, the interviews?

6 MR. JOHNSON: Yes, sir. Either defer my -- I
7 can cross when they come in or make sure they put
8 her up, let her testify to the facts, and then bring
9 her in put her back up. Either way, I don't care.

10 THE COURT: Ladies, what he's saying is, is
11 that if you put the victim up and then put the
12 interviews in later, then he won't have an
13 opportunity to have that interview so he can cross
14 her on it.

15 MS. SIMPSON: Your Honor, the interview has
16 been provided in discovery. It's our position, as
17 you know, due to the confrontation clause, she, and
18 I can represent this, will be one of our first
19 witnesses in place, put up before the interview is
20 put in. He knows the substance of the interviews --

21 THE COURT: And he has transcripts of them.

22 MS. SIMPSON: Right. And he can cross-examine
23 her as to, essentially, prior statements, be it
24 whether she's consistent or inconsistent, however --

25 THE COURT: And that's a relevant -- obviously,

1 a relevant portion of the testimony, and he can
2 cross-examine on any relevant issue.

3 MS. SIMPSON: Correct.

4 THE COURT: So there's nothing precluding him
5 from going wide open on that --

6 MS. SIMPSON: Exactly.

7 THE COURT: -- notwithstanding the fact it
8 hadn't been put into evidence, knowing it's going to
9 be put in.

10 MS. SIMPSON: Correct. Yes, Your Honor. But
11 with -- our position is, there's really no basis for
12 that. I mean, I think the mode and presentation as
13 how evidence is presented to the jury. But based on
14 the nature, especially in this case with criminal
15 sexual conduct of a minor, the thought of putting
16 the victim on the stand, then taking her off, the
17 putting her back on subject to cross-examination --

18 THE COURT: I understand.

19 MS. SIMPSON: -- we are adamantly opposed. I
20 mean --

21 THE COURT: Well, I will make a ruling on that
22 in the morning. But, Mr. Virgin Johnson, in the
23 event that I deny that motion, obviously, the
24 statements, the interviews, that is obviously
25 relevant to the trial of this case, and that's a

1 relevant matter that you can cross-examine as
2 thoroughly and as deeply as you deem necessary when
3 she's on the stand. And to bring her back up after
4 the fact may create some issues. I don't know.
5 I'll just have to look at it. But you'll certainly
6 be allowed -- if I deny your motion, you'll
7 certainly be allowed to cross-examine her on the
8 statement, the transcript, whatever, however you
9 deem necessary to protect your client. You'll be
10 afforded a full opportunity for full
11 cross-examination, including that statement.

12 MR. JOHNSON: And, Your Honor, just for my
13 clearance, I know I can -- from a strategic
14 position, after the State puts her on for the case,
15 I could always call her back. But I think I have a
16 right, contemporaneously, under Crawford -- I think
17 it's Crawford vs. Maryland. I think I have the
18 right, contemporaneously, to cross-examine her in
19 the State's case -- or I'd like for you to defer
20 my -- if they put her up and they direct her, then,
21 Your Honor, you have the authority to say, okay,
22 I'll just allow Mr. Johnson to defer his
23 cross-examination until they put the videos in.

24 MS. SIMPSON: And, Your Honor, it's our
25 position too, if he wants -- I mean, he could put

1 the video in through her.

2 THE COURT: Defer your cross-examination
3 totally?

4 MR. JOHNSON: Totally and until they put the
5 videos up, that way I can cross her within the
6 State's case and not necessarily give up, I think,
7 my client's right to call her and --

8 THE COURT: Ms. Simpson, what he's saying is
9 that he would not cross-examine until you put the
10 statements in and then she would just have to be
11 called back up for cross-examination.

12 MS. SIMPSON: We'd be adamantly opposed to
13 that, Your Honor.

14 THE COURT: And why?

15 MS. SIMPSON: The nature of -- first of all, a
16 child witness on the stand, the nature of the
17 substance of her testimony. Like I said, the
18 interview itself is really no different than the
19 statements. He has it, he can cross-examine her.
20 There is no violation of the confrontation clause.
21 The law requires us to make her available for
22 cross-examination, and at that point, then the video
23 potentially comes in.

24 There's nothing with respect to the statute for
25 which we are introducing the out-of-court hearsay

1 that says as a result of us putting this in, the
2 victim must go up afterwards and be subject to
3 cross-examination after the introduction of the
4 video.

5 THE COURT: The statute is very clear. It
6 says: One of the requirement making it admissible
7 is that the child has to testify at a proceeding and
8 is subject to cross-examination on the elements of
9 the offense and the making of the out-of-court
10 statement. And you can do that all in one shot or
11 you can bifurcate it or however. But I never have
12 done it the way Mr. Johnson is suggesting and I
13 doubt I'll do it tomorrow, but he will certainly be
14 allowed full cross-examination, including the
15 statements, but I'll rule on that in the morning.

16 MS. SIMPSON: Thank you, Your Honor.

17 THE COURT: Mr. Johnson will be allowed to
18 cross-examine until the cows come in, as my mom used
19 to say, as long as it's not cumulative, redundant.

20 MR. JOHNSON: Yes, sir.

21 THE COURT: All right. Anything else I can do
22 to help anyone?

23 MS. SIMPSON: Just briefly on one thing. They
24 do have an expert, is my understanding, that he did
25 provide us the name as well. We didn't receive a

1 report or anything, so I just want to make sure that
2 there is nothing pursuant to our reciprocal Rule 5
3 that needs to be provided. He did provide us
4 several records and things in response to our --

5 THE COURT: What kind of expert you got?

6 MR. JOHNSON: Your Honor, it's a psychologist.
7 And at this point, I don't know if I'm going to call
8 him.

9 THE COURT: What's he going to testify?

10 MR. JOHNSON: The same thing their psychologist
11 is going to talk to; the general actions of a child
12 in this type of situations. It's kind of to rebut
13 what the State puts up. And, like I said, I don't
14 know if I'm going to use him. That's just a
15 possibility.

16 THE COURT: I understand.

17 All right. Do I have any press in the room?
18 You want me to go over where we are with the
19 situation they've offered you with your client or do
20 you feel comfortable talking with him yourself?

21 MR. JOHNSON: Your Honor, I'd rather just talk
22 with him and inform the Court tomorrow.

23 THE COURT: Okay. Anything else before we
24 break for the evening?

25 All right. I've got to rule on the two

1 statements and, at Mr. Johnson's request, the
2 cross-examination, the 403, 404. So I suspect 8:45,
3 that gives us 30 minutes to do it before the jury
4 gets here.

5 MS. SIMPSON: The State is fine with that.

6 MR. JOHNSON: Yes, sir.

7 THE COURT: I want to thank all of you. Y'all
8 have been most prepared and courteous and civil and
9 I appreciate the way you've handled everything and
10 handled each other and the way you've presented
11 yourselves to me. I look forward to being with you
12 tomorrow.

13 I'm going to let Mr. Johnson stay out on his
14 bond tonight. Mr. Johnson, your lawyer is seasoned,
15 which means he's old like me, excellent lawyer. He
16 and I have had many cases together when I used to
17 practice over in Bamberg for 30 years. Mr. Johnson
18 and I did a lot of things together and against each
19 other. I respect him highly. He's been around and
20 knows what's going on. So he's going to talk to you
21 tonight. Obviously all of those decisions are
22 yours, but these are difficult cases and the charges
23 that you're charged with, if you're convicted, I
24 don't have any discretion except a very long,
25 lengthy sentence, which is an 85-percent sentence.

1 CSC with a minor first is 25 --

2 MS. SIMPSON: 25 to life, Your Honor.

3 THE COURT: So the minimum would be a 25-year
4 sentence. So I just suggest that you -- you've
5 trusted in Mr. Johnson this far. He will give you
6 good advice. If you want to follow it, that's fine;
7 if you don't, that's fine. It's up to you. But
8 he's a good lawyer, he's a good man, and he does
9 what's right. And I respect him a lot, and I'm glad
10 to have him in my court trying a case.

11 All right. Thank you, everyone. Have a
12 pleasant evening and I'll see you at 8:45 in the
13 morning.

14 MS. SIMPSON: Thank you, Your Honor.

15 MR. JOHNSON: Thank you.

16 (Court in recess for the evening at 5:48 PM.)

17 THE COURT: Good morning. Anything from the
18 State before I make my rulings?

19 MS. SIMPSON: Yes, Your Honor, just briefly.
20 With respect to what we discussed in chambers, for
21 the record, as to the defendant's audio statement,
22 we are redacting out the portion regarding the
23 polygraph. We do think that's not admissible for
24 trial.

25 Additionally, Your Honor, our motion -- he was

1 charged with CSC in Lee County. Those charges were
2 dismissed, but not as a result of being based on the
3 merits or any type of trial or proceedings. It's my
4 understanding that those charges can be reindicted.
5 We would just move to preclude the Defense from
6 mentioning anything about the charges being
7 dismissed or anything of that nature in opening
8 statements, and I believe he's agreed to do that.

9 THE COURT: Anything else?

10 MS. SIMPSON: And with respect to **Nakiah J.**
11 youngest daughter's interview, who you reviewed --
12 and Defense can let us know. It depends on the
13 ruling. But should you be inclined to let it in,
14 there is a portion towards the end where she talks
15 about seeing the defendant with other women. It's
16 our understanding that they're adult women, not
17 other children. I don't know that that would be
18 relevant in this case. If the Defense wants it in,
19 we can leave it in, but, otherwise, we don't think
20 it's probative of anything with respect to this
21 case, and we'd be willing to take that portion out.

22 THE COURT: Anything else?

23 MS. SIMPSON: I believe that's all from the
24 State, Your Honor.

25 THE COURT: Mr. Johnson.

1 MR. JOHNSON: Your Honor, from the Defense, I
2 would just also like to, as we talked about in the
3 back, ask for a motion to sequester the witnesses.

4 I would agree that we should take that portion
5 out of Nakiah's interview that has to deal with the
6 adults. And depending on how his Honor rules on my
7 motion, there's some other stuff that may come out
8 also. I'm just waiting on that for you to tell me.

9 THE COURT: All right. I will grant the motion
10 to sequester the witnesses. Obviously the mother
11 would be allowed to stay in with the victim, if
12 she's in here. Y'all do the redaction on the
13 polygraph. And there will be no mention of the
14 other charges being dropped in the other counties.

15 As to the interview conducted by Kellin and
16 Investigator Williams there, was a request that I
17 conduct an in-camera, out of the presence of the
18 jury, to determine the admissibility of those
19 out-of-court statements of the children who were
20 under 12 years of age under Section 17-23-175. I
21 find that I will allow the admissibility of those
22 statements. I found that, obviously, they comply
23 with the statute in that they were given -- they
24 being the statements -- in response to a question
25 conducted during an investigative interview. There

1 is an audio and visual recording of the statements
2 that were preserved on film and will made available
3 here. Obviously my ruling is conditioned upon the
4 fact that the child testifies in the proceeding and
5 is subject to cross-examination.

6 As to the offense as well as making the out of
7 court statements, I have looked at it to guarantee
8 the trustworthiness of it, and I find that the
9 statement was not elicited by leading questions, I
10 find that the interviewers had been trained as set
11 forth in their testimony, I find that the statements
12 did represent a detailed account of the alleged
13 offense and that they had term of coherence so,
14 therefore, I will allow them. The jury can give it
15 whatever weight, if any, they deem appropriate.

16 As to cross-examining the child, I will not
17 bifurcate her cross-examination. Mr. Virgin
18 Johnson, you will have the right to cross-examine
19 her on any relevant issues, including the making of
20 the statement after her direct testimony.

21 As to the other alleged incidents that occurred
22 outside of this jurisdiction, I have reviewed the
23 cases as presented by the State, including State vs.
24 Weaverling, State vs. Martucci, and State vs.
25 Mathis, and I find that -- obviously we're all

1 familiar with Rule 404 and State v. Lyle. And I
2 made an analysis under that, and I find that there
3 had been a number of cases that have a common
4 factual pattern of this case which have allowed the
5 other acts to be brought into the case as an
6 exemption to Lyle under the common scheme or plan.
7 I find in this case there's a close degree of
8 similarity or connection between the other bad acts
9 and the crime in which the defendant is on trial,
10 and I find that their probative value outweighs the
11 prejudicial value under 403 and I'll allow that
12 testimony.

13 Anything else I had under advisement, Madam
14 Solicitor?

15 MS. SIMPSON: No, Your Honor, nothing under
16 advisement. I would just --

17 THE COURT: Anything else I needed to rule on
18 before we start?

19 MS. SIMPSON: No. I just -- with respect to
20 your ruling and Defense's motion --

21 THE COURT: Which one?

22 MS. SIMPSON: About the cross-examination.

23 THE COURT: Yes, ma'am.

24 MS. SIMPSON: There was another interview
25 which, of course, we could not introduce pursuant to

1 the statute. But based on that, I assume he knows
2 he can cross-examine thoroughly with respect to that
3 interview of the victim, Minor [REDACTED] that was
4 conducted by Laurie Caldwell. So I just wanted to
5 put that on the record. And, for Your Honor's
6 attention, Ms. Caldwell will be testifying in the
7 form of a fact witness as well, time and place
8 restrictions.

9 THE COURT: Anything else by the State?

10 MS. SIMPSON: Nothing else, Your Honor.

11 THE COURT: Mr. Virgin Johnson, anything by the
12 Defendant?

13 MR. JOHNSON: Your Honor, would the Court, at
14 the appropriate time, after reading all these cases,
15 the -- the Appeals Court is very particular about me
16 making my objections at the right time and so I'm
17 protected on the record. And I would just ask the
18 Court, at those times, I'm not being bothersome to
19 the Court --

20 THE COURT: I understand.

21 MR. JOHNSON: I need to make those objections
22 at the proper time.

23 THE COURT: And, obviously, this is a pretrial
24 ruling, and if something changes during the trial of
25 the case, I'm not bound by my -- we can revisit them

1 and, obviously, if you need to make a motion to
2 object at the appropriate time.

3 Anything else?

4 MS. SIMPSON: Nothing from the State.

5 MR. JOHNSON: Nothing further from the Defense.

6 THE COURT: All right. We'll stand at ease.
7 The jury should be ready to go at 9:15, so we'll
8 start right on time.

9 (Brief pause in the proceedings.)

10 THE COURT: All right. Anything by the State
11 before we proceed?

12 MS. SIMPSON: Your Honor, just for
13 clarification, with respect to sequestration, are
14 witnesses allowed in during opening statements
15 or are they sequestered for --

16 THE COURT: No, ma'am; for the whole thing.

17 MS. SIMPSON: And as far as our experts, it was
18 my understanding that we're sequestering the fact
19 witnesses.

20 THE COURT: Fact witnesses, that's correct.

21 MS. SIMPSON: Thank you. I think that's all
22 from the State, Your Honor.

23 THE COURT: Anything from the Defendant?

24 MR. JOHNSON: No, sir, Your Honor.

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

1 please.

2 (The jury enters the courtroom at 9:16 AM.)

3 THE COURT: Good morning, ladies and gentlemen.
4 I hope you had a pleasant evening and enjoyed your
5 donuts and hot coffee this morning. The first thing
6 we have to do to be ready to go is you have to be
7 sworn in for this particular trial. So if you
8 would, please stand, raise your right hand, and the
9 Clerk will administer the oath to you.

10 (Jury sworn.)

11 THE CLERK: Thank you. Please be seated.

12 THE COURT: Thank you, ma'am.

13 Ladies and gentlemen, let me make some brief
14 opening remarks and sort of tell you where we're
15 going and how we're going to get there and some
16 general ground rules.

17 Let me first of all remind you, in this case,
18 the fact that the defendant, Mr. Johnson, has been
19 charged and arrested and indicted -- and he's
20 indicted for three offenses; one is criminal sexual
21 conduct with a minor in the first degree, another
22 one is criminal sexual conduct with a minor in the
23 second degree, and the last one is a lewd act upon a
24 minor child. I will explain, charge and instruct
25 you on what's required to prove these three offenses

1 at the end of the case when I charge or instruct you
2 on the law. But please bear in mind the fact that
3 Mr. Johnson has pled not guilty to all three
4 indictments, by pleading not guilty, he has the
5 constitutional presumption of innocence throughout
6 the trial, and the State of South Carolina has the
7 burden of proving him guilty beyond a reasonable
8 doubt to you before you can find him guilty.

9 Now, if we were trying a wreck case or someone
10 accused of breach of contract or medical or legal
11 malpractice in the civil court system, the person
12 seeking to receive monetary damages, he has to prove
13 his case by the preponderance or the greater weight
14 of the evidence. That's in a civil case. So if you
15 use my hands as an example of the Scales of Justice
16 in a civil case, the parties come into the court on
17 equal footing. In order for the plaintiff -- the
18 person bringing the lawsuit -- to prevail, he or she
19 has to prove their case by the preponderance or
20 greater weight of the evidence, which simply means
21 they have to tip the scales ever so slightly in
22 their favor. If they're able to do that, they are
23 entitled to win. If the scales remain the same or
24 they tip in favor of the defendant, they would not
25 prevail. That's in the civil side of the courtroom

1 where people are seeking monetary damages against
2 someone else for injuries they may have sustained or
3 other civil matters.

4 The other kind of court cases we have are
5 criminal cases, such as this, where someone is
6 accused and has been indicted of crimes, such as the
7 defendant in this case. Because he has the
8 constitutional presumption of innocence, when he
9 comes into the courtroom, the Scales of Justice are
10 not even; he is presumed to be innocent. The State
11 has to prove his guilt to you beyond a reasonable
12 doubt, and they have to tip the scales in this
13 manner. So in a criminal case, the burden of proof
14 is greater than that in a civil case; they have to
15 prove it to you beyond a reasonable doubt. And I'll
16 explain to you what reasonable doubt is at the
17 conclusion of the case. But, basically, it's the
18 kind of doubt that would cause a reasonable person
19 to hesitate to act. So the burden of proof is on
20 the State, and they have to prove their case to you
21 beyond a reasonable doubt.

22 Now, how do they go about attempting to do
23 that? When we start the trial of the case, the
24 first thing that takes place are opening statements
25 by the lawyers. The State goes first because they

1 have the burden of proof, followed by the Defendant.
2 So one of the lawyers representing the parties will
3 stand up and make an opening statement. Please bear
4 in mind that the opening statement is not evidence
5 in the case; it is simply what the lawyers contend
6 the issues are as sort of a roadmap of what they're
7 going to show you, what they intend to prove, what
8 the main issues are, and they'll explain how they're
9 going to get there, what the case is about. But
10 that's not evidence in the case and you don't
11 consider that as evidence in the case when making
12 your decision.

13 Once the opening statements are made -- and
14 they'll be done in just a few minutes -- then the
15 State calls their witnesses first, and the lawyers
16 will conduct what we call direct examination of the
17 witnesses. Once the State has directly examined
18 their witness, the Defendant will have an
19 opportunity to cross-examine the witness, and then
20 the State has the opportunity to redirect. Once the
21 State has concluded their presentation of witnesses,
22 then the Defendant has the right, if they choose --
23 they have nothing to prove, they have no obligation
24 to prove anything. But if they wish to put up a
25 defense, they may. Following the Defendant's case,

1 then the State has the right to reply. Normally
2 that doesn't take place, but there may be some short
3 reply testimony.

4 Once all the testimony is in, then you'll hear
5 final arguments from the State and from the
6 Defendant. And then once the final arguments are
7 made, I will instruct you or charge you on the law,
8 and then you'll be in a position to go back to the
9 jury room and deliberate the guilt or innocence of
10 the defendant, to determine whether or not the State
11 has proved their case to you beyond a reasonable
12 doubt.

13 Now, in connection with all of that, as I told
14 you yesterday, you sit as the judges of the facts in
15 the case. The 12 of you collectively acting as one,
16 you're the judges of the facts. And as I told you
17 yesterday, you will probably hear different people
18 say different things. You've got to determine what
19 the true facts are. And as I tell all jurors, you
20 know how to tell when someone is telling the truth;
21 don't leave that common sense outside when you go
22 into the jury room. You deal with children, you
23 deal with wives, husbands, employees, employers,
24 friends. You know how to judge when someone is
25 telling you the truth. Use that same common sense.

1 Listen to these people who testify and determine
2 what the true facts are, and then you apply it to
3 the law. So that's the way it will work.

4 Now, here's how we sort of run court: I try to
5 start right on time. We were a couple minutes late
6 today, but not too bad. We'll normally take a break
7 around 11:00 and go till about 12:30. We'll order
8 you lunch today. So we'll have that morning break.
9 But at any time during the trial of the case, any of
10 you become uncomfortable, you need a bathroom break,
11 you need to stand up stretch, you get tired of
12 listening to me, anything, don't get uncomfortable,
13 raise your hand, and I'll make sure whatever needs
14 get met. Let me know if you have any problems
15 whatsoever. You're the main people in this trial,
16 you're the ones who make the decision.

17 When you take your first break today, I'll ask
18 that you pick or select a foreperson from the 12
19 regular jurors. The foreperson is simply someone
20 who acts as the spokesperson of the jury. They
21 bring to me any matters that you may need called to
22 my attention, and you head up the deliberations at
23 the conclusion of the trial. So select a foreperson
24 out of the 12 of y'all.

25 Now, this is a very important rule: You are

1 sworn not to discuss or start deliberating the case
2 until all the testimony has been presented, the
3 lawyers have made their final arguments, and I
4 charge you on the law. It may very well be that
5 that last witness or that final argument or
6 something that I charge will be something very
7 important that makes your decision. So please do
8 not discuss the case in the jury room, don't start
9 any deliberating until it's all over, said and done,
10 and I tell to you to do so. You can talk about
11 anything else you want to back there, make friends
12 or whatever, but please don't discuss the case and
13 don't start any type of deliberations until we're
14 through. And I'll give you that instruction every
15 time we take a break. Don't think I'm being
16 redundant, but we had a trial that was tried on
17 Columbia last week that took six days of the State's
18 time, the defendant's time, the Court's time, and
19 one juror, it was found out, was talking about the
20 case while the trial was going on, and the judge had
21 to declare a mistrial. The whole thing had to be
22 thrown out and it will have to be retried again.
23 All that time was wasted as a result of that. So
24 please don't discuss the case.

25 In just a mew minutes the lawyers will make

1 their opening remarks I ask that you pay close
2 attention. This is obviously an important case for
3 both the State and the defendant. You're exercising
4 a tremendous civic responsibility. This is not TV;
5 this is the real world. Please pay close attention
6 so at the conclusion you'll be in a position to
7 truly deliberate the case.

8 Any objections to my opening remarks by the
9 State?

10 MS. SIMPSON: Nothing from the State.

11 THE COURT: By the Defendant?

12 MR. JOHNSON: Nothing from the Defense, Your
13 Honor.

14 THE COURT: Ladies, opening statement, please.

15 MS. CAVANAUGH: Thank you, Your Honor. May it
16 please the Court.

17 THE COURT: Yes, ma'am.

18 MS. CAVANAUGH: You know I want to nut in you;
19 right? Did you miss me? This time, do you want to
20 be on top or do you want me to get on top? Now,
21 ladies and gentlemen, those are questions or phrases
22 that you might expect to hear in a pornography movie
23 or perhaps in a racy love scene in an R-rated movie.
24 But you would never associate those questions or
25 those words with -- or questions asked by a grown

1 man to his 11-year-old stepdaughter. But on October
2 11th, 2011, those are the words, those are the
3 questions that that defendant asked his 11-year-old
4 stepdaughter [Minor] after he had taken her
5 from her mom's house where she lived with her
6 sisters and her brothers to a graveyard right down
7 the street and drove down the dirt road, made sure
8 no one was coming, proceeded to take her pants off
9 and her underwear off, and started rubbing on her
10 vagina and rubbing on her breasts, and asked her
11 those very questions. But on October 11th, 2011, he
12 couldn't break her as he'd done so for the previous
13 four years, because on that afternoon, he finally
14 made a mistake. You see, he had accidentally
15 butt-dialed Pamela Hall, [Minor's] mom.

16 So that afternoon, [Minor's] mother had to
17 listen to the man who is the father of her three
18 children and the only father figure [Minor] has
19 ever known in her life, say those horrible things.
20 And after two minutes, she could not continue to
21 listen to that; she could not continue to hear those
22 questions asked of her baby. She hung up and she
23 called him back. Get my daughter home now. What
24 are you doing? Get her home now. And, of course,
25 he panicked. He took her to the store, where they

1 were supposed to have gone in the first place, got
2 the food, and came back to the home. [Minor] ran out of
3 the car upset, crying, hysterical. She ran into the
4 house. Pamela Hall grabbed the defendant's service
5 weapon -- because not only was he the father figure
6 to [Minor] but he was also a police officer. She was
7 so mad, so upset, she grabbed his service weapon.
8 What have you been doing to my daughter? I know
9 what I heard. What did you do? Nothing, nothing, I
10 didn't do nothing, ask her, you can go ask her.

11 Because, ladies and gentlemen, he had hoped
12 that [Minor] as she had not told for the previous
13 years, would not tell again. He remembered the
14 threats that he made to her that he would kill her,
15 he remembers telling her that if she told, her mom
16 would go to jail. So he had hoped that this one
17 last time, the mistake he made, he'd still be
18 getting away with it.

19 Pamela Hall walked in the house. [Minor] what did
20 he do? I know what I just heard. What did he do?
21 Mama, please calm down, please calm down. You have
22 three kids, please calm down, please. At that
23 moment, Pamela Hall knew that she had to be [Minor]
24 Hall's rock. She had to be strong. She walked back
25 outside, told that man to leave her property now,

1 she's calling the police.

2 And so he left. And, of course, he was
3 panicking because he knew that he was going to have
4 a really hard time getting around that phone call.
5 And he kept calling Pam and calling Pam and calling
6 Pam. Don't tell the police. I didn't do anything,
7 I didn't do anything. But she had called the police
8 and the police were on their way.

9 And **Minor** finally felt safe enough and strong
10 enough to tell her mother about the horrific things
11 that her step-dad had been doing to her for four
12 years. She told her mom that he had been raping
13 her, forcing her to perform oral sex on him, and him
14 on her, since she was seven years old.

15 Now, that particular afternoon, even though
16 luckily he wasn't able to follow through with what
17 he planned to do that day, they still took **Minor** to
18 the hospital to make sure that she was okay, for the
19 nurse to perform a sexual assault examination, as
20 they do in most of these cases to make sure the
21 little girl had not contracted any kind of diseases
22 and was okay until the investigation could go
23 forward.

24 Now, in the meantime the defendant is driving
25 back to his home in Allendale County, and he's

1 trying his best to come up with how to get around
2 that phone call. Now, law enforcement is familiar
3 with the defendant because he used to work with
4 them, so they call him and he's willing to come back
5 and give a statement. And he does. And he tries to
6 explain that phone call. Ladies and gentlemen,
7 phone numbers don't lie. He can't.

8 Now, as a result of what the defendant has done
9 to his stepdaughter **Minor** from the time she
10 was seven years old until October 11th, 2011, he's
11 charge would three crimes. Ladies and gentlemen, I
12 will briefly go over what we are -- what he is on
13 trial for this week.

14 He's charged with sexual conduct with a minor
15 first degree. That is defined by our Legislature as
16 engaging in sexual battery, which is defined as
17 sexual intercourse, cunnilingus, fellatio, or anal
18 intercourse or any intrusion, however slight, of any
19 part of a person's body into the genital or anal
20 openings of a person's body, except when
21 accomplished for medical purposes. It is
22 specifically of a minor less than eleven years old.
23 So for the rape of his daughter from the time she
24 was seven years old up until the day before her 11th
25 birthday, he is charged with criminal sexual conduct

1 with a minor in the first degree.

2 Now, with the same acts that he performed on
3 her from the time she was 11 until October 11, 2011,
4 when he made that fatal mistake, he's charged with
5 criminal sexual conduct with a minor in the second
6 degree. And that is for the assaults that occurred
7 when **Minor** was 11 years old.

8 And he's also charged with committing a lewd
9 act upon a minor. That is defined by our
10 Legislature as unlawful for a person over the age of
11 14 -- so for an adult -- to willfully and lewdly
12 commit or commit a lewd or lascivious act upon or
13 with the body or its parts of a child under the age
14 of 16 for the intent of arousing, appealing or
15 gratifying lusts or passions or sexual desires of
16 the person or of the child. So for every time that
17 he touched his stepdaughter's breasts, for every
18 time he touched her private area or her butt he's
19 charged with committing a lewd act.

20 Now, ladies and gentlemen, it is our job as
21 prosecutors, myself Catherine Cavanaugh, and Nicole
22 Simpson, my co-counsel, to prove to you each element
23 of these offenses beyond a reasonable doubt. And
24 we, as the State, as in every criminal case that we
25 prosecute, have the burden of proof. And, ladies

1 and gentlemen, in this case, we certainly welcome
2 that burden.

3 Now, proof beyond a reasonable doubt, as the
4 Honorable Judge Early just explained to you, is
5 proof that leaves you firmly convinced of the
6 defendant's guilt. What it is not is proof that
7 overcomes every possible doubt, because, ladies and
8 gentlemen, that's nearly impossible. And the Judge
9 will again instruct you, at the end of the case, on
10 the law and explain to you again what beyond a
11 reasonable doubt is.

12 Now, as you stated during his opening remarks
13 to you, we also want you to use your common sense.
14 So every morning when you walk through that
15 courtroom and every afternoon when you walk through
16 the doors of that courtroom after lunch, bring your
17 common sense with you. Because, again, we're
18 talking about a child who from the age of seven
19 years old until the time she was 11, had been
20 sexually assaulted by the person that she knew as
21 her father, this defendant, Nakia Johnson. And
22 these crimes are very sensitive in nature and
23 they're unique in the fact that because they're so
24 shameful and because these acts are so secretive,
25 they're committed behind closed doors -- it's not

1 like a murder or an attempted murder or armed
2 robbery where there might be witnesses. Usually
3 there are no witnesses. In this case, and I'll get
4 to it later, there are witnesses though.

5 The Legislature recognizes the dynamics of
6 these cases. And because of that, they enacted
7 Statute 16-3-657, which simply states: The
8 testimony of the victim need not be corroborated in
9 a criminal sexual conduct case. Ladies and
10 gentlemen, in this case, as I stated before, we
11 welcome our burden of proof because we have
12 corroboration, we have witnesses. Her little sister
13 Nakia J. [REDACTED] actually saw some of the terrible
14 things that the defendant would do to [REDACTED] Minor

15 In this case, we do have corroboration, we have
16 phone records that show that mistake that he made
17 that night -- or that afternoon where he
18 butt-dialed -- and pardon my language, but that's
19 the only way I know what to call it -- Pamela, her
20 mom.

21 So, ladies and gentlemen, how do you determine
22 the defendant's guilt? Well, you're going to hear
23 testimony from this witness stand. That will be the
24 main form of evidence that you'll hear. The
25 witnesses will come, will be sworn under oath, and

1 testify on that stand about what they know about
2 this case or what they did to investigate this case
3 or their role in the case, whatever that may be.
4 You'll also have evidence in the form of exhibits.
5 So we'll be able to provide photographs or maps or
6 phone records that you will have to take back into
7 the jury room to be able to come to your decision as
8 well.

9 Now, ladies and gentlemen, you'll hear from
10 **Minor** Yes, now she's 15 years old. But on
11 October 11th, 2011, she was 11. She is 15 today.
12 You will hear her own testimony about what her
13 step-father had done to her since she was seven
14 years old. Now, the law also recognizes that when
15 children give statements, that sometimes they're --
16 it would help you to see their statements closer to
17 the time that the disclosure occurred. So if
18 they're under the age of 12, their interview is
19 often recorded. So you'll also be able to see her
20 interview that was conducted by David Kellin of the
21 Family Resource Center. So not only will you have
22 her testimony from today, but you'll be able to see
23 the video that she -- during her interview with
24 David Kellin back when she was 11, the day after
25 this occurred.

1 Ladies and gentlemen, you'll also hear from
2 Pamela Hall. She'll be able to tell you what she
3 heard the defendant say to her baby girl October
4 11th, 2011. And she'll tell you everything that
5 she's done since then to make sure that that never
6 happens to her daughter again. You'll also hear
7 from **Nakiah J.** who is the biological daughter
8 of the defendant who on October 11th, 2011 was eight
9 years old. And she was also interviewed about what
10 she remembers seeing happen to her sister. So she's
11 going to testify and tell you what she remembers,
12 but you're also going to have that video of her when
13 she was eight years old describing to Valerie
14 Williams, who worked with SLED at the time, what she
15 remembers seeing her daddy do to her half sisters
16 before.

17 And, ladies and gentlemen, you'll also have the
18 phone records. You'll be able to see that
19 butt-dial, that final mistake, where the defendant
20 got caught. You'll hear from certain experts in
21 this case. You'll hear from the nurse who examined
22 **Minor** that night; you'll hear about her findings.
23 You'll also hear from a doctor by the name of Susan
24 Luberoff who sees hundreds and hundreds and hundreds
25 of child victims of sexual assault. And she will

1 teach us -- and unlike what you might think, that
2 anatomy heals very quickly. So in her experience,
3 it's very normal for victims not to have any results
4 or not to have any injuries. But she'll take the
5 stand and teach us all about that particular aspect
6 of the case. And you'll also hear from law
7 enforcement, of course, and their investigation and
8 what led to the arrest of this man for criminal
9 sexual conduct with a minor.

10 Now, ladies and gentlemen, on October 11th,
11 2011, one chapter of **Minor's** nightmare of
12 her childhood was closed. No longer does she have
13 to worry about her stepfather sending her mom to the
14 store so he could rape her; no longer does she have
15 to worry about her stepfather sending Pamela on an
16 errand so he could take advantage of her; no longer
17 does she have to worry about the defendant telling
18 her sisters and her brothers to go outside and play
19 so he could take **Minor** into her room and have his
20 way with her.

21 Ladies and gentlemen, at the end of this case
22 after you have listened to all of the testimony,
23 after you deliberate in that jury room, Nicole
24 Simpson -- before you deliberate, Nicole Simpson, my
25 co-counsel, is going to come back to you and she's

1 going to ask you to hold the defendant accountable
2 for the nightmare that he caused Minor
3 She's going to ask you to close this final chapter.
4 Please find him guilty of criminal sexual conduct
5 with a minor in the first degree, second degree, and
6 for committing lewd act on Minor for four years.
7 Thank you.

8 THE COURT: Mr. Johnson.

9 MR. JOHNSON: May it please the Court, Your
10 Honor. Solicitors.

11 Ladies and gentlemen of the jury, I brought a
12 quarter, and I brought it for one purpose: We all
13 already know it has two sides. You've heard one
14 side, now you will hear our side. It was October
15 11th in 2011. Nakia Johnson got up, had a phone
16 call. His daughter, baby girl, which is Minor's
17 half sister, he was coming in to pick her up to take
18 her back home with him. He came in. When he got in
19 at the house -- of course they were in school during
20 that time -- he stayed around the house, he and the
21 mother had sex at the house. The kids came home
22 from school. He was getting ready to go back out.
23 And another thing you'll find out is that the
24 weather was bad on that day. It was very bad. He
25 was a police officer. He had to go back to work.

1 The facts will show that he had to be back to work.

2 Before he went back to work, what he did was
3 went to the store to buy all of the children some
4 candy. **Minor** which is just like his daughter, even
5 though she's not his biological daughter, he raised
6 her, he took care of her, he was a father to her, he
7 took her to the store. He got her to the store.

8 The evidence will show that there was a phone call
9 made and the evidence will show that the phone call
10 came from his phone. The evidence will show that
11 they were not in a graveyard; the evidence will show
12 that they were in the store. And if he was in the
13 store with her, then there's no way for him to be at
14 the graveyard doing what they say he did. And if he
15 wasn't at the graveyard doing what they said he did,
16 then everything that he's been accused of would be
17 called into question.

18 I'm glad that law enforcement went to the store
19 and got the video. The video should be presented by
20 the State. Look at the video. The State is going
21 to present a lot of testimony. There's going to be
22 some experts that -- the law allows the experts to
23 testify because the child is under the age of 12.
24 And you're going to hear a lot of allegations, but
25 there's going to be no proof. There's going to be a

1 lot of allegations. And if you hear enough
2 allegations, it causes one to be very concerned.

3 But I would ask you today -- it is critical, it
4 is important for y'all to look at the evidence and
5 do not sympathize just because a child said it.
6 It's a case about believability. If you believe
7 their testimony, we're in trouble; but if you look
8 at the evidence and use your common sense and look
9 at it piece by piece and put it together -- and
10 those of you who are parents who understand children
11 and understand why they do what they do, please use
12 your common sense this time and watch the video.
13 You'll find that he was never accused of this
14 before. He was an ex- -- well, not an ex. He was a
15 former Marine, police officer, served in this
16 county, served in two or three other counties. You
17 will hear that he served faithfully. It just
18 doesn't make sense.

19 Now, at the close of this case -- because the
20 opening statement is supposed to be a summary or
21 roadmap of where the case is going. I'm not
22 supposed to argue the case, so I'm going to save my
23 arguments, the whys and whats and all of that, for
24 the end. But I'm begging you, I'm pleading with
25 you -- I heard the Solicitor say there was a

1 nightmare. But I want you to know too, the facts
2 will show, he went to jail for over 100 days. The
3 facts will show he lost his job. The facts will
4 show nobody wants to hire him now. The facts will
5 show for three years now he's had this cloud over
6 his head.

7 And you 12 people -- and if one of you leave,
8 the alternates -- y'all have the critical decision.
9 Y'all have to look at the evidence and find that it
10 proves it beyond a reasonable doubt. And what is
11 not talked about is there are expectations in the
12 community, and everybody is going to sympathize with
13 the child and everybody is going to look at y'all.
14 This decision -- nobody wants to seem like they're
15 not protecting children. But your job today is to
16 do justice. You're not here to protect --

17 MS. CAVANAUGH: Objection.

18 THE COURT: Mr. Johnson, their job is to
19 determine the credibility of the witnesses and find
20 the true facts in this particular case.

21 MR. JOHNSON: Your job is to determine the
22 credibility of the witnesses and find the facts in
23 tis case which will equal the justice. I don't want
24 to get up here and argue. This has been a long
25 road. Please, please, as the evidence is presented,

1 remember proof beyond a reasonable doubt. I think
2 the solicitor mentioned and I think the Judge
3 mentioned, it's a doubt that would cause one to
4 hesitate to act. And if it causes you to hesitate
5 at the end of this trial, then you should find him
6 not guilty.

7 We look forward to this evidence being
8 presented. And I want you to pay close attention
9 ton the video of him at the store. Thank you.

10 THE COURT: You may call your first witness.

11 MS. CAVANAUGH: State calls Deputy Jerry
12 Barnwell.

13 THE COURT: Deputy Jerry Barnwell.

14 MS. SIMPSON: He's sequestered. He's right
15 outside.

16 THE COURT: Deputy Jerry Barnwell.

17 (Deputy Jerry Barnwell enters the courtroom.)

18 THE COURT: If you would, please come around
19 and place your left hand on the Bible and raise your
20 right.

21 JERRY BARNWELL

22 being first duly sworn, testified as follows:

23 THE WITNESS: I do.

24 THE CLERK: Please be seated. State your full
25 name for the record, please.

1 THE WITNESS: Deputy Jerry Barnwell.

2

3

DIRECT EXAMINATION

4

BY MS. CAVANAUGH:

5

Q. Good morning, Deputy Barnwell.

6

A. Good morning.

7

Q. Where are you employed?

8

A. Kershaw County Sheriff's Office.

9

Q. And how long have you been employed with the
10 sheriff's department?

11

A. Four years.

12

Q. And what is your position with the sheriff's
13 department?

14

A. Deputy sheriff.

15

Q. And as a deputy sheriff, what are some of your
16 roles and duties?

17

A. Respond to calls of service.

18

Q. Back on October 11th, 2011, were you employed
19 with the Kershaw County Sheriff's Department?

20

A. I was.

21

Q. And were you employed in your same capacity?

22

A. Yes, ma'am.

23

Q. And did you have an opportunity to -- or did
24 you respond to [REDACTED]

25

A. I did.

1 Q. And is that in Kershaw County?

2 A. It is.

3 Q. And why did you respond to that location?

4 A. It was in reference to a sexual assault.

5 Q. And do you have a copy of your report with you?

6 A. No, ma'am, not with me.

7 MS. CAVANAUGH: Your Honor, if I may hand the
8 witness a copy of his report.

9 THE COURT: Yes, ma'am.

10 BY MS. CAVANAUGH:

11 Q. Deputy Barnwell, what time did you respond to
12 Stevens Road?

13 A. It was -- give me one second. It was 5:53 PM.

14 Q. I'm going to direct your attention to the top
15 right of your incident report under dispatch time.

16 A. It was -- it was -- 6:36 PM was the dispatch
17 time.

18 Q. Okay. And what time did you arrive to Stevens
19 Road?

20 A. Got there at 7:23 PM.

21 THE COURT: 7 what?

22 THE WITNESS: 7:23 PM.

23 BY MS CAVANAUGH:

24 Q. And who did you speak to once you got there?

25 A. I spoke with the mother, Pamela Hall.

- 1 Q. Okay. And do you remember what her demeanor
2 was like when you spoke to her?
- 3 A. She was upset and wanted us to do something.
- 4 Q. And without going into any detail, did she tell
5 you about a phone call that she had overheard?
- 6 A. Yes.
- 7 Q. Okay. And after speaking to her, did you speak
8 to anybody else on scene?
- 9 A. No; just her.
- 10 Q. Okay. And who is actually the listed victim in
11 this case?
- 12 A. It's the juvenile, her daughter. I'd have to
13 look on the report.
- 14 Q. I'll direct your attention to the first page in
15 that middle section.
- 16 A. Minor
- 17 Q. Okay. What was her first name?
- 18 A. Minor
- 19 Q. Okay. And how old was she on October 11th,
20 2011?
- 21 A. She was 11.
- 22 Q. And was she at the house that afternoon?
- 23 A. She was.
- 24 Q. But did you actually speak to her?
- 25 A. No.

1 Q. In your role as a responding officer, would
2 that necessarily be part of your duties?

3 A. No; just speak to the mother, get the
4 information from the mother, and notify the on-call
5 investigator. And they would take over from there.

6 Q. And did you do that?

7 A. I did.

8 Q. Did you process the scene or anything like
9 that?

10 A. No, I did not.

11 Q. And why would that not be -- why was that not
12 what you did?

13 A. The crime didn't -- wasn't committed at the
14 residence and it wasn't fresh -- a fresh crime.

15 Q. Wasn't freshly committed that night?

16 A. Right.

17 Q. At least at that residence; right?

18 A. Right.

19 Q. Now, did a -- was the victim's advocate from
20 the sheriff's department called?

21 A. They were.

22 Q. And what did they do?

23 A. They -- they were to meet the victim and the
24 mother at the hospital.

25 Q. Okay. And was it your understanding that they

CROSS-EXAMINATION OF JERRY BARNWELL BY MR. JOHNSON

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1 were taken to the hospital?

2 A. They were.

3 MS. CAVANAUGH: Thank you, Deputy Barnwell.

4 Please answer any questions from the Defense.

5 CROSS-EXAMINATION

6 BY MR. JOHNSON:

7 Q. When you arrived at the scene, was Mr. Johnson
8 there?

9 A. No.

10 Q. Did you speak to him?

11 A. I did not.

12 Q. Did Ms. Pamela Hall tell you in her report
13 about drawing his pistol and pointing it at him?

14 A. She told us that that night, yes.

15 Q. She told you that?

16 A. Uh-huh.

17 Q. She told you she drew it and she pointed it at
18 him?

19 A. She said -- yes.

20 Q. Okay. That's all. Thank you.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MS. CAVANAUGH:

24 Q. Deputy Barnwell, just to follow up on that
25 question, did she tell you why she did that?

1 A. She was angry with him. She told me after she
2 heard the conversation over the phone, she told him
3 to come home right then and there and to bring her
4 daughter back. And then when her daughter returned
5 home with Nakia, that's when -- that's when she told
6 him to leave, grabbed the pistol and --

7 Q. And she grabbed his pistol because of what she
8 heard on that phone call; correct?

9 A. Correct. Correct. She was angry with him.
10 That's why she grabbed the pistol and told him to
11 leave the residence.

12 Q. From what she heard on the phone call?

13 A. Correct.

14 Q. And she provided that particular information to
15 you?

16 A. She did.

17 MS. CAVANAUGH: That's all, Your Honor.

18 THE COURT: All right. You may step down.

19 Next witness, please.

20 MS. SIMPSON: State calls **Minor**

21 **[REDACTED]**

22 being first duly sworn, testified as follows:

23 THE WITNESS: Yes, ma'am.

24 THE CLERK: Please be seated and state your
25 full name for the record.

DIRECT EXAMINATION OF Minor BY MS. SIMPSON

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1 THE WITNESS: Minor

2

3

DIRECT EXAMINATION

4

BY MS. SIMPSON:

5

Q. Minor can you spell your name for the Court

6

Reporter.

7

A. Minor.

8

THE COURT: Let's make sure we understand

9

everything now. See that nice lady way back over in

10

the back? She's got to be able to hear you. And

11

I'm having a hard time hearing you, so you've got to

12

speak up so everybody can hear you. Okay?

13

THE WITNESS: Okay.

14

BY MS. SIMPSON:

15

Q. Minor how old are you?

16

A. Fifteen.

17

Q. And what grade are you in?

18

A. I'm a sophomore.

19

Q. In high school?

20

A. Yes, ma'am.

21

THE COURT: Hold on one second.

22

Ladies and gentlemen of the jury panel, if you

23

cannot hear her, please raise your hand. Okay?

24

Go ahead. Speak up so they can hear you,

25

please, ma'am.

1 THE WITNESS: I'm a sophomore.

2

3 BY MS. SIMPSON:

4 Q. And where do you go to school?

5 A. [REDACTED]

6 Q. [REDACTED]

7 A. Yes, ma'am.

8 Q. Okay. Do you have any particular favorite
9 things you like to do; classes or anything?

10 A. I like history.

11 Q. You like history?

12 A. Yes, ma'am.

13 Q. And do you play any type of sports or do music
14 or anything of that nature?

15 A. I play basketball.

16 Q. You play basketball? Do you play basketball
17 for the school?

18 A. Yes, ma'am.

19 Q. And how old -- when is your date of birth?

20 A. [REDACTED]

21 Q. [REDACTED]

22 A. [REDACTED]

23 Q. [REDACTED] And are you a little nervous here today?

24 A. A little.

25 Q. A little bit.

1 Where did you go to middle school?

2 A. What year?

3 Q. Where?

4 A. [REDACTED]

5 Q. And what about elementary school?

6 A. [REDACTED]

7 Q. And where are you currently living?

8 A. With my step-mom.

9 Q. [REDACTED]

10 A. [REDACTED]

11 Q. And who all lives there with you?

12 A. My brother and step-mama and my dad.

13 Q. And your dad. And what are their names?

14 A. Jocelyn Moses [phonetic], Shawntel Ford
15 [phonetic] and T.F. [REDACTED].

16 Q. Okay. And you go to [REDACTED]

17 How long have you been living with them?

18 A. About three years.

19 Q. About three years.

20 Prior to that, were you actually living with
21 your mother?

22 A. I'm not understanding.

23 Q. Prior to going to live with your step-mom and
24 your dad, did you live with your mom?

25 A. Uh-huh.

1 Q. Okay. And you've actually lived a number of
2 different places; isn't that right?

3 A. Yes, ma'am.

4 Q. Tell the jury about where all you've lived.

5 A. I lived in Fairfax, Fairfield, and then I moved
6 back down here, then I stayed in Camden, then I
7 moved back.

8 Q. Okay. And in Fairfax -- and before we talk
9 about that, actually, let's talk a little bit about
10 your family. Do you have any brothers or sisters?

11 A. Yes.

12 Q. Tell the jury who they are and what their names
13 are.

14 A. I have two brothers; one named [Nakia J.] and one
15 named [T.F.]. And I have two sisters; one name
16 [Nakiah J.] and one named [Nakisha J.] [phonetic].

17 Q. Okay. And who is your mother?

18 A. Pamela Hall.

19 Q. And your father, what's his name again?

20 A. Shawntel Ford.

21 Q. What about your brothers and sisters; do they
22 have the same father or a different father?

23 A. Me and my youngest brother have the same father
24 and the other three has the same.

25 Q. Okay. And who is the father of your other

- 1 three siblings?
- 2 A. Nakia Johnson.
- 3 Q. And was he actually your stepfather?
- 4 A. Yes.
- 5 Q. And did you -- what did you call him?
- 6 A. Kia.
- 7 Q. And what are the names of his kids?
- 8 A. [Nakia J.], [Nakiah J.] and [K.J.]
- 9 [phonetic].
- 10 Q. And is [Nakiah J.] a boy or a girl?
- 11 A. Girl.
- 12 Q. And then your brother is [Nakia J.]?
- 13 A. Uh-huh.
- 14 Q. And then you have another sister. And who is
- 15 the oldest out of all of them?
- 16 A. I am.
- 17 Q. You are. Growing up -- I know now you live
- 18 with your biological father. But was he there a
- 19 whole lot growing up before you went to move with
- 20 him?
- 21 A. Yeah.
- 22 Q. He was around. Did you actually live with him
- 23 or did you live with your mom?
- 24 A. I lived with both.
- 25 Q. When you were living in Fairfax, who did you

1 live with?

2 A. My stepfather and my mother.

3 Q. Your stepfather and your mother. And by your
4 stepfather, who are you referring to?

5 A. Nakia.

6 Q. And your little sister [Nakiah J.], was she born yet
7 or did you live there for a period of time before
8 she was born?

9 A. She was born.

10 Q. And was she there with you too?

11 A. Yes.

12 Q. In Fairfax, after y'all -- why did y'all leave
13 Fairfax?

14 A. Because they got into a big argument that he
15 was cheating. And he was abusive, so we left.

16 Q. And by we left, who all left Fairfax?

17 A. Me, my mother, and my siblings.

18 Q. And at that time who was born?

19 A. [Nakisha J.].

20 Q. [Nakisha J.] and [Nakia J.]. Your little brother wasn't
21 born yet?

22 A. Yeah, he was born too.

23 Q. Okay. And you went with your mother. Where
24 did y'all go to live for a little while?

25 A. We went back to my grandma's.

- 1 Q. And where does she live?
- 2 A. She lives in Kershaw.
- 3 Q. She lives in Kershaw. And has she been living
- 4 here most of her life or --
- 5 A. Uh-huh.
- 6 Q. -- pretty much all of your life?
- 7 A. [Nods head].
- 8 Q. And do you know where she lives?
- 9 A. Yes.
- 10 Q. Where is that?
- 11 A. It's down 341.
- 12 Q. It's down what?
- 13 A. 341.
- 14 Q. And so you stayed with your grandmother a
- 15 little while when you left Fairfax. Is there
- 16 actually -- who's -- what kind of house was it,
- 17 like, as far as was it a house, a trailer?
- 18 A. It was a trailer.
- 19 Q. And on that property, is the trailer the only
- 20 house or is there actually another house that your
- 21 grandmother lived in?
- 22 A. It's actually another house.
- 23 Q. Say that again.
- 24 A. It's two.
- 25 Q. Two houses. Okay. And who did you live with

1 and where?

2 A. I lived with my grandma and my mama, and that
3 was at the trailer.

4 Q. At the trailer. And you said they got into an
5 argument, and that's why they moved, about him
6 cheating. So it was just -- did you overhear
7 arguments or would they argue in front of you?

8 A. Yes.

9 Q. And then after living with your grandmother for
10 a period of time, did you actually move somewhere
11 else?

12 A. Uh-huh.

13 Q. You have to say yes or no.

14 A. Yes.

15 Q. Okay. Where did you live?

16 A. We moved into a trailer.

17 Q. Do you remember where that trailer was?

18 A. It was in the trailer park.

19 Q. Was it here in Kershaw or somewhere else?

20 A. It was in [REDACTED].

21 Q. And who lived with you there?

22 A. Just my mom and my brothers and sisters.

23 Q. Okay. And when you say brothers and sisters,
24 do you mean --

25 A. Nakiah J. --

1 Q. -- Kia's children?

2 A. Uh-huh.

3 Q. Your step-dad's kids?

4 A. Yes.

5 Q. Was he actually living there with y'all?

6 A. Well, he would come visit.

7 Q. Did he also come visit you when you were living
8 on your grandmother's property?

9 A. Yes.

10 Q. Tell the jury about when he came and visited
11 you.

12 A. He would just come and he'll just act normal or
13 he was like -- he'd send my mama to go get something
14 or he would just make up something, like, that he
15 would go get. But he'd always tell me to go to a
16 place and he'll leave off to go to a place and tell
17 them to do something else and he'll just take me to
18 a place on my own or by myself and --

19 Q. And so would your brothers and sisters still be
20 there at the house?

21 A. Yes.

22 Q. And backing up just a little bit, in Fairfax,
23 did he ever do anything there that made you feel
24 uncomfortable?

25 A. Yes.

1 Q. Tell the jury about what happened while y'all
2 were in Fairfax.

3 A. Before we moved into our brick house, we was
4 staying in a trailer. And I guess he discovered
5 that I had hair on privates, so he would ask and I
6 would say, yes, I do. So he would be like -- he
7 would say -- my mama would go off somewhere and
8 he'll send my sisters and them into the back room
9 while I go into his room. And then he'll ask could
10 he -- he would ask me would I tell, and I would
11 always say no. So he asked me to pull down my
12 pants, and I do. So he would pull down his pants
13 too, and would he touch.

14 Q. So backing up a little bit, you said that he --
15 you told him you wouldn't tell. Do you know what he
16 was talking about at that time?

17 A. [Nonverbal response].

18 Q. And when he pulled down his pants and you
19 pulled down yours, he touched you. Can you tell the
20 jury in what way he touched you, like, how he
21 touched you.

22 A. First he'll kiss me on my lips and then
23 he'll -- he'll --

24 THE COURT: Take a deep breath, young lady, and
25 tell us what happened, please.

1 THE WITNESS: He'll rub -- he'll rub -- he'll
2 rub on my arms and my breasts. Then he'll rub on my
3 stomach, then he started kissing me. Then he'll put
4 his private in my private.

5 BY MS. SIMPSON:

6 Q. And would he say anything to you or do you
7 remember what he was doing while this was happening?

8 A. Sometimes he'll ask me do I like it, and I
9 always shake my head yeah. I don't give a response,
10 but I always say yeah.

11 Q. And why did you say yeah?

12 A. I guess it would be over fast if I say yeah.

13 Q. Would he always do that? Was he always able to
14 have sex with you?

15 A. Yes.

16 Q. Yes. But you said he started touching you
17 first; right?

18 A. Yes.

19 Q. And this was in Fairfax where it started?

20 A. Yes.

21 Q. When he would come visit you while you were
22 living on your grandmother's property, tell the jury
23 what happened there when he would visit you.

24 A. He would tell Kiah and my brother and them to
25 either go outside or go to the room and play, then

1 we'll go down the hallway. And he'll check to see
2 if they can see through the door. So he'll tell
3 them to just to stay put and don't move. And we
4 just go in the room and he pulls his pants down and
5 he'll tell me to suck it.

6 Q. Tell you to what?

7 A. To suck it.

8 Q. To suck it?

9 A. [Nods head].

10 Q. What was he telling you to suck?

11 A. His penis.

12 Q. Okay. And did you do it?

13 A. Yes.

14 Q. What do you remember him doing while he made
15 you do that?

16 A. He would just rub my hair or move my head back
17 and forth.

18 Q. Say that last part again.

19 A. He would move my head back and forth.

20 Q. And do you remember if anything ever came out
21 at all?

22 A. White stuff.

23 Q. White stuff? Do you remember where it would go
24 or where he would put it?

25 A. He would tell me just to wipe it on the floor

1 or rub it in, or he'll get a towel or a wash rag.

2 Q. Okay. Did anything else happen while you were
3 there?

4 A. He'll tell me to lay down and he'd kiss me.
5 And he'd kiss my thighs and then he'll put his penis
6 in my private.

7 Q. And in your private, do you mean your vagina
8 area?

9 A. Yes.

10 Q. Did he ever try to touch your bottom or put
11 anything in that area?

12 A. He would rub it, but he wouldn't put it in
13 there.

14 Q. Okay. So he would just rub on that area, but
15 he never put his penis in there?

16 A. Yes.

17 Q. And what type of work did Kia do?

18 A. He's an officer.

19 Q. He was a police officer?

20 A. [Nods head].

21 Q. And did you ever see him with guns or know he
22 had a gun?

23 A. I knew he had one.

24 Q. And, essentially, up until this point, what
25 types of things has he told you? Like, why didn't

1 you tell anyone?

2 A. Because he said I'll never be his, because it
3 would drive him crazy. And he said he would have to
4 kill my mama because he know that she was going to
5 tell, including us would tell, then he's going down.

6 Q. And so that was some of the, I guess, threats
7 he made to you?

8 A. Yes, ma'am.

9 Q. And I know we're kind of talking about stuff --
10 how often did this happen?

11 A. Any time that he could.

12 Q. So whenever he got the opportunity, this is
13 what would happen.

14 After you moved -- at some point while you were
15 at your grandmother's house, did you actually leave
16 there and go live somewhere else for a while?

17 A. We went to go move back with him again at one
18 point in time.

19 Q. At one point in time. And as far as him
20 visiting you, was that pretty much wherever y'all
21 were living at the time? If you weren't living with
22 him, you still got to see him?

23 A. Uh-huh.

24 Q. And other than what we've talked about as far
25 as the things he would do to you, how did he treat

1 you in front of, like, your mother and your brother
2 and your sister?

3 A. He would act like a real person, like a real
4 dad in front of them.

5 Q. And did you act pretty normal too?

6 A. I always stayed to myself.

7 Q. Okay. You always stayed to yourself?

8 A. Yes, ma'am.

9 Q. So at your grandmother's house, you said some
10 people would kind of run up, but he'd be on the
11 lookout for them?

12 A. Yes, ma'am.

13 Q. Okay. Because I couldn't really hear you well
14 during that part. Can you tell us about that?

15 A. While we're in the room, we do what we do. My
16 sister Kiah or either Kamari J. would come to the door
17 or they'll knock or they'll try to, like, peek and
18 see what's going on.

19 Q. Okay. And would he actually send them away or
20 how would they leave, or do you even know?

21 A. He'll tell them to go back or he'll walk back
22 around there with them or act like he's playing with
23 them.

24 Q. Okay. And were there times that -- you said
25 sometimes your mom went to the store. Did she

1 actually work too?

2 A. Huh-uh. No, ma'am.

3 Q. Not during that time? What would happen if she
4 came back from the store?

5 A. She would just come in the house and he would
6 tell me -- well, he would tell me to hurry up and
7 come sit down. So I hurry up and run back by the
8 time she come back. And she would come in and we
9 would act like nothing happened.

10 Q. He said would tell you what?

11 A. Hurry up and come back and sit down.

12 Q. And that's when, I guess, you could hear her
13 pull up or he knew she was coming back?

14 A. Yes, ma'am.

15 Q. So when y'all left and went back to Fairfax,
16 tell the jury a little bit about why you went back
17 to live with them.

18 A. I guess it was him and my mother decision to
19 come back. But I really wanted to stay with my
20 auntie, but my mama wouldn't let me.

21 Q. Okay. Which auntie -- now, you have several
22 aunties; right?

23 A. Yes, ma'am.

24 Q. Tell the jury, who all are your aunts?

25 A. Stacey Hall and Melissa Hall.

1 Q. And those are the two that you actually stayed
2 with off and on?

3 A. Yes, ma'am.

4 Q. Which aunt -- when you say auntie, which aunt
5 did you want to stay with?

6 A. My Aunt Missy.

7 Q. Your Aunt Missy. But you had to go back to
8 Fairfax?

9 A. Yes, ma'am.

10 Q. Who was living with you at Fairfax and who was
11 staying at the house?

12 A. It was me, my mother, my two sisters, and my
13 brother and Nakia.

14 Q. Okay. And when you moved back, did things stop
15 or what happened?

16 A. They just speeded up, just got worse than what
17 it was.

18 Q. Got worse than what it was?

19 A. [Nods head].

20 Q. Tell the jury what you mean when you say it got
21 worse than what it was.

22 A. It just was hour after hours. He'd just come
23 in -- if he's not at work, he'll just -- he'll
24 play -- he'll do -- he'll watch TV for a while and
25 then he'll come and mess with me. And he'll just

1 send them off to go somewhere or when they go
2 outside, he'll pull me back in the house.

3 Q. So with him living there, it happened more
4 often?

5 A. Yes, ma'am.

6 Q. And did it happen certain places in the house
7 or just anywhere?

8 A. The back room, the laundry room, and his room.

9 Q. And about how old were you when this was
10 happening?

11 A. I can't really remember.

12 Q. At some point in Fairfax, was this the time --
13 did your mom leave for a while?

14 A. Yes. She was working.

15 Q. She was working?

16 A. [Nods head].

17 Q. Do you remember where she was working?

18 A. Like, AT&T or something like that.

19 Q. Okay. And so she would come home?

20 A. Yes, ma'am.

21 Q. And when she was home, would anything happen?

22 A. No -- well, while she was sleeping, he'll get
23 up sometimes.

24 Q. Okay. Just sometimes, but not all the time?

25 A. Not all the time.

1 Q. And about how long do you remember you staying
2 in Fairfax at that point in time? Because this is
3 the second time you went back; right?

4 A. Yes, ma'am.

5 Q. Do you remember how long at all?

6 A. I just know it was a good while.

7 Q. It was a good while. And was it just -- did
8 you know the defendant's mom or Kia's mom?

9 A. Yes, ma'am.

10 Q. Did she live there with y'all or did she live
11 in Fairfax?

12 A. She lived in her own home.

13 Q. She lived in her own home. At some point, did
14 you move again?

15 A. Yes.

16 Q. And do you remember why you moved or do you
17 just --

18 A. I just know we moved.

19 Q. Where did you go once you moved?

20 A. We went to Aunt Missy house.

21 Q. Aunt Missy's house. And that's Melissa Hall?

22 A. Yes, ma'am.

23 Q. And where was she living at the time?

24 A. [REDACTED]

25 Q. [REDACTED] And who was all was at Aunt

1 Missy's house?

2 A. It was me, her, and my siblings.

3 Q. And your siblings?

4 A. [Nods head].

5 Q. Where was your mother?

6 A. She was there.

7 Q. She lived there too?

8 A. Yes, ma'am.

9 (State's Exhibit No. 5 marked for
10 identification.)

11 Q. I'm going to show you what's marked as State's
12 Exhibit 5. Do you recognize what's in that picture?

13 A. Yes.

14 Q. What is it?

15 A. My Aunt Melissa house.

16 Q. And I know this picture was taken a little more
17 recently, but is that pretty much how it looked --

18 A. Yes.

19 Q. -- back in -- when you were living there?

20 A. Yes.

21 Q. Okay. And that's -- what's the number on the
22 mailbox?

23 A. [REDACTED]

24 MS. SIMPSON: Your Honor, at this time, the
25 State would offer State's Exhibit 5 into evidence.

1 MR. JOHNSON: No objection.

2 THE COURT: Without objection.

3 (State's Exhibit No. 5 admitted in to
4 evidence.)

5 BY MS. SIMPSON:

6 Q. So this is Aunt Missy'S house. Did you
7 actually see the defendant while you were staying in
8 this house?

9 A. Yes.

10 Q. Tell the jury about how that would come about;
11 how you would see him and what would happen when you
12 saw him.

13 A. He would come down to come see us. We would go
14 do something, like go to Chuck-E-Cheese or
15 something. We'll come back home and he either want
16 a beer or something. It's a store up the street,
17 but he wouldn't want my mom to go to the store up
18 street, he would want her to go downtown to get
19 something for him. And he'll send my brothers and
20 sisters in the living room to play the Wii. We
21 would go to the computer room and he'd put a towel
22 up under the door because you could see up under it.

23 And he'd pull down his clothes and he'll tell
24 me to too, and he'll ask me can I sit on his lap.
25 And I'll sit on his lap and he'll talk for a few and

1 then he'll just start kissing me and rubbing me. So
2 he -- he -- he'll still continue to kiss me. And
3 he'll lick my breasts and kiss my breasts any
4 stomach and rub my butt. And then he'll ask me to
5 sit on his lap some more. And then he'll put his
6 penis in my vajayjay, and he'll just move up and
7 down constantly.

8 (State's Exhibit Nos. 6 and 7 marked for
9 identification.)

10 Q. I'm going to show you what's been marked as
11 State's Exhibit 6 and 7. Okay? Do you recognize
12 these pictures?

13 A. Yes, I do.

14 Q. Now, these were taken more recently, but are
15 they kind of -- what room is that?

16 A. The computer room.

17 Q. And where is the computer room?

18 A. In the back room.

19 Q. And in State's 6 and 7, does it look different
20 than it did back then?

21 A. A little bit.

22 Q. A little bit different. But it's the computer
23 room at Aunt Missy's house?

24 A. [Nods head].

25 MS. SIMPSON: Your Honor, at this time we'd

1 offer State's 6 and 7 into evidence.

2 MR. JOHNSON: Without objection.

3 (State's Exhibit Nos. 6 and 7 admitted in to
4 evidence.)

5 BY MS. SIMPSON:

6 Q. So in the computer room, you said that he would
7 make you sit on him.

8 A. Yes, ma'am.

9 Q. So where would y'all be sitting? Where would
10 this happen?

11 A. We would be sitting in the computer chair.

12 Q. In the computer chair?

13 A. [Nods head].

14 Q. And you said he'd put a towel under the door?

15 A. Yes, ma'am.

16 Q. Would he ever say anything to you while you
17 were in the room or while this was going on?

18 A. He'll say, you know I'm going to make you mine,
19 right? Or he'll say, it feel good to you? Or he'll
20 say, just stay right there, don't move. Or he'll
21 say, that's it, right there.

22 Q. So he would kind of direct you whenever he was
23 done doing whatever he was doing?

24 A. [Nods head].

25 Q. And where did you say your sister or your

1 brother would be?

2 A. In the living room playing games.

3 Q. And your mom, he would send her to a store, but
4 not the one that was closest to the house?

5 A. Yes, ma'am.

6 Q. And was your Aunt Missy at home much when this
7 happened?

8 A. No; she'd be at work.

9 Q. She was at work. Did she work a lot?

10 A. Yes, ma'am.

11 Q. And while at Aunt Missy's house, do you
12 remember if y'all took any trips or anything?

13 A. Yes.

14 Q. Tell the jury about the types of trips you
15 would take.

16 A. We went to Disney World.

17 Q. Disney World?

18 A. Went to the beach. And that's really it.

19 Q. So you went to Disney World and the beach while
20 you were at your Aunt Missy's?

21 A. Yeah.

22 Q. And when you say we went, who all went to
23 Disney World and the beach?

24 A. My mom, my brothers and sisters and him.

25 Q. And him?

1 A. And Kia.

2 Q. And Kia. And what happened when y'all went to
3 Disney World? Did anything happen while y'all were
4 at Disney World?

5 A. Yes, ma'am.

6 Q. Tell the jury what happened while y'all were at
7 Disney World.

8 A. We was on our way out, we was fixing to leave
9 and -- no, at the beginning, when we first got there
10 that night, we all was tired, we all was sleepy. So
11 I slept on one side of the bed and they slept on the
12 other side. But I got closer to where he was. But
13 the beds was just that one and that one
14 [demonstrating]. But he would take the cover up and
15 down so I could see his penis that night.

16 And on the way we about to leave to go home, he
17 sent my mama out to get the car, and he told me to
18 come in and hurry up before he get back. So I came
19 to him before he get in the shower. And he was
20 trying, but it was hurting so I told him, no, just
21 stop. So he just kept touching me and just rubbing
22 me and rubbing himself.

23 Q. Okay. And you said he told your mom to go get
24 the car. Where were you brothers and sisters?

25 A. They went with her.

1 Q. They went with her?

2 A. [Nods head].

3 Q. And you said it hurt. What was he trying to do
4 that hurt?

5 A. Put his penis in me.

6 Q. Okay. And was he actually able to do it then
7 since it was hurting you?

8 A. He couldn't because it was hurting.

9 Q. Okay. So he just touched you instead?

10 A. Yes.

11 Q. Is that everything that happened at Disney
12 World?

13 A. Yes, ma'am.

14 Q. What about the beach?

15 A. We was in the ocean and he told me to come
16 closer to him in the ocean because I couldn't go
17 far. So he had to grab me to go far. So he was
18 just touching me underwater and making me grab him
19 underwater.

20 Q. And why couldn't you go far? Are you not able
21 to swim?

22 A. Not able to swim.

23 Q. Okay. And what beach was this?

24 A. Myrtle Beach.

25 Q. And where were y'all staying when you went to

1 the beach; do you remember?

2 A. We only took a one day -- a one-day thing.

3 Then we came back down to the hotel in Bishopville.

4 Q. Okay. And did anything happen at the hotel in
5 Bishopville?

6 A. Yes, ma'am.

7 Q. Tell us what happened there.

8 A. That night he sent my mama to the store to get
9 some soap and something else. And he told my
10 sisters and brother to go in the bathroom. But
11 **Kyrie J.** said, the girls in the bathroom, so I
12 shouldn't go in the bathroom. So he told him -- he
13 said, get in the bathroom and brush his teeth and
14 wash up in the sink with them. And he closed the
15 door.

16 And he told me to lay back on the bed and take
17 my pants off, so he did the same thing. And he just
18 put his penis in my vajayjay.

19 Q. Okay. And you call it a vajayjay?

20 A. Yes.

21 Q. And by this point, had he been doing this for a
22 while, a long time?

23 A. Yes, ma'am.

24 Q. And had he done this a number of times?

25 A. Yes, ma'am.

1 Q. Had you gotten used to it?

2 A. A little. But it was still uncomfortable.

3 Q. Still uncomfortable. And you didn't tell
4 anybody what was going on?

5 A. [Nonverbal response].

6 Q. While you were at your Aunt Missy's house or
7 anywhere else, did he touch you anywhere else or
8 anything else that you can remember?

9 A. We would drive to a dirt yard -- or a dirt
10 road.

11 Q. A dirt road?

12 A. Yes, ma'am.

13 Q. Would it be the same dirt road or were there
14 different dirt roads?

15 A. Well, this one was kind of like the same, but
16 it was different ones.

17 Q. Okay. Different ones. And what do you
18 remember happening -- or tell us about a time that
19 you remember on the dirt road.

20 A. He'll back the truck up so no one else can see,
21 and he'll look out the windows and see if somebody
22 else come. And he'll pull his pants down and I'll
23 take mines off too. And he'll ask me to get on top
24 of him or he'll ask me do I want to ride. And I
25 said, I don't know how. And he said, I'll teach

1 you. And just said, move up and down.

2 Q. So he asked you to get on top of him and ride,
3 and you said you don't know how?

4 A. Yes, ma'am.

5 Q. Is this one of the first times that you
6 remember being in the truck on the dirt road or just
7 one of the times?

8 A. Just one of the times.

9 Q. And this dirt road, whose house was it close
10 to?

11 A. Aunt Missy's.

12 Q. And how often would you say he took you to the
13 dirt road -- or to a dirt road?

14 A. Multiple times.

15 Q. And at this point, did he ever actually live
16 with you at Aunt Missy's house or did he just visit
17 with you there?

18 A. He'd just visit.

19 Q. Just visited. And would he stay overnight or
20 just come for a little while or how did that work?

21 A. He'd just come for a little while.

22 (State's Exhibit Nos. 8 and 9 marked for
23 identification.)

24 Q. I want to show you what has been marked as
25 State's Exhibits 8 and 9.

1 MR. JOHNSON: Without objection.

2 MS. SIMPSON: Well, Your Honor, I'd offer them
3 into evidence at this time without objection.

4 (State's Exhibit Nos. 8 and 9 admitted in to
5 evidence.)

6 BY MS. SIMPSON:

7 Q. I'll show you State's 8 and 9. Do you
8 recognize these?

9 A. Yes, I do.

10 Q. And what do we see in State's 8 and 9?

11 A. Dirt.

12 Q. Dirt?

13 A. The dirt road.

14 Q. The dirt road?

15 A. Yes, ma'am.

16 Q. And did you actually point this dirt road out
17 to an officer at one point?

18 A. Yes, ma'am.

19 Q. And I know this was a little bit -- this was
20 taken afterwards, but you remember this being one of
21 the dirt roads he took you on?

22 A. Yes, ma'am.

23 Q. But you said there were multiple.

24 A. Yes, ma'am.

25 Q. How were you able to remember this one?

- 1 A. The light off his car and the pole that's in,
2 like, the light thing.
- 3 Q. Okay. The power lines and poles and stuff?
- 4 A. Yes, ma'am.
- 5 Q. So did y'all stay with Aunt Missy for a while?
- 6 A. Yes, ma'am.
- 7 Q. And after living with your Aunt Missy for a
8 while, did you move somewhere else?
- 9 A. Back with our grandma.
- 10 Q. Back with your grandma.
- 11 Let me ask you this: You've moved around, but
12 did you ever switch schools or anything or did you
13 stay in the same school?
- 14 A. When I went back to Fairfax I did.
- 15 Q. Okay. So when you went back to Fairfax, where
16 did you go to school?
- 17 A. I can't remember the name of the school.
- 18 Q. Okay. Were you in Fairfax for very long?
- 19 A. For a little while.
- 20 Q. So after you left Aunt Missy's house, you moved
21 back -- you say to your grandmother's, but the
22 trailer beside her house?
- 23 A. Yes.
- 24 Q. Who all lived with you?
- 25 A. My mom, my siblings, my grandma, my auntie and

1 her daughter.

2 Q. Which auntie?

3 A. Stacey.

4 Q. Aunt Stacey?

5 A. Yes, ma'am.

6 Q. And her daughter. What's her name?

7 A. Ronisha [phonetic].

8 Q. Speak up.

9 A. Ronisha.

10 Q. And tell us about living there. Did you ever
11 get to see the defendant?

12 A. Yes.

13 Q. Tell us about what would happen when you saw
14 him.

15 A. He'll come down and he'll be like, I miss
16 y'all. And we say, we miss you too. And then we
17 give him a hug. And then he'll -- he never stay --
18 when we come, he never stays to the house, so we go
19 get a hotel to stay in.

20 Q. Okay. So he never stayed at the house, so
21 y'all would go stay somewhere else?

22 A. Yes, ma'am.

23 Q. When you say y'all, who would stay with you?

24 A. My brothers, my sisters, me and him.

25 Q. Okay. And did he ever just come to the house

1 for the day or did y'all always stay with him? How
2 did that work?

3 A. No. He'll -- sometimes he'll stay and
4 sometimes he don't. But when he stay is when we go
5 to a hotel.

6 Q. So it just kind of depended on what was going
7 on?

8 A. Yes, ma'am.

9 Q. And did anything ever happen while you were at
10 your grandmother's house or beside your
11 grandmother's house during this time period?

12 A. Oh, no.

13 Q. Nothing. And would he take y'all places
14 besides the hotel? Did he do things with you?

15 A. Not with him. But we either -- we'll leave
16 before the -- I mean, he might say he's about to go
17 to the store or go get something for the house. And
18 he'll tell me to hurry up and get in the car before
19 the others come, and he'll just drive off.

20 Q. And when y'all drove off, where did you go?

21 A. To an off area.

22 Q. An off area? Just somewhere around? Was it
23 near or far away to the house?

24 A. It was kind of far.

25 Q. Kind of far. And how often did that happen?

1 A. Certain times when he comes.

2 Q. Just certain times when he would come?

3 A. [Nods head].

4 Q. Was there a time period that he didn't come for
5 a while? You said you missed him -- or he asked if
6 you missed him. Were there time periods that you
7 didn't get to see him?

8 A. Yes.

9 Q. And do you know why that was?

10 A. He was in the Army, I think.

11 Q. Okay. So he'd be gone for a little while and
12 then you'd get to see him?

13 A. Yes, ma'am.

14 Q. Tell us what you remember, if anything, about a
15 graveyard?

16 A. That was the day of -- that my mama found out
17 for herself and actually heard what was going on.

18 Q. Tell the jury a little bit about what you
19 remember about that day, just generally, and him
20 coming over?

21 A. We just got home from school and we all ran in
22 the house. And he was -- Mama was cooking a little
23 bit. And he was like -- my little sister Kia said
24 she wanted something from the store. So he asked if
25 we all wanted something. We all said yeah. So Mama

1 said, wait, I'm going to get shoes from out the back
2 room.

3 So he told me to hurry up and get to the car.
4 But my Uncle Skeeter come out. Grandma friend
5 Skeeter had stopped him and asked him to get him a
6 beer, and he said, I'll get the money when I come
7 back, because we was in a rush. So we got in the
8 car and my mama had called. And she said, why you
9 left us, you know we all wanted to go? And he was
10 like, I didn't know. He was like, but I'm almost
11 here, so I'll -- what do you want? And she hang up.
12 She said what she wanted and he hang up.

13 So we pull into the graveyard and he parked it.
14 And he told me to pull my pants down and he pulled
15 his down too. So he said -- so he started touching
16 me and he started feeling, but we never could have
17 done nothing because of the fact that my mama was
18 still on the line and he was just talking. And he
19 was like, Pam, you crazy, I wouldn't say that. He
20 said, why would I do that? And he was just still
21 steady talking, and him and my mama was still steady
22 arguing.

23 So he pulled off with the car. We hurried up
24 and went to the store. And he went in and he got
25 what he wanted and came back and just threw it in

1 the car. So he was just driving, he was just
2 swerving on the road. And he was like, whatever you
3 do, whatever you do, don't tell her nothing, don't
4 tell her nothing what happened. He was like, Minor
5 if you tell her, I'm done, don't tell her nothing.
6 So I didn't say anything.

7 Q. So you didn't say anything. And you said the
8 phone call from your mom, your pants were down?

9 A. Uh-huh.

10 Q. And his pants?

11 A. [Nods head].

12 Q. And this stuff had already happened before at
13 the graveyard?

14 A. Huh?

15 Q. Or stuff had happened on another occasion at
16 another time?

17 A. No. We was still in the graveyard.

18 Q. Oh, y'all were in the graveyard. And when he
19 got the phone call, y'all were starting it. But did
20 you finish? You said he wasn't able to finish?

21 A. No. We was just talking, but he was starting.

22 Q. And did you actually hear him on the phone with
23 your mom?

24 A. Yeah, because the phone was, like, where the
25 stick -- like where you pull the thing back in park,

1 gas or neutral. The phone was just sitting there.

2 Q. Okay. And they were yelling and kind of
3 arguing on the phone?

4 A. Yes.

5 Q. When you got back to the house, tell the jury
6 who was there and what happened.

7 A. He couldn't pull into the driveway, so my mom
8 was already waiting at the mailbox. And she opened
9 the door and she pulled me out the car. And she was
10 like, Minor tell me what happened, tell me what
11 happened. So I just cried because I didn't know
12 what to do. She was crying too. So she told me to
13 get into the house and pulled into the driveway. He
14 was yelling outside. And she was like, Minor tell me
15 what happened. And I still said, nothing happened,
16 Mama. And she was like, I'm not crazy, because I
17 know what I heard. She was like, Minor tell me. And
18 I said nothing happened, Mama. And she said, I'm
19 going to send you to a home, Minor tell me what
20 happened now. So I told her what happened.

21 And she went outside and she said, you
22 molesting my young daughter, you touching my
23 daughter? And she got back in the car and they was
24 arguing, and she put me in the car too. And she
25 said, Minor now tell me what happened again. So I

1 told her. And I got back out. She told me go kiss
2 my brothers and sisters and tell them I love them.
3 And that's when she had the gun in her hand and she
4 was pointing it at his head. And he was like, Pam,
5 just stupid. And he was like, [Minor] you know I ain't
6 touch you. And I said, yes, you did.

7 And I said, Mama, get out the car, you got four
8 kids, it's no need for you to even do that. And she
9 was like, [Minor] do what I said. And I said, Mama,
10 come on, it ain't worth it, man. And she got out.
11 And she said, leave my yard because I'm going to
12 call the police on you. And he left. And that was
13 it.

14 Q. So initially you didn't want to tell your -- or
15 didn't tell your mom what happened when y'all got
16 there?

17 A. I was scared. I didn't know what to do at that
18 point.

19 Q. Okay. And he told you not to tell.

20 A. [Nods head].

21 Q. And how long had this been going on when it
22 finally came out?

23 A. It was a while. It was just long.

24 THE COURT: How long?

25 THE WITNESS: A long time.

1 THE COURT: A long time?

2 THE WITNESS: Yes, sir.

3 BY MS. SIMPSON:

4 Q. Would you say years?

5 A. Yes, ma'am.

6 Q. And you said your mom was really mad and she
7 asked you what happened and was pulling you into the
8 car. Were you in the car when she had the gun or
9 where were y'all?

10 A. We got back in the car and we was say -- I got
11 in the front and she got in the back. And she
12 said -- she asked me, now, Minor tell me what you
13 told me in the house. And so I told her. And he
14 looked at me and just shook his head. And I got
15 back out.

16 Q. Okay. And once he left, what do you remember
17 about that night, if anything?

18 A. I just had cold feet. I just didn't know what
19 to do.

20 Q. All right. Who all was at the house or -- I
21 mean, was it really quiet or was there a lot of
22 commotion when everybody found out?

23 A. My mother, she was stunned. She -- I mean, she
24 neither couldn't stand no more, she just fall. And
25 my grandma, she had just go for -- my brothers and

1 sisters didn't know what was going on at the moment.

2 But Nakiah J. just started crying because she knew.

3 Q. Nakiah J. was crying?

4 A. Yes, ma'am.

5 Q. And did you actually go to the hospital that
6 night?

7 A. Yes, ma'am.

8 Q. And do you remember after going to the
9 hospital -- have you ever had that kind of -- been
10 to the doctor and them performed those kinds of
11 tests on you?

12 A. No, ma'am.

13 Q. No. And do you remember talking to police too?

14 A. Yes, ma'am.

15 Q. And do you also remember -- did you tell the
16 police a little bit about what happened?

17 A. Yes, ma'am.

18 Q. And did you also remember going to, I think,
19 the Family Resource Center and talking to a
20 Mr. Kellin?

21 A. Yes, ma'am.

22 Q. On that day when you talked to him, were you
23 able to tell him much about what happened?

24 A. Not really. I could only just put points of
25 what happened and where some places took place.

1 Q. And how were you feeling when you went to meet
2 with Mr. Kellin?

3 A. I was sick.

4 Q. You were sick?

5 A. I was still scared and embarrassed.

6 Q. So you were sick, scared, and embarrassed --

7 A. Yes, ma'am.

8 Q. -- when you went to talk to him?

9 And when you say you were sick, tell the jury
10 what was wrong with you.

11 A. I was nervous and I -- I really didn't want to
12 talk. And everything just happened so fast, so it
13 just made me gag.

14 Q. All right. And did you also have to talk to
15 another lady at some point?

16 A. Yes, ma'am.

17 Q. Do you remember her name at all?

18 A. No, ma'am.

19 Q. No. But was it similar to the type of
20 conversation that you had with Mr. Kellin?

21 A. Yes, ma'am.

22 Q. And during that time talking with her, were you
23 able to give her information about what Kia, your
24 stepfather, had been doing to you?

25 A. Yes, ma'am.

1 Q. Do you know whether your Aunt Missy and Aunt
2 Stacey ever found out what was going on?

3 A. My Aunt Stacey found out that night.

4 Q. Okay. And as far as giving specific details,
5 have you really talked to many people about this, as
6 far as telling details and exactly what happened
7 like we're doing here today?

8 A. No.

9 MS. SIMPSON: I beg the Court's indulgence.

10 BY MS. SIMPSON:

11 Q. As far as -- and let's be clear, Kia, your
12 stepfather, besides when y'all were alone and these
13 things were happening, how did he treat you? Was he
14 nice to you or was he mean to you? How did he treat
15 you?

16 A. Like, our relationship with each other?

17 Q. Uh-huh.

18 A. He was -- he was just a guy. I mean, he's not
19 bad when it comes to me. But he was just a father.

20 Q. So he was the father in your life for a while.
21 And did he treat you, like I said, outside of this,
22 like your other brothers and sisters? You were
23 included in going to Chuck-E-Cheese and to the beach
24 and --

25 A. He treated us equally.

1 Q. Okay. And the person who touched you and had
2 sex with you for a period of years, a long time, do
3 you see him in the courtroom here today?

4 A. Yes.

5 Q. And can you point him out for the jury and tell
6 us what he's wearing?

7 A. [Indicating]. He's wearing blue.

8 Q. Blue?

9 A. Blue.

10 Q. Sitting between his attorneys?

11 A. Yes.

12 MS. SIMPSON: Your Honor, let the record
13 reflect she's identified the defendant.

14 THE COURT: Thank you.

15 MS. SIMPSON: Thank you, Minor

16 THE COURT: Ladies and gentlemen of the jury,
17 we're going to take our morning break at this time.
18 I would ask that you please select the foreperson
19 between the 12 of you. Please don't discuss the
20 case or do any type of deliberations.

21 We're going to go until about 12:45 when you
22 come back, and then your lunch will be here then.
23 We'll take about a ten-minute break, come back, and
24 then continue on. Everyone please remain seated.

25 (The jury exits the courtroom at 10:49 AM.)

1 THE COURT: All right. Ma'am, you're in the
2 middle of your testimony. Obviously I'll let you
3 get down and go to the bathroom and stretch your
4 legs, whatever, but please don't discuss it with
5 anyone while you take a break, okay, because you'll
6 have to answer questions from Mr. Virgin Johnson
7 when we get back. Fair enough?

8 THE WITNESS: Yes, sir.

9 THE COURT: Thank you. You may step down.
10 All right. The defendant is in custody. We'll
11 take about a ten-minute break. Thank you.

12 (Brief recess.)

13 THE COURT: Anything by the State before we
14 start back?

15 MS. SIMPSON: Yes. Captain Knafelc is one of
16 our investigators. I know we have our lead. He
17 assisted in the investigation. But I don't know --
18 we said lay witnesses were sequestered. But is law
19 enforcement -- can he be present? If not -- we'll
20 leave it up to the Defense or whatever.

21 MR. JOHNSON: Your Honor, at this point I think
22 he's sat in already. So there's no need to run him
23 out now.

24 THE COURT: Thank you.

25 Anything else?

1 MS. SIMPSON: No.

2 THE COURT: Bring the jury in, please.

3 (The jury enters the courtroom at 11:09 AM.)

4 THE COURT: Little quick change. You're the
5 forelady?

6 THE FOREWOMAN: Yes, sir.

7 THE COURT: Congratulations on your election
8 victory.

9 I think it will be about 1:00 until lunch gets
10 here. They couldn't quite get it at 12:45.

11 Mr. Johnson.

12 MR. JOHNSON: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q. Minor I'm going to stand right here. My
16 name is Virgin Johnson. And I'm going to have you
17 questions; do you understand that?

18 A. Yes, I do.

19 Q. And I'm going to have to ask you some very
20 serious tough questions; do you understand that?

21 A. Yes.

22 Q. And if at any time when I'm asking you
23 questions, if you need to stop, take a break or
24 anything, you tell me. Okay?

25 A. Okay.

1 Q. All right. Let's start with how many people --
2 and I want you to tell me who -- you've talked with
3 about this case.

4 A. Like, do you mean have I expressed myself to
5 anyone?

6 Q. Said anything about this -- have you talked --
7 you talked with your mama about it?

8 A. I talked to -- I did -- I talked to my step-mom
9 about it. But me telling my mama about it, I
10 haven't.

11 Q. Did you talk with your mama about it the night
12 it happened?

13 A. No. I was tired.

14 Q. So where did your mama get the information to
15 call the police from?

16 A. She -- I told her the day that he -- the day
17 that it happened. I told her that he has been
18 touching me places and we have been doing stuff.
19 That's as far as it gotten.

20 Q. So you did talk with your mama about it?

21 A. I never expressed, like, what had actually --
22 like, details about it. I just told her what
23 happened.

24 Q. So details that you gave to law enforcement,
25 she didn't get them from you?

1 A. What do you mean?

2 Q. When she did a statement -- she gave
3 information to law enforcement. I just want to know
4 did you give her the information to give to law
5 enforcement?

6 A. I don't think I was there when she wrote the
7 statement or I was around. So I don't really
8 actually remember, because it's been so long.

9 Q. Okay. I don't want to be redundant. I'm just
10 asking you -- you might have not been there. I just
11 want to know, did you give her the information to
12 give to them?

13 A. I don't remember.

14 Q. You don't remember. Okay.

15 Now, didn't you talk to Nakiah J. about this?

16 A. No.

17 Q. And I think you just said you talked to
18 Mr. Killings [sic] about this.

19 A. Mister who?

20 Q. Mr. Killings.

21 A. You're talking about the man?

22 Q. Yes, ma'am.

23 A. Yes.

24 Q. Okay. And then I think you also said you
25 talked to another lady about this.

1 A. Yes.

2 Q. And when you talked to Mr. Killings, did you
3 tell him the truth?

4 A. Absolutely.

5 Q. And when you talked to the other lady, did you
6 tell her the truth?

7 A. Absolutely.

8 THE COURT: Speak up for me, please.

9 THE WITNESS: Yes, I did.

10 BY MR. JOHNSON:

11 Q. Okay. And you talked to -- did you talk to a
12 nurse at the hospital that night?

13 A. Like, what do you mean talk to?

14 Q. The night they took you to Richland Memorial?

15 A. She asked me a few questions.

16 Q. Did you talk with her?

17 A. Yeah.

18 Q. Did you tell her the truth that night?

19 A. Yes.

20 Q. And I think the next day up to a couple days
21 later, you were taken to a doctor and she asked
22 questions. Did you tell her the truth?

23 A. Yes.

24 Q. Okay. Do you remember -- when you were talking
25 to Mr. Killings, do you remember him asking you how

1 many times this occurred?

2 A. No, I don't remember.

3 Q. So you don't remember what you told him?

4 A. I don't know what I -- I remember some things
5 that I told him. But that particular question, no.

6 Q. Okay. I don't want to be confusing. So you
7 remember some of what you told him, but you don't
8 remember all of it?

9 A. I remember some.

10 Q. You remember some. All right. Do you remember
11 telling him that there were three -- that it was
12 only three times this happened to you?

13 A. No.

14 Q. Do you remember telling him it was the truck
15 and Disney World and the beach?

16 A. I remember telling him something about the
17 truck and Disney World and the beach. But --

18 THE COURT: Speak up for me.

19 A. -- I don't remember the time.

20 Q. Do you remember telling him home -- it happened
21 home?

22 A. I remember that too.

23 Q. Okay. And did you tell him home was 346
24 Stevens Road?

25 A. I don't remember off my hand, but I don't know.

1 Q. Wasn't [REDACTED] the place you were
2 living at at that time?

3 A. Yes.

4 Q. And did you tell him home was [REDACTED]?

5 A. I can't really give you a complete answer,
6 because I don't remember telling him that.

7 Q. Do you remember telling him that the computer
8 room was at [REDACTED]?

9 A. No, because it wasn't.

10 Q. And the computer room is not at 3 [REDACTED]
11 [REDACTED], is it?

12 A. No.

13 Q. Okay. Let's start with when Mr. Johnson left
14 to go to the store. You went with him to the store;
15 is that correct?

16 A. Yes.

17 Q. Okay. And he didn't ask you to go. You went
18 and got in the car; isn't that correct?

19 A. No; he forced me to go.

20 Q. Now, you were in the house at this time.
21 Wasn't Mr. Skeeter in the house?

22 A. No; he was outdoors.

23 Q. Okay. Wasn't your grandmama in the house?

24 A. Yes.

25 Q. Wasn't your mom in the house?

- 1 A. Yes.
- 2 Q. And wasn't your brothers and sisters in the
3 house?
- 4 A. Yes.
- 5 Q. So he didn't force you, you went; correct?
- 6 A. No. He forced me, sir.
- 7 Q. He forced you with all of them there watching?
- 8 A. No. He told me to come on and get to the car,
9 and that's what I did.
- 10 Q. So you're saying he forced you by --
- 11 A. A command.
- 12 Q. He commanded you to get to in the car?
- 13 A. Yes.
- 14 Q. Okay. And you wasn't fearful or nothing like
15 that now, were you?
- 16 A. Was I what?
- 17 Q. Fearful. Afraid to get in the car.
- 18 A. I don't have no other choice but do what he say
19 at that point.
- 20 Q. I understand command. But were you fearful or
21 afraid?
- 22 A. I'm always afraid.
- 23 Q. Of him?
- 24 A. Yes.
- 25 Q. Okay. And y'all left to go to the store; is

1 that correct?

2 A. Yes.

3 Q. Okay. And y'all -- and the first thing you
4 said was y'all went to the Manning Church cemetery;
5 isn't that correct?

6 A. Yes.

7 Q. And that wasn't the truth, was it?

8 A. It was the truth, sir.

9 Q. Okay. But then you said you went to the
10 Bethany cemetery; isn't that correct?

11 A. That is the cemetery.

12 Q. Well, isn't the St. Matthews Church --

13 A. No. That's the -- the St. Matthews Church is
14 right there. We never been there. We went straight
15 to the cemetery that's a road down.

16 Q. But didn't you tell them at first that you went
17 to the St. Matthews Church?

18 A. Say what?

19 Q. Didn't you tell them first that you went to the
20 St. Matthews Church cemetery?

21 A. I never said that.

22 Q. Okay. So then you said you left the house.
23 And how far is the house from the cemetery?

24 A. I could say it's maybe a three-minute or a
25 two-minute drive.

1 Q. Okay. And I think you said he went back to the
2 cemetery and drove high in the cemetery back there;
3 is that correct?

4 A. Can you repeat yourself?

5 Q. Did you not say he drove behind the cemetery?

6 A. I didn't say anything about he drove behind.

7 Q. Okay. Did he drive behind the cemetery.

8 A. No. You can't drive behind it because there's
9 trees.

10 Q. There's not a road beside the cemetery?

11 A. I can't remember offhand because it's been a
12 while since I been.

13 Q. Okay. But don't you live right down the road
14 from the cemetery?

15 A. No, I don't live right down the road. You have
16 to go to a -- have to cross another road to get to
17 it.

18 Q. Do you live within a mile of the cemetery?

19 A. I don't really know offhand if it's a mile or
20 not.

21 Q. Okay. He did not park -- allegedly, he did not
22 park in front of the cemetery, he parked behind the
23 cemetery; correct?

24 A. There's no way to get behind it. He parked on
25 the side.

1 Q. Okay. And just so I'm understanding, there's a
2 road on the side of the cemetery that goes back to a
3 lake; is that correct?

4 THE COURT: Goes back to a what?

5 MR. JOHNSON: Back to a lake.

6 A. I don't know.

7 Q. You don't know? Okay.

8 And I want to be sure about this: You said
9 that when your mother called, y'all were at the
10 cemetery?

11 A. When my mother called?

12 Q. When your mother called.

13 A. No. We was heading -- we was like -- we was
14 there, but we was pulling in when she called.

15 Q. You were pulling into the cemetery. But I
16 thought you told the jury you were in the cemetery
17 when --

18 A. We basically were. Where the dirt roads are,
19 you just turn the wheel and we end there. So --

20 Q. But didn't you say you also had your pants
21 down?

22 A. I did.

23 Q. Okay. So you couldn't have your pants down
24 while you were turning in --

25 A. Oh, yes, you can.

1 Q. Okay. So he had you taking your pants down on
2 the road going back to the cemetery?

3 A. Yes.

4 Q. So you while you were at the cemetery, how long
5 did y'all stay at the cemetery?

6 A. I can't really answer that because I don't
7 know.

8 Q. You don't know? Okay.

9 Did you not say that when you were at the
10 cemetery you had your pants down, the phone call
11 interrupted him, and y'all left the cemetery and
12 went to the store?

13 A. Can you repeat yourself?

14 Q. Did you not say that while you were at the
15 cemetery, the phone call came -- you had your pants
16 down, the phone call interrupted him and he got up
17 and y'all went to the store?

18 A. I did say that.

19 Q. You did?

20 A. Yes.

21 Q. Okay. So that means y'all were at the
22 cemetery, allegedly, with your pants down?

23 A. Yes.

24 Q. And not putting your pants down while you were
25 turning in the road?

1 A. My pants were down, and as we pull into the
2 cemetery, it was still down.

3 Q. Okay. Let's skip to the -- I'm coming back to
4 that one.

5 Let's go to the brick house. The brick house
6 is in Fairfax; is that correct?

7 A. Yes.

8 Q. Okay. And if I'm understanding correctly,
9 you're at the brick house, your mother was down
10 there at the same time too; correct?

11 A. Yes.

12 Q. Okay. Now, do you remember telling
13 Mr. Killings that when you was at the brick house,
14 that all he did was put the dresser behind the door
15 and he never touched you?

16 A. I didn't say that.

17 Q. You didn't say that?

18 A. I never said that he never touched me, but I
19 did say that he put the dresser behind the door.

20 Q. Do you remember Mr. Killings saying -- say what
21 did he do, and you said, all me was put the dresser
22 behind the door and he asked me would I tell and I
23 said no and then he removed the dresser?

24 A. I don't remember saying that.

25 Q. You don't remember saying that? Okay. But if

1 that was the case, then that would be different from
2 what you're saying today; is that correct?

3 A. Would that be different?

4 Q. Right.

5 A. She didn't never ask me no question about --

6 Q. I said Mr. Killings.

7 A. Who?

8 Q. Mr. Killings?

9 A. Repeat your question.

10 Q. Mr. Killings. I said -- not she, he. If --

11 THE COURT: Hold on. Repeat your question so
12 she can hear you, please.

13 BY MR. JOHNSON:

14 Q. The question was, if you did tell Mr. Killings
15 that he just drove the dresser behind the door and
16 moved the dresser, that would be different from what
17 you testified to this morning; isn't that right?

18 A. Would it be different? No. I wouldn't lie.

19 Q. This is very -- this is a very difficult
20 question for me to ask you. But can you -- you
21 remember telling either Mr. Killings or the other
22 person that you don't remember the location that he
23 took you in Kershaw County?

24 A. I don't remember the location he took me?

25 Q. Yeah. Do you remember telling him you don't

1 remember the location?

2 A. No. What I remember me saying was I could only
3 point out a few of them, but I can't really say that
4 I know too many other places.

5 Q. Okay. And in either interview, there's a
6 location that Officer -- I can't pronounce his name
7 correctly, so I don't want to mispronounce it. But
8 about two or three months ago, you took him to a new
9 location; is that correct?

10 A. What do you mean?

11 Q. You took him to a new location where you said
12 Mr. Johnson did something to you.

13 A. That she showed me in the picture?

14 Q. Yes.

15 A. That's the location that he took me to.

16 Q. Okay. This happened and you -- let's begin
17 back in 2011. You didn't remember that location
18 until about three months ago?

19 A. What are you saying?

20 Q. I'm asking you, you didn't tell anybody until
21 about three months ago; is that correct?

22 A. I didn't tell anyone?

23 Q. Yes, ma'am. You said you didn't know where the
24 location was, didn't you?

25 A. Wait. I'm confused.

1 Q. Okay. You took him to a location three months
2 ago --

3 THE COURT: Who is him?

4 MR. JOHNSON: Officer -- I don't want to
5 mispronounce your name.

6 MR. KNAFELC: Knafelc.

7 THE COURT: All right.

8 BY MR. JOHNSON:

9 Q. Do you remember Officer Knafelc taking you to a
10 location about three months ago?

11 A. Yes, I remember.

12 Q. And the purpose of going to that location was
13 the fact that you said you had just remembered it.

14 A. Uh-huh.

15 Q. Okay. And it was like three years later you
16 remembered it?

17 A. No, I always remembered it. It was just that
18 it was really hard for me to come -- to talk and get
19 it all out. But since I knew we had to come to
20 trial, I really needed to express myself and get
21 over that to heal.

22 Q. Okay. So you just knew it and you kept it for
23 three years?

24 A. I didn't keep it for three years. I told you I
25 expressed myself to my stepmother and I told her

1 what I could at times.

2 Q. Okay. Now I'm going to go back to the -- the
3 cemetery. When the phone call came, I think you
4 said, y'all got up and went to the store.

5 A. I didn't say that.

6 Q. Did y'all get up and go to the store?

7 A. When the phone call came in?

8 Q. Yes.

9 A. They were arguing, then we jumped up and went
10 to the store.

11 Q. Okay. How long do you think they argued?

12 A. I don't -- I'd say at least about -- I don't
13 know. I know that it had been about -- I could say
14 30 seconds at least, maybe less. I don't know.

15 Q. All right. And so they argued right there.
16 And then -- okay.

17 Tell me, from the location you were at the
18 cemetery, did he have to turn around or what did he
19 have to do when y'all started to the store?

20 A. He didn't have to turn around. He just drove a
21 little -- a little turn. And he had to turn to go
22 to the store.

23 Q. Okay. And y'all went on to the store?

24 A. [Nods head].

25 Q. Okay. Now, when y'all got to the store, who

1 went in the store?

2 A. He did.

3 Q. All right. And after y'all -- after he went in
4 the store, what did he bring out of the store?

5 A. I can't remember all that. But I know he got
6 some sunflower seeds. I know that.

7 THE COURT: He got what?

8 THE WITNESS: Sunflower seeds.

9 Q. Did -- you don't remember -- did he get the
10 beer for Mr. Skeeter?

11 A. I can't remember that.

12 Q. So while he was in the store, you just kind of
13 sat in the car or what were you doing?

14 A. I just sat in the car, I believe.

15 Q. Okay. Do you remember when -- when you talked
16 to Mr. Killings, do you -- do you remember not
17 mentioning anything about hair on your privates at
18 that time? Did you --

19 A. No. I never told him that.

20 Q. You didn't tell him that?

21 A. No.

22 Q. So when you were in the -- this was back in, I
23 think, '10, '12, '11; is that correct?

24 A. I can't remember dates.

25 Q. Okay. It happened on the 11th. I think you

1 went to Mr. Killings the next day. You don't
2 remember?

3 A. I don't remember.

4 Q. Okay. And you were closer to what happened
5 then than you are now; is that correct?

6 A. What do you mean?

7 Q. I mean, you were closer to the event then than
8 you were when you met with Mr. Killings; is that
9 correct?

10 A. I'm not understanding.

11 Q. Okay. When you went to talk to Mr. Killings,
12 did you say anything about hair on your privates?

13 A. No.

14 Q. Okay. And you didn't say anything about kiss
15 you on the lips, did you?

16 A. Nope.

17 Q. And you didn't say anything about rubbing your
18 arms or rubbing your breasts, did you?

19 A. Yes, I did.

20 Q. Did you say touch your breasts or did you say
21 rub them?

22 A. I said touch.

23 Q. Okay. So you didn't say anything about
24 rubbing, did you?

25 A. I can't remember.

1 Q. And you didn't tell him anything about he said
2 did you like it, did you?

3 A. I can't remember.

4 Q. And you never mentioned anything about kissing
5 your thighs, did you?

6 A. I can't remember.

7 Q. And you never told him anything about killing
8 your mother, did you?

9 A. I don't remember.

10 Q. Now, when you talked about the computer room,
11 you never said anything about licking your breasts,
12 did you?

13 A. I can't remember.

14 Q. Never said anything about licking your stomach?

15 A. To who?

16 Q. Mr. Killings.

17 A. No. I mean, I can't just sit there and --
18 like, at that moment that that just happened a day
19 before, like, I just, in my head, my mind was like,
20 not confused, but how can I just sit there and,
21 like, honestly tell this man -- like, tell this man
22 every -- everything. I can only point out certain
23 parts. Like, I could only say what was there at
24 that moment.

25 Q. Okay. Well, I can understand that. But then

1 you went and talked to another lady sometime in
2 November, didn't you?

3 A. I believe so.

4 Q. And you had over -- about 30 days to get it
5 together; isn't that correct?

6 A. That's 30 days compared to four years. That's
7 still kind of hard for me to express. Still to this
8 day, I still can't get therapy because I'm still
9 afraid.

10 Q. So you didn't tell the lady 30 days later about
11 licking your breasts, did you?

12 A. No.

13 Q. Did you tell any of the law enforcement about
14 that?

15 A. I can't remember.

16 Q. And on the Disney World trip, you didn't tell
17 anything about the bed or the covers, did you?

18 A. Nope.

19 Q. And you didn't tell anything about him showing
20 you his penis, did you?

21 A. No, sir.

22 Q. And you didn't say anything about him hurting
23 you, did you?

24 A. When?

25 Q. Either to Mr. Killings or the other person.

- 1 A. What you mean by hurting?
- 2 Q. Well, you said that they -- I tried, but it was
- 3 hurting, so I said stop. You didn't say anything
- 4 about that, did you?
- 5 A. No.
- 6 Q. You didn't say anything about him rubbing
- 7 himself at that time, did you?
- 8 A. I don't remember.
- 9 Q. Okay. At the beach, you said, he was touching
- 10 you in the water; is that correct?
- 11 A. Yes, sir.
- 12 Q. Okay. You didn't tell anybody before today
- 13 about him touching you in the water, did you?
- 14 A. You said before today?
- 15 Q. You didn't tell anybody that you interviewed
- 16 before today that he -- this is the first time you
- 17 told anybody about that; isn't that correct?
- 18 A. It's not my first time telling anybody about
- 19 it, but -- no, it's not my first time.
- 20 Q. Okay. Who did you tell?
- 21 A. My step-mom --
- 22 Q. Okay. But you --
- 23 A. -- and my lawyers. I talked to them about it.
- 24 Q. Okay. So you did talk to your lawyers about
- 25 it?

1 A. Yes.

2 Q. Okay. When I asked you just now who did you
3 talk about, you said you didn't.

4 A. No. You asked me another question about
5 something else, and I said, no, I haven't.

6 Q. Okay. Well, forgive me.

7 Who all did you -- now, did you talk to your
8 lawyers about it?

9 A. About what?

10 Q. About what happened.

11 A. As we was going through my videos and she asked
12 me if I remember anything at them times then bring
13 it to her attention, that's what I did.

14 Q. And how many times did you talk with your
15 lawyers? I'm not asking you what you said, I'm
16 asking how many times did you talk with them.

17 A. I can't remember.

18 Q. Was it more than one?

19 A. Absolutely. I mean --

20 Q. So you have talked with more than one person
21 and you've talked about this incident much more than
22 one time?

23 A. What do you mean?

24 Q. You had conversations about this incident with
25 different people more than one time?

1 A. I'm doing it now.

2 Q. I understand that. But I'm talking about
3 before today.

4 A. Yeah.

5 Q. Okay. So why didn't you say that when I asked
6 you upfront?

7 A. Because I asked you what you mean and you asked
8 me one particular question, so I told you.

9 Q. Now, when you were at the beach -- and I want
10 to make sure I ask this question. If it's
11 redundant, I apologize. I said that you didn't tell
12 anybody about him touching you in the water. Is
13 that correct?

14 A. Uh-huh.

15 Q. Okay. And I won't go back to that.

16 Where was your mother while this was going on?

17 A. In the water? She was with my other brothers
18 and sisters playing in the sand. She had to watch
19 out for my little sister Kamari J. because she can't
20 swim and the other two.

21 Q. So was she on the beach or in the water?

22 A. She was halfway in the water, but she was also
23 running around with my little sister.

24 Q. Now --

25 MR. JOHNSON: Your Honor, may I have a second,

1 please?

2 THE COURT: Sure.

3 BY MR. JOHNSON:

4 Q. Okay. Do you remember telling anyone you took
5 pictures in the computer room and didn't do anything
6 else?

7 A. I never said he took pictures in the computer
8 room.

9 Q. You never said he just took pictures and tried
10 to look out to see if anybody was coming?

11 A. I said that part, but I never said it was in
12 the computer room.

13 Q. Did you say that because he took pictures in
14 the computer room?

15 A. Did I say what?

16 Q. That he took pictures in the computer room; did
17 you say that?

18 A. I never told anyone that.

19 Q. Okay. And then did you tell Mr. Killings that
20 in the computer room he sat in the chair and made
21 you sit on top of him?

22 A. I can't actually remember.

23 Q. Can't remember. So you don't remember what you
24 told Mr. Killings?

25 A. I remember some things, but I don't remember

1 all. So...

2 Q. So today you don't remember what happened in
3 the computer room?

4 A. Oh, I remember.

5 Q. Okay. Could you please tell me what happened
6 in the computer room?

7 THE WITNESS: Do I have to answer that?

8 THE COURT: Ma'am?

9 THE WITNESS: Do I have to go through that
10 again?

11 THE COURT: Answer his question one more time.
12 Okay?

13 Re-phrase the question.

14 THE WITNESS: He asked me can --

15 THE COURT: Re-ask the question.

16 BY MR. JOHNSON:

17 Q. Do you remember what happened in the computer
18 room? Do you remember what you told Mr. Killings
19 after --

20 THE COURT: Well, that's two questions now.

21 BY MR. JOHNSON:

22 Q. Do you remember what happened in the computer
23 room?

24 A. Yes, I remember what happened in the computer
25 room.

1 Q. Now, please tell us what happened in the
2 computer room.

3 THE COURT: Take a deep breath, ma'am. Answer
4 one more time and that will be it.

5 A. He told my sisters and brothers to go in the
6 living room and play the game, which they did. We
7 went in the back room and he took the towel and put
8 it under the door. He told me to take my clothes
9 off and he took his off. He asked me to come sit on
10 his lap, so I did. He started kissing and touching
11 me and licking my breasts. And then he put his
12 penis in my vajayjay.

13 Q. Thank you, ma'am. I'm sorry for causing you
14 problems. That's what you said happened?

15 A. Yes, sir.

16 Q. Okay. I want to thank you. I have one or two
17 more questions and I'll be done. Okay?

18 A. Okay.

19 Q. All right. You said this went on over a period
20 of three or four years?

21 A. Yes.

22 Q. Were there times when Mr. Johnson wasn't even
23 around you because he didn't live where you lived?
24 Is that correct?

25 A. Yes.

1 Q. Matter of fact, there were times when he went
2 out of the country because he was overseas; is that
3 correct?

4 A. Yes.

5 Q. Okay. And you didn't think to share that with
6 your mother then?

7 A. No. Because at that time -- I mean, it's hard
8 to even think about it. I mean, knowing that he
9 have other children with my mother, I mean, how
10 would it affect them too?

11 Q. Okay. And on the day it happened, I think you
12 told your mother twice that nothing happened; is
13 that correct?

14 A. Yes.

15 Q. Okay. And after you told her that, she picked
16 up the gun -- or she had the gun --

17 A. No, no, no.

18 Q. Okay. Tell me -- correct me. Tell me what
19 happened.

20 A. When I told my mother what happened, she got me
21 out the car, we went into the house, and she asked
22 me repeatedly over and over again. That's when I
23 finally told the truth of what happened.

24 Q. And I think you said she asked you over and
25 over again. And I think what she said was, I'm

1 going to take you to the doctor --

2 A. No, that's not what she said. She said, I'm
3 going to take you to a home.

4 Q. Take you to a home?

5 A. Yes.

6 Q. What kind of home?

7 A. I mean, I wouldn't know. I mean, that's to
8 scare me up, I guess. A home is another place.

9 Q. Oh, so she said if you didn't tell her the
10 truth, she was going to take you to a home?

11 A. Yes.

12 Q. And I think she got you in the car in front of
13 Mr. Johnson; is that correct?

14 A. Yes.

15 Q. And Mr. Johnson said, look, tell her the truth,
16 I didn't do this; is that correct?

17 A. No. He said, Pam, you are stupid. And he
18 looked at me and I looked back at him and he
19 asked -- he was like, Minor tell her the truth that I
20 didn't.

21 Q. That's right. He said, tell her the truth, he
22 didn't do it; is that correct?

23 A. He did do it.

24 Q. Okay. But I'm saying --

25 A. His statement, that's what he said.

1 Q. I'm sorry?

2 A. That's what he said.

3 Q. He did say that? Okay. Now I'm confused. He
4 did say, Minor tell Pam that I didn't do that; right?

5 A. Yes.

6 Q. All right. And at the time, y'all were in the
7 car, she had his gun; is that correct?

8 A. Uh-huh.

9 Q. And she had put the gun to his head and
10 threatened to kill him; is that correct?

11 A. I mean, it was still in the holster, but she
12 just was pointing it.

13 Q. Okay. And you said -- I think you did say
14 that -- something about that he said that if you
15 told, she would go to jail for life or something
16 like that?

17 A. She would go away or get killed.

18 Q. You did say that; correct?

19 A. Uh-huh.

20 Q. Okay. And after he went to jail, for some
21 reason or another, did she leave and have to go to
22 jail?

23 A. I mean, yes.

24 Q. Okay. Thank you.

25 MR. JOHNSON: That's all, Your Honor. Thank

1 you very much.

2 THE COURT: Redirect, if any.

3 MS. SIMPSON: Yes, Your Honor, briefly.

4 REDIRECT EXAMINATION

5 BY MS. SIMPSON:

6 Q. Minor he asked you about pictured and he
7 said specifically the computer room. I don't think
8 we went over this. Did he ever take pictures of
9 you?

10 A. In the computer room?

11 Q. Anywhere at any point.

12 A. Yes.

13 Q. Tell the jury about what pictures he would take
14 and what pictures you remember.

15 A. He'll take pictures of my breasts and my
16 privacy area and my butt.

17 Q. And do you remember where he would take those
18 pictures, like what locations or --

19 A. In his room.

20 Q. In his room?

21 A. Yes, ma'am.

22 Q. Like a bedroom in his house?

23 A. Yes, ma'am.

24 Q. And with those pictures -- did you ever see
25 them? Would he show them to you?

1 A. I seen, like, not -- one night when he went out
2 to go somewhere, I took his phone and looked through
3 them myself.

4 Q. Okay. But he made you pose for those pictures?

5 A. Uh-huh.

6 Q. And you say they didn't happen in the computer
7 room, they happened --

8 A. At the brick house.

9 Q. He also asked you a lot about what you remember
10 telling Mr. Kellin. Was that the interview that you
11 were sick for?

12 A. Yes.

13 Q. And did it actually have to end early?

14 A. Yes. He wanted to.

15 Q. Okay. And then you also talked to another
16 lady, but you had to go to another interview; right?

17 A. Yes, ma'am.

18 Q. And between that one interview -- you were how
19 old when you met with Mr. Kellin?

20 A. Eleven.

21 Q. And did you have a birthday between meeting
22 with Mr. Kellin and meeting this other lady?

23 A. Yes.

24 Q. Okay. So you turned 12 before you met with
25 her?

1 A. Yes.

2 Q. And when you talked to her, were you able --
3 and I'm not going to ask you specifically what you
4 remember. But were you able to give her some more
5 detail about what happened to you?

6 A. Yes.

7 MS. SIMPSON: Thank you, Minor
8 I have nothing further, Your Honor.

9 THE COURT: Next witness, please.

10 MS. SIMPSON: State calls Pamela Hall.

11 THE COURT: Ms. Hall.

12 PAMELA HALL

13 being first duly sworn, testified as follows:

14 THE DEFENDANT: Yes, ma'am.

15 MS. SIMPSON: May we approach?

16 THE COURT: Yes, ma'am.

17 (Sidebar conference.)

18 THE CLERK: State your full name for the
19 record, please.

20 THE WITNESS: My name is Pamela Hall.

21 THE COURT: Ms. Hall, speak up for me now.

22 THE WITNESS: My name is Pamela Hall.

23 THE COURT: There you go. Thank you.

24 DIRECT EXAMINATION

25 BY MS. SIMPSON:

DIRECT EXAMINATION OF PAMELA HALL BY MS. SIMPSON

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- 1 Q. Ms. Hall, how old are you?
- 2 A. Thirty-four.
- 3 Q. And where are you from?
- 4 A. Bethune, South Carolina.
- 5 Q. Bethune. And tell me a little bit about your
- 6 family and your children.
- 7 A. Well, I have four kids; three girls and one
- 8 boy. I have two sisters, one brother, my mother.
- 9 My dad passed when I was five, so it's been pretty
- 10 much just us.
- 11 Q. And by just us, who do you mean?
- 12 A. My immediate family, the ones I just named.
- 13 Q. Okay. And I want to talk specifically about
- 14 your children. Can you tell the jury their names
- 15 and ages and who their father is?
- 16 A. Minor is the oldest, she's 15, her dad is
- 17 Shawntel Ford. Then I have Nakiah J. Nakia J.
- 18 and Nakisha J., and they're -- Nakia
- 19 Johnson is their dad.
- 20 Q. Okay. Do they have nicknames that they kind of
- 21 go by? We've heard --
- 22 A. Minor Nakiah J. Kyrie J. and Kamari J. or K.K.
- 23 Q. And where are you currently living now?
- 24 A. In Bishopville.
- 25 Q. And are you working?

1 A. No.

2 Q. What type of work have you done in the past?

3 A. I was training for assistant manager at
4 McDonald's. I've worked at Hardee's and at AT&T.

5 Q. And you mentioned you have brothers and sisters
6 too. Who are they?

7 A. I have a brother Tracey Hall, a sister Melissa
8 Hall, and another sister Stacey Hall.

9 Q. And as far as oldest to youngest, who is the
10 oldest?

11 A. Tracey is the oldest, then it's Melissa,
12 Stacey, and me.

13 Q. So you're the baby of the family?

14 A. Uh-huh.

15 Q. And did you grow up in Bethune?

16 A. Excuse me?

17 Q. Did you grow up in Bethune?

18 A. Yes; between Bethune and Bishopville. It's the
19 same area.

20 Q. Okay. So kind of back and forth, but in that
21 area?

22 A. Uh-huh.

23 Q. I want to turn your attention to this case.

24 Tell the jury some of the relationships in this

25 case; how you met the defendant Nakia Johnson?

1 A. I initially met him going through a roadblock.
2 And a couple of days later a friend of mine was
3 talking to one of his coworkers, so it was kind of a
4 mutual conversation how we met.

5 Q. And at the time y'all met, were you actually
6 married or in another relationship?

7 A. Yes, I was married. But I was separated.

8 Q. Married but separated?

9 A. Yes.

10 Q. And where were you living at the time?

11 A. In Bishopville.

12 Q. In Bishopville. Who was living with you?

13 A. At the time it was just me and Minor

14 Q. And what -- do you remember about what
15 timeframe that was that you met him?

16 A. It was around September of 2001.

17 Q. Did you know him before the roadblock or you
18 just --

19 A. No.

20 Q. -- you said through a mutual friend?

21 A. That was my first time meeting him.

22 Q. Tell the jury about your relationship and how
23 it developed.

24 A. We was -- we started -- he was still married at
25 the time. We were kind of seeing each other behind

1 her back and after I was separated. So we were off
2 and on, off and on, for almost about a year before I
3 got pregnant with Nakiah J.. And we've been off and on
4 for a few years. And then we moved Wisconsin for a
5 couple months, and I ended up moving to South
6 Carolina and he ended up coming back. And I ended
7 up moving into Fairfax, I think, in 2005 or 2006.

8 Q. Let me back up. You said you met him in a
9 roadblock. What was his employment? What did he
10 do?

11 A. At Lee County Sheriff's Department.

12 Q. Okay. And was he actually working as a police
13 officer at that time?

14 A. Yes.

15 Q. And you said he was married at the time too?

16 A. Yes.

17 Q. Did you actually know his wife?

18 A. She grew up with my sisters. They're around
19 the same age. But I knew her from the neighborhood.

20 Q. So y'all were seeing each other, and then about
21 a year into the relationship, you had Nakiah J.?

22 A. Uh-huh.

23 Q. When Nakiah J. was born, where did you live?

24 A. Still in Bishopville. I still lived -- just
25 me, Minor and Nakiah J..

DIRECT EXAMINATION OF PAMELA HALL BY MS. SIMPSON

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1 Q. Would you see the defendant -- tell the jury
2 about when you would see him; how frequent, how --

3 A. Almost every day or every other day. Sometimes
4 his days off, he would come by. When he was
5 working, he would come by on shift. I would ride
6 with him sometimes when he worked night shift. He
7 was around all the time.

8 Q. And was y'all's relationship, I guess, pretty
9 good at that time? How would you describe it?

10 A. When we first started, it was pretty good. I
11 think I was seven months pregnant with **Nakiah J.** and
12 that was the first time we got into a physical
13 altercation. We had some issues dealing with me,
14 his wife, and another female that was involved. And
15 he took me to my mom's house one night and we got
16 into an altercation. And he tried to get me to get
17 out the car, and I told him I wasn't getting out
18 until I got home.

19 So he pulled his gun on me that night. And he
20 got a call -- I think it was on Cameron Church Road
21 [phonetic]. So I rode with him to the call, and
22 when we got there -- I think it was Lieutenant Liam
23 Blakely and Darlene Dillinger. I ended up, I think,
24 right there by -- no, I think I rode back with
25 Darlene. We got into an altercation then because I

1 had braids in my hair and he pulled a few of my
2 braids out that night.

3 Later on that night, he came back, apologized,
4 we sat and talked for a while. A couple days later,
5 everything was fine.

6 Q. And this -- was it unusual for y'all to get
7 physical with one another? I know -- I mean, as far
8 as him being physical with you, would you fight back
9 too? I mean, was this uncommon?

10 A. In the beginning, I really didn't because I was
11 kind of scared. It wasn't all the time. But we
12 would have physical altercations. It was mostly
13 when he got caught in the wrong and we were arguing,
14 one thing would lead to another.

15 Q. Okay. And what would you say the, I guess,
16 primary issue was or cause for --

17 A. Other women.

18 Q. And are those grown woman or any issues with
19 little kids?

20 A. They were grown.

21 Q. So there were never any issues regarding --

22 A. No.

23 Q. -- your children?

24 A. No.

25 Q. Okay. At some point did y'all actually -- you

1 said you were off and on. At some point did you
2 actually get divorced or --

3 A. I -- the divorce wasn't final until 2007.
4 And -- right after I had my last child from him.

5 Q. Okay. And where were you living when you had
6 Nakia J.-- Kyrie J.

7 A. Nakia J., I was living still in Bishopville.

8 Q. And then the little girl, K.K.?

9 A. In Colleton County. I was living in Fairfax
10 then.

11 Q. Okay. At any point in time during the course
12 of y'all's relationship, did you and -- do you call
13 him Kia?

14 A. I call him Key.

15 Q. Did you and the defendant, Key, actually live
16 together?

17 A. Yes.

18 Q. Tell the jury where all you lived together and
19 who lived with you.

20 A. We lived together in Wisconsin. It was maybe
21 about three months and then we moved back. We moved
22 to a trailer that his mom had in Fairfax. We stayed
23 there a few months, almost a year. And we then
24 moved to the brick house in Fairfax and stayed
25 there for -- well, I stayed there almost a year and

1 a half before I left.

2 Q. Okay. And those were all the places y'all
3 actually lived together --

4 A. Yes.

5 Q. -- with your children?

6 A. Uh-huh.

7 Q. And your children -- we mentioned his
8 biological children. Was **Minor** with you that
9 entire time too?

10 A. When I went to Wisconsin, she wasn't with me.
11 But when I moved to Fairfax, she was with me.

12 Q. Okay. From Fairfax up until, I guess, this
13 point now, living with her stepmother and father --

14 A. Uh-huh.

15 Q. -- has she been with you?

16 A. Since this happened, she's been living with
17 him.

18 Q. Okay. But prior to that, she --

19 A. Yeah. She was with me.

20 Q. Tell me, I guess, essentially, did he -- did
21 the defendant actually provide for you or give you
22 money at times?

23 A. Yes, he did.

24 Q. Tell the jury about that and what all he gave
25 you and did for you.

1 A. When it comes to bills and with the kids, he
2 took care of everything for them. What he bought
3 for his three, he did for **Minor** He never
4 mistreated her in any way. If I didn't have
5 anything, he provided. He pretty much provided
6 everything.

7 Q. Okay. And at the trailer, he actually -- in
8 Bishopville, did he -- as far as housing and roofs
9 over your head --

10 A. Uh-huh. He --

11 Q. I'm sorry. I interrupted you.

12 A. Yes. He provided all of that also. And I was
13 going through it -- I wasn't working and I was
14 responsible for paying the bills, and I wasn't able
15 to keep them up.

16 Q. Did you also -- I guess when y'all -- when you
17 moved from certain locations, what was the cause of
18 that?

19 A. When I moved from Fairfax, I was working at
20 AT&T and I didn't have money to actually get my own
21 place, so I was in between my sister's and my mom's.

22 Q. When you say your sister's, who did you go live
23 with?

24 A. When I first moved back to Bishopville, I
25 stayed with Stacey a little while. And then I ended

1 up moving to my mom's, and that's when we got the
2 trailer and I was there. And after I left the
3 trailer, I stayed with Melissa a little while. So I
4 was between Melissa and my mom's house because --

5 Q. And --

6 A. -- my mom lives in -- one side is Kershaw
7 County and one side is Lee. And they were going to
8 Bishopville schools, so sometimes during the school
9 days, I would stay at my mom's and catch the bus.

10 Q. So they stayed in the schools --

11 A. Uh-huh.

12 Q. -- even though you had moved houses?

13 A. Yes.

14 Q. And your mom's property, is that off Stevens
15 Road?

16 A. Yes.

17 Q. And describe that property for the jury.

18 A. It's a single mobile trailer, three bedroom.

19 Q. And right beside your -- that's where you
20 stayed. Is there actually a house next door?

21 A. Uh-huh. Now it's my mother's house. My
22 grandmother used to live there.

23 Q. So you were there and then you stayed, you
24 said, with Stacey when you were in Bishopville, and
25 then Melissa when you moved back?

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1 A. Yes.

2 Q. Tell the jury a little bit too, while you were
3 staying in places and you weren't living with the
4 defendant, what was your interaction with him and
5 his with your kids during those times?

6 A. We talked almost -- well, every day. He would
7 come -- some days he would come stay or sometimes
8 we'd get a room, or if we was going places, we would
9 go. But he came back and forth. And during the
10 times when the kids were down there with him, I was
11 working in Orangeburg, so I was back and forth
12 between there -- between Fairfax and my mom's house.

13 Q. And you said sometimes you would get a place.
14 Tell the jury what you mean by that.

15 A. I'd get a room for a couple days or if we went
16 somewhere, wherever we went, we'd get a room in that
17 area. We went to the beach in -- we didn't get a
18 room there, but we got a room when we came back to
19 Bishopville. It depends on wherever we went.

20 Q. And when you got a room, would it be just you
21 and the defendant or who all would go?

22 A. Sometimes it would be just me and him and
23 sometimes it would be all of us.

24 Q. And all of us, who do you mean?

25 A. Me, him, and the kids.

1 Q. And did y'all have occasions to go on trips
2 together?

3 A. Yes.

4 Q. And did he actually pay for you to go on these
5 trips with him?

6 A. Yes.

7 Q. Tell the jury what trips he took you on.

8 A. He came back from Afghanistan, we went to
9 Disney World for a couple days. I think we stayed
10 three days -- I think maybe three days. I mean, he
11 would, like, take the kids different places. But
12 that's the only trip that we've actually been on
13 besides that, and the beach.

14 Q. Okay. Was it a day trip to the beach or was it
15 a --

16 A. Day trip.

17 Q. When he was -- was he still working as an
18 officer throughout this --

19 A. At that time, I'm not sure whether he started
20 back or not. I know he had just came home like a
21 month before that. So I'm not sure whether he was
22 back working or not.

23 Q. So did he actually go out of the country for
24 periods of time and then come back for a couple
25 months and then leave for a couple months and --

1 A. When he'd go, he'd be gone maybe three months.
2 I want to say the whole year that he was gone, he
3 came home maybe three or four times in between, and
4 he'd come and stay maybe two or three weeks.

5 Q. Okay. So he would stay two weeks with -- or in
6 town --

7 A. Yes. He was in town.

8 Q. -- and you'd see him during those two weeks?

9 A. Yes. Uh-huh.

10 Q. Did he actually -- since you were living -- I
11 guess where were you living during that timeframe?
12 Was it Aunt Missy's house or your grandmother's
13 or --

14 A. At that time, I was living with my mom. And
15 that's when we got the trailer.

16 Q. Okay. And when he would visit with you or come
17 into town, would he want to see his kids?

18 A. Uh-huh.

19 Q. And y'all had a pretty good relationship, so --

20 A. Yes.

21 Q. -- he got to see the kids?

22 A. Uh-huh.

23 Q. All the arguments you had, I guess -- and I'm
24 going to fast-forward a little in time here right
25 prior to the incident. Describe your relationship

1 at that time.

2 A. At that time, we were off and on. We really
3 wasn't together because at that time he was living
4 in Fairfax and I was living in Bishopville.

5 Q. Off and on?

6 A. Uh-huh.

7 Q. Were y'all still cordial? Like, did y'all get
8 along in your relationship well enough? Was your
9 relationship still intimate?

10 A. We got along, we was still intimate, but we
11 still had our arguments here and there.

12 Q. Okay. And what were those arguments generally
13 over?

14 A. Mostly we would argue about him cheating with
15 other people.

16 Q. Okay. Cheating with other women and --

17 A. Yes, ma'am.

18 Q. -- that's the essence of it?

19 But there's no doubt he provided for you --

20 A. Yes. He did that.

21 Q. -- and his kids?

22 A. Yes, he did.

23 Q. Tell me about the day this happened, what you
24 remember about that day or that all this came about?

25 A. I think that the week before, he was supposed

1 to come and pick up our baby girl **Kamari J.** But he
2 didn't come because something came up at work. So
3 he came to pick her up -- I think that was a
4 Tuesday, if I'm not mistaken. He came that Tuesday
5 morning, stayed there for a while. I think we went
6 to CVS to get my medicine and came back. We had sex
7 that day.

8 The kids got home maybe about 30, maybe 40
9 minutes after we got back. My mom and her friend
10 was there. The kids came in, he spoke with the
11 kids, played with the kids for a while. And I was
12 helping my son with his homework in the other room.
13 And then I heard the car door close when they were
14 leaving, and I asked Skeeter was -- I think Skeeter
15 was in the front room or outside. And I said, where
16 did they go? He said, they going to the store.

17 So I called his phone and asked him why did he
18 leave us and why he didn't take the other kids. And
19 he said, I'm going to the store. He said, I'm to
20 get them candy. So I said, are you coming back to
21 get the rest of the kids? He said, yes, he was
22 coming back. I waited for a little while, he didn't
23 come back. Maybe like five minutes -- because the
24 store isn't that far away. So when he never came, I
25 called.

1 I think I called him maybe twice and he didn't
2 answer. Then when he did answer, he said he was in
3 the store. I told him, bring me some skins and, I
4 think, a beer. He said they didn't have the kind of
5 skins that I wanted. And I said okay. So we hung
6 up the phone, I went and sat back on the chair in
7 the front room, and my phone rung. And when it
8 rung, I picked it up and I was saying, hello, hello.
9 And I could hear the background. I could hear him
10 talking, but he couldn't hear me. I kept saying,
11 hello, hello.

12 So I got up, I went down the hall in the
13 bathroom. And I heard -- when I put the phone up to
14 my ear again, I said, hello, hello. I could hear
15 him talking. At first I couldn't make out what he
16 was saying, but then I heard him say, you know I
17 want to nut in you, but I can't. And I didn't hear
18 anything. Then I heard him say, you know why? And
19 she didn't say anything. He said, do you know why?
20 And she said, because I'll get pregnant. And he
21 asked her did she miss him. She didn't say
22 anything. And he asked her how does she want to do
23 it; does she want to get on top or does she want him
24 to get on top. And I think she said, you on top.

25 And that was it. I hung up because I couldn't

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1 take hearing it no more. I hung up and I called his
2 phone back. I don't remember if he answered the
3 first ring or the second ring. But I called and
4 when he answered the phone, I remember saying, I
5 just heard everything you said. I said, you got ten
6 seconds to have my baby back in the yard.

7 And I don't remember everything I said. I
8 don't remember hanging up the phone, I don't
9 remember putting on my shoes or my jacket, I just
10 remember being outside. And when I got outside, I
11 waited around a few minutes and I didn't see the
12 car. I was down at the road, and then when I walked
13 back to the porch and I came back, his car was
14 coming. He was flying, driving so fast. And when
15 he got to the road, he passed it. When he mashed
16 the brakes, the car was skidding a little bit.

17 I remember her -- I remember telling her to get
18 out the car, because I looked at her and she was
19 scared. I could tell she was scared because I could
20 kind of see her heart beat because she had on a
21 T-shirt. And I remember jumping in the car and
22 grabbing his gun, and he pulled up -- he was driving
23 up the street. And I remember -- I can't remember
24 word for word what was said. We was arguing, I was
25 mad. I ended up getting out of the car. And I

1 remember walking back to my mom's house, because
2 it's maybe not even a five-minute walk and I still
3 had the gun in my hand at the time.

4 I ended up going in the house and I asked her.
5 She was in the bathroom. I said, **Minor** what
6 happened? She kept saying, nothing, nothing. And I
7 told her -- I said, **Minor** tell me what happened. I
8 said, I know what I heard on the phone. And she
9 kept saying, nothing, Mom, nothing. I said, if you
10 don't tell me, I'm going to take you to the doctor,
11 so you might as well tell me what happened. When I
12 said that, first she said that he was touching her
13 breasts. And when she said that, I said, tell me
14 everything. And she, Mom, it's over, it's over.

15 So I ended up going outside and I made her go
16 outside with me. And I put her in the front seat
17 and I was in the back seat. And I said, now tell
18 him what you told me. And first she said he didn't.
19 And he said, Pamela -- any time we argue, he call me
20 Pamela. He said, Pamela, you think I would do
21 something like that? You think I would do something
22 like that? I told him -- I said, I know what I
23 heard, I know what I heard you say, and I know what
24 I heard her say.

25 And first thing his excuse was he reached over

1 to put her seatbelt on. I'm thinking she's 11 years
2 old, she's capable of putting on her own seatbelt.
3 And at the time, the car -- the Cadillac, the front
4 seatbelts, whenever you fasten them, they get stuck.
5 So we wasn't using them because they got stuck. So
6 the seatbelts wasn't being used. And I told her to
7 get out the car.

8 I had his gun, I had it pointed at him. And
9 the only thing that I can say that saved him was she
10 said, Mom -- she said, Mom, you have four of us to
11 take care of, he's not worth it. She said, it's
12 out, you know he's not worth it. And that's the
13 only thing that saved him that day.

14 Q. I want to back up just a little bit to that
15 phone call, because you said she, she. Whose voice
16 did you hear?

17 A. **Minor**

18 Q. And what did she say?

19 A. When he asked her why, the first time she
20 didn't say anything, and then she said because I'll
21 get pregnant. And then when he asked her about her
22 being on top, him being on top, she said, you. And
23 after that, I just hung up because I didn't want to
24 hear any more.

25 Q. And is there any doubt in your mind as to whose

1 voice that was that was responding to him?

2 A. No.

3 Q. When they left to go to the store that day, who
4 all left?

5 A. It was just him and her.

6 Q. And everybody else was still at the house?

7 A. Everybody else was still at the house.

8 Q. Grandmother, other kids?

9 A. Yes.

10 Q. You said -- you mentioned the black Cadillac.
11 Did he actually have several vehicles?

12 A. He had the black Cadillac and he also had a
13 white Suburban.

14 Q. Okay. And the Cadillac, was that actually his
15 police car or did he have a separate --

16 A. That was personal car.

17 Q. That was a personal car?

18 A. Uh-huh.

19 Q. And was that the car he was in that night?

20 A. Yes.

21 Q. With respect to -- I know you said you were
22 very upset and angry and pulled the weapon. What
23 was his demeanor? How was he acting?

24 A. He was laughing it off. He was trying to
25 say -- he kept saying, do you think I would do

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1 something like that? Do you think I would do
2 something like that? And then when she said about
3 him touching her breasts, he said -- that's when he
4 said about he reached across to grab the seatbelt.
5 And like I said, it didn't make any sense because
6 she's capable of fastening her own seatbelt, and I
7 knew that they didn't work.

8 Q. And you also heard what you heard on the phone?

9 A. Yes.

10 Q. Tell me, y'all had a number of other arguments
11 regarding other women and the cheating. Was this
12 similar, his reaction, or how --

13 A. Huh-uh.

14 Q. Describe how --

15 A. Because normally whenever he would get caught
16 up, he would get mad and want to argue.

17 Q. He would get mad and --

18 A. And want to argue.

19 Q. So y'all would kind of go back and forth?

20 A. Yes.

21 Q. What was different about this argument?

22 A. His whole demeanor. And I've been knowing
23 Nakia long enough to know when he's lying to me.
24 And the fact that he couldn't look me in my face and
25 the fact that I know exactly what I heard and all he

1 could say was, you think I could do something like
2 that, and he was, like, saying it in a -- like kind
3 of laughing it off instead of being serious about
4 it.

5 Q. The point after the conversation where he said
6 pretty much what Minor told you is what saved his
7 life --

8 A. Yes.

9 Q. What happened after that, that you can
10 remember?

11 A. I remember getting out the car. I remember
12 hugging her. We stood there for a while. I was
13 crying, she was crying. She went in the house. I
14 told her to go in the house. I gave him his gun
15 back and told him to get out my yard because I was
16 calling the police. And I called. I said it, like,
17 twice, and he didn't move. And I actually dialed
18 the number, 911, when he was in the yard. And when
19 he heard me talking, that's when he left.

20 Q. Okay. And when the police arrived, tell me
21 what you remember about once they got to the scene.

22 A. I remember it started raining. I was outside
23 in the rain waiting because it took a while for them
24 to get there. And I think dispatch called back and
25 said -- I don't know if he couldn't find the address

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1 or what. But I was outside when he pulled up.

2 When he pulled up, he asked me what happened,
3 and I told him.

4 Q. And you told him -- when you say you told him
5 what happened, did you tell him everything that
6 happened that night?

7 A. I think I told him about the phone call. I
8 remember telling him I pulled the gun, all of that.

9 Q. Okay. So you told him about your actions as
10 well as what you heard?

11 A. Yes.

12 Q. And then did you also, that night, have to give
13 a statement?

14 A. Yes.

15 Q. A written statement?

16 A. Yes.

17 Q. And in that statement, were you asked just to
18 provide information about what happened?

19 A. Yes.

20 Q. And is that what you did?

21 A. Yes.

22 Q. Did you have to go somewhere else that night?

23 A. They told us to be in Kershaw County for her
24 to -- well, they took us to Kershaw County, I think.
25 And when we got there, they said we had to go to

- 1 Richland. And I remember when I was asking him
2 about did they find him -- I remember him -- he had
3 his gun. And after he left and I was outside
4 waiting for the police to come, his car was in the
5 area because the car passed by. It pulled into,
6 like, a neighbor's driveway and it turned around.
7 And I remember asking him because I was scared --
8 Q. Slow down just -- I know you're nervous. But
9 slow down just a little bit so she can take it down.
10 A. I remember asking them could they send someone
11 to make sure they were okay.
12 THE COURT: Hold on a second. Take a deep
13 breath so we can hear.
14 Q. What do you remember about the hospital?
15 A. We was there. We went to Richland County and
16 they did some interviews on her when we was waiting
17 in the waiting room. And one of the ladies from the
18 victims advocate, she told us that they had him at
19 the police department. We got home maybe about 4:00
20 that morning.
21 Q. And they told you they had who?
22 A. Nakia. They had him in custody, I think.
23 Q. And at the hospital, backing up just to make
24 sure we understand, you were talking to the nurse or
25 asking somebody about something?

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1 A. Before we left Kershaw County Hospital, I asked
2 one of the officers about could they have someone
3 check on my mom and the other kids at the house. My
4 sister had just got home from work. And, you know,
5 he had his gun, and I know sometimes about the
6 altercations that we've had, I was worried about
7 them.

8 Q. And you said he had his gun. Did he also have
9 some other guns or had you seen him with any other
10 guns?

11 A. Not that day. I don't know if he has any
12 others, but I didn't see any others.

13 Q. Okay. Just that one gun that day?

14 A. Yes.

15 Q. Okay. And that was actually his service
16 weapon?

17 A. Yes.

18 Q. After going to the hospital that night, did you
19 and Minor come home?

20 A. Yes.

21 Q. At some point did you talk to your sisters?

22 A. I think my sister called me while I was at the
23 hospital. And I think I told her -- I think my mom
24 had already told her what happened. And when I got
25 home, she came and sat -- Minor came home, went to

1 sleep, and my sister sat up and talked to me for a
2 little while and I told her what happened.

3 Q. And as far as what happened in your
4 conversations with Minor did she go into very
5 much detail about what happened or was it --

6 A. When she started -- she started saying about
7 that that wasn't the first time. She said the thing
8 about when we went to the beach, she said something
9 about at, I think, Missy's house. But she didn't go
10 into detail because when she was trying to explain
11 it and trying to go into it, I didn't want to hear
12 it. I would just stop it there. I told her that
13 whenever she talk to them, just tell them.

14 Q. And talk to -- who were you talking about?

15 A. To the police and to the doctors.

16 Q. But you just told her to stop talking?

17 A. Yes.

18 Q. You said your mom knew too. Was your mom
19 actually there that night?

20 A. She was there. During the time when I got the
21 phone call, she was sitting on the chair. She don't
22 know -- she didn't know about what happened until
23 after I called the police, because she was in the
24 house. And I remember coming in and out of the
25 house. I remember her saying something to me, but I

1 just blocked it out.

2 Q. Okay. At that point you're really upset and
3 angry?

4 A. Yes.

5 Q. So the only people -- who was actually outside
6 that night?

7 A. Just me, Minor and Nakia.

8 Q. You've actually -- in addition, you've actually
9 had some issues -- personal issues as well; correct?

10 A. Yes.

11 Q. And that includes things with alcohol and
12 things of that nature?

13 A. Yes.

14 Q. Tell the jury about when you actually went to
15 rehab and where your children lived.

16 A. I went to rehab in November of 2010. And at
17 that time, they went to go live with Nakia and his
18 mother in -- I think the middle of September --
19 middle of September in 2010 until -- they came home,
20 I think it, was December -- no; it was right before
21 Christmas, like two days before Christmas.

22 Q. And so he essentially -- did he agree to take
23 the children in with his mom?

24 A. Yes, he did.

25 Q. And did you voluntarily go to get help?

1 A. Yes.

2 Q. As far as your issues with alcohol or drugs,
3 were you ever out of your children's lives as far as
4 other than going to rehab for that period of time?

5 A. No. Actually, after this happened -- about a
6 month and a half after this happened, I was
7 currently on probation at that time. And I violated
8 my probation and I ended up doing 18 months after
9 this happened.

10 Q. And when you say after this happened, after
11 this all this came out?

12 A. Yes.

13 Q. Is that part of the reason that **Minor** went
14 to go live somewhere else?

15 A. Yes; live with her dad.

16 Q. And what were you on probation for; do you
17 remember?

18 A. It was for, I think, financial card
19 transaction, if I'm not mistaken.

20 Q. And you actually -- like, I said, you went to
21 jail. You had a fraudulent check from back in 2002?

22 A. Yes.

23 Q. And you also have -- you were on probation for
24 financial identity fraud in 2009?

25 A. Yes.

1 Q. And that was a couple different counts; right?

2 A. Yes.

3 Q. So you never actually went to jail or anything
4 for the alcohol?

5 A. No.

6 Q. And as far as the pervasiveness of your issues, did
7 that ever affect your ability to be in your
8 children's lives other than that one --

9 A. No. And, actually, it came after -- after I
10 got the -- the charges were in 2009, actually. So
11 the drug use came after that.

12 Q. Okay. And how would you describe your issues
13 with it?

14 A. It was battling off and on. And it was mostly
15 because -- like, growing up, I went through the same
16 issues as **Minor** and I didn't know how to express
17 it. Talking to my mother about it, she didn't do
18 anything about it, and I kind of had to deal with my
19 issues on my own.

20 Q. Okay. And you had your children as well?

21 A. Yes.

22 Q. And to be fair, did the defendant kind of help
23 you out, like, financially, as well as being
24 supportive?

25 A. Yes, he did.

1 Q. At some point, did he know about some of your
2 issues?

3 A. Yes.

4 Q. And y'all actually talked about it?

5 A. Yes.

6 Q. And was he supportive when you went to rehab?

7 A. Yes, very supportive.

8 Q. And is that when he agreed to talk your
9 children, to include Minor back to Fairfax?

10 A. Yes.

11 Q. For a period of time did y'all actually stay
12 and live with -- or was Stacey living with you at
13 one time too?

14 A. When I first moved back from Fairfax, I lived
15 with Stacey. And during this time was happening,
16 Stacey was living with my mom also.

17 Q. Okay. And when you say living with, y'all were
18 in the trailer beside?

19 A. Well, actually, my mom was still living in the
20 trailer because my grandmother was still living at
21 the time.

22 Q. Oh, she was still alive.

23 A. Uh-huh.

24 Q. And you also lived for a period of time with
25 Melissa?

1 A. Yes.

2 Q. And where was that?

3 A. [REDACTED].

4 MS. SIMPSON: I beg the Court's indulgence.

5 BY MS. SIMPSON:

6 Q. The father of your three children and

7 Minor's [REDACTED] stepfather, do you see him here in the
8 courtroom today?

9 A. Yes.

10 Q. And can you point out for the jury who he is
11 and what he's wearing.

12 A. Nakia Johnson, blue shirt and light blue and
13 navy blue tie [indicating].

14 MS. SIMPSON: Your Honor, let the record
15 reflect she's identified the defendant.

16 THE COURT: Thank you.

17 MS. SIMPSON: Thank you, Your Honor.

18 THE COURT: Mr. Johnson.

19 CROSS-EXAMINATION

20 BY MR. JOHNSON:

21 Q. Ms. Hall, I'll say the same thing to you I said
22 to Minor [REDACTED] These are some questions I must ask
23 you. You understand that?

24 A. Yes.

25 Q. If you need a break or something, you let me

1 know. Okay?

2 A. Okay.

3 Q. I just want to establish, Nakia was a good
4 stepfather to Minor

5 A. Yes, he was.

6 Q. Okay. And he was a good provider and good
7 person to you?

8 A. Yes, he was.

9 Q. Okay. And up until the time you got this phone
10 call, you had no indications of anything like this?

11 A. No, I hadn't.

12 Q. And even when you were going through the
13 rehabilitation, like you said, he was supportive?

14 A. Yes.

15 Q. Okay. Now, let's deal with that a little bit.
16 There was a period, I think, he bought you a house
17 or a trailer?

18 A. Yes.

19 Q. And then he went overseas?

20 A. Yes.

21 Q. And when he came back, it was gone?

22 A. Actually, when he came back, it was still
23 there. I was having issues paying the -- keeping
24 the upkeep with the bills and also with the lot
25 rent. And the people I owed the lot rent to, which

1 was Plantation Parks, they came and they moved it
2 off their property and took it to their lot. It
3 accumulated over a period of days with the amount of
4 money that I had to pay to get it back, and I didn't
5 have it.

6 Q. Okay. Wasn't he sending you money from
7 overseas?

8 A. Actually, when he came -- when he came home,
9 he -- that's when he purchased the trailer and left
10 the money for everything. But whenever he would buy
11 for the kids during that time, after I went to
12 rehab -- no, that was before I went to rehab. There
13 were periods of time he would buy them stuff and
14 actually bring it to them or he would actually take
15 them shopping.

16 Q. Okay. Now let's go directly to the day of
17 October 11th, 2011. Mr. Johnson left to go to the
18 store. One of your baby girls had a note in her bag
19 for not doing something in school; is that correct?

20 A. Yes. **Nakiah J.**, she got in some trouble on the
21 bus.

22 Q. Right. And you were -- when he got ready to go
23 to the store, you were dealing with the situation
24 with **Nakiah J.**; right?

25 A. No. When he went to go to the store, I was

1 helping my son with his homework. I already talked
2 with Nakiah J. about that.

3 Q. All right. And I think the both of y'all sat
4 down and helped him with the homework; isn't that
5 correct?

6 A. No. Actually, I was down the hall helping my
7 son with his homework and Minor was sitting on
8 the chair. I think he was helping her. Matter of
9 fact, she was sitting here and he was sitting behind
10 her helping her with her homework [demonstrating].

11 Q. Okay. So you were helping your son with his
12 homework. Where were the other kids?

13 A. They were down the hall.

14 Q. So Minor was the one in the living room with
15 him or wherever they were?

16 A. I guess so.

17 Q. Okay. So it wouldn't be unreasonable for her
18 to go with him to the store, would it?

19 A. It would be unreasonable for him to take her
20 and not the others, because nine times out of 10
21 whenever they go anywhere, all of them go.

22 Q. Okay. But I think you said he was just like,
23 if not -- I think you called him her stepfather. It
24 wouldn't unreasonable for a stepfather and
25 stepdaughter to go to the store, would it?

1 A. No, it wouldn't be.

2 Q. Okay. Now, when they went to the store, there
3 were a series of phone calls made, weren't there?

4 A. Yes.

5 Q. Okay. All right. And this whole issue arised
6 when you said you thought you heard him talking to
7 **Minor** on the phone; is that correct?

8 A. No. I didn't say I thought; I said I heard.

9 Q. Okay. And I think what you were told and the
10 conclusion we come to is that when you heard the
11 phone call, they were somewhere in the cemetery, is
12 that correct, or the graveyard?

13 A. At that time, I didn't know where they were,
14 because the first call I placed to him, I asked him
15 why he didn't take -- why he left us. And he said
16 he was coming back. He didn't come back, so I
17 called him again and he said that he was in the
18 store.

19 Q. Okay.

20 A. And I think I called -- that's when he told
21 me -- asked me what I wanted. I called one time
22 before that, he didn't answer; and second call, he
23 picked up and said they were on the way back. I
24 went and sat back down in the living room and that's
25 when his phone called my phone, and that's when I

1 heard the conversation.

2 Q. And what -- did you do a statement for the
3 Kershaw County Sheriff's Department?

4 A. Yes, I did.

5 Q. Okay. And --

6 MR. JOHNSON: Your Honor, may I approach,
7 please?

8 THE COURT: You may.

9

10 BY MR. JOHNSON:

11 Q. May I ask you to look at that, please, and tell
12 me if that's the statement.

13 A. Yes, this is it.

14 Q. Okay. All right. And in that statement, you
15 said he parked in the graveyard; is that correct?

16 A. She said that -- after they got back and me and
17 her talked about the conversations, she said that he
18 was at the graveyard. And initially when she said
19 graveyard, I thought she was -- because there's a
20 church right up -- maybe a minute up from my mom's.
21 I thought that's what she was talking about, which
22 is St. Matthews. But later to find out, it wasn't
23 that one; it was the further one up the street.

24 Q. And it goes on and you said he left the
25 graveyard and went to the store; correct?

1 A. Yes. That's what she said.

2 Q. Okay. So when you heard the phone call, it
3 would have had to have been while they were at the
4 graveyard; is that correct?

5 A. I'm not sure -- when the phone call -- I don't
6 know where they were. All I know is I heard the
7 conversation.

8 Q. Okay. But Minor told you it was at the
9 graveyard?

10 A. I know she said that after I called him, he
11 came back and he was saying -- telling her not to
12 tell me. I can't tell their exact location because
13 I don't know. All I can tell you is what I heard on
14 the phone.

15 Q. But this is what you wrote in your statement.

16 THE COURT: Refer to what part you're talking
17 about in the statement, Mr. Johnson.

18 MR. JOHNSON: I'm sorry, Your Honor?

19 THE COURT: Refer to what part you're talking
20 about in the statement.

21 MR. JOHNSON: Yes, sir.

22 BY MR. JOHNSON:

23 Q. Did you write in your statement: She said he
24 parked in the graveyard down the street today and
25 her pants were down and he tried to penetrate her.

1 I called and he left the graveyard and went to the
2 store.

3 Did you say that in the statement?

4 A. Okay. Which part are you on?

5 Q. On page 2, about middle ways down.

6 A. She said he parked in the graveyard down the
7 street and had her pants down and tried to penetrate
8 her. But I called and he left the graveyard and
9 went to the store. This has been going on for
10 years.

11 Q. Okay. The only thing I want to make sure we
12 got clear is, she said, and you put in your
13 statement, that they left the graveyard and then
14 went to the store.

15 A. Yes, because that's what she told me.

16 Q. Okay. And that's what you put in the
17 statement?

18 A. Yes.

19 Q. Okay. And did you, at any time, identify the
20 time the call was made?

21 A. No.

22 Q. Did you not tell the law enforcement the time
23 the call was made?

24 A. I told him -- I showed -- I didn't -- I showed
25 him what was on my call log on my phone. I can't

1 remember. It was almost four years ago.

2 Q. Okay. I'll ask him.

3 But you did show him the call log on your
4 phone?

5 A. Yes, I did.

6 Q. And the call log identified the time?

7 A. Yes.

8 Q. And the phone -- and the time that's on your
9 phone would be the correct time that the incident
10 occurred?

11 A. I can't pinpoint exactly which call it was the
12 incident occurred because it was a few calls going
13 in and out the whole time.

14 Q. Okay. But --

15 A. So I can't say exactly which call it was.

16 Q. Did you not tell the police officer it was the
17 call that lasted two or three minutes?

18 A. The one that lasted two or three minutes was
19 the one that I heard him talking to her.

20 Q. That's my point exactly.

21 A. Yes.

22 Q. Didn't you tell him the one that lasted two or
23 three minutes?

24 A. That's the one that I heard, yes.

25 Q. And that's the one when they left the graveyard

1 and then went to the store?

2 A. At that time, that's -- at that time -- I can't
3 say that's when they left the graveyard because I
4 didn't know. I didn't know about the graveyard
5 until after she came back.

6 Q. I understand clearly what you're saying. The
7 only thing I'm trying to get established is that the
8 two-minute call is the call when they were at
9 wherever they were.

10 A. Yes. That's when I heard the conversation.

11 Q. Okay. And later on you found out wherever they
12 were was the graveyard?

13 A. Yes.

14 Q. Okay. And you made that call and then you
15 listened to that call for about two or three
16 minutes, I think you said?

17 A. No. I think it was right at two minutes.

18 Q. Okay. So you listened to the call for two
19 minutes; is that correct?

20 A. Yes.

21 Q. And whatever was on your phone would be the --
22 whatever would be the correct time --

23 A. Yes. It would be the incoming call from when
24 he called, yes.

25 MR. JOHNSON: Your Honor, I beg the Court's

1 indulgence for a second.

2 BY MR. JOHNSON:

3 Q. I think you testified that you went with her to
4 someplace for a test; Palmetto Richland or
5 someplace.

6 A. Yes.

7 Q. Okay. And I'm asking you only what you said.
8 I'm not asking about anybody else. Okay?

9 Did you tell anybody at Palmetto Richland I --
10 it was happening about two or three minutes?

11 A. Two ore three what?

12 Q. Did you tell anyone at Palmetto Richland that I
13 listened to what was happening for two or three
14 minutes?

15 A. Yes.

16 Q. Okay. And did you tell them that he denied it?

17 A. Yes.

18 Q. Okay. And did you also tell them that she
19 said, I got in the back seat of the car and he made
20 her get in the front -- I got into the backseat of
21 the car and made her get into the front -- no, I'm
22 sorry. My mistake.

23 Did you say, he said -- she said he touched her
24 chest?

25 A. Yes.

1 Q. Okay. All right.

2 A. And he said he touched her chest when he
3 reached to fasten the seatbelt.

4 Q. That's correct.

5 A. Yes.

6 Q. You said you were angry and you -- where did
7 you pick his revolver up from?

8 A. He had it in the front -- in the car in the
9 front and stuff. In the floor, there's a hump
10 between the driver 's and passenger's seat. It was
11 on the floor. When I got in the car, that's the
12 first thing I saw.

13 Q. And I think you said had it not been for what
14 **Minor** said, you probably would have shot him?

15 A. Yes.

16 Q. Okay. And you told all that to law
17 enforcement?

18 A. Yes, I did.

19 Q. And I think he tried to call you several times
20 after he left the house; correct?

21 A. Yes, he did.

22 Q. And then I think you might have -- did you call
23 him back one time?

24 A. I don't remember if I called him back or not.
25 I know he called after -- when I called the police,

1 I know that's when he backed out and he tried to
2 call me several times. After that, I'm not sure
3 whether I called him back or not. I called his
4 mother and I informed her of what happened and let
5 her know that I had called the police. And she said
6 she was going to try to get in touch with him.

7 Q. Okay. So just so I understand, was it 10
8 minutes, 15 minutes, 5 minutes after he left? How
9 many minutes before you called --

10 A. Sir, I can't answer that, because at that time
11 my emotions were hot. I wasn't thinking about the
12 time or anything.

13 Q. And it was storming during that time, wasn't
14 it?

15 A. Actually, at that time -- it didn't start
16 raining until after the -- I want to say when the
17 police got there, it was just drizzling a little
18 bit. But it wasn't storming bad.

19 Q. It wasn't bad weather? Y'all weren't waiting
20 for the storm?

21 A. Not in that area. It was drizzling a little
22 bit, but it wasn't no storm.

23 Q. And you are 100-percent sure that the voice you
24 heard was **Minor**

25 A. I'm 100-percent positive that was my daughter's

1 voice.

2 Q. And you're 100-percent sure that the phone call
3 for two minutes and something was the time all this
4 was going on?

5 A. Yes, because that was the incoming call that I
6 had from him.

7 Q. Okay. I think you said -- when Mr. Johnson and
8 **Minor** left the house, you said it was strange for him
9 to -- not to take all the kids.

10 A. Yes. If all the kids were in the house, he
11 wouldn't just take one and don't take the others.

12 Q. Okay. And that was probably his general
13 routine, wouldn't it be?

14 A. Yes. He would take all of them, take
15 everybody.

16 Q. Okay. And you got to know him. And it would
17 be strange for him to take her by herself like that?

18 A. Okay. If all the kids are in one room and all
19 of them are there, if he say he's going to the
20 store, all of them are going to ask to go.

21 Q. Okay. My point is, to you it would be strange
22 for him just to take her?

23 A. I'm not saying it's -- there's times -- it was
24 time when it has been just him and her. So, no,
25 it's not strange. But that particular day it was,

1 because I want to say either my son or my baby girl
2 had wanted some candy. That was the purpose of
3 going to the store, because they asked for it.

4 Q. Okay. And he brought the candy back from the
5 store?

6 A. To be honest, I didn't see anything he brought
7 back because after that time, I mean, everything
8 done happened.

9 Q. Okay. And the fact that you got angry and he
10 got angry and the fact that y'all argued has no
11 relevance on him having any relationship with any
12 minors or --

13 A. See, that's -- when? Prior?

14 Q. No. You testified that y'all argued and you
15 might even testified that he got physical one time.
16 But that has nothing to do with these charges;
17 right?

18 A. No.

19 Q. Okay. And that's not an indicator that he did
20 anything; right?

21 A. No.

22 Q. Okay. Would it be possible when you told him
23 that, that he thought it was just so crazy that you
24 would even think that he'd do something like that?

25 MS. SIMPSON: Objection; calls for speculation

1 as to what the defendant is thinking.

2 THE COURT: Rephrase the question.

3 MR. JOHNSON: Okay. Your Honor, I can't
4 rephrase it other than --

5 THE COURT: No, sir. It calls for speculation,
6 so that's why I gave you the chance.

7 MR. JOHNSON: I'm not going to try.

8 THE COURT: Thank you.

9 MR. JOHNSON: All right.

10 THE COURT: Anything else?

11 MR. JOHNSON: Your Honor, I'm just trying to
12 frame one question in my mind.

13 BY MR. JOHNSON:

14 Q. Did he help Nakiah J. with her homework that same
15 day?

16 A. I don't recall him helping her with her
17 homework. I remember him helping Minor with hers
18 and I was helping my son with his.

19 Q. Okay. And did you ever talk with Nakiah J. about
20 this incident?

21 A. Actually, I think me and Minor -- I think I
22 took her to -- I think she had a counseling session
23 a couple days after this happened. And when I came
24 back, my mom said, Pam, you need to talk to Nakiah J.
25 And I said, why? And she said, Nakiah J. tell your

1 mama what you just told me. And then when I asked
2 her what happened, she said that she saw some things
3 that happened, and I think they were at the house in
4 Fairfax. She saw some things that he did.

5 And when she told me that, that's when I called
6 Detective Bailey or called someone and let them know
7 what she just told me. And that's when they set up
8 an interview for her to come talk to someone.

9 Q. I thank you for the litany. But I just said,
10 did you tell Nakiah J. -- did you tell Nakiah J. --

11 A. I didn't tell her anything.

12 Q. Did you talk to Nakiah J. at any time about this?

13 A. After the fact, I explained what happened to
14 her.

15 Q. Did you talk with her?

16 A. Yes.

17 Q. Okay. Did you talk with her any time before
18 she had the interview?

19 A. No.

20 Q. You did not?

21 A. Before -- when -- after this happened, I
22 explained to them what happened that day. I
23 explained that to them, yes. But I didn't go into
24 no details as far as what -- everything that took
25 place.

1 Q. Did you talk to her before she went to the
2 interview?

3 A. I'm sure I talked to her. That's my daughter.

4 Q. So did you -- you did discuss it?

5 A. I didn't discuss this with her, no.

6 Q. Okay. Let's get it straight, because I don't
7 want to keep yelling.

8 Did you discuss this incident with her? I know
9 you talked with her. Did you discuss this incident
10 with her before she went to her interview?

11 A. Yes, I did.

12 MR. JOHNSON: Thank you. That's all I wanted.

13 THE COURT: Thank you. Is that it?

14 MR. JOHNSON: Yes, Your Honor.

15 MS. SIMPSON: Brief redirect.

16 REDIRECT EXAMINATION

17 BY MS. SIMPSON:

18 Q. One question: That statement where he was
19 focused on the graveyard, as far as your knowledge,
20 you gave a two-page statement to the police;
21 correct?

22 A. Yes.

23 Q. And that was your statement?

24 A. Yes.

25 Q. And just before that, you were actually talking

1 about what she -- who were you referring to?

2 A. To Minor

3 Q. That highlighted portion, what did she tell you
4 before the graveyard?

5 A. She started crying and told me that it has been
6 happening for a long time. I asked what did he do.
7 She said, he made her put her mouth on his private
8 area and he also put his mouth on hers. She said he
9 put his thing in her, and it was going on since '07
10 up until today.

11 Q. And then it goes into the portion about the
12 graveyard. Is that your personal knowledge or is
13 that what she's telling you?

14 A. That's what she's telling me.

15 Q. And you also told police how you pulled the gun
16 on him and everything that happened that night?

17 A. Yes.

18 Q. And as far as your conversations with Nakiah J.
19 prior to the interview, you stated that Nakiah J. told
20 who?

21 A. I think she told my mom, because when I came
22 home, she told me I needed to talk to Nakiah J..

23 Q. Okay. And based on what Nakiah J. said, at that
24 point you informed who?

25 A. I'm not sure whether it was Investigator

1 Bailey, but I know I called someone to let them
2 know.

3 Q. And did they decide she was going to be
4 re-interviewed?

5 A. Yes, they decided. Because that was **Nakiah J.'s**
6 first time being interviewed was when I made the
7 call.

8 Q. Okay. Did you discuss with her anything about
9 the details of what she observed; specific details
10 or anything like that?

11 A. No. The only thing I explained to -- well, to
12 all the other three kids was that -- because they
13 saw their dad on the news. They happened to catch
14 the news that came on and they actually saw it. I
15 kind of had to break it down and explain it to them.
16 But I didn't get into detail, I just told them that
17 he did something bad and he was in jail.

18 MS. SIMPSON: Thank you. That's all.

19 THE COURT: Thank you, ma'am.

20 MR. JOHNSON: Your Honor, can I -- one --

21 THE COURT: I don't -- recross is
22 discretionary, and I don't do recross.

23 MR. JOHNSON: Thank you, Your Honor.

24 THE COURT: I do that with both sides in all
25 cases.

DIRECT EXAMINATION OF STACEY HALL BY MS. SIMPSON

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1 Next witness, please.

2 MS. SIMPSON: May we approach just for timing
3 and scheduling issues?

4 THE COURT: Well, we're going to go til 1:00
5 and then break for lunch. Do you not have a short
6 witness or one that you can get started on?

7 MS. SIMPSON: Yes, sir. I'll call -- I think
8 she'll be short. We'll try to keep --

9 THE COURT: No, ma'am. You can have all the
10 time you want, I just told them we're going til
11 1:00.

12 MS. SIMPSON: The State calls Stacey Hall.

13 (Stacey Hall enters the courtroom.)

14 THE COURT: Come around, ma'am. Place your
15 left hand on the Bible and raise your right.

16 STACEY HALL

17 being first duly sworn, testified as follows:

18 THE WITNESS: Yes, ma'am.

19 THE CLERK: Be seated and state your full name
20 for the record.

21 THE COURT: Give us your full name for the
22 record, spelling your last.

23 THE WITNESS: Stacey Hall, H-A-L-L.

24 DIRECT EXAMINATION

25 BY MS. SIMPSON:

1 Q. Ms. Hall, how old are you?

2 A. Forty-three.

3 Q. And where do you live?

4 A. I live in [REDACTED] [REDACTED].

5 Q. And have you lived in Bishopville all of your
6 life or have you moved --

7 A. Moved.

8 Q. You currently live in [REDACTED]

9 A. Yes.

10 Q. And where do you work right now?

11 A. I work for Smiles Home Care and Believers Home
12 Care.

13 Q. And how long have you been providing health
14 care and things of that nature?

15 A. Three months.

16 Q. And prior to that, what type of work did you
17 do?

18 A. Manufacturing.

19 Q. And what were your shifts like?

20 A. Twelve hours.

21 Q. Did you do rotating shifts, night --

22 A. Yes, rotating.

23 Q. I want to turn your attention to how you know
24 some of the people in this case. Tell us, how do
25 you know [REDACTED] Minor [REDACTED]

- 1 A. My niece.
- 2 Q. And who is her mother?
- 3 A. Pamela Hall.
- 4 Q. So that's your sister?
- 5 A. Yes, my sister.
- 6 Q. Do you have any other sisters?
- 7 A. Yes; Melissa Hall.
- 8 Q. I'll talk to you too about how you know some of
- 9 Pamela's -- I guess your relationship with some of
- 10 Pamela's other children. Do you have a relationship
- 11 with them?
- 12 A. Oh, yes, I do.
- 13 Q. Tell the jury their names and ages.
- 14 A. **Nakia J.** he is 10, I think, and **Nakiah J.**, she's 11,
- 15 and **Nakisha J.** she's 8, I think.
- 16 Q. And **Minor** is --
- 17 A. She's 15.
- 18 Q. Okay. So she's the oldest?
- 19 A. Yes.
- 20 Q. Do they spend time with you?
- 21 A. Yes. The three -- the last three do. Me and
- 22 **Minor** see each other every ow and then.
- 23 Q. And they're a little bit younger, so --
- 24 A. Yes.
- 25 Q. Okay. Going back to 2011 when all this came

1 about, where exactly were you living at that time?

2 A. At that time, in [REDACTED].

3 Q. [REDACTED] Do you remember what road that's
4 on?

5 A. [REDACTED]

6 Q. Is that near where your mother was living?

7 A. Yes; same house.

8 Q. Okay. Same house?

9 A. Uh-huh.

10 Q. And did you know the defendant?

11 A. Yes.

12 Q. And how did you know the defendant?

13 A. Through my sister Pamela.

14 Q. And how long had you known him? Have you known
15 him since they started dating or how did that work?

16 A. Since they started dating, yes.

17 Q. Okay. And how would you describe your
18 interactions with him; frequent or --

19 A. It wasn't -- whenever he would come to see the
20 kids, I'd see him. And when he worked in
21 Bishopville as a police officer, I'd see him from
22 time to time.

23 Q. Were y'all close at all?

24 A. No, not really.

25 Q. Not really?

DIRECT EXAMINATION OF STACEY HALL BY MS. SIMPSON

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- 1 A. Huh-uh.
- 2 Q. And did Pamela talk about him a lot or anything
3 of that nature?
- 4 A. No, just that he was the kids' father and
5 that's about it. Didn't really talk about nothing.
- 6 Q. And to your knowledge, did he actually provide
7 for those kids?
- 8 A. Yes, he did.
- 9 Q. And was it just his kids or also Minor
- 10 A. All of them; Minor and his.
- 11 Q. And did he also help out Pam financially?
- 12 A. As far as I know, yes.
- 13 Q. At times did she also need your help?
- 14 A. Sometimes, yeah, maybe to babysit the kids,
15 something like that.
- 16 Q. And did she even -- or did y'all stay together
17 with your mom for a period of time as well?
- 18 A. Yes.
- 19 Q. And when was that, if you remember?
- 20 A. I know it was in -- maybe 2008 -- 2008, -9.
21 Can't remember if it was 2010.
- 22 Q. And Pamela and her children, they've kind of
23 moved a lot of different places back and forth
24 during those years?
- 25 A. Yes.

1 Q. Did you know the defendant's wife at the time?

2 A. Yes, I knew her. We went to school together.

3 Q. You grew up together?

4 A. Uh-huh.

5 Q. And did you ever have any interactions with her
6 about the defendant or anything of that nature?

7 A. No, ma'am.

8 Q. And did you ever have any encounters with the
9 defendant at all?

10 A. Not really, no.

11 Q. So y'all didn't talk much or have any real
12 relationship?

13 A. No.

14 Q. How was he with Minor as far as what you
15 observed?

16 A. He was -- he acted normal, you know,
17 like normal. Yes.

18 Q. And how did Minor act around him?

19 A. She acted normal too.

20 Q. So you didn't really have any indication that
21 anything was going on?

22 A. No, ma'am.

23 Q. Tell me about -- were you actually living at
24 the house in when all of this came
25 about?

DIRECT EXAMINATION OF STACEY HALL BY MS. SIMPSON

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1 A. Yes, ma'am.

2 Q. How did you find out what happened?

3 A. My sister called me when I got off work that
4 night at 12:00.

5 Q. And do you remember what she said to you?

6 A. She told me that something happened to
7 **Minor** and I asked her what. And she said
8 that -- my sister got a phone call -- well, the
9 defendant pocket-dialed her phone back and told
10 what -- I can't remember everything that he said. I
11 kind of blocked it out. I can't remember
12 everything. All I know is something happened and
13 they was at the hospital and at the sheriff's
14 office.

15 Q. And what was her, I guess, demeanor? Like, how
16 was she on the phone? How was she acting?

17 A. She was nervous and scared and just couldn't
18 believe it.

19 Q. And what did you do as a result of that? Were
20 you still at work?

21 A. No. I got off at 12:00. And when I was on my
22 way home, she called me.

23 Q. When you got home, who all was there?

24 A. My mom was there, my son, my daughter, and I
25 think the other kids were there too.

1 Q. Okay. And did you actually speak with or talk
2 to Minor that night?

3 A. No.

4 Q. Did you ever talk to her after this about kind
5 of what happened?

6 A. No, I didn't.

7 Q. Okay. What did you talk to her about?

8 A. I asked her if she was okay. I gave her a hug
9 and told her everything was going to be all right.

10 Q. All right. And you weren't actually there for
11 anything that happened?

12 A. No.

13 Q. But you did live at Stevens Road during that
14 time?

15 A. Yes.

16 Q. And you lived there for a period of years?
17 Would you say a period of years? Months? Weeks?

18 A. A period of years.

19 Q. And that's prior to 2011 you'd been living
20 there?

21 A. No. I moved to -- I wasn't living
22 there in 2011. I stayed there maybe six months and
23 then I moved out.

24 Q. All right. So this all came about in October
25 of 2011. When it all came about, how long had you

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1 actually been living at [REDACTED]?

2 A. Before this came about?

3 Q. Yes. This actually came about in October of
4 2011. How long had you been at the house?

5 A. Maybe two or three years.

6 Q. And the person you know as Nakia Johnson, the,
7 I guess, father of your nieces and nephews and,
8 essentially, father-like, stepfather role to
9 [REDACTED] Minor do you see him here in the courtroom?

10 A. Yes.

11 Q. Can you point him out for the jury?

12 A. Sitting right there [indicating].

13 Q. And prior to -- or post-incident, after all
14 this happened, did you have any contact with him at
15 all?

16 A. Oh, no.

17 Q. All right. Thank you.

18 MR. JOHNSON: No questions, Your Honor.

19 THE COURT: No questions.

20 All right, ma'am, you may step down. You're
21 excused.

22 All right. You got a two-minute witness?

23 MS. SIMPSON: No, sir.

24 THE COURT: Madam Forelady, ladies and
25 gentlemen, I don't think your meal is here, but

1 should be here any minute. When it comes, obviously
2 I'll let you eat it back there or, if you want to go
3 outside, you're welcome to go outside and eat it.
4 We'll start back at 2:15. So however y'all want to
5 do it, and if one wants to stay and one wants to go
6 out, that's perfectly fine too.

7 Please don't let anyone discuss the case with
8 you, don't discuss the case with anyone. Please
9 don't start any type of deliberations. Enjoy your
10 lunch. We'll start back at 2:15 and probably go to
11 around 5:00.

12 Everyone else please remain seated.

13 (The jury exits the courtroom at 12:59 PM.)

14 THE COURT: Anything for the record while
15 they're out -- hold on one second, please.

16 Ma'am?

17 MS. SIMPSON: Nothing for the record, really;
18 just scheduling issues for this afternoon as far as
19 the --

20 THE COURT: We'll go in chambers to talk about
21 that.

22 MS. SIMPSON: Perfect.

23 THE COURT: Mr. Johnson, anything for the
24 record?

25 MR. JOHNSON: No, sir.

1 THE COURT: All right. We'll stand at ease
2 until 2:15. Defendant is in custody. Make sure he
3 gets something to eat.

4 (A luncheon recess transpired 1:00 PM - 2:16
5 PM.)

6 THE COURT: Anything for the record before we
7 start back, by the State?

8 MS. SIMPSON: Nothing from the State, Your
9 Honor.

10 THE COURT: From the Defense?

11 MR. JOHNSON: Nothing from the Defense, Your
12 Honor.

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

15 (The jury enters the courtroom at 12:17 PM.)

16 THE DEFENDANT: Did you enjoy your lunch?

17 THE JURY: Yes, sir.

18 THE COURT: Okay. You may call your next
19 witness.

20 MS. CAVANAUGH: State calls Temple Hart.

21 THE COURT: Come around, please. Raise your
22 left hand to be sworn in.

23 TEMPLE HART

24 being first duly sworn, testified as follows:

25 THE WITNESS: I do.

1 THE CLERK: Please state your name for the
2 record.

3 THE WITNESS: Temple Hart.

4 THE CLERK: Have a seat, please.

5 DIRECT EXAMINATION

6 BY MS. CAVANAUGH:

7 Q. Good afternoon, Ms. Hart. Where are you
8 employed?

9 A. Palmetto Health Richland in Columbia, South
10 Carolina.

11 Q. And what is your profession?

12 A. I'm a registered nurse.

13 Q. And how long have you -- can you give your
14 educational and employment background for me?

15 A. Yes. I graduated from nursing school in 2003
16 with my Associate's Degree in nursing and began
17 working as a labor and delivery nurse.

18 In 2009, I got my Bachelor's Degree from
19 University of South Carolina, and I worked as a
20 labor and delivery nurse for seven years. And in
21 2010, I started working as a forensic nurse examiner
22 or a sexual assault nurse examiner.

23 Q. And did you have to -- before I get into that,
24 are you actually licensed in the state as a
25 registered nurse as well?

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1 A. Yes, ma'am.

2 Q. And you just described your certification as a
3 sexual assault nurse examiner. Can you describe the
4 training that you went through in order to receive
5 that designation.

6 A. Yes. After being a registered nurse, you then
7 go through a 40-hour didactic or classroom training
8 specializing in sexual assault courses and
9 simulations, and from there you will do 40 pelvic
10 exams with a gynecologist in their office, under
11 their supervision, along with supervised sexual
12 assault evaluations and examinations for adolescents
13 and adults; spend time with law enforcement, spend
14 time with a sexual assault response team in the
15 community, in the crime lab, and then, again,
16 additional training for pediatric sexual assault
17 nurse examiner.

18 Q. Okay. And you went through that certification
19 process in 2011?

20 A. 2010 for adults and then later for -- peds was
21 a little bit later in 2010. And my certification
22 was in 2010 and 2011.

23 Q. Okay. And can you approximate about how many
24 times you performed a sexual assault exam?

25 A. Between 250 and 300; right around 260s.

1 Q. And do you know how many of those included
2 examinations of a child?

3 A. I don't have that exact number. It may be
4 about 40 percent. Those are details that are in the
5 database.

6 Q. Okay. And have you testified in court before
7 regarding sexual assault exams?

8 A. Yes, I have.

9 Q. And have you been qualified as an expert in the
10 field of sexual assault examination before?

11 A. Yes, I have.

12 Q. And how many times?

13 A. I believe four times for Richland County and
14 once for Sumter County.

15 MS. CAVANAUGH: Your Honor, at this time I'd
16 ask that Temple Hart be qualified as an expert as a
17 sexual assault nurse examiner expert.

18 THE COURT: Any cross-examination on her
19 qualifications?

20 MR. JOHNSON: None, Your Honor.

21 THE COURT: All right. Madam forelady, ladies
22 and gentlemen, I'm going to qualify her as an
23 expert. And what that simply means is that she'll
24 be allowed to give opinion testimony, if asked,
25 whereas a regular lay witness is not allowed to give

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1 opinion testimony. I'll instruct you at the close
2 of the case about the weight to give an expert's
3 testimony.

4 Ma'am.

5 BY MS. CAVANAUGH:

6 Q. Ms. Hart, did you have occasion to perform a
7 sexual assault exam on Minor

8 A. Yes, I did.

9 Q. And before we get -- well, what date did you
10 perform that exam?

11 A. I believe -- October 11th, 2011.

12 Q. And how old was she on October 11th, 2011?

13 A. She was 11. She would have been 12 on the
14 16th, so just a few days before her 12th birthday.

15 Q. And what time did she arrive at the hospital?

16 A. 2150.

17 Q. And that's military time?

18 A. Yes.

19 Q. So that would be --

20 A. 9:50 PM.

21 Q. And who did she arrive to the hospital with?

22 A. She arrived in the emergency room with her
23 mother.

24 Q. And did you have any information at all from
25 law enforcement?

1 A. I don't know exactly how I found out when she
2 arrived. The -- either the hospital calls to let me
3 know that there's a patient there to be seen.
4 Sometimes law enforcement does call and let us know
5 ahead of time. I don't recall in this case who told
6 me first. I just came to the hospital upon her
7 arrival.

8 Q. And which particular agency was associated with
9 this exam? Which sheriff's department?

10 A. Kershaw County.

11 Q. And can you describe -- once she comes to the
12 emergency room, can you describe the steps that are
13 taken before the actual exam is performed?

14 A. Yes. When a patient arrives in the emergency
15 room, they come to triage where they're asked what
16 they're there for. And from there they go to either
17 the pediatric side of the emergency room or the
18 adult side, based on their age. And once they get
19 into triage, they're then taken to a room where they
20 are assigned a nurse and a physician.

21 The nurse will do her assessment, the doctor
22 will do his assessment, medical assessment, and do a
23 medical clearance. And from there they're call the
24 nurse examiner on call, which was me, and we come
25 into the room.

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1 Q. And once you arrive, do you collect any history
2 from either the victim or the mother?

3 A. Yes, both. And if it's a child and they're
4 there with their parent, we'll talk to the parent
5 first and get a complete history, both medical
6 history and history of the assault, and see whatever
7 they can tell us to help us guide in talking with
8 the child.

9 Q. Okay. And did you do that in this case?

10 A. Yes, I did.

11 Q. And who was actually present during the
12 collection -- during your gathering of her history?

13 A. The sexual trauma services advocate was there
14 during that time.

15 Q. Okay. And was she also there during the exam?

16 A. Yes, she was.

17 Q. And as far as the basic medical history that
18 you obtained from the mother in this case, what --
19 can you describe that?

20 A. We ask about their previous medical history,
21 immunizations, any surgeries, and then we ask any
22 kind of medications they're taking at that time, if
23 they have any injuries at that time, and then
24 demographics, who the child lives with. We ask
25 questions pertaining to -- depending on the age of

1 the child -- you know, what the private parts are
2 called to them so we can try to speak in the same
3 language as the child and ask about the sexual
4 history -- assault history, I'm sorry, anything the
5 mom could offer for that and give me any of those
6 details.

7 Q. Okay. And was there anything as far as in her
8 general medical history -- not -- separated from why
9 she was there -- to get a sexual assault exam? Was
10 there anything in her medical history that stuck out
11 to you as significant?

12 A. No. She had a history of asthma noted and
13 bronchitis, but nothing else.

14 Q. Once you obtained her general medical
15 background, can you explain what you did next?

16 A. Then I talked to **Minor** the patient, with the
17 advocate in the room. And I begin by, you know,
18 asking her why -- we have a series of questions that
19 are all ready that we ask, just open-ended general
20 questions, to ask them what brought them to the
21 emergency room and have them explain to us what
22 happened to them and any details they can offer.

23 Q. Okay. And before you start your exam, do you
24 also ask her questions related to whether she went
25 to the bathroom, whether she ate anything prior to

1 your exam?

2 A. Yes, we do. Everything that happened, what she
3 was doing leading up to the assault, and then what
4 happened immediately afterwards. That helps to
5 guide the exam in collecting any evidence. So
6 anything she had to eat or drink, whether she had
7 gone to the bathroom, whether she changed her
8 clothes, showered, anything that could change which
9 evidence I would try to collect or any testing I
10 would do.

11 Q. Okay. As far as -- you said you did speak to
12 Minor before the assault?

13 A. Yes, I did.

14 Q. And did she rely to you that she had been
15 sexually assaulted in the past?

16 A. She told me that she was there because of her
17 step-dad touching her and that he had touched her
18 inappropriately.

19 Q. Specifically about that night, what did she say
20 occurred?

21 A. Do you want me to --

22 Q. Well, let me ask you this: Did she tell you
23 that particular night she had been penetrated?

24 A. No. She said he had put his hand on her
25 private part.

1 Q. Okay. And despite that information, did you
2 still -- as far as what happened that night, did you
3 still perform your exam?

4 A. Yes, I did.

5 Q. Okay. And had she -- did it come to your --
6 did she disclose to you that she had been sexually
7 assaulted for a period of years prior to?

8 A. She described that it had happened before, the
9 month prior, and she named a couple of occasions
10 where that -- what had happened that night was
11 touching and other things that had happened to her
12 with her step-dad.

13 Q. Okay. Including penetration?

14 A. Yes.

15 Q. When you performed -- once you got the
16 information from **Minor** did you begin your
17 examination?

18 A. I did.

19 Q. And can you describe this particular
20 examination; what you did, what you collected.

21 A. Yes. We have the patient undress on the sheet
22 where any kind of debris that might fall off would
23 fall off and we'd collect that sheet, and it goes
24 into the evidence kit. **Minor** undressed for me and put
25 on a gown. We were in a private room, the advocate

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1 was there, and I just did a visual inspection
2 looking for any injuries and -- which included a
3 genitalia assessment.

4 Q. And was her mom present in the room when you
5 performed this exam?

6 A. According to my notes, just the advocate was in
7 there.

8 Q. Okay. And what were your findings from your
9 exam?

10 A. One of the tools that we use is called
11 toluidine dye, and it's just a blue liquid dye kind
12 of like ink that we apply with a soft cotton swab.
13 And that helps us to visualize any injuries that we
14 might not be able to see.

15 I noticed some redness in her genitalia, and
16 that dye was used just to make sure that it wasn't
17 just a change in color. And that dye, which we call
18 positive uptake, if it adheres to the nucleate
19 cells, that dye was present indicating there was
20 some trauma to that area. So I noted redness and
21 then positive uptake of the dye.

22 Q. And that redness that you observed, would that
23 be consist to what she described happened to her
24 that night?

25 A. Yes.

1 Q. Which was the touching?

2 A. The touching, the rubbing.

3 Q. Did you observe any other type of injury in her
4 genital area?

5 A. No, I did not.

6 Q. And was that unusual for you? Did that seem
7 unusual, based on her description?

8 A. No. No.

9 Q. Can you explain that? Why is that?

10 A. Minor has had a period. She was postpubertal.
11 She's had a period for almost two years. And during
12 that puberty cycle, you produce estrogen. Estrogen
13 is one of the hormones that keep that area supple,
14 elastic, stretchy and, therefore, it's not usual
15 that you would see any kind of trauma to that area
16 because it's an area that is able to adapt.

17 Q. And you mentioned that she had started her
18 period. Did she indicate when that actually -- and
19 just to be clear, it wasn't that night that she had
20 a period --

21 A. No, it was not. I believe her last period,
22 according to my notes, was September 26th.

23 Q. Okay. And did she tell you when she started
24 experiencing her periods, at what age?

25 A. When she was ten.

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1 Q. And she was 11 this evening --

2 A. Almost 12, yep.

3 Q. And, again, that is significant as it relates
4 to the vagina area?

5 A. Yes. And not having any kind of trauma or, you
6 know, any severe damage or any kind of injuries,
7 because that -- even though she was only 11 or
8 almost 12, she has estrogen and a very mature body.

9 Q. So in other words, that area can heal quickly?

10 A. It does heal quickly, yes.

11 Q. In your experience of conducting the sexual
12 assault exams, do you expect to find evidence of
13 sexual assault as far as injuries or lacerations or
14 anything like that?

15 A. It's not likely. No.

16 Q. And can you expand a little bit on that?

17 A. Again, with the hormones and the -- that area,
18 the hymen that surrounds the vaginal opening, is
19 very elastic, and it's meant to stretch, it's meant
20 to -- with the lubrication and hormones, we rarely
21 see trauma to that area unless it's something very
22 forceful or violent.

23 Q. So in your experience, in cases that there's
24 confirmed penetration, for instance, where the
25 patient might be pregnant, there still might not be

1 evidence of penetration even in the case that you
2 know that there is?

3 A. That is correct. There's not always trauma or
4 injuries, no.

5 Q. About how long did your examination take?

6 A. The physical exam took about 50 minutes.

7 According to my notes, I started at 11:04 with the
8 interview process, and the physical exam began at
9 1:10, and the exam was completed at 2:00 a.m.

10 Q. And you indicated that you took swabs from her
11 vaginal area?

12 A. Yes, I did. Part of the evidence collection is
13 to swab based on the assault history. So I swabbed
14 her mouth based on what she had told me had happened
15 in the past, I swabbed the vaginal area, and the
16 anal area on the outside.

17 Q. Okay. And do you do this in most of your
18 sexual assault exams?

19 A. Based on the assault history, based on the
20 disclosure, so what the patient has told me has
21 happened to them.

22 Q. And what do you do with those swabs once you
23 take those?

24 A. We collect the evidence and it is in a secure
25 area room that nobody else can get into. They're

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1 dried in a drier, they're sealed, they're put into a
2 sealed collection evidence kit, and then it's locked
3 up in a refrigerator and held until law enforcement
4 comes and signs it out from our department.

5 Q. And, again, what specifically did **Minor**
6 describe to you happened that particular night?

7 A. You want me to read what she said?

8 Q. As far as the type of touching that she
9 alleged?

10 A. She said he had touched her inappropriately,
11 that he had put his hand on her private part.

12 Q. And, again, your findings were consistent with
13 that statement?

14 A. Yes.

15 Q. Going back to what she told you happened that
16 night, did she say -- I'll point you to your --
17 your -- the part of your report where you documented
18 your conversation with her.

19 A. Okay.

20 Q. Where did she say -- did she say he touched
21 over or under her clothing?

22 A. The question was asked in two separate
23 occasions. At one point there's a place where we
24 specifically ask was it over or under, and at that
25 time she said it was over her clothing. I did not

1 know -- I didn't ask exactly was it over her
2 underwear or over her pants, she just said over.

3 But then during some -- during -- just while
4 talking to her and asking her questions, I asked her
5 specifically about the contacts to her. And she
6 answered that, yes, there had been oral sex while at
7 the beach, but then that night it was touching and
8 that he had -- let me find it.

9 She wasn't aware of the terms that I had used,
10 such as masturbation and ejaculation. So we try to
11 ask them in their own words what they're talking
12 about. And she described that he was playing with
13 his private and that she knew that the white stuff,
14 when he would nut, could get her pregnant.

15 Q. And specifically when you asked her about that
16 night, you did not ask her whether it was over her
17 underwear or over her pants?

18 A. I did not. She replied, he touched my private
19 part with his hand.

20 THE COURT: With his what?

21 THE WITNESS: With his hand.

22 MS. CAVANAUGH: I beg the Court's indulgence.

23 Thank you, Ms. Hart. Please answer any
24 questions from Mr. Johnson.

25 THE COURT: Any questions, Mr. Johnson?

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1 MR. JOHNSON: Yes, sir, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. JOHNSON:

4 Q. Ms. Hart, how are you?

5 A. Good, thank you. How are you?

6 Q. Pretty good.

7 I tried to get into contact with you several
8 times. We were never able to talk; is that correct?

9 A. No, sir. We talked on the phone twice.

10 Q. I mean about the medical stuff. You said you
11 couldn't talk about that. We talked on the phone,
12 but not about what happened.

13 A. Well, we did talk. The day I talked to you,
14 you didn't have the report in front of you. But...

15 Q. We never talked about what actually happened in
16 the report.

17 A. I answered your questions that day. I don't
18 remember exactly everything we talked about. But
19 you didn't have the report with you on that day.

20 Q. All right. The -- there is a Palmetto Health
21 FNE Program, Pediatric, Forensic Intake Form. Is
22 that the form that you used to do an intake?

23 A. Yes.

24 Q. And on that form -- do you have a copy of that
25 form with you?

1 A. Yes, I do.

2 Q. I do have mine today, so we could talk about
3 the form, if that's all right.

4 A. All right.

5 Q. And on that form, it asks a lot of questions
6 and you ask the questions from what you found that
7 night, correct -- you answer the questions from what
8 you find that night; is that correct?

9 A. Yes, sir.

10 Q. All right. On page three of 14 -- page 1 and 2
11 just has background and history; would you agree
12 with me?

13 A. Yes, sir.

14 Q. On page 3 of 14, it has pertinent medical
15 history, any previous history of sexual abuse. And
16 how did you check that?

17 A. No.

18 Q. All right. And we keep going and it has pulse
19 or subtle hygiene activities, and you check yes and
20 no to that. And I think you checked yes to
21 urinated, and yes to ate and drank, and no to
22 everything else.

23 A. That's correct.

24 Q. Okay. Then at the top of page 4 of 14, it has
25 the history of assault per the parent caregiver.

1 And that actually means what -- I'm assuming the
2 mother gave you when she came with Minor Correct?

3 A. Yes, sir. The history was by the mother Pamela
4 Hall.

5 Q. Okay. All right. And on page -- going
6 directly to what Minor said, on page 5 of 14, history
7 of assault per patient. And it got parenthesis,
8 exact words; is that correct?

9 A. Yes, sir.

10 Q. Okay. And here's what it says -- it asks the
11 question: Why do you come did you come to the
12 hospital today. What does she say?

13 A. Cause my step-dad.

14 Q. And did something happen to you? What did she
15 say?

16 A. He touched me inappropriately.

17 Q. Uh-huh.

18 A. He -- keep reading?

19 Q. Yes, ma'am.

20 A. He touched my private part.

21 Q. Read the whole thing.

22 A. Asked Minor how he touched her. She replied: He
23 just reached his hand in. Asked Minor where they were
24 when this happened. She replied: This happened in
25 the car. Asked Minor who was with them. She replied:

1 Just me and him. Asked **Minor** what he touched her
2 with. She replied: He touched me with his hand.
3 He touched my chest too.

4 Q. All right. Now, where did she say she was
5 touched?

6 A. My private part.

7 Q. Okay. And she put: I was touched. And then
8 the next question was, was the touching over or
9 under the clothes.

10 A. On top of my clothes.

11 Q. Okay. There's another question: How did your
12 private part feel? And you -- and what was your
13 answer to that?

14 A. I did not ask her this question. This is a
15 guideline of questions to ask the patient. And if
16 it doesn't apply or if it's not appropriate, then we
17 don't ask.

18 Q. And since I was asking the question -- it would
19 have been wrong for me to ask just some. Now I want
20 to go to page 6. It has, did any other part of his
21 or her body touch you? What was your answer?

22 A. No.

23 Q. Okay. Did you touch any part of his body?
24 What was your answer?

25 A. Her answer was no.

CROSS-EXAMINATION OF TEMPLE HART BY MR. JOHNSON

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1 Q. All right. All right. Now, on page 7 at the
2 bottom of the page under the time 5 -- 1550: Were
3 any injuries inflicted upon assailant during the
4 assault? What was your answer?

5 A. No.

6 Q. Okay. All right. Page 8, you have penetration
7 of vagina, and then it has a spot that has penis.
8 It has yes -- no, yes, attempted, unsure. What did
9 you check?

10 A. Unsure was checked.

11 Q. All right. And it had the finger under that.
12 It says: No, yes, attempted, unsure. What did you
13 check?

14 A. Unsure.

15 Q. Okay. And then it went to penetration of anus.
16 What did you check?

17 A. No.

18 Q. And finger?

19 A. No.

20 Q. And object?

21 A. No.

22 Q. All right. And you had oral copulation of
23 genitals of patient. What did you have? What did
24 you check?

25 A. I'm sorry?

1 Q. Under oral copulation of genitals, under that
2 is of patient. What did you put?

3 A. No.

4 Q. And then you have of assailant. What did you
5 check?

6 A. Yes.

7 Q. Okay. And what did you -- why did you check
8 yes? You have the little writing on the side.

9 A. There's an area for description, and I had made
10 a note that said: Reported to law enforcement that
11 she did; however, did not disclose this to me during
12 the interview.

13 Q. Okay. It has a section that has nongenital and
14 genital acts, and it has under that licking. What
15 did you check?

16 A. No.

17 Q. Kissing, what did you check?

18 A. No.

19 Q. Suction injury, what did you check?

20 A. No.

21 Q. Biting, what did you check?

22 A. No.

23 Q. And you had -- fondling, what did you check?

24 A. Yes.

25 Q. All right. Other acts -- I mean, other acts.

CROSS-EXAMINATION OF TEMPLE HART BY MR. JOHNSON

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- 1 It has other. What did you check?
- 2 A. No.
- 3 Q. Videotape, what did you check?
- 4 A. No.
- 5 Q. Video showing, what did you check?
- 6 A. No.
- 7 Q. Okay. All right. It has --
- 8 A. Would you like the description on that one?
- 9 Q. Ma'am?
- 10 A. Did you want the description on that?
- 11 Q. Yes, ma'am. Tell it all. Yes, ma'am.
- 12 A. Photos taken with assailant's cell phone on
- 13 different occasions.
- 14 Q. But there no photos brought to the emergency
- 15 room that night; right?
- 16 A. No, sir.
- 17 Q. Okay. It had: Did ejaculation occur? And it
- 18 has a space for the mouth. And it had the no, yes,
- 19 and unsure. What did you check?
- 20 A. No -- I'm sorry. Unsure.
- 21 Q. And pronounce V-A-G-I-N-A.
- 22 A. Vagina.
- 23 Q. Okay. What did you check?
- 24 A. Unsure.
- 25 Q. And anus, what did you check?

1 A. No.

2 Q. Body, what did you check?

3 A. Unsure.

4 Q. And clothes, bedding, and others, what did you
5 check?

6 A. No.

7 Q. Okay. And on page 10, there's a drawing.

8 There was no marks done to the drawing; is that
9 correct?

10 A. That's for physical injuries. That's correct;
11 nothing, no findings.

12 Q. Okay. On page 11 there is an examination of
13 females. And I think you got a drawing with a
14 number one and a two, and it has checked F-O-S-S-A
15 N-A-V-I-C-U-L-A-R-I-S. I'm spelling it because I
16 can't pronounce it.

17 A. Okay. Fossa navicularis.

18 Q. Okay. And what is that?

19 A. That's on the inside of the vagina, the bottom
20 portion.

21 Q. And that's the place that you said had the
22 redness?

23 A. That's correct.

24 Q. Okay. And because of the redness, it
25 doesn't -- you don't know the -- you don't know what

1 would cause -- there are a number of things that

2 would cause the redness; is that correct?

3 A. That is correct.

4 Q. Okay. So as we go through the report from that

5 night -- and if I sum it up wrong, you sum it up

6 correctly for me. Basically, other than some

7 redness that could have been caused by anything,

8 there's nothing to show any kind of sexual act or

9 any kind of penetration.

10 A. I can only base my assessment on what the

11 patient tells me.

12 Q. Oh, yes, ma'am. I understand that. I'm just

13 talking about from your report, you found nothing.

14 A. I found that the redness that I saw and

15 observed with the positive dye uptake was consistent

16 with what the patient told happened me that night.

17 Q. But it could have been consistent with

18 something else too; isn't that true?

19 A. I just know it was consistent with what she

20 told me happened.

21 Q. Okay. I'll say it one more time. It's a yes

22 or no. It could be consistent with something else?

23 A. Yes.

24 Q. Thank you.

25 MR. JOHNSON: That's all I have.

1 THE COURT: Redirect?

2 MS. CAVANAUGH: I beg the Court's indulgence.

3 REDIRECT EXAMINATION

4 BY MS. CAVANAUGH:

5 Q. Ms. Hart, I'll point your attention to page 8
6 at the top. Mr. Johnson was asking you about the
7 boxes you checked regarding penetration of vagina,
8 and specifically referring to the penis, you checked
9 unsure. He didn't ask you to read the description
10 next to that though. Can you do that now, please.

11 A. Yes. I made a note, and it said: Mother
12 reported that **Minor** told her he was rubbing himself on
13 her, and she, the mother, heard him saying he wanted
14 to nut in her.

15 Q. And then just one more to follow up on that.
16 The next question about penetration of the vagina by
17 the finger, and he asked you if you checked unsure.
18 Can you read your description beside that as well?

19 A. I wrote unclear if fondling over clothes or
20 digital penetration.

21 Q. And, again, this information that you're
22 collecting and that you're checking these boxes
23 with, where are you getting that from?

24 A. The database is -- where am I getting -- I'm
25 sorry. I'm getting the information from Mom and the

DIRECT EXAMINATION OF JERRY DOBBINS BY MS. CAVANAUGH

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1 patient.

2 Q. And I'm going to point you to page 6 of your
3 report. The third full paragraph, when you discuss
4 speaking to the victim **Minor** --

5 A. Yes.

6 Q. -- she did disclose to you, specifically, that
7 she had been penetrated by the stepfather on several
8 occasions?

9 A. Yes.

10 Q. Thank you.

11 MS. CAVANAUGH: No further questions.

12 THE COURT: Ma'am, you may step down.

13 And may she be released from her subpoena?

14 MS. CAVANAUGH: No objection.

15 MR. JOHNSON: No objection.

16 THE COURT: You're released from your subpoena,
17 ma'am.

18 Next witness, please.

19 MS. CAVANAUGH: State calls Jerry Dobbins.

20 (Jerry Dobbins enters the courtroom.)

21 THE COURT: Sir, please come around. Put your
22 left hand on the Bible and please raise your right.

23 JERRY DOBBINS

24 being first duly sworn, testified as follows:

25 THE WITNESS: I do.

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

3 THE WITNESS: My name is James Dobbins
4 D-O-B-B-I-N-S.

5 DIRECT EXAMINATION

6 BY MS. CAVANAUGH:

7 Q. Mr. Dobbins, where are you employed?

8 A. I'm a contractor for AT&T.

9 Q. And what do you do for AT&T?

10 A. I make court appearances to certify and testify
11 as to their records.

12 Q. Okay. And how do you actually -- are you the
13 person who actually receives the subpoena?

14 A. No. That would have been received by our
15 subpoena center.

16 Q. Okay. And once the subpoena center actually
17 receives a subpoena, are records produced?

18 A. Yes.

19 Q. And pursuant to that subpoena?

20 A. Yes.

21 Q. And do you receive those records?

22 A. Yes, I do.

23 Q. And can you explain the process from the time
24 the subpoena center receives the subpoena until they
25 get to you.

DIRECT EXAMINATION OF JERRY DOBBINS BY MS. CAVANAUGH

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1 A. The subpoena center will work with whoever
2 issued the legal command. When an appearance has to
3 be made, they will send records to me via a secure
4 e-mail. I will get them, review them, discuss them
5 if necessary, and then make an appearance on their
6 behalf to certify that they are indeed AT&T's
7 records.

8 Q. And from the time that they're actually
9 retrieved from the database and sent to you, are
10 they altered or tampered in any way?

11 A. No.

12 Q. And are they kept -- we're talking phone
13 records; correct?

14 A. Yes.

15 Q. Are they kept in the normal course of business?

16 A. Yes, they are.

17 Q. Are you considered the records custodian?

18 A. Yes. I'm appearing as the records custodian
19 for those records.

20 Q. Did you in fact receive a subpoena in this
21 case -- or did AT&T receive --

22 A. Yes.

23 (State's Exhibit No. 10 marked for
24 identification.)

25 Q. I'm going to show you what's marked as State's

1 Exhibit 10. I'll ask you to review these records.

2 Do you recognize them?

3 A. They're a lot of records. Let me look through
4 not all of them. Yes, I recognize these records.
5 These are the records that AT&T sent to me.

6 Q. Okay. For this particular case?

7 A. Yes.

8 Q. Okay. And --

9 MS. CAVANAUGH: Your Honor, at this -- I beg
10 the Court's indulgence.

11 THE COURT: Any objection?

12 MR. JOHNSON: None.

13 THE COURT: Without objection.

14 (State's Exhibit No. 10 admitted in to
15 evidence.)

16 BY MS. CAVANAUGH:

17 Q. Mr. Dobbins, what records are those; what
18 number? The specific number.

19 THE COURT: You mean exhibit number or
20 telephone number?

21 MS. CAVANAUGH: Telephone number.

22 A. These are records for a telephone number

23 [REDACTED]

24 Q. And who is the subscriber of that particular
25 number?

DIRECT EXAMINATION OF JERRY DOBBINS BY MS. CAVANAUGH

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1 A. A Nakia Johnson.

2 Q. Okay. And what period do these records cover?

3 A. The records begin October the 1st, 2011; the
4 records end October 16th, 2011.

5 Q. Okay. And what time zone are these records
6 actually produced in?

7 A. The records are shown in UTC, which is
8 universal coordinated time. It really equates to
9 the time that we would probably know as Greenwich
10 Mean Time, absent any Daylight Savings Times. So
11 it's typically four or five hours different than
12 eastern time, depending on whether we're in Daylight
13 Savings Time.

14 Q. Okay. So in October of 2011, how many hours
15 off Eastern Standard Time would we be?

16 A. Four hours' difference. Any record on these
17 would be showing as though it appeared four hours
18 later than the call actually occurred.

19 Q. So if a call is captured on these records at,
20 say, 2154, what time would that be in Eastern
21 Standard Time?

22 A. Well, 2154 would be like 9:54 PM, minus four;
23 nine minus four is five, so 5:54 PM.

24 Q. Okay. And do -- the records that you have in
25 front of you, do they show cell tower locations?

1 A. They do not.

2 Q. Okay. So from these records, we don't know
3 where the phone is actually travelling; is that
4 correct?

5 A. Correct.

6 Q. As far as cell tower locations are, if we're
7 talking about an area that's, say, a mile from one
8 location to the next, could you still -- with cell
9 tower location, could you still pinpoint exactly
10 where someone is anyway?

11 A. They're difficult within a mile. You can tell
12 they're in the same state, same city or region, but
13 sometimes cell -- sometimes a phone call will hit
14 the nearest tower, sometimes that tower is busy,
15 sometimes that tower is down for maintenance. So it
16 would not be unusual for some calls to be within two
17 or three different towers away from the closest one.
18 But, of course, that doesn't mean a person could be
19 thousands of miles away. But for these purposes,
20 there's no location information anyway.

21 Q. Okay. Mr. Dobbins, I'm going to point you --
22 direction your attention to page 53 of these
23 records. And, again, these are records of Nakia
24 Johnson; is that correct?

25 A. Yes, per the [REDACTED] -- the number ending in [REDACTED]

DIRECT EXAMINATION OF JERRY DOBBINS BY MS. CAVANAUGH

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1 Q. Okay. And I'm going to direct you to -- let's
2 just briefly go over certain phone calls in this
3 case.

4 Are there some phone calls that appear twice --
5 that look to appear twice on these records or in
6 duplicate?

7 A. Yes.

8 Q. Can you explain --

9 A. It represents one phone call. What you see is
10 when the times are the same, you can tell there are
11 two AT&T subscribers involved; there's an
12 originating call that would be captured, or a
13 terminating call would be captured if it's another
14 one of our customers. So you'll see two calls;
15 you'll see the call going out, which would be
16 recorded, and you'll see the information from the
17 number that was received if it's an AT&T customer.
18 So it will appear as two calls when, in fact, it's
19 only one.

20 Q. And that's if one of the numbers are also -- if
21 they're both AT&T numbers?

22 A. Yes.

23 Q. Okay. I'm going to direct you to phone call --
24 specifically phone call number 815 and 816. Are
25 those in fact the same phone call on top of page 53?

1 THE COURT: Is that less than four hours or is
2 that 8:00?

3 THE WITNESS: She's talking about a line
4 number. The 815th call and the 816th call of the
5 record are --

6 THE COURT: That's not time?

7 THE WITNESS: No. That's just the quantity --
8 the number of the call -- number on the record
9 chronologically.

10

11 BY MS. CAVANAUGH:

12 Q. Is that, in fact, one call?

13 A. Yes.

14 Q. And was the -- the terminating number, that's
15 the person that actually received the call?

16 A. Yes.

17 Q. Was that the subscriber in this case,
18 Mr. Johnson?

19 A. That call was terminated to the number ending
20 in [REDACTED], the subscriber number.

21 Q. Okay, which comes back to Mr. Johnson?

22 A. Yes.

23 Q. Okay. And what -- that phone call was made
24 what time --

25 THE COURT: On what date? Date and time,

DIRECT EXAMINATION OF JERRY DOBBINS BY MS. CAVANAUGH

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1 please.

2 A. That call shows as October 11th, 2011. The
3 time of connection shows as 2141, which would have
4 been 9:41 PM; but absent the four hours, that's
5 5:41 PM.

6 Q. Okay. And, again, those were incoming calls to
7 Mr. Johnson?

8 A. The terminating number, phone jargon, is the
9 [REDACTED], Mr. Johnson.

10 Q. Okay. And approximately --

11 A. Mr. Johnson's phone. I -- the records don't
12 show who is at the end of the phone, but that's --

13 Q. The subscriber's phone.

14 A. -- that instrument. Yes.

15 Q. And approximately how long does that phone call
16 last?

17 A. Fifty seconds.

18 Q. I'm going to direct your attention to line item
19 number, so line number 819. Was that -- what time
20 and date was that particular phone call made?

21 A. Number 819 shows as October 11th, 2011. The
22 UTC, or the time, is 2147, which really would have
23 been 5:47 PM Eastern Time.

24 Q. Okay. And beside -- all the way towards the
25 end -- okay. So that would have been six minutes

1 later than the call I just asked you about; is that
2 correct?

3 A. 41 to 47, yes, about. Uh-huh.

4 Q. Okay. And as far as the -- on that particular
5 call that came in at 5:47, did that call go straight
6 to voicemail?

7 A. Yes. That was a voicemail call.

8 Q. Okay. And that's indicated under the feature
9 column of the phone records?

10 A. Under feature column, and also under the --
11 there's a number underneath that corresponds to the
12 routing number for voicemail.

13 Q. Okay. And I'm going to direct your attention
14 to a call that was made, going further down the
15 records, number 828 and 829.

16 A. Okay.

17 Q. What date and time was that phone call made in
18 Eastern Standard Time?

19 A. October 11th, 2011, at Eastern Time 5:54 PM.

20 Q. Okay. And was that actually a phone call
21 coming from the subscriber's telephone?

22 A. That's from the subscriber number, [REDACTED], the
23 one assigned to Mr. Johnson.

24 Q. And how long did that phone call actually last?

25 A. Two minutes, three seconds.

DIRECT EXAMINATION OF JERRY DOBBINS BY MS. CAVANAUGH

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1 Q. And was that actually a completed call that
2 didn't go to voicemail?

3 A. Yeah. That was a regular outbound call from
4 the [REDACTED] number.

5 Q. Okay. Right after that, phone call terminated.
6 Did the subscriber's phone receive an incoming call?

7 A. Yes.

8 Q. And what date and time was that?

9 A. October 11th, 2011, at 5:56.

10 Q. And approximately how long did that phone call
11 last?

12 A. A minute and 23 to a minute and 25 seconds.

13 Q. Okay.

14 MS. CAVANAUGH: I beg the Court's indulgence.

15 BY MS. CAVANAUGH:

16 Q. Going back to those two phone calls we just
17 discussed, the two-minute outgoing phone call and
18 the incoming call, as far as the first phone call
19 that lasted two minutes at 5:54, the outgoing call,
20 can you read the number that was dialed that
21 5:54 PM?

22 A. The number that was called is [REDACTED] [REDACTED]

23 Q. And going to the next incoming call that you
24 just described at 5:56, what number called the
25 subscriber's number?

1 A. The number that was dialed on the
2 two-minute-and-three-second call was the number that
3 called back on the minute-and-20-something-second
4 call.

5 THE COURT: Same [REDACTED]

6 THE WITNESS: [REDACTED] called back [REDACTED] immediately
7 afterwards.

8 MS. CAVANAUGH: I beg the Court's indulgence.
9 Thank you, Mr. Dobbins. No further questions.

10 THE COURT: All right.

11 Mr. Johnson, cross?

12 CROSS-EXAMINATION

13 BY MR. JOHNSON:

14 Q. Good morning, Mr. Dobbins. I just have a few
15 questions for you. I think the numbers on the side,
16 like 815, 816, those are item numbers. That's the
17 list -- the item number?

18 A. Yes.

19 Q. Okay. Under item numbers, I want you -- if you
20 look at item 818, and it's on 10/11/11, and the time
21 is 2145 and -- who --

22 (Phone ringing.)

23 A. I'm sorry, Mr. Johnson. Go ahead.

24 Q. That's okay. I'm just glad it wasn't me.

25 THE COURT: Okay. So number 818.

CROSS-EXAMINATION OF JERRY DOBBINS BY MR. JOHNSON

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1 BY MR. JOHNSON:

2 Q. Number 818, that phone call is from -- what
3 number is the originating number and what number is
4 the terminating number?

5 A. Call 818 began with a number ending in [REDACTED] and
6 ended with the subscriber's number which ends in
7 [REDACTED].

8 Q. Okay. And if we look at Item No. 819, would
9 you tell me what the originating number is and what
10 the terminating number is?

11 A. The originating number is [REDACTED] [REDACTED], and
12 the terminating number is also the subscriber
13 number, the one ending in [REDACTED].

14 Q. And I think at the bottom of that -- there is a
15 number at the bottom which shows that it was
16 forwarded or went to voicemail or something like
17 that; correct?

18 A. Yes.

19 Q. Okay. If you look at item 820, 10/11/11, I
20 think the connect time is 2148. Would you tell me
21 the originating number and the terminating number?

22 A. That is a call that originated at
23 [REDACTED] [REDACTED] and terminated on the subscriber's
24 line ending in [REDACTED].

25 Q. Okay. And item 821 on the same date at 2148,

1 would you tell me the originating number and the
2 terminating number?

3 A. Item 821 originated from [REDACTED] [REDACTED] and
4 terminated on the subscriber's number ending in
5 [REDACTED].

6 Q. Okay. Now I'd like to go back to items 828 and
7 829. And both of those were at the time of 2154,
8 which would be 5:54; is that correct?

9 A. 5:54 PM, yes, sir.

10 Q. And 828 and 829, that's the same call; is that
11 correct?

12 A. Yes. That's two views of the same call.

13 Q. Okay. So it's one AT&T phone number calling to
14 another AT&T phone number --

15 A. Yes.

16 Q. -- so -- it would show up twice, but it's one
17 call?

18 A. Yes.

19 Q. Okay. Okay. And that call lasted two minutes
20 and three seconds. So that's just one call at two
21 minutes and three seconds; is that right?

22 A. Yes.

23 Q. Okay. And would you please give me the
24 originating number and the terminating number?

25 A. The call that was for two minutes and three

CROSS-EXAMINATION OF JERRY DOBBINS BY MR. JOHNSON

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1 seconds originated with the subscriber line, the one
2 ending in [REDACTED]; it terminated in [REDACTED] [REDACTED].

3 Q. Okay. And what was the time of that call?

4 A. It was at 5:54 PM.

5 Q. Okay. Thank you. And then Item No. 830 and
6 831, which I think -- what time was -- what was the
7 connect time on that call? 21 what?

8 A. By connect time, do you mean the -- the
9 duration of the call or the time the call occurred?

10 Q. The time the call occurred.

11 THE COURT: Which item number are you talking
12 about?

13 MR. JOHNSON: Item 830 and 831.

14 THE WITNESS: 830 and 831 also represent one
15 call as shown from the point of view of two
16 different AT&T customers. That call occurred at
17 5:56 PM and lasted -- it shows one record as a
18 minute 25 seconds, another record a minute 23
19 seconds, which would have been when the different
20 ends of the phone disconnected.

21 BY MR. JOHNSON:

22 Q. Okay. That's what I want you to explain.
23 That's one dialing and one picking up; is that
24 correct?

25 A. Yes. That's just different actions on

1 different handsets.

2 Q. Okay. Now, Item No. 28 and 29, which is one
3 call, received the call from [REDACTED], and Item No. 31
4 and 32 -- I mean, item 28 -- item 828 and 829 called
5 [REDACTED]. That was the terminating call?

6 A. That's the call that received --

7 Q. Right.

8 A. The receiving end of the call.

9 Q. Right. And then item 830 and 831 was the
10 number [REDACTED] --

11 A. Calling back --

12 Q. -- calling back --

13 A. -- [REDACTED]

14 Q. Calling back to [REDACTED].

15 Okay. And it was 5:56 when the call came back?

16 A. Yes.

17 MR. JOHNSON: That's all I have, Your Honor.

18 THE COURT: Redirect, if any.

19 MS. CAVANAUGH: I beg the Court's indulgence.

20 No further questions.

21 THE COURT: All right, sir --

22 Any objection to Mr. Dobbins being released
23 from his subpoena?

24 MS. CAVANAUGH: No, Your Honor.

25 MR. JOHNSON: Nothing from the Defense, Your

DIRECT EXAMINATION OF MELISSA HALL BY MS. SIMPSON

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1 Honor.

2 THE COURT: Next witness, please.

3 MS. SIMPSON: The State calls Melissa Hall.

4 (Melissa Hall enters the courtroom.)

5 MELISSA HALL

6 being first duly sworn, testified as follows:

7 THE WITNESS: Yes, I do.

8 THE CLERK: Be seated in the witness chair and
9 state your full name for the record, please.

10 THE WITNESS: Melissa Hall.

11 DIRECT EXAMINATION

12 BY MS. SIMPSON:

13 Q. Ms. Hall, how old are you?

14 A. Forty-six.

15 Q. Forty-six. And do you live here in Camden?

16 A. No, ma'am.

17 Q. Where do you live?

18 A. In Nakiah J. [REDACTED]

19 Q. Nakiah J. [REDACTED]

20 A. Well, the area, yes. I'm from Lee County.

21 Q. Lee County. And --

22 THE COURT: Hold on one second. Just take a
23 deep breath.

24 Q. Where do you work?

25 A. At Invista.

1 Q. And what do you do there?

2 A. I'm a scales operator.

3 Q. And how long have you been with that company?

4 A. Ten years.

5 Q. What type of shifts do you work?

6 A. Rotating day to night, night to day.

7 Q. And how long are your shifts?

8 A. Twelve hours.

9 Q. You say you work shifts similar to what your
10 sister had back in 2011 too --

11 A. Yes.

12 Q. -- that Stacey had?

13 A. Yes.

14 Q. I want to talk to you a little bit about your
15 family. Who is Pamela Hall to you?

16 A. My sister.

17 Q. And do you have any other sisters?

18 A. Stacey Hall.

19 Q. And who is the oldest?

20 A. I am.

21 Q. You are. Did you live in Kershaw for a period
22 of time?

23 A. Yes.

24 Q. Tell the jury about that and how you ended up
25 there and what time period you stayed there.

DIRECT EXAMINATION OF MELISSA HALL BY MS. SIMPSON

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- 1 A. I was at [REDACTED] from '97 to 2000, I think it was.
- 2 Q. Okay. And [REDACTED] is that where your
- 3 mother and grandmother lived?
- 4 A. Yes.
- 5 Q. And then you moved to Bishopville?
- 6 A. Yes.
- 7 Q. At some point did you also move back to -- I'm
- 8 sorry, I want to make sure my areas are right --
- 9 Cassatt?
- 10 A. First, I think I moved back to [REDACTED], and then
- 11 to [REDACTED].
- 12 Q. Okay. And when did you live at [REDACTED] -- or
- 13 what's the street?
- 14 A. [REDACTED].
- 15 Q. And when did you live there?
- 16 A. I think it was 2011 until 2015.
- 17 Q. So you only recently made a move from that
- 18 house?
- 19 A. Yes.
- 20 Q. I want to show you what's already been
- 21 introduced as State's Exhibit 5. Is that the home
- 22 where you lived?
- 23 A. Yes.
- 24 Q. And when you lived at [REDACTED], did
- 25 Pamela and her children come to visit you?

1 A. Yes.

2 Q. And tell us about that and how she came to be
3 with you and who all came.

4 A. She came the end of the school year in May of,
5 I want to say, 2012, and she stayed until August of
6 the next school term of 2012.

7 Q. Okay. And did she actually live with you
8 before all the stuff came out about Minor

9 A. Yes.

10 Q. Okay. Tell us about that time. Because I
11 believe she -- all of this came out in October of
12 2011; correct?

13 A. Yes.

14 Q. And she lived with you prior to that?

15 A. It came out in 2011?

16 Q. Yes. It's okay if you don't remember the dates
17 or the years exactly.

18 A. Okay. Well, when it came out, she was with me
19 from May to August.

20 Q. Okay. May through August, the year of the
21 disclosure?

22 A. Yes.

23 Q. Tell the jury a little bit about the makeup of
24 your house; how many rooms and where everybody was
25 kind of staying.

DIRECT EXAMINATION OF MELISSA HALL BY MS. SIMPSON

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1 A. It was a three-bedroom. It had a living room,
2 kitchen, two baths.

3 Q. Okay. And did you also have a room that we've
4 kind of referred to as the computer room in your
5 home?

6 A. Yes.

7 Q. Okay. I'll show you what's in as State's
8 Exhibit 7. Is that the room?

9 A. Yes.

10 Q. Now, these are fairly recent photos. Is -- the
11 room, has it recently changed any or did it change
12 any --

13 A. No.

14 Q. -- since 2011?

15 A. No, it didn't.

16 Q. That's generally how it was set up?

17 A. Yes.

18 THE COURT: Everybody with me on the jury?

19 Q. And who all did Pam -- which of her children
20 were there with you?

21 A. I think all of her kids; Minor [REDACTED] Kamari J.,
22 Nakiah J. and -- we call him Kyrie J. but his name is
23 Kyrie J.

24 Q. And do you know the defendant in this case,
25 Nakia Johnson?

1 A. Yes, I do.

2 Q. And tell the jury how you know Nakia.

3 A. Through my sister Pam.

4 Q. Through your sister Pam. And when did y'all
5 actually meet?

6 A. After they started dating.

7 Q. Okay. And did you have much interaction with
8 him at all?

9 A. No.

10 Q. No. So y'all didn't have any type of
11 relationship?

12 A. No.

13 Q. No. Were you aware of whether or not he was
14 supportive of the children? Like, would he provide
15 clothes for them or money to Pam?

16 A. Yes, ma'am.

17 Q. Tell us about that, as far as him helping out.

18 A. I guess whenever she called saying they needed
19 whatever it was, if he could, he'd give her money
20 for whatever it was they needed.

21 Q. And during that time that they were staying
22 with you, did you have any idea that anything had
23 happened with **Minor**

24 A. No. You would never know.

25 Q. You'd never know. And, like I said, he didn't

DIRECT EXAMINATION OF MELISSA HALL BY MS. SIMPSON

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1 have -- well, let me move to the night all this came
2 out. How exactly did you find out?

3 A. I was at work and Pam called me, and she was
4 upset.

5 Q. Okay. And what shift were you working on; the
6 nightshift?

7 A. Yes; the 7:00 PM to 7:00 AM.

8 Q. And she was upset. Did she tell you -- without
9 telling me exactly what she said, did she tell you
10 why she was upset?

11 A. Yes.

12 Q. Did you come home at that point or did you
13 finish your shift?

14 A. I finished my shift.

15 Q. What happened when you went home -- or did you
16 go directly home or did you go --

17 A. I went home.

18 Q. Went home to your home?

19 A. Uh-huh.

20 Q. At some point did you see **Minor** or Pamela
21 afterwards?

22 A. I can't remember exactly -- no, because I think
23 I went to my house. The dates and the times of
24 where they stayed is kind of foggy, so I'm not sure
25 about where I was living and where they were living.

1 Q. Okay. But did you make contact with your
2 sister at some point?

3 A. Yes, I did.

4 Q. Did she tell you about what happened that
5 night?

6 A. Yes.

7 Q. And even her pulling the firearm on him --

8 A. Yes.

9 Q. -- and things of that nature?

10 A. Yes.

11 Q. As far as details about, I guess, the abuse,
12 did **Minor** ever give you any of those details or
13 talk to you about what happened?

14 A. No, she didn't.

15 Q. Tell me how she reacted with you once she found
16 out.

17 A. She didn't react in a negative way. She seemed
18 relieved.

19 Q. That it was --

20 A. She just --

21 Q. She just seemed relieved?

22 A. Yes.

23 Q. And how did you respond to her? Did you
24 question her at all about details of what happened
25 or anything of that nature?

DIRECT EXAMINATION OF Nakiah J. BY MS. CAVANAUGH

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1 A. No, I didn't.

2 Q. What did you do?

3 A. Just -- you know, just -- if there was anything
4 she needed, I did what she needed. But she didn't
5 ask for anything. She didn't seem indifferent. She
6 just seemed like a burden was lifted off her
7 shoulders. We didn't talk about it.

8 Q. So y'all didn't talk any more about what
9 happened. And did you talk to the defendant, Nakia
10 Johnson, about what happened?

11 A. No, I didn't.

12 Q. Thank you, Ms. Hall.

13 THE COURT: Any questions?

14 MR. JOHNSON: No questions.

15 THE COURT: You may step down.

16 Next witness, please.

17 MS. CAVANAUGH: The State calls Nakiah J.

18 (Nakiah J. enters the courtroom.)

19 THE COURT: Come around, please, ma'am.

20 Nakiah J.

21 being first duly sworn, testified as follows:

22 THE WITNESS: Yes.

23 THE CLERK: Please be seated in the witness
24 chair and state your full name for the record.

25 THE COURT: Okay. Answer ay questions the lady

1 has for you, ma'am. Speak up loud so all of them on
2 the jury can hear you. Okay? You understand?

3 THE WITNESS: Yes.

4 THE COURT: Speak loud now.

5 DIRECT EXAMINATION

6 BY MS. CAVANAUGH:

7 Q. Nakiah J. how are you?

8 A. Good.

9 THE COURT: Speak loud.

10 Q. Speak loud into the microphone. Okay?

11 How old are you?

12 A. I can't --

13 THE COURT: Ma'am, that's not going to work.

14 You just have to relax a little bit and speak loud
15 for me. Okay? She asked how old you are. How old
16 are you?

17 THE WITNESS: Twelve.

18 THE COURT: There you go. That's much better.

19 BY MS. CAVANAUGH:

20 Q. And it's summertime, so are you in school right
21 now?

22 A. No, ma'am.

23 Q. What grade did you just finish?

24 A. 6th.

25 Q. And where did you go to school?

DIRECT EXAMINATION OF Nakiah J. BY MS. CAVANAUGH

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- 1 A. Lee Central Middle school.
- 2 Q. And what are some of your favorite subjects?
- 3 A. Math.
- 4 Q. And do you make pretty good grades?
- 5 A. Yes.
- 6 Q. Do you play any sports?
- 7 A. Basketball.
- 8 Q. Do you play for your middle school team?
- 9 A. No, ma'am.
- 10 Q. Just for fun outside of the school?
- 11 A. Yes.
- 12 Q. And do you like to do other things? Do you
- 13 have any favorite TV shows?
- 14 A. SpongeBob.
- 15 Q. You still like SpongeBob?
- 16 A. Yes.
- 17 Q. Nakiah J. do you have any brothers and sisters?
- 18 A. Yes.
- 19 Q. Who are they? What are their names?
- 20 A. Minor Nakisha J., Nakia J.
- 21 Q. What's your mom's name?
- 22 A. Pamela Hall.
- 23 Q. And do you live with your mom?
- 24 A. Yes.
- 25 Q. And who else is in the house with you and your

- 1 mom right now?
- 2 A. My auntie and my sisters and brothers.
- 3 Q. Okay. And where -- whose house is it?
- 4 A. My mom's.
- 5 Q. Okay. And where is that?
- 6 A. East College Street.
- 7 Q. Is that here in Kershaw?
- 8 A. Yes.
- 9 Q. Have you always lived on East College Street?
- 10 A. No, ma'am.
- 11 Q. Can you describe some of the places that --
- 12 where did you live before you moved to East College
- 13 Street?
- 14 A. Stevens Road.
- 15 Q. Okay. And whose house is on Stevens Road?
- 16 A. My grandma's.
- 17 Q. And which grandma is that? Is that your mom's
- 18 mom?
- 19 A. Yes.
- 20 Q. Do you remember -- who lived with you on
- 21 Stevens Road?
- 22 A. My mama and my grandma.
- 23 Q. Did Minor live with you on Stevens Road?
- 24 A. No.
- 25 Q. What about your younger brother and sister?

DIRECT EXAMINATION OF Nakiah J. BY MS. CAVANAUGH

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- 1 A. Yes.
- 2 Q. Do you remember when you lived with your
3 grandma on Stevens Road?
- 4 A. Yes.
- 5 Q. When was that?
- 6 A. I don't really remember.
- 7 Q. Okay. Do you know about how long you've lived
8 on East College Street?
- 9 A. I don't remember.
- 10 Q. Were you in 5th grade at East College Street?
11 Do you know?
- 12 A. No, ma'am.
- 13 Q. So you were on Stevens Road when you were in
14 5th grade?
- 15 A. Yes.
- 16 Q. Where did you live before you lived with your
17 grandma on Stevens Road?
- 18 A. I don't remember.
- 19 Q. Okay. Did you ever live in Fairfax?
- 20 A. Yes.
- 21 Q. Okay. And who did you live in -- who did you
22 live in Fairfax with?
- 23 A. My mama.
- 24 Q. And who else?
- 25 A. And my daddy.

1 Q. And who is your dad?

2 A. Nakia.

3 Q. Did Minor live with you in Fairfax?

4 THE COURT: You okay?

5 Q. Nakiah J. do you need some water?

6 THE COURT: Are you going to be able to answer
7 these questions? You want to step down and let's
8 come back after while?

9 THE WITNESS: [Nods head].

10 THE COURT: That will make you feel better?

11 THE WITNESS: Yes.

12 THE COURT: I'll let you step down. We'll do
13 this later on. Okay? You want to step out with
14 your mama?

15 THE WITNESS: [Nods head].

16 (Nakiah J. exits the courtroom.)

17 THE COURT: All right. Madam Forelady, ladies
18 and gentlemen, let's take our afternoon break. Is
19 ten minutes okay? Please don't discuss the case,
20 don't deliberate and we'll come back and go to about
21 5:00.

22 (The jury exits the courtroom at 3:37 PM.)

23 THE COURT: All right. We'll take about a
24 ten-minute break. Ms. Cavanaugh, why don't you -- I
25 don't know if this child is going to be able to

DIRECT EXAMINATION OF Nakiah J. BY MS. CAVANAUGH

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1 testify or not. She seems very upset. I know her
2 mom is out talking to her, but y'all talk to her and
3 sort of see where we are.

4 MR. JOHNSON: Your Honor, may we approach a
5 second?

6 THE COURT: Yes, sir.

7 MS. SIMPSON: And, Your Honor, our victim
8 advocate is actually going to go. She's been
9 spending time with her and is talking with her right
10 now.

11 (Side bar conference.)

12 THE COURT: All right. We'll stand at ease for
13 a few minutes. Defendant is in custody.

14 (Short break 3:39 PM - 4:07 PM.)

15 THE COURT: All right. Nakiah J. come back up
16 here, young lady.

17 All right. Miss Johnson, we're going to get
18 ready to start back up. We took the opportunity for
19 you to have a little break. You think you'll be
20 okay?

21 THE WITNESS: Yes.

22 THE COURT: You think you'll be able to finish
23 up?

24 THE WITNESS: Yes.

25 THE COURT: It's very important for everybody

DIRECT EXAMINATION OF **Nakiah J.** BY MS. CAVANAUGH

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1 involved, so take a deep breath and they'll ask you
2 questions. Now, you didn't talk about the case to
3 anybody when we broke, did you?

4 THE WITNESS: No, sir.

5 THE COURT: You didn't talk at all about the
6 case; right?

7 THE WITNESS: No, sir.

8 THE COURT: Mr. Johnson, does that satisfy
9 your --

10 MR. JOHNSON: Yes, sir.

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

13 (The jury enters the courtroom at 4:08 PM.)

14 THE COURT: All right. You may proceed, ma'am.

15 MS. CAVANAUGH: Thank you.

16 DIRECT EXAMINATION

17 (Continued)

18 BY MS. CAVANAUGH:

19 Q. **Nakiah J.** what did you see happen to your sister?

20 THE COURT: Speak up loud so we can all hear,
21 please, ma'am. **Nakiah J.** you have to answer the
22 question, please.

23 Q. Did you see something happen to your sister,

24 **Nakiah J.**

25 A. [Nods head].

DIRECT EXAMINATION OF Nakiah J. BY MS. CAVANAUGH

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1 Q. Can you answer out loud? Did you see something
2 happen to your sister, Nakiah J. is this hard
3 for you?

4 THE COURT: You have to answer for me, please,
5 ma'am. Are you going to be able to tell us the
6 story? Ma'am?

7 Q. Nakiah J. can you tell us what happened to your
8 sister?

9 THE COURT: All right. Madam Forelady, ladies
10 and gentlemen, I hate to ask you to do this, but
11 step back out just one second, please.

12 (The jury exits the courtroom at 4:11 PM.)

13 THE COURT: Nakiah J. can you listen to me? I
14 know this is difficult. It's important that the
15 whole story come out. And if you're able to do it,
16 we want you to tell us; but if you're not able to do
17 it, I need to know that as well. You don't think
18 you can do that in front of all these people?

19 THE WITNESS: No.

20 THE COURT: I can't hear you, sweetie.

21 THE WITNESS: No.

22 THE COURT: No, you don't think you can?

23 THE WITNESS: [Shakes head.]

24 THE COURT: It's just too much for you?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 All right. I'm not going to -- she's obviously
3 unable to do this. I don't know if -- you want to
4 try it again tomorrow? I don't know.

5 MS. CAVANAUGH: Your Honor, I beg the Court's
6 indulgence.

7 THE COURT: All right, ma'am.

8 MS. CAVANAUGH: Your Honor, if we -- see if we
9 could get away from what she witnessed to see if
10 she's able to answer any other questions in front of
11 the jury and then make her available for
12 cross-examination by the Defense.

13 THE COURT: Well, if she can't answer the
14 questions you're asking her, I'm certain he won't be
15 able to any the questions on cross-examination
16 because she hasn't said anything other than talking
17 about her family; nothing about the case in general.
18 I just -- we tried it twice.

19 Nakiah J. you don't think you'll be able to tell
20 this jury your story? Please talk to me. Okay?
21 And it's okay if you can't; I just need to know.

22 MS. CAVANAUGH: Nakiah J. would you be able to
23 answer one yes-or-no question?

24 THE WITNESS: [Shakes head.]

25 THE COURT: All right. She's just not going to

1 be able to do it.

2 All right. You may step down. Thank you.

3 And this also -- she had one of the statements,
4 an interview?

5 MS. CAVANAUGH: Yes, Your Honor.

6 THE COURT: Right. She's not subject to
7 cross-examination, so I can't let that come in. Do
8 you have any other witnesses for this afternoon?

9 MS. CAVANAUGH: Yes, Your Honor, we do.

10 THE COURT: All right.

11 MS. CAVANAUGH: I beg the Court's indulgence.

12 THE COURT: Y'all go ahead and talk.

13 MS. CAVANAUGH: Your Honor, if she is able to
14 get herself to calm down tonight and to -- without
15 anybody, of course, discussing her testimony, and be
16 recalled for the State tomorrow, we'd ask that we be
17 allowed to do that.

18 THE COURT: Mr. Johnson?

19 MR. JOHNSON: Your Honor, out of an abundance
20 of caution, I think I would say, Your Honor, I think
21 that she can't testify and I'd be very concerned if
22 she came back, after she'd been home with her
23 family, to testify. I know the Court has the
24 decision, but that would cause me grave concern. I
25 would ask that if she can't testify now, to let her

1 go home with her family where we have no idea what's
2 said and she's going to come back and testify, I
3 think that would be a detriment to my client.

4 MS. CAVANAUGH: And, Your Honor, may I reply?
5 This is the first time that she's seen her
6 stepfather since these allegations arose in 2011 --

7 THE COURT: Her father.

8 MS. CAVANAUGH: Her father. I apologize. So I
9 do understand why she's so hesitant.

10 THE COURT: Well, where would she stay tonight?

11 MS. CAVANAUGH: She would stay with her mother
12 where she lives tonight.

13 THE COURT: Where is her -- is her grandmother
14 here?

15 MS. CAVANAUGH: I don't think she's here in the
16 courthouse, but she's on Stevens Road which is very
17 close to the courthouse. So if we could -- we'd ask
18 permission to -- even if it's just later on today,
19 that she be subject to cross-examination; if it was
20 tomorrow morning, that she not discuss the case with
21 anyone and that we have the ability to recall her if
22 she is able to calm down and testify.

23 MS. SIMPSON: And, Your Honor, it would be our
24 position that you would have the ability, just as
25 you do overnight with any witness, to ask them

1 whether or not they've discussed their testimony
2 with anyone or anything of that nature. And if
3 there's anything that gives cause for concern at
4 that time, we would see. But it's our position that
5 it would really be no different than --

6 THE COURT: Ms. Pamela Hall, stand for me.
7 You're still under oath. Obviously you've seen how
8 upset your daughter is, and she's sort of frozen up
9 on the stand. I'm going to let her go home with you
10 tonight, but I'll instruct you and order you not to
11 discuss the case at all with her.

12 MS. HALL: Okay.

13 THE COURT: You understand that?

14 MS. HALL: Yes.

15 THE COURT: Obviously, if I find out you did,
16 you'll be contempt of court and subject to being
17 punished. I'm not fussing at you, just telling you
18 what the rules are. And just make sure she gets a
19 good night's sleep and makes sure she's comfortable
20 and rested, and we'll give it a shot in the morning
21 to see if she'll be able to testify. But I instruct
22 you and order you that there is to be absolutely no
23 mention of the trial, her dad.

24 MS. HALL: Yes, sir.

25 THE COURT: Is her stepsister -- or half-sister

1 staying with y'all as well?

2 MS. HALL: No, she's not. She stays with her
3 dad.

4 THE COURT: Okay. So no one can have access to
5 her by telephone or anything else. Okay?

6 MS. HALL: Yes. And I'll make inquiries in the
7 morning when I make the decision as to whether or
8 not I'll allow her to continue her testimony.

9 Yes, sir?

10 MR. JOHNSON: Your Honor, I would just ask that
11 the Court would consider expanding the order not
12 only to her, but to not let anybody talk to her
13 about the case.

14 THE COURT: Ms. Pamela Hall, obviously that not
15 only means you, but anybody in the family or anybody
16 calling or sisters or family or friends or anyone.
17 Just let her have a nice, pleasant evening, watch
18 her TV shows or whatever she wants to do, and we'll
19 try it in the morning. Fair enough?

20 MS. HALL: Yes.

21 THE COURT: All right. Do y'all have another
22 witness for this afternoon?

23 MS. SIMPSON: We do, Your Honor.

24 THE COURT: Bring the jury in, please.

25 (The jury enters the courtroom at 4:19 PM.)

1 THE COURT: Madam Forelady, ladies and
2 gentlemen, we're going to give this young lady over
3 the evening to see if she can perhaps give another
4 shot tomorrow to see if she'll be able to testify.
5 If she is, she is; if she can't, she can't. We'll
6 all understand that. We'll do another witness this
7 afternoon. I've been instructed she'll be staying
8 with her family, but everybody has been instructed
9 that she is not to discuss the case tonight and
10 nobody is to discuss the case with her. I'll make
11 inquiries tomorrow and make sure that order has been
12 complied with. Nobody is to coach her tonight,
13 nobody is to do anything other than just let her
14 have a restful evening. And if she's able to
15 tomorrow, she'll be able to; if she can't, I
16 understand that. So we're going to go at least
17 until 5:00.

18 Ladies?

19 MS. CAVANAUGH: State calls David Kellin.

20 DAVID KELLIN

21 being first duly sworn, testified as follows:

22 THE WITNESS: I do.

23 THE CLERK: Please have a seat in the witness
24 box and state your full name for the record.

25 THE WITNESS: Mahlon David Kellin.

1 DIRECT EXAMINATION

2 BY MS. CAVANAUGH:

3 Q. Good afternoon, Mr. Kellin. Can you state what
4 your profession is.

5 A. Social worker.

6 Q. And how long have you been a social worker?

7 A. Twenty-three years.

8 Q. And are you licensed as a social worker?

9 A. I am.

10 Q. Can you -- where did you go to college? Can
11 you describe your educational background for us.

12 A. I have an undergraduate degree in psychology
13 from Lander University and a master's degree in
14 social work from University of South Carolina.

15 Q. And when did you receive your master's degree?

16 A. In 1992.

17 Q. And can you go over your employment history
18 with us since then?

19 A. I've been employed various places; most
20 recently with Family Resource Center here in Camden
21 as a counselor and forensic interviewer, and working
22 now at Palmetto Citizens Against Sexual Assault in
23 Lancaster as a counselor.

24 Q. And when did you work at the Family Resource
25 Center?

1 A. From 2008 through 2012, I believe.

2 Q. And what exactly is the Family Resource Center?

3 A. It's a child advocacy center. It's a center
4 where children are referred after disclosure of
5 abuse. They're brought there for potential
6 interview, like, you know, if the police request an
7 interview be done, also for counseling. But it all
8 revolves around children and it gives them a safe
9 place to talk and to communicate.

10 Q. And were you one of the interviewers at the
11 Family Resource Center?

12 A. I was.

13 Q. And you were employed in that capacity in 2011?

14 A. Yes.

15 Q. Did you have an occasion to interview **Minor**

16 **Minor**

17 A. I did.

18 Q. And what day did you interview **Minor**

19 A. If I can refer to my notes. My interview was
20 conducted October 12th, 2011.

21 Q. Okay. And how old was **Minor** at the time of
22 your interview?

23 A. Eleven years old.

24 Q. And what was her date of birth?

25 A. It was **██████████**.

1 Q. And who actually referred Minor to the
2 Family Resource Center?

3 A. Rick Bailey of the Kershaw County Sheriff's
4 Office.

5 Q. Okay. And is it typical for law enforcement to
6 refer children to the Family Resource Center?

7 A. Yes.

8 Q. Can you describe the interview process for us
9 as far as the type of room and who's in the room
10 with you at the time?

11 A. We have a small room at the Family Resource
12 Center. There's a small room set off to the side
13 with a camera system and a one-way mirror. The
14 camera system records both audio and video of the
15 interview. We have a couch and a chair, a pad of
16 paper on an large board. Myself and the person
17 interviewing would be in the room.

18 On occasion there would be someone observing,
19 but with my interview, there was not. And
20 everything that happens in that room is contained
21 within that audio and video recording for the
22 particular person that's being interviewed.

23 Q. And is the fact that it's being recorded
24 relayed to the child?

25 A. Yes. We do indicate that the camera is there

1 and is recording.

2 Q. And is there anyone else besides you and the
3 child present in the room at the time of the
4 interview?

5 A. No.

6 Q. And what information, if any, did you have
7 before you interviewed Minor

8 A. Basically I went in with little or no
9 information about her case and just the referral
10 from Investigator Bailey that a forensic interview
11 needed to be done and that the allegations were
12 sexual abuse.

13 Q. Okay. Have you had an opportunity to review
14 your video and interview of Minor recently?

15 A. Yes.

16 Q. How did you begin that interview?

17 A. I interviewed by introducing myself, and very
18 briefly in the beginning, we talk about just general
19 topics. We check and see if they're aware that this
20 is being recorded. We provide a couple of
21 semi-instructions just about how to respond if they
22 don't know something so that they're not trying to
23 provide information to us just to try to provide us
24 information or to guess.

25 So we encourage them to -- if they don't know

1 something, to say they don't know; if they don't
2 understand, to say I don't understand and not to
3 guess. We also ask in the beginning if will they
4 tell the truth during the interview process.

5 MR. JOHNSON: Your Honor, may it please the
6 Court. I have a motion, please, sir.

7 THE COURT: Make it. You want to make it
8 outside the presence of the jury?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: All right. Ladies and gentlemen,
11 y'all step out just a second.

12 (The jury exits the courtroom at 4:27 PM.)

13 THE COURT: Mr. Johnson.

14 MR. JOHNSON: May it please the Court.

15 At this time, I move that that comment be
16 struck. And, Your Honor, I move for a mistrial
17 based upon the fact of the words saying he instructs
18 them to tell the truth, knowing one -- at least one
19 of the cases I read, and I'll define it for you,
20 Your Honor, says one of the things that you -- any
21 time you -- the interviewer says they tell the child
22 to tell the truth, that gives the impression the
23 child is being truthful. I'll have to find the
24 case. I don't --

25 THE COURT: That's Kromah.

1 MR. JOHNSON: Yes. And that was one of the
2 things I think they specifically spelled out.

3 THE COURT: Well, it's not grounds for a
4 mistrial. It might be grounds to exclude the
5 playing of the interview.

6 MR. JOHNSON: Your Honor, for the record, I
7 move to strike too.

8 MS. CAVANAUGH: Your Honor, the State v. Kromah
9 deals with him rendering an opinion on whether or
10 not she was truthful. He's not rendering an opinion
11 in any way or bolstering her credibility. We'll be
12 happy to move on from this set of questioning. But
13 he did not render an opinion at all, and that's what
14 State v. Kromah deals with.

15 THE COURT: Well, in the case of State vs.
16 Miama Kromah, that was a case where they talked
17 about forensic interviewing, and that was the case
18 where they were mainly concerned about the
19 interviewer commenting on the credibility or the
20 believability of the person giving the interview.
21 And, obviously, I think in that case it was physical
22 abuse, and that interviewer testified that there was
23 compelling finding of physical abuse.

24 And it went on to discuss the fact that the
25 jury is the ultimate finder of fact and witnesses

1 should not be bolstering credibility or giving
2 opinions about credibility or believability of the
3 children who are being interviewed.

4 And at the conclusion of that case, the Court
5 says this: Because the admissibility of forensic
6 interviews and the testimony based thereon at trial
7 has been the subject of recent appeals, we believe
8 it would be helpful to set forth, by way of exactly
9 the kinds of statements that the forensic
10 interviewer should avoid at trial; one, that the
11 child was told to be truthful, a direct opinion as
12 to a child's veracity or tendency to tell the truth,
13 any statement that indirectly vouches for the
14 child's believability such as stating that the
15 interviewer has made a compelling finding of abuse,
16 any statement indicating to a jury that the
17 interviewer believes the child's allegations in the
18 current matter, or opinion that the child's manner
19 indicated the child is telling the truth.

20 However, the interviewer may testify regarding
21 the following: Time, date, and circumstances of the
22 interview, personal observations regarding the
23 child's behavior or demeanor, or statements as to
24 the events that occurred within the personal
25 knowledge of the interviewer.

1 Of course yesterday we had a hearing to
2 determine the admissibility of this interview under
3 17-23-175, and I had the opportunity to review the
4 video as well as read the transcript of the video,
5 and, also, Mr. Johnson's questions about that
6 statement that the child was encouraged to tell the
7 truth.

8 Nowhere else in the interview was there any
9 bolstering by the interviewer or any comment on the
10 child or whether or not he thought the child was
11 telling the truth or not telling the truth. And,
12 quite frankly, I think he conducted the interview
13 according to the statute, and that there was no
14 problems dealing with he -- he being the
15 interviewer -- commenting on the believability of
16 the or the credibility of the witness. So I'm going
17 to deny your motion for mistrial.

18 And I think the context in which he has
19 testified about the truthful statement would not
20 taint it so as to make it inadmissible. And I'll
21 let you be protected on the record. Anything else
22 you want to tell me, Mr. Johnson.

23 MR. JOHNSON: Yes, sir, Your Honor. The next
24 logical step is that it could be more prejudicial
25 than probative to follow that. And that statement,

1 at this point, would be more prejudicial than
2 probative.

3 THE COURT: Well, the question was asked: Tell
4 us generally how you conduct the interview. And he
5 started off by telling us a number of things,
6 including encouraging her to tell the truth, is
7 basically what he said. I don't find that to be
8 more prejudicial than probative, so I'm going to
9 allow him to continue on with his testimony.

10 MR. JOHNSON: Thank you.

11 THE COURT: But you're protected on the record.

12 MR. JOHNSON: Thank you, sir.

13 (The jury enters the courtroom at 4:33 PM.)

14 THE COURT: You may continue.

15 BY MS. CAVANAUGH:

16 Q. When you conduct your interview, are open-ended
17 questions utilized?

18 A. As much as possible.

19 Q. And does that to ensure that you don't put
20 words in the child's mouth?

21 A. Yes.

22 Q. When you were interviewing **Minor** did she
23 appear to understand your questions?

24 A. Yes.

25 Q. And was she able to answer them to the best of

1 her ability?

2 A. As far as I know, yes.

3 Q. Did she disclose to you that she had been
4 sexually assaulted?

5 A. She did.

6 Q. And was she able to tell you when that
7 occurred?

8 A. She told me in some of the disclosure about
9 trips that they had taken, which would define a
10 when. She did not give a date or time.

11 Q. And you can look at your notes as well. Did
12 she disclose that this had happened in several
13 different places?

14 A. Yes.

15 MR. JOHNSON: Objection, Your Honor; leading.

16 THE COURT: Sustained.

17 Rephrase your question.

18 Q. Was she able to tell you where these occurred?

19 A. She described locations, yes, that she had been
20 when the abuse occurred.

21 Q. Did -- was **Minor** sick during this interview?

22 A. She asked to leave the room twice to throw up.

23 Q. Based on that fact, did you make -- did you end
24 the interview?

25 A. After the second time when she asked to leave

1 to throw up, I started to conclude the interview at
2 that point.

3 Q. Going back to where she disclosed to you that
4 these incidents happened -- and you can look at your
5 notes -- where did she disclose that these incidents
6 had occurred?

7 A. She described the location -- one at home, at
8 [REDACTED]. She also described at the beach
9 that was north or near one of the side Myrtle
10 Beaches, is what I have here; at Walt Disney World,
11 at a dirt road, and also at a graveyard or cemetery.

12 Q. And I'll direct your attention to the middle
13 paragraph. Did she also say it occurred in a
14 computer room?

15 A. Yes, she did.

16 Q. And, again, she was able -- not -- to give you
17 a timeframe of when these things occurred?

18 A. I think she said at one point it was during the
19 summer or at times when he would come down. He was
20 not -- according to her, he was not living in the
21 home at the time. So it was during times when he
22 would come down, is how she described it.

23 Q. And, again, I'll direct you towards the bottom
24 of page 3 of your notes from this interview.

25 A. Okay. She also described that it started three

1 years ago, from the point of the interview, at his
2 brick home in Fairfax.

3 Q. And, again, this interview with **Minor** was
4 recorded?

5 A. It was.

6 Q. And have you had an opportunity to review the
7 interview recently?

8 A. I have.

9 Q. And I'll show you what's been marked as State's
10 Exhibit 3. Is this a copy of her forensic
11 interview?

12 A. That's a copy of the interview, yes.

13 MS. CAVANAUGH: I beg the Court's indulgence.

14 BY MS. CAVANAUGH:

15 Q. And just to reiterate, you stated -- why did
16 you end the interview?

17 A. After the second time she went to the bathroom
18 to throw up, I felt like at that point we needed to
19 close the interview or to wrap it up. She continued
20 to talk after that, so it was shortly after we
21 finished talking that last bit that we wrapped up
22 the interview.

23 MS. CAVANAUGH: Your Honor, at this time we'd
24 ask that State's Exhibit 3 be introduced into
25 evidence.

1 THE COURT: Any objection?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: Sir?

4 MR. JOHNSON: Yes sir. At this time, I would
5 object to the entrance of it.

6 THE COURT: Same reasons as stated yesterday?

7 MR. JOHNSON: Same reasons. And just out of an
8 abundance of caution, whenever you see fit, I'll put
9 my reasons on the record.

10 THE COURT: We will do that after the jury
11 leaves. Remind me to do that, Mr. Johnson.

12 MR. JOHNSON: Yes, sir.

13 THE COURT: All right. You may publish it.
14 How long is it?

15 MS. CAVANAUGH: This one is approximately 40
16 minutes.

17 THE COURT: All right. We'll listen to 20
18 minutes of it today and the last 20 minutes of it
19 tomorrow morning, unless the jury wants to listen to
20 all of it today. I'll give them that option at
21 5:00.

22 (State's Exhibit No. 3 admitted in to
23 evidence.)

24 (Video played for his Honor and the jury.)

25 THE COURT: Can everybody see it?

DIRECT EXAMINATION OF DAVID KELLIN BY MS. CAVANAUGH

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1 THE JURY: Yes, sir.

2 THE COURT: We're going to fast-forward it
3 while she's in the bathroom.

4 MS. CAVANAUGH: Your Honor, I apologize, this
5 is a different laptop than we used yesterday.

6 (Video paused.)

7 THE COURT: All right. Madam Forelady, ladies
8 and gentlemen of the jury --

9 How many more minutes of it?

10 MS. CAVANAUGH: About 20 more, maybe a little
11 less.

12 THE COURT: All right. Madam Forelady, I'd
13 like to finish this up this afternoon. That would
14 take us to about 5:20. Is that okay with everybody?

15 THE JURY: Yes, sir.

16 THE COURT: All right. Let's finish this one
17 up.

18 Then we'll cross-examine tomorrow, Mr. Johnson.

19 All right. Move along.

20 (Video resumed.)

21 THE COURT: Let's move it forward while she's
22 in the bathroom the second time.

23 (Video concluded.)

24 THE COURT: All right. Ms. Cavanaugh, I'll let
25 you continue you direct examination of this witness,

1 Mr. Kellin, tomorrow morning, unless you're through.

2 MS. CAVANAUGH: Tomorrow is fine, Your Honor.

3 THE COURT: All right. Mr. Kellin, you're
4 right in the middle of your testimony. Please don't
5 discuss it with anyone tonight, don't let anyone
6 discuss it with you. We'll start back tomorrow
7 morning at 9:15, so please be back and ready to go.

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Ladies and gentlemen,
10 we'll start at 9:15 in the morning. I think we're
11 doing pizza for lunch tomorrow. And I'll talk to
12 the lawyers tonight so I can get some sort of an
13 idea of where we stand for tomorrow. Please don't
14 let anyone discuss the case with you and please
15 don't discuss the case with anyone else. Please
16 don't try to do any type of research, and please
17 don't start any type of deliberations in the jury
18 room.

19 I hope you have a pleasant evening and we'll
20 start bright and early in the morning at 9:15.
21 We'll be here at 8:30 to do some things so we'll be
22 ready by the time you get here. Thank you very
23 much. You've paid very close attention. I look
24 forward to seeing you in the morning.

25 (The jury is excused for the evening at

1 5:22 PM.)

2 THE COURT: All right. Sir, you may step down.

3 Mr. Johnson, I told you I'd let you put that on
4 the record after the jury went out. You made an
5 objection and --

6 MR. JOHNSON: Yes, sir.

7 THE COURT: I think you made an objection to
8 publishing the tape or the DVD.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: And your objection is, please?

11 MR. JOHNSON: Your Honor, the first objection I
12 want to make is, I want to object to the fact that
13 it is not trustworthy. And it's not trustworthy
14 because of the inconsistency of the statement saying
15 something happened one time, saying it happened one
16 place, saying it happened another, saying it
17 happened three times one place, saying it was the
18 first time one place in Kershaw County and then
19 first time one place in Fairfax -- I mean, in
20 Allendale County.

21 I would -- the questions, I think, were
22 suggestive because the questions that were asked
23 were like, where did you do this and where did you
24 do that. And the questions were more directed and
25 pointed at this particular points.

1 And if Your Honor denies that, then I would go
2 to more prejudicial than probative. And then if
3 Your Honor denies that -- and, Your Honor, to renew
4 my motion for the Kromah motion for the bolstering
5 of the testimony.

6 THE COURT: Thank you, Mr. Johnson. And I
7 appreciate you protecting the record on that. But
8 I'm going to respectfully deny it. I find that -- I
9 made the determination yesterday in-camera, out of
10 the presence of the jury, as to whether or not this
11 would be admissible. And, obviously, I don't see
12 where anything has changed. It will be ultimately
13 for the jury to determine the credibility of the
14 victim -- or the alleged victim. And, obviously,
15 you and I have been doing this a long time, and it's
16 not unusual to have some discrepancies when people
17 try to relate what happened in the past.

18 Obviously, you had the opportunity to
19 cross-examine the victim in the case. You'll be
20 afforded the same opportunity to cross-examine the
21 interviewer, Mr. Kellin, tomorrow when he comes back
22 to complete his.

23 So I stand by my previous ruling that the tape
24 of the interview is admissible, complies with
25 17-23-175, and I find that it is not -- prejudicial

1 value does not outweigh the probative value, and I
2 stand by my ruling on the bolstering that we already
3 discussed.

4 MR. JOHNSON: Thank you, Your Honor. I was
5 reading the case and it says that I have to state
6 the rule. That's 801 (d) -- 801 (c) -- I see ones
7 or -- Your Honor, I was reading those cases and I
8 just want to --

9 THE COURT: You're perfectly protected. If you
10 look tonight and that's not the correct rule, you
11 can correct it in the morning. Fair enough?

12 MR. JOHNSON: Yes, sir, Your Honor.

13 THE COURT: All right. Anything from the State
14 before we break for the evening?

15 MS. SIMPSON: Nothing further from the State.

16 MR. JOHNSON: Nothing from the Defense.

17 THE COURT: All right. You requested in
18 chambers that I lift my requirement that your client
19 be in custody for the evening. Mr. Johnson, I
20 practiced law beside you for 30 years -- well, not
21 beside you, but we had many, many cases, as I've
22 said, over the years and we've had criminal cases
23 together. And I've been on the bench now 11 years,
24 and it's just been my standard practice,
25 particularly in a case of these types of allegations

1 and with the minimum mandatory of 25 years, if he's
2 convicted, I just -- I -- I cannot grant your
3 request. He will be in custody until the conclusion
4 of the trial.

5 MR. JOHNSON: Yes, sir.

6 THE COURT: Anything else by anyone?

7 MS. SIMPSON: No, Your Honor.

8 THE COURT: All right. If y'all don't mind,
9 let me see y'all in chambers so we can discuss a
10 little bit of where we are. We'll stand adjourned.

11 (Court adjourned for the evening at 5:27 PM.)

12 THE COURT: Anything from the State before we
13 proceed?

14 MS. SIMPSON: Yes, Your Honor. Just to put on
15 the record what we discussed in chambers regarding
16 the testimony of Nakiah J. I spoke with my
17 co-counsel, Ms. Cavanaugh, at length last night.

18 Based on what was presented yesterday and she
19 initially got up there and was able to talk about
20 everything, essentially, but the substance of what
21 we are here for and her observations, Your Honor
22 allowed us a break to calm down. And at that point,
23 the victim advocate spoke with her and she said she
24 would be able to testify and that she could do it.
25 And I think Your Honor even talked to her prior to

1 that. And then once again when the jury was in
2 here, one question was asked and the subject matter
3 and she broke down again.

4 In our trial preparations with her, she
5 reviewed her forensic interview and was able to alk
6 to us and we were capable of thinking that she could
7 take the stand and testify. However, at that time,
8 her mother indicated to us that she may need
9 counseling. We've actually set that up and it's in
10 the process. She will be seeing a counselor.

11 These things together, plus the Defendant's
12 objection about us recalling her this morning if she
13 were able to get up there and testify, his worries
14 and concerns as far as potential pressures or
15 discussions about the case -- and I have no doubt
16 that Ms. Hall followed instructions. But due to the
17 potential trauma of putting her on the stand, and
18 she is not the victim in this case, we're not going
19 to recall her. Additionally, we're not going to put
20 in, of course, her forensic interview as it does not
21 qualify under the statute now since she's not
22 subject to cross-examination.

23 I think in the interest of justice, both on
24 behalf of the Defendant and the State, I think it's
25 best not to go forward with this witness. And

1 whatever curative instruction Your Honor wants to
2 give to the jury or whatever the Defense requests,
3 if the request a curative instruction, the State
4 would not be opposed.

5 THE COURT: Mr. Johnson.

6 MR. JOHNSON: Your Honor, as I previously told
7 you in the back, the curative instruction you told
8 me is satisfactory. The only thing I need is -- I
9 need to make the Court aware, I am going to -- you
10 said you were going to redact the portion about the
11 lie detector. I just want to protect myself on the
12 record for that.

13 THE COURT: That's on your client's statement?

14 MR. JOHNSON: Yes, sir.

15 THE COURT: I assume the State has done that.

16 MS. SIMPSON: It's actually being done now. It
17 just needs to be downloaded to a CD that can be
18 played. So prior to Sergeant Bailey testifying,
19 we'll have to -- and if the Defense wants to review
20 it first, that's fine.

21 THE COURT: Do you have Mr. Kellin here and
22 ready to go?

23 MS. SIMPSON: We do. He's outside.

24 THE COURT: All right.

25 MS. SIMPSON: And we also have Dr. Foster here.

1 But if you want to --

2 THE COURT: Well, I don't want my jury waiting.
3 And somehow or another we got cross-legged with the
4 jail and they're 45 minutes late. So that pretty
5 much put a damper on our attempt of getting an early
6 start.

7 Bring the jury in, please.

8 (The jury enters the courtroom at 9:16 AM.)

9 THE COURT: Madam Forelady, ladies and
10 gentlemen, good morning. I hope you enjoyed your
11 snacks and coffee. We were here at 8:30. We were
12 going to try to get 45 minutes' worth of stuff done
13 outside of your presence, but we had a mix-up in
14 communications and -- anyway, we were not able to
15 waste the 45 minutes. But we're not wasting your
16 time, and that's why we're starting right on time.

17 One matter of housekeeping: The young girl who
18 was on the stand yesterday, **Nakiah J.** I've made a
19 determination that she's just not able to testify in
20 this case, so her testimony will be stricken from
21 the record. I will instruct you to not consider
22 what she said or how she appeared or anything in
23 your deliberations of the guilt or innocence of the
24 defendant.

25 Obviously, we can't use that portion she

1 testified to because the Defendant didn't have the
2 option or right to cross-examine her. So please,
3 her testimony will be stricken and do not consider
4 that in your deliberations.

5 Okay. You may recall Mr. Kellin to finish up
6 with him.

7 MS. CAVANAUGH: Thank you, Your Honor.

8 THE COURT: Any objection to my curative
9 remarks to the jury?

10 MS. SIMPSON: None from the State, Your Honor.

11 THE COURT: Mr. Johnson?

12 MR. JOHNSON: No, Your Honor.

13 THE COURT: Thank you.

14 (David Kellin enters the courtroom.)

15 THE COURT: Come on up, sir. I remind you,
16 you're still under oath from yesterday.

17 Ms. Cavanaugh.

18 DIRECT EXAMINATION

19 (Continued)

20 BY MS. CAVANAUGH:

21 Q. Good morning, Mr. Kellin.

22 A. Good morning.

23 Q. Outside of the interview that we observed
24 yesterday afternoon before we broke for the day, did
25 you have any other involvement with this case?

1 A. No.

2 MS. CAVANAUGH: I beg the Court's indulgence.

3 No further questions.

4 THE COURT: Mr. Johnson?

5 MR. JOHNSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q. Other than the information you collected in
9 that video, that's all the information you have as
10 it relates to this case; is that right?

11 A. Yes.

12 Q. And the video shows what information you got;
13 is that right?

14 A. Yes.

15 MR. JOHNSON: That's all I have, Your Honor.

16 THE COURT: I assume no redirect.

17 MS. CAVANAUGH: No, Your Honor.

18 THE COURT: You're excused. You're free to go.

19 Next witness, please.

20 MS. CAVANAUGH: State calls Investigator Dave
21 Capps.

22 (Dave Capps enters the courtroom.)

23 DAVE CAPPS

24 being first duly sworn, testified as follows:

25 THE WITNESS: Yes, ma'am.

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

3 THE WITNESS: Good morning.

4 DIRECT EXAMINATION

5 BY MS. CAVANAUGH:

6 Q. Investigator Capps, where are you employed?

7 A. Lee County Sheriff's Office.

8 Q. And what is your position at the Lee County
9 Sheriff's Department?

10 A. I am a criminal investigator in the inhouse IT
11 and local agency security officer.

12 Q. And IT, what does that stand for?

13 A. Information technologist. I handle their
14 computers, camera systems, and things like that.

15 Q. Okay. And how long have you been with Lee
16 County Sheriff's Department?

17 A. Since July of 2010.

18 Q. So you were there in October of 2011?

19 A. That's correct.

20 Q. Do you work with Lieutenant Patrick Hickmon?

21 A. I do. He's my supervisor.

22 Q. And back in, I believe it was, October 2011,
23 did he ask you to go to the Fountain Grocery Store?

24 A. He did.

25 Q. And why did he and you to go to the Fountain

1 Grocery Store?

2 A. Mr. Fountain has a security system in his
3 store -- Mr. Ron Fountain's store, he has a security
4 system. And at that time, it was -- the USB port
5 would not allow you to download the video, and if
6 you did, it was in such a format that it could not
7 be viewed otherwise.

8 Q. So did you have your own equipment that you
9 used when you went to the grocery store?

10 A. Yes. It's a very simple technique. I just
11 took a digital camera and made a recording. And
12 that recording is an ABI file which can be viewed on
13 any Windows media player.

14 Q. And did you already have some information about
15 where to go on that particular surveillance?

16 A. Yes. After having been instructed to go there
17 by Lieutenant Hickmon, as a result of our
18 conversation, I was informed that he and
19 Mr. Fountain had already marked the location on the
20 video regarding two individuals he needed me to
21 video.

22 Q. Okay. And just to -- did you meet with
23 Mr. Fountain that afternoon?

24 A. I did. And he -- well, I believe it was the
25 next morning, the morning of the 21st -- I think it

1 was the morning of the 21st.

2 Q. In October?

3 A. Yes. I --

4 Q. Sorry. What?

5 A. I don't recall the exact date to be quite
6 honest with you. But I know it was the 21st of
7 something.

8 Q. I'm going to show you what's marked as -- well,
9 what will be marked as State's Exhibit 11. Do you
10 recognize this recording?

11 A. Yes.

12 Q. And is that a copy of the video that you just
13 described?

14 A. Yes.

15 MR. JOHNSON: No objection.

16 MS. CAVANAUGH: Your Honor, at this time I'd
17 ask that State's Exhibit 11 be entered in to
18 evidence and that we publish it to the jury.

19 MR. JOHNSON: No objection, Your Honor.

20 (State's Exhibit No. 11 marked for
21 identification and entered in to evidence.)

22 (Video played for his Honor and the jury.)

23 BY MS. CAVANAUGH:

24 Q. So, Investigator Capps, you can hear voices in
25 the background. What are those voices?

1 A. That was Mr. Ron Fountain and I having a
2 conversation about the people that I was to video.

3 Q. So that was why you were using your own
4 equipment to record it?

5 A. Yes.

6 Q. So that wasn't necessarily voices from the day
7 of this surveillance video?

8 A. No. That system did not have audio or anything
9 in the store. The background was either he and I
10 talking and/or customers talking on the other side
11 of the wall of the office.

12 Q. Okay. Was that the extent of your involvement
13 in this particular case?

14 A. That was all I did.

15 Q. And you had no other outside information other
16 than to go to the store and get that particular
17 video; correct?

18 A. That is correct.

19 MS. CAVANAUGH: I beg the Court's indulgence.

20 Thank you. Please answer any questions from
21 the Defense.

22 THE COURT: Mr. Johnson.

23 MR. JOHNSON: Thank you, Your Honor. May it
24 please the Court.

25 CROSS-EXAMINATION

1 BY MR. JOHNSON:

2 Q. Investigator Capps, aren't there two other
3 videos, little clips, that go along with that one?

4 A. I believe there were two videos and a still
5 picture.

6 Q. That's right. So that was not the only one
7 that you took down?

8 A. No, sir.

9 Q. Okay. And you were the one that -- did you, by
10 the way, bring a copy of the other still pictures or
11 video with you?

12 A. No, sir. When I downloaded those to the
13 computer system at the office, I burned them
14 straight on a disc. And the computer system they
15 were downloaded subsequently onto was destroyed by a
16 lightning strike a couple years ago. We have new
17 systems now.

18 Q. Okay. If --

19 MR. JOHNSON: Your Honor, can we approach,
20 please?

21 THE COURT: Yes, sir.

22 (Sidebar conference.)

23 MR. JOHNSON: Your Honor --

24 THE COURT: You will need it?

25 MR. JOHNSON: Yes, sir.

CROSS-EXAMINATION OF DAVE CAPPS BY MR. JOHNSON

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1 THE COURT: Okay. No problem.

2 Madam Clerk, may I borrow your --

3 Your Honor, may I approach?

4 THE COURT: Absolutely.

5 Let me have a technician down here to help play
6 the video for Mr. Johnson, please.

7 All right. Mr. Johnson, what do you need?

8 (Video played.)

9 MR. JOHNSON: I want it to go back to the
10 beginning.

11 THE COURT: All right. Ma'am, take it back to
12 the very beginning, please.

13 MR. JOHNSON: Can you stop it right there? And
14 back it up, please.

15 (Video paused.)

16 BY MR. JOHNSON:

17 Q. Investigator Capps, can you see this?

18 A. Yes, sir.

19 Q. At the bottom there, is that like -- gives the
20 time of what's going on?

21 A. That's the system time on that device. Yes,
22 sir.

23 Q. And on the system time right here, it has the
24 number 17 lighted up, and the rest of the numbers
25 are dark; is that correct?

1 A. Yes, sir.

2 Q. And the number 17 is like military time, it
3 indicates the hour; is that correct?

4 A. Yes, sir.

5 Q. And down below this, there was another number
6 that indicates the minutes; is that correct?

7 A. Yes, sir.

8 Q. Okay. And we're unable to see it on this one,
9 but there is a minute section that will show you the
10 minutes at the bottom.

11 A. That is correct.

12 Q. And that would tell the time the person that
13 you saw would have been -- if you look at this and
14 look at where the person was, you would know where
15 they were at that time; is that correct?

16 A. Yes, sir.

17 Q. Okay. And you did make two other short videos
18 along with this one; is that correct?

19 A. A total of two short videos and one still
20 picture.

21 Q. All right. And when you went down there, did
22 anybody not tell you to make sure you showed the
23 time?

24 A. No, sir.

25 Q. So they just told you to -- they already had

CROSS-EXAMINATION OF DAVE CAPPS BY MR. JOHNSON

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1 them identified at what they wanted you to look at?

2 A. Yes.

3 Q. And in their identification, they didn't tell
4 you to identify the time that the person was going
5 to be in the store?

6 A. No, sir.

7 Q. If I was to show you a copy or a photo of the
8 still shot, would you be able to recognize it?

9 A. Yes, sir.

10 MR. JOHNSON: Thank you, Your Honor.

11 Your Honor, she'd like to approach.

12 THE COURT: Mark it for identification.

13 Defendant's 1; is that correct?

14 MR. JOHNSON: Yes, sir.

15 (Defendant's Exhibit No. 1 marked for
16 identification.)

17 BY MR. JOHNSON:

18 Q. I'd like for you to look at it and tell me, can
19 you identify that?

20 A. This is a representation of Ron Fountain's
21 store in front of the video box.

22 Q. Is that the still shot?

23 A. Yes, sir.

24 Q. Can you tell me the time on it?

25 MS. CAVANAUGH: Objection.

1 THE COURT: What's the objection?

2 MS. CAVANAUGH: That that is not in evidence,
3 Your Honor. He can't talk about it. It's not in
4 evidence.

5 THE COURT: He's not introducing it, he's just
6 refreshing his memory with it. Overruled.

7 BY MR. JOHNSON:

8 Q. Can you tell me the time on it?

9 A. I can't tell you the exact time, but I can tell
10 you close to the time would be 1700 and
11 approximately 58 or 59 minutes.

12 Q. Okay. Thank you.

13 A. Okay.

14 MS. CAVANAUGH: Investigator Capps, in your
15 experience as --

16 THE COURT: He's not finished.

17 MS. CAVANAUGH: I apologize.

18 BY MR. JOHNSON:

19 Q. Can you tell me what time 1758 is in Eastern
20 Standard Time?

21 A. A minute before 6:00 [sic].

22 Q. Okay. Would that be 5:58?

23 A. Yes, sir.

24 Q. Okay. Thank you, sir.

25 THE COURT: That's it?

1 MR. JOHNSON: Yes, sir.

2 THE COURT: Ma'am.

3 REDIRECT EXAMINATION

4 BY MS. CAVANAUGH:

5 Q. Investigator Capps, in your experience as an
6 investigator in looking at surveillance videos with
7 the sheriff's department, are the surveillance video
8 times always 100-percent accurate?

9 A. No, they're not.

10 Q. And do you know if Ron Fountain's video was
11 100-percent accurate on this particular night?

12 A. I don't recall that. I don't know whether it
13 was or wasn't. I can't say whether it was or wasn't
14 either way.

15 Q. And your sole purpose with this video was to
16 identify that those two individuals were in the
17 store that particular afternoon?

18 A. That was the purpose of the video, yes.

19 MS. CAVANAUGH: Thank you.

20 THE COURT: All right. You may step down.

21 May he be excused from his subpoena?

22 MS. CAVANAUGH: No objection.

23 MR. JOHNSON: No, sir, Your Honor; I didn't
24 have a subpoena on him.

25 THE COURT: Next witness, please.

1 MS. CAVANAUGH: State calls Ron Fountain.

2 (Ron Fountain enters the courtroom.)

3 RON FOUNTAIN

4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

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

8 THE WITNESS: Ronald H. Fountain.

9 DIRECT EXAMINATION

10 BY MS. CAVANAUGH:

11 Q. Good morning, Mr. Fountain. Are you the owner
12 of Fountain's Grocery Store?

13 A. I am.

14 Q. And where is that located?

15 A. On Highway 341 between Bishopville and Bethune.

16 Q. And is that near Stevens Road?

17 A. Yes, ma'am.

18 Q. Okay. Did you have an opportunity to meet with
19 investigator -- well, first of all, explain the
20 surveillance systems that you have at your store.

21 A. Well, I got a camera system that films
22 everybody in and out the store and --

23 Q. And is it common for investigators with the
24 sheriff's department to come to you and ask to view
25 that surveillance?

- 1 A. Right. They came out and wanted to see that
2 day's surveillance.
- 3 Q. And they do that if your store is robbed also?
- 4 A. Yeah. If it's robbed, they have the film.
- 5 Q. Or if there's a break-in?
- 6 A. Right.
- 7 Q. Or if somebody has taken something from your
8 store. Is this a common occurrence for you?
- 9 A. Right. It films it at all times.
- 10 Q. Okay. And have you had -- how long have you
11 owned Fountain Grocery Store?
- 12 A. Forty-three years.
- 13 Q. Okay. And since you began having surveillance,
14 have you had multiple systems?
- 15 A. I think this is the third or fourth system I
16 put in.
- 17 Q. Okay. And why have you had to put in multiple
18 systems?
- 19 A. Well, they're fixing to wear out and updates
20 and things like that come up.
- 21 Q. Okay. And did you have surveillance back in
22 2011?
- 23 A. I did.
- 24 Q. And back in the fall of 2011, did an
25 investigator come meet with you to obtain

1 surveillance?

2 A. He did.

3 Q. Did your system at the time have the ability to
4 copy itself?

5 A. No.

6 Q. So the sheriff's department had to use their
7 own recording device to make a copy; is that
8 correct?

9 A. That's correct.

10 Q. Back in 2011, as far as the timing on your
11 surveillance system, could you say that it was
12 100-percent accurate?

13 A. At first I was thinking maybe it was an hour
14 off. But then we got to thinking it was -- I think
15 a break-in, it was an hour off. This was fairly
16 close. And from looking back at it, I can tell from
17 the customers coming in that it was, like, after
18 5:00, going on 6:00 when these customers come in,
19 because they get off work at 5:00 and they show up,
20 you know, about the same time every day.

21 Q. Right. But your system wasn't necessarily
22 100-percent accurate to the minute, was it?

23 A. Oh, no, ma'am.

24 Q. Back in October of 2011, you met with
25 Investigator Capps and provided him -- and allowed

CROSS-EXAMINATION OF RON FOUNTAIN BY MR. JOHNSON

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1 him to view your system?

2 A. That's correct.

3 Q. And did he make a copy of that surveillance
4 from that day?

5 A. He did.

6 MS. CAVANAUGH: I beg the Court's indulgence.

7 Thank you, Mr. Fountain.

8 THE COURT: Mr. Johnson.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON:

11 Q. How are you this morning, sir?

12 A. All right.

13 Q. On your system -- I think you just said it, but
14 I want to clear it up. It films everybody coming in
15 and everybody going out?

16 A. Correct.

17 Q. So that means it would show the time a person
18 coming in and show the time a person comes out?

19 A. Right.

20 Q. Okay. And you just testified a minute ago
21 about it's not 100-percent accurate. On the day
22 they're talking about, all you know is the system
23 ran. You don't know if it was accurate or not. All
24 you know is the system was running that day; right?

25 A. Yes.

1 Q. And let me ask you this: I heard your voice on
2 the background. Did you -- on the day we're talking
3 about, on October 11th, did you see a male and a
4 female in the store that y'all were looking at?

5 A. Correct.

6 Q. It was not just a male, it was a male and a
7 female?

8 A. Right. It was a male and a little girl.

9 Q. A male and a little girl?

10 A. Yes.

11 Q. Who were in the store together?

12 A. Right.

13 Q. Thank you, sir.

14 MR. JOHNSON: Thank you.

15 THE COURT: Redirect?

16 MS. CAVANAUGH: No redirect.

17 THE COURT: Thank you, Mr. Fountain. You are
18 released from your subpoena.

19 Next witness, please.

20 MS. CAVANAUGH: The State calls Laurie
21 Caldwell.

22 MS. SIMPSON: Your Honor, actually, we're going
23 to call a different witness.

24 THE COURT: Very well.

25 MS. SIMPSON: The State calls Paul Meah.

DIRECT EXAMINATION OF PAUL MEAH BY MS. SIMPSON

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1 (Paul Meah enters the courtroom.)

2 (State's Exhibit No. 12 marked for
3 identification.)

4 PAUL MEAH

5 being first duly sworn, testified as follows:

6 THE WITNESS: I do.

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

9 THE WITNESS: My name is Paul Meah.

10 DIRECT EXAMINATION

11 BY MS. SIMPSON:

12 Q. Mr. Meah, where are you employed?

13 A. I'm employed at SLED in Columbia.

14 Q. Okay. What is SLED?

15 A. That's the South Carolina Law Enforcement
16 Division. We provide a forensics laboratory and
17 other services for the State.

18 Q. And what is your position with SLED?

19 A. I'm a DNA scientist. I'm in the forensic DNA
20 section.

21 Q. And how long have you been at SLED?

22 A. Approximately eight years.

23 Q. And how long have you been with the forensics
24 portion involving DNA analysis?

25 A. That entire time.

1 Q. Can you tell the jury about your educational
2 background and training?

3 A. I got my bachelor's degree in 2001 from the
4 University of South Carolina. And then I got my
5 master's degree in 2003, and that was in molecular
6 biology. I did three years of Ph.D. work, but I got
7 hired away by SLED before I finished my Ph.D.

8 Q. And with respect to SLED, tell the jury about
9 your lab. Is it accredited in some way?

10 A. Yes, it is. We're accredited by ISO Standard,
11 which is the highest in the world right now. We do
12 testing every two years -- I mean, twice a year. I
13 have to do proficiency testing in my field, which
14 means that I get a blinded sample or several samples
15 and I have to make sure that I do them correctly.

16 Q. And is your work actually peer-reviewed or your
17 analysis or examinations with respect to any
18 particular case?

19 A. Every single case is technically reviewed,
20 which means that they go back and they go through
21 all of the things that we did to make sure that we
22 did them properly. And it's also administratively
23 reviewed to make sure all of the evidence was
24 handled properly and sorted and the report is
25 correct.

DIRECT EXAMINATION OF PAUL MEAH BY MS. SIMPSON

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1 Q. Okay. And tell the jury, what is DNA?

2 A. DNA is in every cell of your body. It
3 identifies you and makes you the human that you are.
4 You get half of it from your mother and half of it
5 from your father. It's a blueprint for building a
6 body.

7 And in this example, we use it to identify
8 people. We can use it to identify body fluids or
9 anything like that.

10 Q. And is DNA unique to every individual? Can you
11 explain that?

12 A. It is, except for twins. Twins have close to
13 the same DNA. I mean, there are 3 million base
14 layers in the body, and that's a lot. And some
15 twins may have different little snips, but as far as
16 person to person goes, there's very large
17 differences in DNA that we can see.

18 Q. And with respect to your qualifications, have
19 you ever testified as an expert before in the field
20 of DNA analysis?

21 A. I have.

22 Q. And how many times?

23 A. Approximately 25 or 30 times.

24 MS. SIMPSON: Your Honor, at this time we'd
25 offer Mr. Meah as an expert in DNA analysis.

1 MR. JOHNSON: No objection.

2 THE COURT: All right. He'll be qualified to
3 render opinions in regards to the area of DNA.

4 BY MS. SIMPSON:

5 Q. Explain a little bit about how cases or
6 evidence is referred to you typically.

7 A. We pick up in a couple of different ways. It
8 used to be -- and I'm not sure in this case. But we
9 used to pick up evidence from a room that was beside
10 our laboratory and stored there. And then we --
11 that changed over and we got an evidence storage
12 procedure in place, which is downstairs. So I'm not
13 sure how I received these items.

14 But they come in a heat-sealed pouch so I can
15 tell that no one has tampered with it. It's got the
16 dates and initials of whoever sealed that. So it
17 would come in from an officer. The intaking person
18 heat-seal package that, initial it, and date it, and
19 then put it in the storage somewhere, either in that
20 room or downstairs. And then I would just request
21 those items whenever I'm ready to work the case. I
22 just e-mail down to say I need to come pick them up.

23 Q. And when you receive an item of evidence, do
24 you make sure or are there methods in place to make
25 sure they're not tampered or altered in any way

1 prior to coming to you?

2 A. Yes. The heat-sealed pouch, if it were
3 tampered with in any way, I would not process the
4 evidence, in protection of myself. I check those
5 things very closely. I also check to make sure that
6 the things haven't been opened improperly, have
7 evidence seal tape, I mean, things you probably see
8 on TV commonly. It's just protection for all of us
9 to make sure that it hasn't been tampered with.

10 Q. And with respect to DNA, explain to the jury
11 about what a profile is.

12 A. It's sort of like a locker combination. That's
13 a really good way to look at it, is that each
14 individual is going to have a combination. All we
15 look for -- we size for certain areas of the genome.
16 We don't seek sequence, we don't look for the
17 letters that make up a genome; we just look for the
18 size of the tiny bits in several different
19 locations, like 15 different locations.

20 And everybody just has a different size there.
21 So some people may have a 7 or an 8 or a 9. That's
22 an example of my data. And we just look at 15 of
23 those different locations. And people don't
24 generally match up, and we can estimate how rare
25 that genome type is in a population by modeling and

1 statistical analysis. That's the second part of my
2 job, is to estimate how rare a sample is in the
3 population.

4 Q. So statistical analyses are not always used, it
5 just kind of depends on the evidence that's provided
6 and what's requested?

7 A. Correct. For example, if there was a victim
8 stain on a mattress that was at a house somewhere, I
9 would need to say how sure I was that that belonged
10 to that victim. I mean, that's the important part
11 of DNA. And a lot of times it's to say how sure we
12 are that we can match this sample to that other
13 sample.

14 Q. Okay. And in that same vein, explain what a
15 buccal swab is and the importance of a known
16 profile.

17 A. Sure. So a buccal swab -- buccal is referring
18 to the buccal cells in your mouth that are a type of
19 epithelial cell that's shared very easily. And we
20 often collect those as known standards. We can use
21 blood as a known standard because your white blood
22 cells have your DNA profile in it.

23 But a buccal swab is not intrusive; it's just a
24 cotton swab like you buy at the Revco or CVS or
25 anything that you just swab the inside of your

1 cheeks with. And we use that to generate a known
2 profile. So say, God forbid, you were a victim in a
3 crime, we would need something to compare to that
4 crime.

5 So say you got at a bar or something and blood
6 was on the floor. So we would take your buccal swab
7 and match it to that blood on that floor. So we
8 have a known standard to measure against the
9 unknown.

10 Q. And so without a known standard, you really
11 can't make any determinations with respect to a
12 match or anything of that nature?

13 A. Correct.

14 Q. Are there certain sources, I guess, that are
15 better or -- for collecting DNA, like, such as
16 seminal fluid or things of that nature?

17 A. Sure. So the amount advantage that we have
18 with semen is that spermatozoa are tougher; they
19 don't lyse the same way. That means to break open.
20 They don't break open the same way that other cells
21 do.

22 So the cells on your body that -- from your
23 mouth or your skin or from anywhere, they break up
24 pretty easily. You can just use a little bit of
25 detergent or -- and some Prodene Aseptil, which just

1 breaks down the protein, and you can convert those
2 pretty easily. But sperm cells are really tough and
3 they don't break that way. So we can separate out
4 something like skin from what's inside of a sperm
5 cell by the addition of some extra chemicals. And
6 we didn't have to do that in this case, but...

7 Q. And just kind of a general question with
8 respect to DNA, can you actually date that DNA or
9 determine when that DNA actually got onto an item?

10 A. We cannot, not -- not with our current
11 technology. And I can't imagine a way that you
12 could.

13 Q. So that DNA could have been there for a minute,
14 a year; you just don't know?

15 A. Correct.

16 Q. There's just no way to determine?

17 A. Correct.

18 Q. Tell the jury a little about what comes -- do
19 you actually receive sexual assault kits?

20 A. I do. So in sexual assaults, we have -- it's a
21 pretty standard kit. It's got a bunch of those
22 swabs that I was telling you about, the swabs for
23 different areas. There's a protocol that the nurse
24 is supposed to follow, and she gets us a buccal
25 swab, an oral swab, a rectal swab, a vaginal swab,

1 any probable places for other body fluids we call
2 suspected body fluids. So if there's an ejaculate
3 on a different part of the body that the victim
4 indicates, the nurse would collect that and send it
5 on to me for identification.

6 Q. Okay. And are they often collected just as a
7 matter of course in some cases and submitted to you
8 for testing?

9 A. Definitely, because oftentimes -- well, there's
10 several reasons. Victims can be incapacitated or
11 misremember. I think that's probably the strongest
12 reason that these are collected in a matter of
13 course. Even if a victim was, say, a week or two
14 out from the sexual assault, they still would
15 attempt the sexual assault collection kit.

16 Q. And what exactly -- you said swabs or anything
17 else that's collected from the nurse at the
18 actual -- at the hospital or wherever the evidence
19 is included.

20 A. Yes, everything. There are smears that -- a
21 smear is a microscopic slide that we can look
22 for spermatozoa. That's a really -- it's not an
23 efficient way, it's actually quite slow. And it's a
24 very exacting method to look and see if any
25 spermatozoa could be in a, you know, oral, vaginal

1 and rectal, are usually the smears in most -- in the
2 sexual assault collection kits.

3 We also sometimes collect hairs or hairs are
4 collected for us. I'm trying to think of anything
5 else that -- oh, fingernail scrapings. If a victim
6 says she was trying to defend herself, that's a
7 common way.

8 Q. Okay. Did you actually receive some evidence
9 in the case that we're here for today?

10 A. Yes, I did. I received a sexual assault
11 evidence collection kit from a Minor
12 Excuse the pronunciation for Minor if it's
13 incorrect.

14 Q. And what was included in that kit?

15 A. Well, first thing I do when I get the sexual
16 assault evidence collection kit is break it down
17 into its components and see what's there. So in
18 this case, we got the smears that I was referring
19 to, the vaginal, oral and rectal smears; we got
20 vaginal swabs, oral swabs, buccal swabs, particle
21 swabs, which is the standard, for Minor we
22 got a suspected body fluid swab and debris
23 collection.

24 And debris collection means they were looking
25 for hairs or anything that could give indication to

DIRECT EXAMINATION OF PAUL MEAH BY MS. SIMPSON

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1 the crimes occurred.

2 Q. Okay. I'm going to show you what's been marked
3 as State's Exhibit 12. Do you recognize this?

4 A. It might be inside of this.

5 Q. Would you like a pair of -- I think we have --

6 A. Here we go. These are the heat-sealed pouches
7 I was referring to.

8 THE COURT: Mr. Meah, my court reporter has
9 asked that you slow down just a tad.

10 THE WITNESS: I'm sorry. This is the -- may I
11 move this too?

12 THE COURT: Sure. She has to take everything
13 down. Every now and then we get a witness who is --

14 THE WITNESS: I can only imagine. That's --
15 and it's very technical too. I will try to slow
16 down.

17 THE COURT: Please continue.

18 THE WITNESS: So these are the heat-sealed
19 pouches I was referring to. This is probably a
20 debris collection or -- item 2 -- I'm trying -- I
21 did not analyze this item.

22 This is the sexual assault evidence collection
23 kit. You can see my initials and the date that I
24 worked on it. So this would come to me sealed up
25 and I'd cut it with a scalpel and then initial and

1 date when I closed it back.

2 Those are the smears I was referring to.

3 There's the debris collection. And the envelope in
4 front of that debris collection is what would
5 contain the swabs.

6 BY MS. SIMPSON:

7 Q. Okay. And you said you had a buccal swab of
8 the victim, Minor [REDACTED] in this case?

9 A. Correct.

10 Q. So you had a known standard for purposes of
11 your analysis?

12 A. Correct.

13 MS. SIMPSON: Your Honor, at this time we would
14 offer State's Exhibit 12 in to evidence.

15 THE COURT: Any objection?

16 MR. JOHNSON: No objection.

17 THE COURT: 12. Thank you.

18 (State's Exhibit No. 12 admitted in to
19 evidence.)

20 BY MS. SIMPSON:

21 Q. I want to go through what you tested and the
22 examination that you've done. Tell the jury how you
23 conducted your examination and your analysis of the
24 items conducted in this kit.

25 A. Okay. Well, I go through each sample and I

DIRECT EXAMINATION OF PAUL MEAH BY MS. SIMPSON

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1 test for -- usually for semen. It depends on what's
2 indicated. The nurse indicates on -- sometimes on
3 the envelopes what we're looking for in that
4 example. So given what the victim has told the
5 nurse about the assault, it could be saliva, it
6 could be semen, or it could be blood. So we'll get
7 a request on the envelope.

8 And in this case, it was to test for semen.
9 And I just go through and test each swab. So in
10 this case, I tested -- I looked at the smears, I
11 didn't see any spermatozoa. I tested the vaginal
12 swabs and I didn't find any semen; I tested the oral
13 swabs and no semen was identified; I tested the
14 rectal swabs and no semen was identified.

15 Q. Let me stop you right there. Once you
16 determine spermatozoa -- and how is that different
17 than semen?

18 A. Semen is the fluid that carries spermatozoa.
19 So it's the -- just the liquid portion.

20 Q. And if there isn't any identified or -- on the
21 item, do you stop your examination or what do you
22 do?

23 A. We do. We generally stop there, because that's
24 really where the strength of DNA lies. When we have
25 semen on something, the spermatozoa stronger, as I

1 told you about earlier, the way it differentially
2 lyses, that's where we can really identify a male
3 subject. That's the strength of our analysis.
4 Touch DNA doesn't do very well in these cases. And
5 for a vaginal swab, if you can imagine, if I were to
6 grab your arm and tried to swab your arm to identify
7 myself on your arm, it won't do very well because
8 I'm going to collect many more cells from you than I
9 would from just the few that I left just by touching
10 you.

11 Q. So that creates problems with things like
12 mixtures and things of that nature?

13 A. It does. And just how many -- the contribution
14 to the mixture is the problem. So you can imagine
15 pennies -- let's say we have 100 pennies and we know
16 that one was a 1934 penny. Well, DNA can't tell the
17 difference between a 1976 or a 1934 penny; it just
18 says these are all the pennies. Well, all of the
19 other pennies would outweigh the 1934. We'd never
20 be able to tell which one was the 1934 just by
21 looking at it. That's pretty much what this comes
22 down to.

23 Q. And I believe we were on item 1.5, the buccal
24 swab.

25 A. Yes. So I did take the buccal swab and

CROSS-EXAMINATION OF PAUL MEAH BY MR. JOHNSON

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1 generate a profile from the victim. That was just
2 for in case we needed future comparisons for, maybe,
3 a blanket or some underwear, which are often
4 submitted later on.

5 Q. And with respect to -- and had any -- I almost
6 forgot an item. Items 1.6 and 1.7, what were your
7 findings and results with respect to those?

8 A. Item 1.6 was a suspected body fluid swab, and
9 there was no semen identified on that. And item 1.7
10 was debris collection, and there weren't any hairs
11 found in the debris collection to test.

12 Q. And outside of the sexual assault kit, did you
13 actually examine any other items of evidence in this
14 case?

15 A. I don't believe so. No.

16 MS. SIMPSON: I beg the Court's indulgence.

17 Thank you, Mr. Meah.

18 THE COURT: Cross?

19 MR. JOHNSON: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q. Mr. Meah, you said you tested for semen because
23 the nurse indicated semen?

24 A. Yes, sir. That's usually what we test for. It
25 depends on what it says on the front of the envelope

1 and -- yes. The test for semen in this case was
2 negative.

3 Q. That's what was on the front of that envelope?

4 A. I can't recall. I can open the kit and I can
5 look at the front of the envelopes, but --

6 Q. But you just tested for semen?

7 A. Yes, sir.

8 Q. Okay. And one short question: His semen
9 wasn't found in anything you tested; is that
10 correct?

11 A. No, sir.

12 MR. JOHNSON: That's all I have.

13 THE COURT: Redirect?

14 MS. SIMPSON: Brief redirect.

15 REDIRECT EXAMINATION

16 BY MS. SIMPSON:

17 Q. Was there any semen or sperm identified in any
18 of the items that you analyzed?

19 A. No, ma'am.

20 MS. SIMPSON: Nothing further, Your Honor.

21 THE COURT: All right. Thank you. You may
22 step down. You're released from your subpoena.

23 Next witness, please.

24 MS. CAVANAUGH: The State calls Investigator
25 Steve Knafelc.

DIRECT EXAMINATION OF STEVE KNAFELC BY MS. CAVANAUGH

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1 STEVE KNAFELC

2 being first duly sworn, testified as follows:

3 THE WITNESS: So help me God.

4 THE CLERK: Have a seat, please, and state your
5 full name for the record.

6 THE WITNESS: Steve Knafelc.

7

8

9 DIRECT EXAMINATION

10 BY MS. CAVANAUGH:

11 Q. Good morning, Investigator Knafelc.

12 A. Good morning.

13 Q. Are you a captain now?

14 A. Yes, I am.

15 Q. I apologize, Captain.

16 Where are you employed?

17 A. Here at the sheriff's office in Kershaw County.

18 Q. And you just stated you're a captain. How long
19 have you been a captain?

20 A. A little over a year now. Before that I was a
21 lieutenant over criminal investigations.

22 Q. And as a captain, what are some of your duties
23 with the Kershaw County Sheriff's Department?

24 A. I oversee all crime scenes, assign cases, all
25 criminal cases, criminal investigation cases that

1 come through the sheriff's office, assign different
2 points of the job itself, and I also oversee some
3 criminal sexual conduct cases also.

4 Q. So you do oversee --

5 A. Pretty much.

6 Q. -- those type of cases?

7 A. Yes, ma'am.

8 Q. Okay. And did you work -- do you work with
9 Sergeant Rick Bailey --

10 A. I do.

11 Q. -- with the sheriff's department?

12 A. Yes, ma'am.

13 Q. As far as the investigation into the defendant,
14 Nakia Johnson, back in 2011, did you have any
15 involvement with that investigation?

16 A. At that time, no, ma'am. In fact, I was going
17 to a conference during that time. Like I said, I
18 was a lieutenant at that moment in time, but Rick
19 Bailey was the on-call. So dispatch did call me and
20 let me know what was going on, but I was heading to
21 the class itself. So I asked them to just give Rick
22 and a call since he was on call at the time. I
23 didn't have anything, at the time, to do with the
24 case.

25 Q. At that time, did you -- were you part of the

1 special victims unit team?

2 A. Yes, I was.

3 Q. And can you explain what all that encompasses?

4 A. Well, we have certain investigators that mainly
5 deal with these type cases. And at that particular
6 time, I can't remember if we had a unit set aside
7 just for these type cases, but today we do. But
8 again, I was a lieutenant, so I think they called me
9 just because I was dealing with a lot of these type
10 cases at the time. But, like I said, I wasn't in
11 the county to assist.

12 Q. And you have experience in investigating
13 criminal sexual conduct cases?

14 A. Yes.

15 Q. But with this particular investigation, you
16 were not directly involved; correct?

17 A. I was not.

18 Q. Back last October of 2014, so about nine months
19 ago, did you have some involvement with this case?

20 A. Yes, ma'am. I was asked to meet a member of
21 the defendant's staff -- I believe his name is
22 Mr. Dowling -- to meet him and also the victim in
23 this case and the victim's mother to an alleged
24 incident location in Cassatt.

25 THE COURT: Where?

1 THE WITNESS: In Cassatt.

2 THE COURT: Someone from the defendant's side
3 and the mother and who?

4 THE WITNESS: The victim of the case.

5 BY MS. CAVANAUGH:

6 Q. And just to clarify, that particular afternoon,
7 did you -- did the investigator with the defense's
8 staff meet with you?

9 A. He did not. We -- I believe we spoke on the
10 phone. And he said -- he was supposed to meet me at
11 the Cassatt Country Store, obviously in Cassatt, and
12 then from there we were supposed to go to the
13 residence of the aunt, if I'm not mistaken.

14 But he got tied up with some things that was
15 going on, so we didn't meet personally at that
16 particular time.

17 Q. Did you meet the victim and the victim's
18 mother?

19 A. I did. He instructed -- Mr. Dowling instructed
20 to go ahead and do what I was supposed to do as far
21 as going to the alleged incident in Cassatt. But I
22 did meet with the mother and the victim at the
23 residence on Cassatt Road.

24 Q. And is -- the residence on Cassatt Road, is
25 that located in Kershaw County?

- 1 A. Yes, ma'am.
- 2 Q. Okay. When you arrived at the aunt's home,
3 where did y'all -- where did y'all go after that?
- 4 A. Obviously, I arrived at the residence. They
5 were waiting on the victim and the victim's mother
6 was waiting in a car. I told them who I was. I
7 believe I gave the mother my business card. The
8 victim got in the front seat of my car and the
9 mother got in the back seat and we went to a
10 location just from here as -- it would be easier for
11 y'all to understand it this way: It's from here to
12 maybe the post office across the street to a
13 location off of Cassatt onto a dirt road.
- 14 Q. So it was very close?
- 15 A. Very close.
- 16 Q. Was it still in Kershaw County?
- 17 A. Yes, ma'am.
- 18 Q. Who was actually giving you the directions as
19 far as where to go?
- 20 A. The victim. She was sitting in the front seat
21 with me, and I asked her to tell me where to go and
22 that's what she did.
- 23 Q. Is that **Minor**
- 24 A. Yes, ma'am.
- 25 Q. I'm going to show you what's already been

1 entered in to evidence as State's Exhibit 5. Is
2 this the house that you met Minor and her mom at?

3 A. Yes, ma'am.

4 Q. And was that Aunt Missy's house?

5 A. Yes, ma'am, I believe so.

6 Q. I'm also going to show you what's been entered
7 into evidence as State's Exhibits 8 and 9. Does
8 that look familiar?

9 A. Yes, ma'am.

10 Q. And is that the road that you just referred to?

11 A. Yes, ma'am. That's the dirt road off of
12 Cassatt Road.

13 Q. In Kershaw County?

14 A. Yes, ma'am.

15 Q. Investigator Knafelc, once you -- did you have
16 any information about what occurred at that dirt
17 road?

18 A. Investigator Bailey just -- we talked about it.
19 Obviously when I got back from the conference, he
20 told me what was going on. He just basically told
21 me that there was an alleged incident that happened
22 on that road. And that's where I met up with the
23 victim.

24 Q. And you met with him back in October of 2014?

25 A. Yes; October 6th.

CROSS-EXAMINATION OF STEVE KNAFELC BY MR. JOHNSON

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1 Q. When you got to the dirt road, did you take
2 photographs of the dirt road?

3 A. I did. The mother and her daughter stayed in
4 my vehicle. I parked, got out, took several photos,
5 and got back in and went -- took them back to the
6 residence, to their aunt's house.

7 Q. And while you were in the car, did the victim
8 have any trouble directing you to this dirt road's
9 location?

10 A. No, ma'am, not at all. No, ma'am.

11 Q. After you took the pictures, where did you go,
12 Investigator Knafelc?

13 A. I took them back to the residence, to the
14 aunt's house, and dropped them off.

15 MS. CAVANAUGH: I beg the Court's indulgence.

16 BY MS. CAVANAUGH:

17 Q. Later on did you have an opportunity to meet
18 with the investigator from the Defense?

19 A. Yes, ma'am, I did.

20 Q. And did you show him this location as well?

21 A. I did.

22 MS. CAVANAUGH: I beg the Court's indulgence.

23 No further questions at this time.

24 THE COURT: Mr. Johnson?

25 CROSS-EXAMINATION

1 BY MR. JOHNSON:

2 Q. I just want to identify two things. I think
3 you were on the way to a conference or something on
4 10/11/11 when the call first came in, in 2011.

5 A. Yes. I believe it was -- October, I normally
6 go to a hostage negotiation conference at the beach.
7 And I believe that's probably where I was heading
8 to.

9 Q. All right. And the date that you took them to
10 see the scene was two years later; it was 10/6/2014?

11 A. Yes, sir.

12 Q. Thank you, sir.

13 THE COURT: Ma'am, anything else?

14 MS. CAVANAUGH: No, sir, Your Honor.

15 THE COURT: You're excused. You may be
16 released from your subpoena.

17 Next witness.

18 MS. CAVANAUGH: Your Honor, may we approach?

19 (Sidebar conference.)

20 THE COURT: Move along.

21 MS. CAVANAUGH: State calls Laurie Caldwell.

22 (Laurie Caldwell enters the courtroom.)

23 LAURIE CALDWELL

24 being first duly sworn, testified as follows:

25 THE WITNESS: Yes, ma'am.

DIRECT EXAMINATION OF LAURIE CALDWELL BY MS. CAVANAUGH

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1 THE CLERK: Thank you. Be seated in the
2 witness chair and state your full name.

3 THE WITNESS: Laurie Varnedoe Caldwell.

4 DIRECT EXAMINATION

5 BY MS. CAVANAUGH:

6 Q. Ms. Caldwell, what is your profession?

7 A. I am, right now, a contract agent with the
8 State Law Enforcement Division. I'm retired law
9 enforcement.

10 Q. What do you -- is that commonly known as SLED?

11 A. Yes.

12 Q. And what is your contract position with SLED
13 right now?

14 A. I'm assigned to the Social Security Disability
15 Fraud Investigative Unit.

16 Q. And prior to contracting with SLED, did you
17 work -- can you describe your employment before.

18 A. Yes. I retired from SLED in February 2011, and
19 there I did criminal investigations primarily
20 focused on crimes against children and vulnerable
21 adults. Upon retirement, I joined the staff at the
22 Dickerson Center For Children, which is a
23 community-based child advocacy center in West
24 Columbia, and I was over their child forensic
25 program and their multidisciplinary team and victim

1 advocacy program.

2 Q. So who -- when --

3 THE COURT: Hold on a second.

4 MR. JOHNSON: Your Honor, may we approach
5 again?

6 THE COURT: Sure.

7 (Sidebar conference.)

8 THE COURT: Mr. Johnson, it might just be best
9 to do it now.

10 Madam Forelady, ladies and gentlemen, step out
11 just for a second, please. It won't take but a
12 second. Don't discuss the case and don't
13 deliberate, please.

14 (The jury exits the courtroom at 10:20 AM.)

15 THE COURT: Mr. Johnson.

16 MR. JOHNSON: Your Honor I'd like to object to
17 any testimony from this witness because they -- I
18 have reviewed the -- I reviewed the interview. I
19 think they're leading questions, I think they're
20 suggestive questions, I think they're inconsistent
21 questions, and I would just object to that -- the
22 testimony on that -- on those grounds.

23 And if his Honor decides to overrule that, then
24 I would object and ask the Court to rule on the
25 issue of is the testimony more prejudicial than

1 probative.

2 THE COURT: It's my understanding this witness
3 conducted an interview of the child.

4 Is that correct?

5 MS. CAVANAUGH: Yes, Your Honor. Our position
6 is that she is part of the investigation. She was
7 asked to interview **Minor** the victim in this
8 case, because the other interview was ended short
9 because she did get sick.

10 Under 801 -- we're not going into any aspect of
11 the issues that the Court did have, you know, under
12 State v. Kromah and that sort of thing. We're
13 solely going on that Ms. Caldwell is a fact witness,
14 she's part of the investigation, and her testimony
15 as to time and place under 801(d)(1)(d) is --

16 THE COURT: Hold on. I'm not in my courtroom,
17 so I'm not sure where the rules are.

18 What bothers me is, this an out-of-court
19 statement by the child under 12. But we have to do
20 a 17-23-175 analysis?

21 MS. CAVANAUGH: Your Honor, she's actually over
22 12. And I believe that particular statute deals
23 with admitting the video. We're not seeking to
24 introduce the video in this case since she was over
25 the age of 12.

1 THE COURT: I understand that. So -- the
2 victim; right?

3 MS. CAVANAUGH: Yes, Your Honor.

4 THE COURT: So her interview was after she was
5 12?

6 MS. CAVANAUGH: Yes, Your Honor. It was -- her
7 first interview was conducted October 12th, 2011,
8 she was 11 years old. Her birthday is [REDACTED]
9 So she turned 12, and then Ms. Caldwell interviewed
10 her in November, three weeks later, when she was 12.
11 I believe that -- so we're not putting in the video,
12 just Ms. Caldwell is part of this investigation and
13 we believe that her testimony is admissible under
14 801(d) --

15 THE COURT: 801 what?

16 MS. CAVANAUGH: 801(d), and then under that
17 section, Section D, the very last subsection.

18 THE COURT: D like dog?

19 MS. CAVANAUGH: Yes, sir.

20 THE COURT: What's under that?

21 MS. CAVANAUGH: (D)(1)(d).

22 THE COURT: (D)(1)?

23 MS. CAVANAUGH: (D)(1)(d).

24 THE COURT: So you're going to limit her
25 testimony -- her being Ms. Caldwell -- to time and

1 place of the incident?

2 MS. CAVANAUGH: Time and place, Your Honor,
3 yes. And we also are not asking her to identify the
4 defendant, we're not asking her to say the
5 defendant's name; solely limited to time and place.

6 THE COURT: What the victim says where it took
7 place and when?

8 MS. CAVANAUGH: Yes, Your Honor. And, I mean,
9 I have a highlighted copy of her interview that I
10 can hand up so she can specifically address time and
11 place.

12 THE COURT: And that interview of the victim by
13 this witness, Ms. Caldwell, has been given to
14 Mr. Virgin Johnson?

15 MS. CAVANAUGH: Yes, Your Honor.

16 THE COURT: And the victim has been subject to
17 cross-examination not only on her forensic
18 interview, but this -- well, she was able to be
19 cross-examined on this statement as well?

20 MS. CAVANAUGH: She was, Your Honor.

21 THE COURT: Mr. Virgin Johnson, anything else
22 you want to tell me?

23 MR. JOHNSON: Your Honor, if they're going -- I
24 was looking at the case Kromah. And, Your Honor,
25 maybe the Court can clarify for me time, date and

1 circumstances of the interview. I'm of the opinion
2 that just meant what they observed at the interview.
3 I don't think that -- and I want the Court to
4 clarify that for me. I don't think that means
5 testify to any other events or occurrence that
6 happened in the past.

7 I'm trying to understand time, date, and
8 circumstance of the interview. What are they trying
9 to get? I'm trying to determine, what are they
10 trying to get her to testify to? If they're not
11 going to use his name, is she going to testify to
12 what the child said about other incidents or what?

13 THE COURT: The child is going to testify as to
14 what happened on such-and-such date and where, and
15 that be it; right?

16 MS. CAVANAUGH: Yes, Your Honor. The --

17 THE COURT: Do the proffer. Ask the question
18 on a proffer.

19 EXAMINATION

20 BY MS. CAVANAUGH:

21 Q. Ms. Caldwell, did you make a report in this
22 particular case regarding your interview of Minor [REDACTED]

23 [REDACTED]

24 A. Yes.

25 Q. And is this actually a copy of your report?

1 A. Yes.

2 THE COURT: Now, use that to refresh her memory
3 and to focus in on the exact -- the exact evidence
4 that can be elicited under 801(d)(1)(d).

5 Q. Did -- does that report serve to refresh your
6 memory of the interview you conducted on Minor

7 A. Yes, it does.

8 Q. And did Minor indicate to you that she had
9 been sexually salted?

10 A. Yes, she did.

11 Q. And did she indicate to you when those assaults
12 took place?

13 A. Yes. She provided timeframes, yes.

14 Q. And can you -- did you put those timeframes in
15 your report?

16 A. Yes, I did.

17 Q. And what were those timeframes?

18 A. She said that some of the victimization took
19 place in Fairfax, South Carolina when she was in the
20 1st and 2nd grade. And she described living in a
21 brick house when she was in 1st grade. And she said
22 that some incidents happened at her sister's house
23 in Bishopville.

24 And then she talked about when she was in 3rd
25 and 4th grade, she lived with her grandmother and

1 that some incidents took place there. And she
2 talked about an incident when she was in the 4th
3 grade where they were in a hotel and an incident
4 took place there.

5 She described -- she talked about her family,
6 in 5th grade, moved into a trailer in Bishopville,
7 and the incidents took place in her bedroom, the
8 living room, the bathroom, and her brother's room.

9 She talked about the summer between her 5th and
10 6th grade years when she went to Disney World on
11 vacation, that something happened at that location.
12 And then during the summer when she lived with her
13 aunt in Cassatt, that an incident took place down a
14 dirt road.

15 THE COURT: And that would be the sole
16 testimony you would elicit from her?

17 MS. CAVANAUGH: Yes, Your Honor. And we
18 believe it's admissible under 801(d)(1)(d), as well
19 as the fact that Mr. Johnson has repeatedly put the
20 victim's credibility and the different statements
21 that she's given into question. So we believe that
22 this testimony is appropriate and it is under the
23 rules.

24 THE COURT: All right. Mr. Johnson, why is it
25 not admissible under 801(d)(1)(d)?

1 MR. JOHNSON: Your Honor, may I have a look at
2 801(d) (1) (d)?

3 THE COURT: Absolutely.

4 MR. JOHNSON: I just don't know what it says.

5 THE COURT: It says this: A statement is not
6 hearsay if -- that's D -- 1, prior statement by a
7 witness; D, declarant -- who is the young lady --
8 testifies at the trial and is subject to
9 cross-examination concerning the statement and the
10 statement is, D, consistent with the declarant's --
11 young child -- testimony in a criminal sexual
12 conduct case or attempted CSC where the declarant --
13 the child -- is the alleged victim -- she is -- and
14 the statement is limited to the time and place of
15 the incident. It's dead on.

16 MR. JOHNSON: Your Honor, I understand. My
17 objection would be, number one, she alleged other
18 incidents. They're not consistent. And I just want
19 to put it on the record. The other interviewer that
20 testified, her statements are not consistent with
21 what she said -- this witness -- I know we're not
22 under that 17-1-25, but there were questions of
23 leading or other things.

24 And so I'm assuming -- do I just get the right
25 to cross-examine her about everything?

1 THE COURT: This witness?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: You get to cross-examine her on all
4 relevant issues in the trial of the case.

5 MR. JOHNSON: Your Honor, if you would just
6 note my objections.

7 THE COURT: I do.

8 MS. CAVANAUGH: Your Honor --

9 MR. JOHNSON: And the more probative than
10 prejudicial.

11 THE COURT: Overruled on 403.

12 MS. CAVANAUGH: Just to be clear, Your Honor,
13 if he opens the door to certain issues on his cross,
14 then she's not limited just to testimony under
15 801 --

16 THE COURT: That is correct. He's a seasoned
17 lawyer, he knows.

18 MS. CAVANAUGH: I just wanted to clarify that.

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

21 (The jury enters the courtroom at 10:32 AM.)

22 THE COURT: Okay. Madam Forelady, ladies and
23 gentlemen, we're ready to proceed.

24 You may proceed, ma'am.

25 DIRECT EXAMINATION

1 (Continued)

2 BY MS. CAVANAUGH:

3 Q. I believe you were in the middle of discussing
4 the fact that you did interview Minor

5 A. Yes, I did.

6 Q. And what day did you -- what date did you
7 interview Minor

8 A. I interviewed her on November 9th, 2011.

9 Q. And how old was she at the time that you
10 interviewed her?

11 A. She was 12.

12 Q. And when was her birthday?

13 A. Her birthday was -- or is

14 Q. So she had just turned 12 about
15 prior?

16 A. Yes.

17 Q. And when you conduct these interviews, and this
18 one in particular, who is in the room when you do
19 the interview?

20 A. No one is in the room other than myself and the
21 alleged victim.

22 Q. Do other individuals associated with the case
23 or with the Dickerson Center have opportunity to
24 observe outside of the room?

25 A. Yes. They can do that through the camera

1 system in a room located downstairs. The child
2 forensic interview room at the Dickerson Center is
3 upstairs.

4 Q. And are these interviews recorded?

5 A. Yes, they are.

6 Q. When you interviewed **Minor** did you ask
7 open-ended questions?

8 A. Yes, I did.

9 Q. And did she appear to understand your
10 questions?

11 A. Yes, she did.

12 Q. Did she disclose to you she was sexually
13 assaulted?

14 A. Yes, she did.

15 Q. And did she tell that these had occurred over a
16 period of years?

17 A. Yes; approximately four years.

18 Q. And, specifically, did she tell you when these
19 assaults began?

20 A. Yes.

21 Q. And do you actually have your -- do you make a
22 report of your interview?

23 A. Yes, I do.

24 Q. And do you have those notes up there with you?

25 A. Yes, I do.

1 Q. Do they help refresh your memory?

2 A. Yes.

3 Q. Again going to back to when she said they
4 began, what grade was she in when it began?

5 A. Started when she was in the 1st grade.

6 Q. And did she indicate where she was living at
7 that time?

8 A. She was living in Fairfax, South Carolina.

9 Q. And did these occur in a house?

10 A. She said that it occurred in a brick house
11 and -- when they lived in Fairfax, and then
12 eventually they moved into a trailer and they
13 continued.

14 Q. Okay. Did she indicate what room these
15 occurred in?

16 A. In the brick house she said it started -- that
17 she --

18 Q. Was it in her bedroom?

19 A. His bedroom --

20 Q. His bedroom?

21 A. -- was one of the locations.

22 Q. Okay. Did she --

23 THE COURT: Hold on a second.

24 MR. JOHNSON: Your Honor, could we approach?

25 THE COURT: Sure.

1 (Sidebar conference.)

2 BY MS. CAVANAUGH:

3 Q. Ms. Caldwell, did she indicate they continued
4 into 2nd grade?

5 A. Yes, she did.

6 Q. And what -- where was she living in 2nd grade?

7 A. Apparently they had moved to Bishopville, South
8 Carolina.

9 Q. Did she indicate she had been assaulted in
10 Bishopville in 2nd grade?

11 A. Yes, she did.

12 Q. Did they continue into when she was in 3rd and
13 4th grade?

14 A. Yes.

15 Q. And did she give you locations where they
16 occurred during those grades?

17 A. In 3rd and 4th grade, she said that she was
18 living with her grandmother and that the assaults
19 continued there, as well as a hotel in Bishopville
20 when she was in 4th grade.

21 Q. Okay. Did they -- did she indicate to you that
22 the assaults continued into 5th grade?

23 A. Yes. She said that her family moved into a
24 trailer located in Bishopville and that she was in
25 the 5th grade, and that she was assaulted in her

1 bedroom and the living room, the bathroom --

2 MR. JOHNSON: Your Honor, objection, move to
3 strike.

4 THE COURT: Okay. Disregard where -- just the
5 location, ma'am, time and place, time and location;
6 house and what year.

7 Q. So 5th grade, they occurred in her home?

8 A. Yes.

9 Q. Did she also tell you that they occurred in the
10 summer between 5th and 6th grade?

11 A. Yes, she did.

12 Q. And what -- at that time she was living with
13 her aunt in Cassatt?

14 A. Correct, yes.

15 Q. Other than interviewing Minor is that the
16 extent of your involvement with Minor after this
17 interview?

18 A. Yes.

19 MS. CAVANAUGH: Thank you, Ms. Caldwell.

20 Please answer any questions from the Defense.

21 MR. JOHNSON: No questions for Ms. Caldwell.

22 THE COURT: All right. You may step down.

23 Have a pleasant day.

24 Is she released from her subpoena?

25 MS. CAVANAUGH: Yes, Your Honor.

1 MR. JOHNSON: No objection.

2 THE COURT: Please call your next witness.

3 MS. SIMPSON: Your Honor, we have one issue.

4 She should be here --

5 THE COURT: Go check.

6 MS. SIMPSON: -- but if we could just have a
7 couple seconds to check.

8 THE COURT: Absolutely.

9 MS. SIMPSON: Your Honor, may we approach?

10 (Sidebar conference.)

11 THE COURT: All right. Madam Forelady, ladies
12 and gentlemen, the next witness, I have to conduct
13 what's called a proffer, which means I have to
14 listen to her testimony to determine whether or not
15 it's admissible. That's what I planned to do at
16 8:30 this morning. It's not going to take nearly
17 that long. But we had some scheduling mess-ups
18 and -- well, I won't go any further than that.

19 So I'll have to ask you to step out just for a
20 second and let me do this proffer. Don't discuss
21 the case and don't deliberate.

22 (The jury exits the courtroom at 10:42 AM.)

23 THE COURT: All right. Ma'am?

24 MS. CAVANAUGH: State calls Dr. Alison Foster.

25 THE COURT: Come around, please.

1 ALISON FOSTER

2 being first duly sworn, testified as follows:

3 THE WITNESS: I do.

4 THE CLERK: Have a seat and state your full
5 name for the record.

6 EXAMINATION

7 BY MS. CAVANAUGH:

8 Q. Good morning, Dr. Foster.

9 A. Good morning.

10 Q. Can you briefly -- or can you describe your
11 education and training background for the Court?

12 A. Certainly. College, Emory University in
13 Atlanta. And then I worked for a year at a
14 residential treatment facility called the Devroe
15 Center, after which I relocated to Columbia, South
16 Carolina where I attended the Ph.D. program in
17 clinical community psychology at the University of
18 South Carolina.

19 I graduated in the spring of 1996, completed a
20 postdoctoral year of training from '96 to '97 at
21 William S. Hall Psychiatrist Institute -- excuse me.
22 That was from 1994 to 1995, then I graduated in
23 1996, then did a year of postdoctoral supervised
24 practice. And I was already employed as the program
25 director of the Assessment & Resource Center, which

1 became an accredited children's advocacy center in
2 1999.

3 So I've been continuously employed from 1995 to
4 the present at the ARC. My current title is chief
5 psychologist. I'm there part-time now since 2012.
6 And then I also have a private practice of forensic
7 clinical psychology work.

8 Q. And does your education and training and the
9 background that you described, does that include
10 research on child victims of sexual and physical
11 abuse?

12 A. Yes. So I've been training -- specialized
13 training I began in the 1990s. And certainly all of
14 my postdoctoral continuing education is in the area
15 of children, child abuse, forensic evaluations. So
16 I'm constantly attending national, regional and
17 statewide conferences and updating my education and
18 knowledge in those areas.

19 Q. And have you actually -- have you been the
20 author of any publications on this topic?

21 A. I authored a chapter on -- or a monograph, it
22 would be called, on child development for the
23 American Prosecutors Research Institute. And I a
24 book chapter coming out, but that's actually more
25 about child custody evaluations.

1 THE COURT: Well, let me ask you this, ma'am:
2 Does your education and your experience and work
3 history, has that dealt with the common behavioral
4 characteristics of sexual assault victims and the
5 range of responses to sexual assault encountered by
6 children?

7 THE WITNESS: Yes, sir.

8 THE COURT: And the effect of sexual abuse on a
9 victim's subsequent conduct, such as delayed
10 reporting?

11 THE WITNESS: Yes.

12 MS. CAVANAUGH: Your Honor, at this time I ask
13 that Dr. Foster be qualified as an expert in child
14 abuse assessments.

15 THE COURT: All right. Mr. Johnson, do you any
16 cross-examination as to her qualifications?

17 MR. WILLIAMS: No, Your Honor --

18 THE COURT: I'm sorry.

19 MR. WILLIAMS: -- no cross-examination as to
20 her qualifications; just that you rule as far as
21 qualification and reliability under 702.

22 THE COURT: Now, do you have any dispute that
23 this is a subject matter that is beyond the ordinary
24 knowledge of the jury, thus requiring an expert to
25 explain the matter to the jury.

1 MR. WILLIAMS: Yes, Your Honor. We -- since
2 her testimony is only to the behavior or common
3 behavior of the individual in similar circumstances,
4 we would say that a jury would be able to understand
5 on their own without an expert in this particular --

6 THE COURT: Well, in light of the ruling in the
7 State vs. Brown, which went into a long explanation,
8 dissection, of whether or not this is a subject that
9 an expert could testify to, I respectfully overrule
10 your objection as to that.

11 MR. WILLIAMS: Thank you, Your Honor.

12 THE COURT: And it's all set forth in State vs.
13 Brown, and the other cases are cited therein, and
14 from numerous jurisdictions elsewhere that is cited
15 in that case.

16 MS. CAVANAUGH: Thank you, Your Honor.

17 EXAMINATION

18 (Continued)

19 BY MS. CAVANAUGH:

20 Q. And just before we start, did you have any
21 direct involvement in the investigation of the
22 defendant, Nakia Johnson?

23 A. No.

24 Q. Did you interview the victim in this case,

25 Minor

1 A. No.

2 Q. Did anyone at the Assessment & Resource Center
3 interview Minor

4 A. No.

5 Q. So you're essentially a blind witness in this
6 case?

7 A. That's correct.

8 THE COURT: And you will not be offering any
9 opinion regarding the credibility or the
10 believability of the victim and/or other witnesses;
11 is that correct, ma'am?

12 THE WITNESS: That is correct, sir.

13 THE COURT: Or commenting on whether or not she
14 was actually assaulted.

15 THE WITNESS: Correct.

16 THE COURT: Just simply an opinion about the
17 effects sexual assault has or responses to sexual
18 assault on children?

19 THE WITNESS: Correct.

20 THE COURT: Anything else you need
21 cross-examination on, on the proffer?

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: All right.

24 I will allow it, as long as it's limited to the
25 scope that we just talked about; that she will not

1 have any opinions concerning the believability or
2 the credibility of any of the witnesses, including
3 the victim in this case.

4 MS. CAVANAUGH: Thank you, Your Honor.

5 THE COURT: Bring the jury in, please.

6 (The jury enters the courtroom at 10:51 AM.)

7 THE COURT: All right. Ma'am, you may call
8 your next witness.

9 MS. CAVANAUGH: Thank you, Your Honor. The
10 State calls Dr. Alison Foster.

11 THE COURT: All right. Ma'am, come around and
12 be sworn by our Clerk, please.

13 ALISON FOSTER

14 being first duly sworn, testified as follows:

15 THE WITNESS: I do.

16 THE CLERK: Be seated and state your full name
17 for the record, please.

18 THE WITNESS: Alison Foster.

19 DIRECT EXAMINATION

20 BY MS. CAVANAUGH:

21 Q. Dr. Foster, where are you employed?

22 A. I'm employed in two places in Columbia, South
23 Carolina. I work for the Assessment & Resource
24 Center, which is a children's advocacy center in
25 Columbia. I was the program director there for 17

1 years and I'm still there part-time as chief
2 psychologist.

3 And then I also have a private practice as a
4 clinical psychologist involved in forensic matters.
5 So that means court ordered evaluations of children
6 and families, including issues in family court and
7 criminal court.

8 Q. And can you describe your -- where did you work
9 prior to having your -- what you just stated?

10 A. Sure. So my employment, I -- before I finished
11 my Ph.D. in clinical psychology, I was already hired
12 at the ARC. So beginning in 1995, I became the
13 program director there. So for 17 years, 1995 to
14 2012, I was full-time at the ARC. And I also had a
15 private practice during the time of 1998 forward.
16 Then beginning in 2012, I split my time now between
17 half time at the ARC and the other half at my
18 private practice.

19 Q. And can you tell us your educational
20 background?

21 A. I went to college at Emory University in
22 Atlanta, graduated in 1988. I worked for a year in
23 a residential treatment facility for emotionally
24 disturbed adolescents. Then I graduated --

25 THE COURT: What was your degree in, ma'am?

1 THE WITNESS: I'm sorry, sir. I graduated with
2 Bachelor's degrees in English and psychology. Then
3 when I came to USC in Columbia, I completed the
4 Ph.D. program there in clinical community
5 psychology. So I have a Ph.D. in clinical community
6 psychology, which leads to a licensure after a year
7 of postdoctoral work that's supervised. And I've
8 been a licensed clinical psychologist since 1997.

9 BY MS. CAVANAUGH:

10 Q. And do you teach any -- at any locations?

11 A. Yes. I have what's called an adjunct
12 appointment with the University of South Carolina
13 School of Medicine, Department of Neuropsychiatry
14 and Behavioral Science. That appointment dates back
15 to 1998, I believe. So I teach medical students and
16 residents who are trained to become family practice
17 physicians, child psychiatrists, and forensic
18 psychiatrists.

19 And then I also train nationally in various
20 academies that focus on child abuse and forensic
21 interviewing of children. So, for example, the
22 National Children's Advocacy Center, the National
23 Child Protection Center, the National District
24 Attorneys Association, and then I conduct here in
25 the state of South Carolina, senior faculty for a

1 five-day forensic interview training course called
2 ChildFirst.

3 Q. And have you been the author of any clinical
4 research in the area of child abuse?

5 A. A little bit. I'm mostly a practitioner. But
6 I did publish a monograph, it's called, for the
7 American Prosecutors Research Institute all about
8 child development and benchmarks of child
9 development from 3 to 18.

10 And then I conduct -- I do a lot of
11 presentations more than publications. So I train at
12 various national child abuse conferences, regional
13 and statewide conferences, every year.

14 Q. And are there certain behaviors of alleged
15 child victims that are different from what the
16 average person might believe?

17 A. I would say so, yes.

18 Q. And does your -- does your education and
19 training and employment and the presentations that
20 you've presented, do those involve that type of
21 behavior?

22 A. Yes, it does.

23 MS. CAVANAUGH: Your Honor, at this time I'd
24 ask that Dr. Foster be admitted as an expert in the
25 field of child abuse assessment.

1 THE COURT: Any cross-examination on her
2 qualifications?

3 MR. WILLIAMS: No Your Honor.

4 THE COURT: All right. Dr. Foster will be
5 allowed to render opinion testimony and I do qualify
6 her. Thank you.

7 BY MS. CAVANAUGH:

8 Q. Dr. Foster, did you have any direct involvement
9 in this particular case as far as interviewing the
10 victim?

11 A. No, I did not.

12 Q. And you stated that you work at the Assessment
13 & Research Center. Was the victim in this case,
14 Minor interviewed at the Assessment &
15 Resource Center?

16 A. No, she was not.

17 Q. So you have no direct involvement in this case?

18 A. Correct.

19 Q. As you just stated, are there behaviors of
20 child victims of sexual assault that are atypical in
21 these cases?

22 A. Well, relative to what parents and others often
23 expect, yes. There are behaviors that sometimes are
24 called counterintuitive or just different than
25 expected. I could provide some examples if you'd

1 like.

2 Q. Right. For example, is it common for a child
3 to immediately disclose whether she's been sexually
4 assaulted?

5 A. Right. No, it is not. In fact, that is the
6 most atypical or uncommon disclosure process. That
7 doesn't mean that there aren't some child victims
8 who do make an immediate outcry, but they're the
9 exception to the rule.

10 Q. And are there statistics regarding the delayed
11 disclosure?

12 A. There are. At this point, there's been about
13 25 or more years of research. So we now have data
14 from a wide range of sources and pretty good
15 agreement that it is probably as much as two-thirds
16 of what we called bona fide victims of child sexual
17 abuse; in other words, there is very good reason to
18 believe that child sexual abuse did occur. And in
19 studying those cases, about two-thirds of those
20 children do not tell anybody in the course of their
21 entire childhood. So it only is revealed in
22 adulthood, in fact, for the majority of victims.

23 We know that a subset of victims will tell at
24 some point in childhood, but we know that that
25 process is typically delayed by months, certainly,

1 but more commonly, years.

2 Q. And do certain dynamics in the family, for
3 instance, if the alleged perpetrator is a stepfather
4 or father figure, does that play a role in the
5 delayed disclosure?

6 A. Yes, it plays a significant role, because the
7 relationship dynamics are so complex and the child
8 is in an ever-present sort of association with that
9 person. So they don't get really much physical
10 distance or psychological distance.

11 And what I mean by so complex is that person
12 plays so many roles; authority figure, provider,
13 might be the biological parent of a sibling,
14 somebody that, you know, the child can look to the
15 mother and say, well, this person is meaningful to
16 my mother's life. So there's so many ramifications
17 or consequences for the child to consider when they
18 consider what it's going to mean to tell.

19 Q. And if threats are made, does that also play a
20 role into the disclosure process or the delayed
21 disclosure?

22 A. Certainly, yes.

23 Q. Is it more likely for a child to believe those
24 threats than, perhaps, an adult?

25 A. Yes. Again, young children don't really --

1 don't critically evaluate what adults tell them. I
2 mean, obviously young children see adults as very
3 powerful and possessing much more knowledge and
4 ability. So they're going to assume that if a
5 parent says they can make something happen, they can
6 make something happen.

7 Obviously as children get older, certainly into
8 the adolescent years, they can start to evaluate
9 threats a little differently, and that can be part
10 of what opens up a victim to feeling like they can
11 take a risk and make a report. But if they've
12 experienced a lot of years of believing in the power
13 of the offender, it takes a substantial amount of
14 courage to switch that dynamic and decide on
15 telling, as opposed to keeping quiet, is the right
16 way to go.

17 Q. What if the child has witnessed altercations
18 between their mother and the alleged perpetrator, if
19 that person is the stepfather?

20 A. So witnesses of domestic violence would do a
21 few things, potentially. And every case is
22 different. I'm speaking generally. But for one, in
23 terms of what's called observational learning, if a
24 child is seeing, for example, an adult, their
25 mother, being physically victimized by a father

1 figure, stepfather, the observational learning is,
2 well, my mother can't, my mother is powerless, my
3 mother is being victimized; it could lead to the
4 child's appraisal that the mother can't protect me,
5 can't protect the child, that there will be
6 retribution for the mother, in other words,
7 consequences or revenge for the mother.

8 So that can seriously underscore both the
9 viability of the threats -- in other words, he's
10 making good on a physical threat, his powerfulness,
11 as well as possibly weakening the child's belief
12 that the mother can protect.

13 Q. And what is meant by the term of accidental
14 disclosure?

15 A. In our field we talk about discovery or
16 disclosure of abuse sometimes being accidental and
17 sometimes being purposeful. So an accidental
18 discovery or an accidental disclosure happens when a
19 child says something, but didn't mean for it to --
20 didn't mean for it to get to the adults or didn't
21 really mean for it to be the telling.

22 So an accidental discovery can happen -- for
23 example, with a young child, it could happen if the
24 child is exhibiting sexual behaviors and it causes a
25 parent to be concerned about abuse. That would be

1 an accidental discovery. Another accidental would
2 be, in some way the offense gets interrupted by an
3 eyewitness walking in or by somebody hearing
4 something or overhearing something that leads to a
5 confrontation that the child wasn't prepared for,
6 didn't expect, but something triggered questioning
7 that may very much catch the victim off guard.

8 Q. When the disclosure does come about, whether
9 it's delayed or accidental, is there a difference in
10 how the child might remember the abuse, if it's
11 chronic versus acute?

12 A. Absolutely. First of all, you said it was
13 accidental. So one thing, if it's accidental and
14 suddenly questions are coming at a victim, they have
15 to do a lot of very quick coping. So they can be
16 emotionally overwhelmed, anxious, you know, denying
17 is often a first stage of response in cases of child
18 sexual abuse, even when there's medical evidence. I
19 mean, the first thing, when children are confronted
20 with questions they weren't expecting, is just to
21 deny.

22 But then, two, in terms of being able to give
23 details about what you said -- you asked about
24 chronic. So chronic sexual abuse is considered
25 abuse that's been ongoing for some period of time as

1 opposed to something that just recently happened for
2 the first time.

3 The challenges there for a child just include
4 the fact that they may be asked to recall details
5 about events where they've spent so much mental
6 energy suppressing, trying not to synthesize those
7 memories; they all blend together. So there are
8 emotional challenges to recall, there's also just
9 time challenges to recalling. And if the child has
10 spent so much time suppressing thinking about those
11 memories, it's a lot to suddenly organize those
12 recollections and then deliver them when being
13 asked. It takes -- it often goes through stages.
14 We know the children will report a certain amount --
15 it's what we call piecemeal, where they might tell
16 us a certain amount, and as they begin to realize,
17 perhaps, that they're safe and protected -- if they
18 realize they're safe, that they're protected, then
19 they may provide more information gradually as they
20 go forward in time.

21 Q. And so not only are there difficulties with the
22 memory, but there are difficulties in speaking about
23 the abuse in general?

24 A. Right. Right. It can be psychologically
25 overwhelming. So depending on their level of

1 anxiety and distress, how much support they have,
2 even just and language skills, I mean, to start
3 talking about something they never wanted to talk
4 about.

5 Q. You mentioned language skills. Do children
6 have a hard time sometimes associating adult anatomy
7 with what they know to be anatomy at the time of 10
8 or 11 years old?

9 A. Yes. You know, some children do use accurate
10 language; other children may have some limited
11 understanding of, you know, their own anatomy,
12 especially little girls, especially before they are
13 menstruating and having to tend to things. They may
14 not have a really good understanding of all of their
15 anatomical features, and they'll use general words
16 like bottom that aren't as specific as what adults
17 would use.

18 Q. And is it difficult for children to relay,
19 victims to relay, to strangers what occurred to them
20 if they're being interviewed by law enforcement or
21 another agency?

22 A. Yes. It is hard enough for adult victims, and
23 it's certainly no easier -- and it's embarrassing.
24 And there's, you know, this sense of making
25 something private public. So there are -- we know

1 there are many barriers, which is why so much
2 training goes into having specialized interviews who
3 can establish a rapport and work through some of
4 those barriers.

5 Q. So you mentioned, in cases of chronic abuse,
6 it's difficult for children to pinpoint exact times
7 and places that the assaults occurred.

8 A. Correct.

9 Q. Do they use maybe -- is it often that they use
10 other things to associate when something happened?

11 A. Right. So children, especially --

12 MR. JOHNSON: Your Honor, may it please the
13 Court. I'm trying not to jump up out of my seat,
14 but I object to leading.

15 THE COURT: Just object. I can't rule unless
16 you object.

17 Please do not ask leading questions. Rephrase
18 your question.

19 BY MS. CAVANAUGH:

20 Q. Are there certain events that help relate with
21 time, timing of the assaults with these cases?

22 A. Yes. With children, time is a developmental
23 challenge for young children. And, of course, as
24 children get older, they get a better and better
25 handle on managing time. But, obviously, what is a

1 long time or a short time or marking seasons or
2 thinking in terms of a calendar, that's not the
3 strength of children, certainly not elementary
4 school children or younger children.

5 So often when we're trying to figure out when
6 something happened, it's important to ask questions
7 that assist the child in making associations to
8 things that are more relevant to the child as
9 opposed to when in a calendar sense. So sometimes
10 they can make associations once they -- or we, as
11 adults, can make associations once we get
12 information from them about what bedroom they were
13 residing in, who their school teacher was, maybe a
14 particular family reunion or birthday party or
15 something like that that's associated with the
16 timing of an event.

17 So children, when asked just when questions,
18 perform very poorly. And, actually, all humans have
19 a hard time thinking back about when things
20 happened. But as adults, we can do things like pull
21 out our calendars and we're more practiced at making
22 associations. So children, they really need help
23 with contextual questions that allow us to then
24 figure out when in time events may have occurred.

25 Q. And in cases of chronic sexual abuse, is it

1 difficult for children to estimate how many times
2 something happened?

3 A. Definitely. Again, a sequence of events with a
4 beginning, a middle, and an end, and that being a
5 unit of one, and then another sequence of events
6 with a beginning, middle, and an end that's somewhat
7 different, somewhat the same, and that being another
8 unit of one, and then being able to count up all of
9 these units over time, especially when it's
10 something that, again, was not -- well, typically, a
11 lot of victims put a lot of energy into suppressing,
12 deflecting, avoiding thinking about these, so they
13 really haven't put a lot of effort into
14 consolidating them into their memory; they're
15 running away from the memory more than they are, you
16 know, calculating them.

17 So when we ask -- now, older children,
18 teenagers, can begin to provide a decent estimate.
19 And I'm talking 15-year-olds. But the research on
20 children's abilities to provide estimations of the
21 number of times that something happened suggests
22 that it's just -- it's developmentally beyond
23 children before their high school years to be very
24 accurate in something like that.

25 Q. And you just mentioned ages. Does the research

1 show that it's different for a child that's 11
2 versus an older child?

3 A. Yes. There's some very good research from the
4 University of Southern California evaluating
5 children of various ages and asking them to estimate
6 the number of foster homes that they've resided in
7 or number of times they appeared in dependency
8 court.

9 And so these are cases -- this is research
10 where the researchers know exactly what number of
11 foster homes a child was in, for example, and what
12 number of times a child presented in dependency
13 court, and they evaluated children from about the
14 age of eight forward. And that's how we know, I
15 mean, that these children's abilities to estimate
16 even something like that, number of changes in
17 houses or number of times they had to go to court,
18 they're just not able to provide reliable
19 estimations until their later teen years.

20 Q. Do some of the memories of certain events
21 overlap with each other?

22 A. Yes. You mean -- so we talk in terms
23 of something called, in our field, script memory
24 versus something called episodic memory. So if
25 you're involved in an activity, whatever it is,

1 driving to work every day, how you brush your teeth,
2 how you make dinner, whatever, and somebody asks
3 you, well, how do you go to work, you're going to
4 have a script, a memory.

5 A script memory allows you to be an efficient
6 thinker and talk about how you usually go to work
7 and what sequence things typically go in or how you
8 get ready for work in the morning. So that's a
9 script memory. We all make script memories for
10 everything that goes on in our life with any
11 repetitiveness. So if I ask questions and learn
12 about the script of memory for abuse, you know, a
13 child may talk about how things usually went or what
14 he would normally do or normally say. And that's
15 important information, but it can gloss over unique
16 details and help us figure out what we would call
17 episodic events.

18 So when we're seeking episodic memory, we're
19 trying to get single episodes. So if I -- for way
20 of example, if I asked you to tell me about a TV
21 show you like, you could give me script memory about
22 how the show generally goes, but then if I said,
23 well, tell me all about the last episode, that would
24 be one unique event and then you would provide specific
25 details about that event.

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1 What we know is that children can sometimes
2 tell -- if they're well-anchored, they might be able
3 to provide episodic memory details for maybe the
4 last time or one time that stands out for whatever
5 reason. It might not be the worst time. But,
6 generally speaking, that's just more challenging for
7 them to parse it out and think of specific episodes.

8 And many episodes aren't going to be
9 remembered, maybe a few will stand out but,
10 otherwise, what they will tend to provide is script
11 memory.

12 Q. And are these behaviors common with a lot of
13 child sexual assault cases?

14 A. Yes.

15 MS. CAVANAUGH: I beg the Court's indulgence.

16 BY MS. CAVANAUGH:

17 Q. And, Doctor, even though there are some common
18 behaviors, does each child victim act the same in
19 all cases?

20 A. Definitely not.

21 Q. So it depends on the family dynamics?

22 A. Yes.

23 Q. And how long the abuse has occurred?

24 A. Yes.

25 Q. And who the alleged perpetrator --

1 MR. JOHNSON: Your Honor, again.

2 THE COURT: Again what?

3 MR. JOHNSON: She's leading.

4 THE COURT: She is. You have to object.

5 Rephrase your question.

6 BY MS. CAVANAUGH:

7 Q. Basically, is each child different?

8 A. Yes. Factors that make children and the
9 dynamics in each case different include the age of
10 the child, the sex of the child, the sex of the
11 perpetrator, the relationship between the
12 perpetrator and the victim, the length of time that
13 the events had been going on. So all of those
14 features will create the kind of complex interplay,
15 so some children will present differently than other
16 children.

17 Q. Is it unusual for, perhaps, family members not
18 to notice anything different about the child even
19 after the abuse is occurring?

20 A. Absolutely.

21 MR. JOHNSON: Your Honor, it's a leading
22 question -- it's leading.

23 THE COURT: Sustained.

24 Rephrase the question.

25 BY MS. CAVANAUGH:

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1 Q. Is it immediately obvious to other family
2 members that a child might be abused?

3 MR. JOHNSON: Your Honor --

4 THE COURT: Sustained.

5 Madam Forelady, ladies and gentlemen of the
6 jury, the rules are, when you're directly examining
7 a witness, you have to ask direct questions: What
8 day is it? If you're on cross-examination you, can
9 lead them: Isn't today Thursday? It's a fine line,
10 but I have to make them play by the rules.

11 Ask a direct questions, please.

12

13 BY MS. CAVANAUGH:

14 Q. Do family -- is it -- do family members always
15 know what's happening to the child?

16 MR. JOHNSON: Your Honor, leading.

17 MS. CAVANAUGH: I don't --

18 THE COURT: I'll allow her to ask that.

19 A. No, they do not. And one of the more painful
20 dynamics in child sexual abuse cases involving
21 family members is that mothers -- and I'll say
22 mothers because most often it is the mother who is
23 saying, how could I not have seen something was
24 going on? So every week -- and at my job at the
25 ARC, that's a question that --

1 MR. JOHNSON: Your Honor.

2 THE COURT: What's the objection? She's
3 answered the question.

4 MR. JOHNSON: Your Honor, sidebar?

5 THE COURT: Yes, sir.

6 (Sidebar conference.)

7 THE COURT: Disregard that last statement and
8 answer, ladies and gentlemen of the jury.

9 Anything else, ma'am?

10 MS. CAVANAUGH: Thank you, Dr. Foster. Please
11 answer any questions from the Defense.

12 THE COURT: Mr. Johnson -- Mr. Virgin Johnson.
13 Mr. Johnson, was Mr. Williams going to
14 cross-examine this witness?

15 MR. JOHNSON: Your Honor, I understand. I'm
16 trying to get my thoughts together.

17 THE COURT: Well, was he prepared to do it?

18 MR. WILLIAMS: I was prepared, Your Honor.

19 THE COURT: Okay. Either way. I'll let either
20 one of you do it. But y'all know the rules; if you
21 do the objecting, you got to do the questioning.
22 But I'll bend the rules in this particular --

23 MR. WILLIAMS: Thank you very much, Your Honor.

24 THE WITNESS: May I ask for a cup of water?

25 THE COURT: You certainly may.

1 Mr. Williams?

2 MR. WILLIAMS: Briefly, Your Honor. Thank you.

3 CROSS-EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Dr. Foster, I think you testified, you never
6 examined the victim in this case, did you?

7 A. Correct.

8 Q. And, Dr. Foster, you testified about
9 behavioral -- common behaviors in alleged victims;
10 is that right?

11 A. Yes.

12 Q. Dr. Foster, would it be fair to say that
13 there's no set pattern of behavior for victims of
14 sexual abuse?

15 A. Speaking generally, I think that would be fair
16 to say. Yes.

17 Q. Okay. Dr. Foster -- and also, you didn't
18 conduct any tests in this particular case?

19 A. None.

20 Q. Okay.

21 MR. WILLIAMS: I beg the Court's indulgence,
22 Your Honor.

23 THE COURT: Absolutely.

24 BY MR. WILLIAMS:

25 Q. Dr. Foster, would it be fair to say that your

1 entire testimony was just a general statement about
2 how some victims may act in these particular
3 situations? Is that correct?

4 A. It would be fair to say my testimony pertained
5 to -- I responded to questions that pertained to
6 chronic sexual abuse cases. And I provided a wide
7 range of information to relate to children of
8 various ages. But there were some specifics
9 provided to me in the questions pertaining to parent
10 figure and that sort of thing. So we weren't
11 discussing every single type of child sexual assault
12 cases.

13 Q. Dr. Foster, let me back up just a moment. You
14 said you published a book, Child Development for
15 American Prosecutors; is that correct?

16 A. A monograph, yes.

17 Q. Would it be fair to say that most of your work
18 has been the prosecution side? Is that correct?

19 A. For the criminal -- in the criminal part of my
20 practice, that would be fair to say, yes.

21 Q. And, Dr. Foster, isn't it true that in this
22 particular case you interviewed no witnesses?

23 A. Correct.

24 Q. Not the victim?

25 A. Right.

1 Q. Made no reports?

2 A. Right.

3 Q. And you're speaking just to, what, your general
4 observances?

5 A. General expert knowledge.

6 Q. Thank you.

7 MR. WILLIAMS: One moment, Your Honor.

8 THE COURT: Sure.

9 MR. WILLIAMS: Thank you. No further
10 questions, Your Honor.

11 THE COURT: Ma'am, anything on redirect?

12 MS. CAVANAUGH: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. CAVANAUGH:

15 Q. Mr. Williams just asked you about your
16 participation for the prosecution. Do a number of
17 agencies actually refer children to your -- to the
18 Assessment & Resource Center?

19 A. Yes.

20 Q. What are those agencies?

21 A. Law enforcement agencies from about 17 counties
22 every year, child protective services, DSS,
23 sometimes family court judges, sometimes guardians
24 ad litem. So those are the usual referrals.

25 Q. So not just criminal cases?

1 A. No.

2 THE COURT: Thank you. You may step down.

3 May she be released from her subpoena?

4 MS. CAVANAUGH: No objection.

5 MR. JOHNSON: No objection.

6 THE COURT: You are excused.

7 Madam Forelady, ladies and gentlemen, I know
8 you have been out a couple times, but my court
9 personnel has not, so they need a little break.
10 Let's do about ten minutes and come back and go till
11 about 1:00.

12 (The jury exits the courtroom at 11:25 AM.)

13 THE COURT: Mr. Johnson, you got a motion you
14 wanted to make at the sidebar?

15 MR. JOHNSON: Your Honor, yes. And, quite
16 frankly, I don't remember the particular statement,
17 but --

18 THE COURT: You said you wanted to make a move
19 for a mistrial when the lady was talking --
20 Dr. Foster was talking about, I think, Mom and --
21 Mom blaming herself for not noticing and, perhaps,
22 believing the child or something like that.

23 MR. JOHNSON: Yes, sir, Your Honor. I think
24 that goes directly in this case to bolstering the
25 credibility of the -- of what was said by the mom

1 and the daughter. And that testimony elicited is so
2 prejudicial and would impact the jury that I think
3 that -- it's prejudicial, would impact the jury, and
4 I think the proper remedy would be a mistrial.

5 In this case, Your Honor, right up as of yet,
6 we have no physical evidence. And everything now is
7 hearsay --

8 THE COURT: Everything is credibility.

9 MR. JOHNSON: I mean, everything is
10 credibility. And testimony like that already, the
11 fact that she testified as an expert, bolsters it.
12 But when her testimony becomes more specific to this
13 particular case, it bolsters it more. And I think
14 once you ring that bell, you can't un-ring that bell
15 with the jury. And I would move, in the interest of
16 justice and fairness, because of the prejudicial
17 effect, that we be granted for mistrial.

18 THE COURT: Well, I didn't quite perceive it in
19 the manner that you have. I think Dr. Foster was
20 warned or advised to stay away from any testimony
21 dealing with her opinion as to the credibility of
22 any witnesses in this case. I think she replied in
23 that one question, which I told the jury to
24 disregard; it wasn't talking about credibility of
25 anybody in this case, it was talking about mom s

1 feeling guilty about not being able to recognize
2 what was going on under their own noses, so to
3 speak. I think I gave a curative instruction. And
4 I respectfully deny your motion for mistrial.

5 MR. JOHNSON: Thank you, Your Honor. And if I
6 could add to that, just for purposes of the record,
7 the number of leading questions that went before
8 that enhanced it more. So I just add that --

9 THE COURT: Well, with all due respect to you,
10 Mr. Johnson, I can't make the objections.

11 MR. JOHNSON: I understand.

12 THE COURT: Once you made it, I made her
13 rephrase the questions. And, really and truly, I
14 didn't think they were that prejudicial, they were
15 just a tad leading.

16 Anything else?

17 MR. JOHNSON: That's all. Thank you, sir.

18 THE COURT: Thank you.

19 What you got left?

20 MS. SIMPSON: Your Honor, we have Dr. Susan
21 Luberoft, and then Sergeant Rick Bailey will be
22 our --

23 THE COURT: Doctor who?

24 MS. SIMPSON: Dr. Susan Luberoft with the
25 Assessment & Resource Center. She did a forensic

1 medical exam on Minor

2 THE COURT: All right. We'll take about a
3 ten-minute stretch-your-legs break.

4 (Short break.)

5 THE COURT: Ms. Simpson, anything for the
6 record before we start back?

7 MS. SIMPSON: Nothing from the State.

8 THE COURT: Mr. Johnson?

9 MR. JOHNSON: Nothing from the Defense.

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

12 (The jury enters the courtroom at 11:46 AM.)

13 THE COURT: Okay. You may call your next
14 witness.

15 MS. SIMPSON: The State calls Dr. Susan
16 Luberoff.

17 (Susan Luberoff enters the courtroom.)

18 SUSAN LUBEROFF

19 being first duly sworn, testified as follows:

20 THE WITNESS: Yes.

21 THE CLERK: Please be seated and state your
22 full name for the record.

23 THE WITNESS: I'm Susan Breland Luberoff.

24 THE COURT: Speak loud enough so the very back
25 row can hear, as well as me.

1 DIRECT EXAMINATION

2 BY MS. SIMPSON:

3 Q. Dr. Luberoff, where are you employed?

4 A. I work for the USC School of Medicine
5 Department of Pediatrics. And I'm stationed at the
6 Assessment & Resource Center which is a clinic that
7 sees children with concerns of abuse or neglect.

8 Q. What is your position?

9 A. I'm the medical director there, clinical
10 associate professor of pediatrics at the medical
11 school, and I'm division director for the Division
12 of Forensic Pediatrics at the Department of
13 Pediatrics.

14 Q. And can you tell the jury a little bit about
15 your educational background and training with
16 respect to pediatrics?

17 A. Sure. I graduated from the USC School of
18 Medicine in Columbia in the third class to graduate
19 in 1983, and completed a three-year residency in
20 pediatrics at Children's Hospital at Richland
21 Memorial.

22 And since then I've practiced pediatrics. My
23 concentration has been in the subspecialty field of
24 child abuse pediatrics. That's where I've spent the
25 majority of my professional time. I've had specific

1 training in that field including a six-week
2 fellowship at the Kemp National Center of Child
3 Abuse in Denver. I'm board certified in general
4 pediatrics and also board certified in the
5 subspecialty of child abuse pediatrics.

6 Q. Okay. So in addition to maintaining your board
7 certification, do you also attend certain classes
8 and courses of that nature to keep your training and
9 your license up to date?

10 A. Yes. In South Carolina, actually, we have a
11 system for all of us, all of the medical providers
12 who work in this field; a system that requires that
13 we have a certain amount of ongoing continuing
14 medical education each year. We meet together three
15 times a year and undergo peer review and have
16 educational sessions at those meetings.

17 Q. And with respect to your actual position, tell
18 the jury a little bit about what you actually do as
19 far as your role with the Assessment & Resource
20 Center.

21 A. I have two main roles; when children come in to
22 that clinic for a worry about abuse or neglect, I do
23 the medical part of the evaluation. So if the child
24 needs to have a medical exam for part of the
25 evaluation, that's the part that I do. I do a

1 complete physical examination, I decide whether any
2 laboratory testing needs to be done or X-rays and
3 that kind of thing, and I'll order those as
4 necessary.

5 I'll also respond to the hospital if there's a
6 child admitted to the hospital with an injury, or
7 where there is worry about abuse, then the hospital
8 staff will consult me to come over and help with
9 that part of the evaluation.

10 Q. Okay. And with respect to physical or medical
11 examinations of children, do you deal -- you said
12 allegations of abuse. Does that involve all types
13 of abuse?

14 A. Yes.

15 Q. And tell the jury a little about the different
16 types that you see.

17 A. We see children for worries about sexual abuse,
18 physical abuse, neglect; we will sometimes have
19 children come through our clinic who have been
20 witnesses to a homicide or some kind of traumatic
21 event that they need to be interviewed about that.

22 Q. And how many medical examinations of children,
23 with particular emphasis on sexual assault
24 examinations, would you say you performed during the
25 course of your career?

1 A. Thousands.

2 Q. And have you ever testified as an expert in the
3 field of sexual assault examinations?

4 A. Yes.

5 Q. About how many times?

6 A. They call it something different just about
7 every time I go to court. So if you include child
8 abuse pediatrics, sexual assault examinations,
9 sexual abuse evaluations and so on, it's been well
10 over a hundred times. I stopped counting years ago.

11 MS. SIMPSON: Your Honor, at this time I'd like
12 to qualify Dr. Susan Luberoff as an expert in the
13 field of child sexual assault examinations.

14 THE COURT: Any cross-examination of her
15 qualifications?

16 MR. JOHNSON: No cross-examination. I agree
17 she is an expert.

18 THE COURT: All right. This doctor will be
19 allowed to give opinion testimony in the field of
20 sexual assault examinations and pediatrics in
21 general.

22 BY MS. SIMPSON:

23 Q. Dr. Luberoff, did you actually examine a child
24 involved in this case?

25 A. I did.

1 Q. Tell the jury who that was and when she came to
2 you.

3 A. I examined Minor on October 14th, 2011,
4 Minor

5 Q. Okay. And tell the jury -- well, first of all,
6 when a patient is presented to you, do you have any
7 kind of background information that's provided to
8 you, if there's any available?

9 A. Different amounts of background information.
10 Whoever calls to set the child up for an evaluation
11 through the resource center gives enough information
12 to us to know whether the child is appropriate for
13 us to see. And sometimes we have a wealth of
14 information and sometimes we don't have a lot of
15 information.

16 Q. So it's just kind of dependant on the case and
17 timing of the actual exam as to what you receive?

18 A. Yes.

19 Q. And what is Minor -- her last name is Minor
20 How did she present to you? What were the
21 allegations or the nature of them?

22 A. It was for a sexual abuse concern.

23 Q. And so in this instance, tell the jury about
24 the examination you actually performed on her and
25 how you conducted that exam.

1 A. First, she was oriented to the room. One of
2 our employees called a child life specialist spent
3 some time with the child in advance, explaining the
4 whole exam to the child and answering any concerns
5 or worries they might have about the exam, explains
6 every position that I might need the child to be in
7 so the child can comfortable and cooperative with
8 the exam, because I do need a good, cooperative, and
9 comfortable child for me to see everything that I
10 need to see in detail.

11 And then the exam itself of **Minor** included a
12 careful examination of all of her skin, a careful
13 examination of her genitalia. And we used a
14 colposcope, which is an instrument that's like a set
15 of binoculars with a bright light just so I can see
16 things with some magnification and with a good,
17 bright light to look at the genital area, and a lot
18 of things that are general physical exam parts, like
19 listening to her heart, looking in her ears, looking
20 at her teeth, examining her abdomen.

21 When a child comes to the Assessment & Resource
22 Center for an evaluation, we don't limit our
23 examination just to whatever type of abuse or
24 neglect is the concern; we actually examine for any
25 type of abuse or neglect. So it's a very thorough

1 physical examination with some extra attention to
2 the genitalia.

3 Q. So you're also looking to see if there's any
4 visible signs of, like, bruising or scarring or any
5 potential physical abuses as well; right?

6 A. Correct.

7 Q. I want to go back to what you said about the
8 orientation and the positioning of the child. Is
9 the nature of this exam similar to what, I guess, an
10 adolescent or adult female would have when she goes
11 to the gynecologist?

12 A. It is, with the exception that -- ordinarily
13 when a woman goes to the gynecologist, a pap smear
14 is done, and that involves placing the speculum
15 inside the vagina. We rarely have to do that as
16 part of our evaluation of children. So it's an
17 examination similar to that at a GYN, but we don't
18 do the speculum exam.

19 Q. So with younger children, have they typically
20 been through this type exam when they come to you?

21 A. Well, typically, if a younger child is being
22 followed by a pediatrician for regular checkups,
23 that pediatrician should be looking at the genitalia
24 at every regular checkup. The pediatrician is not
25 going to use a special light for it and probably

1 isn't going to do the time of traction of moving the
2 labia or the apart to see up inside to the degree
3 that we do. But a child should be accustomed to a
4 physician looking at his or her genitalia when they
5 go for a regular exam.

6 Q. Okay. And do you actually document your
7 findings in the form of a report?

8 A. I do.

9 Q. With respect to your examination of Minor [REDACTED]
10 [REDACTED] tell the jury what you found as far as your
11 physical examination.

12 A. She had two old burns on her body; one, she
13 didn't remember what it was from, and I believe the
14 other was from a curling iron or something like
15 that. They were accidental burns.

16 And then the rest of her exam was essentially
17 normal. Her genital examination in particular was
18 normal. She had reached puberty several years
19 earlier. She listed her date or her age of her
20 first period as having been eight years old, and she
21 was now 11 when I saw her. And so she was well into
22 the advanced stages of puberty; she had breast
23 development and her hymen had grown in the way that
24 hymens grow, she had hair distribution and so on,
25 consistent with her pubertal history.

1 Q. Okay. And tell the jury -- you said her --
2 your examination of the genitalia area, you didn't
3 notice anything abnormal.

4 A. Right.

5 Q. What exactly is included in the genitalia are
6 as far as a female genitalia?

7 A. Parts, body parts?

8 Q. Yes?

9 A. That would be the labia or lips of the vagina,
10 the hymen, the more distal or more closer to the
11 external part of the actual vagina itself, the anal
12 area, the perianal area, and the perineum.

13 Q. Okay. And what exactly is the hymen?

14 A. The hymen is a piece of tissue that is part of
15 the vagina. It's near the beginning of the vagina.
16 It -- it goes through a big change when puberty
17 happens. When a child is born and in the first few
18 years of life, the hymen tends to look fairly thin
19 and looks fragile. It's actually not particularly
20 fragile, it's normal living human tissue which is
21 mucus membrane kind of tissue, which means that it
22 is bathed in moisture all the time; it's always
23 moist because of the secretions in the vagina.
24 It, before puberty, as I said, looks kind of thin.
25 If you were trying to look through it from front to

1 back, sometimes you can see light through it.

2 At puberty, when so many other changes are
3 happening in the body of a girl, the breasts are
4 growing, the hips are spreading, hair is starting to
5 sprout in the vaginal area and armpits, the vagina
6 and the hymen undergo a dramatic change through the
7 course of puberty.

8 And at the hymen level, what happens is, it
9 thickens. It thickens to such a degree that where
10 before puberty it was in the enough that I might be
11 able to see light through it, by the end of puberty,
12 it's thick, almost like as thick as my thumb. And
13 in addition to growing thicker during that course of
14 puberty, it grows on its surface area, so that
15 before puberty, the opening -- and there's an
16 opening in the hymen from before birth. The opening
17 in the hymen might be a circular opening where the
18 hymen sort of just surrounds that opening.

19 The hymen grows so much during the course of
20 puberty, that it ends up folding around the edges so
21 that at the end of puberty, when the body is now
22 prepared for reproduction, an object can be
23 introduce into that opening and it's got enough
24 surface area that it will simply spread out of the
25 way and allow entrance of a normal penis size object

1 without destroying the hymen or -- and, actually,
2 without usually injuring the hymen at all.

3 Q. So it essentially develops to where penetration
4 is possible and almost easier, in a sense?

5 A. Correct.

6 Q. With respect to a normal exam -- and you said
7 her findings were normal?

8 A. Yes.

9 Q. Is that uncommon or typical?

10 A. It's quite typical. The vast majority of girls
11 who have been through puberty who have had vaginal
12 penetration with an object or a penis have
13 completely normal exams when we see them at the
14 Assessment & Resource Center, even children that we
15 see that are pregnant. Their exams are usually
16 completely normal. And when they're pregnant, we
17 know for sure a penis has been in there. Those
18 hymens are usually completely normal. And this is,
19 you know, a little different than what I grew up
20 believing and what I was told by my mama, but it's a
21 fact, it's the way the body actually is.

22 Q. And if penetration has occurred over a period
23 of time -- you used the example about pregnancy.
24 But over the course of years, would you still expect
25 to still have a normal exam?

1 A. Yes, unless something extraordinary has
2 happened to that hymen. And sex is not
3 extraordinary; sex is the part of what the hymen is
4 there for. And by extraordinary, I mean something
5 like -- like if there's some type of brutal assault
6 where there is a bad injury. It can be injured,
7 it's not very easily injured. Or if there's been
8 surgery involving the hymen, for example, if someone
9 has had cancer of the hymen and had a piece removed,
10 that's not going to normal on exam anymore.

11 But, ordinarily, the hymen looks normal without
12 injury, even after repeated penetration of the
13 vagina.

14 Q. And as a medical doctor, as far as your purpose
15 and your goals in performing the medical exam, what
16 are those, particularly in children?

17 A. The main purpose of doing the exam is to see if
18 there are any injuries. If there are, then we need
19 to know that and the child needs to know and the
20 parents need and the system needs to know that.
21 But, mainly, we're examining the child for any signs
22 of abuse and to make sure -- to ensure that the
23 child is healthy.

24 If the child has experienced sexual abuse, for
25 example, then part of the evaluation would be to

1 determine what kind of testing needs to be done for
2 sexually transmitted infections to ensure that the
3 child didn't contract an illness from what happened.

4 So the overarching purpose of the exam is to
5 ensure that the child is healthy, and that all of
6 the steps to evaluate that health related to that
7 concern are done.

8 Q. All right. And would that be your -- as far as
9 your examination of **Minor** the extent of your
10 involvement with this case?

11 A. Yes. I only saw her the one time.

12 MS. SIMPSON: Thank you, Dr. Luberoff.

13 THE COURT: Mr. Johnson, any questions?

14 MR. JOHNSON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. JOHNSON:

17 Q. Dr. Luberoff, how are you doing?

18 A. Good. Thank you. How are you?

19 Q. Fine. Fine. I just want to clear up one
20 thing: The -- as you sit there right now, you
21 couldn't testify whether she had sex or didn't have
22 sex; all you could do is testify that the exam you
23 did, you found it normal; correct?

24 A. Correct.

25 Q. And I looked at -- do you have your intake

1 report with you, the one -- the child maltreatment
2 protocol?

3 A. I do.

4 Q. Okay. If you would, turn to page 9.

5 A. Yes.

6 Q. Will you read that -- I can't pronounce those
7 words, so I wanted to point you to the page.

8 A. I'll help you.

9 Q. Okay. Under the subject no injuries
10 identified, what's that next word?

11 A. Anogenital. That means injuries in the region
12 of the anus or the genital area.

13 Q. Okay. And on your report, you found no
14 abrasions, no bruises, nothing?

15 A. Correct.

16 Q. No scars, no tears, no lacerations, nothing?

17 A. Correct.

18 Q. So in other words, all you're testifying today
19 is that a report was done, and it can't say whether
20 something happened or whether it didn't?

21 A. That's correct.

22 MR. JOHNSON: Thank you.

23 MS. SIMPSON: No redirect, Your Honor.

24 THE COURT: Thank you. Thank you, Doctor.

25 Thank you for coming.

1 Next witness, please.

2 MS. SIMPSON: The State calls Sergeant Rick
3 Bailey.

4 RICK BAILEY

5 being first duly sworn, testified as follows:

6 THE WITNESS: Yes, ma'am, I do.

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

9 THE WITNESS: Rick Bailey, B-A-I-L-E-Y.

10 DIRECT EXAMINATION

11 BY MS. SIMPSON:

12 Q. Sergeant Bailey, where are you employed?

13 A. Currently employed with the Kershaw County
14 Sheriff's Office.

15 Q. And how long have you been with Kershaw County?

16 A. Been with Kershaw County since the year of
17 1998, but I had four years of previous law
18 enforcement before that.

19 Q. And what was your previous law enforcement
20 background?

21 A. I worked, I believe it was, about three and a
22 half years or close to it with Camden City Police
23 Department. And then I worked a year with the
24 Bishopville Police Department; that's where I
25 started out.

DIRECT EXAMINATION OF RICK BAILEY BY MS. SIMPSON

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1 Q. And what is your current position with Kershaw
2 County Sheriff's Office?

3 A. I'm a sergeant in the criminal investigations
4 unit.

5 Q. And as a sergeant in that division, what do
6 your duties include?

7 A. I receive orders from the captain and the
8 lieutenant, I'm assigned cases for investigation,
9 take up special tasks they assign me to do and
10 delegate those tasks accordingly to other
11 investigators in that division.

12 Q. Okay. And do you work, I guess, with all types
13 of investigations?

14 A. Yes, ma'am. I've done all types of
15 investigations.

16 Q. And tell the jury just a little bit about your
17 experience in law enforcement and your background as
18 far as types of cases you've responded to and your
19 investigations?

20 A. I'm assigned to the criminal investigations
21 division. I've worked everything from somebody
22 writing a bad check, assault and batteries of people
23 hitting each other, property crimes like break-ins
24 to homes, theft to personal items, homicide
25 investigations, what is commonly considered

1 white-collar crimes like embezzlement, and juvenile
2 investigations.

3 Q. So pretty much everything?

4 A. Yes, ma'am.

5 Q. And turning your attention back to 2011, did
6 you actually become involved in criminal sexual
7 conduct cases involving minors too?

8 A. Yes, ma'am.

9 Q. Specifically the one we're here for today?

10 A. Specifically, yes, ma'am.

11 Q. Tell the jury how you were notified and how you
12 became involved.

13 A. With the sheriff's office, we have a certain
14 number of investigators and each of us getting a
15 week of on-call. That means we're subject to recall
16 24/7 for seven days straight.

17 On the date in question, which was October
18 11th, road deputies were called to respond to a
19 scene on Stevens Road. It's really -- it's an
20 oddity, Stevens Road; you got Kershaw County, Lee
21 County, but it kind of bounces back and forth. Some
22 people call it Bethune, some people call it Cassatt,
23 some people call it Bishopville, because there's
24 that many, you know, different lines on that road.

25 But deputies were called to the scene at

1 Stevens Road where they made contact with Ms. Hall
2 and, I think, the victim in the case. Because of
3 the nature of the case, I was notified to respond to
4 the scene by, I believe it's Corporal West. I
5 believe he's a sergeant now. So I responded to the
6 scene and met with the deputy.

7 Q. Okay. So you actually went to the location at
8 Stevens Road that night?

9 A. Yes, ma'am.

10 Q. And you spoke with the responding officer -- or
11 at least who was present on the scene?

12 A. I believe one that's already testified, Deputy
13 Barnwell, and his immediate supervisor Mr. West, and
14 also Ms. Pamela Hall.

15 Q. So you made contact with the mother as well?

16 A. That's correct.

17 Q. And were you able to gather information as to
18 what had occurred and what was going on?

19 A. Yes, ma'am. It was reported to me first by
20 responding officers that there was allegations of
21 attempted or actual sexual assault by the suspect in
22 the case, a Mr. Nakia Johnson.

23 As soon as I heard the name, I recognized who
24 it was because of past experience. And they relayed
25 the events of what was relayed to them.

1 Q. I want to back up just for a minute. You said
2 you recognized the name. Tell the jury how you were
3 able to recognize Mr. Johnson's name.

4 A. Me and Mr. Johnson worked on the same shift
5 when I was a road supervisor.

6 Q. So y'all were familiar and actually worked
7 together?

8 A. Yes, ma'am.

9 Q. And during that time of working together, did
10 you actually establish kind of a working
11 relationship or a friendship, so to speak?

12 A. In small departments like this, most of the
13 time you spend during the day is actually with
14 people on your shift, so you actually build a
15 rapport with the people that you work with because
16 they've got your back and you've got theirs. So you
17 get pretty close. At that time I think we had four-
18 or five-man shifts to cover the whole county.

19 Q. Okay. At that time though, was he actually
20 still working with Kershaw County?

21 A. On October 11th?

22 Q. Yes.

23 A. No, ma'am, he was not.

24 Q. And backing up just a little bit, who was the
25 victim that you -- or who was the alleged victim?

1 A. The alleged victim reported to me was Miss

2 **Minor**

3 Q. And what was her relationship with Mr. Nakia
4 Johnson, the defendant?

5 A. I've heard it mentioned a lot the past few days
6 that he was the stepfather. But I don't think they
7 were actually married, but he was playing the role
8 as a father or a stepfather.

9 Q. So he was in a relationship with Ms. Hall, the
10 victim's mother?

11 A. Yes, ma'am.

12 Q. To your understanding, was he actually living
13 at the location at ?

14 A. To my understanding, he was not there -- or
15 residing at the Stevens Road address.

16 Q. Okay. And was the victim actually living there
17 with her mother at that time?

18 A. To my knowledge, at the time.

19 Q. And with respect to -- and you said you learned
20 of an attempted sexual assault or something of that
21 nature. Were you aware of where that had possibly
22 occurred; like, was the home that you responded to
23 the actual location?

24 A. The alleged incident location was not at the
25 home, but at a church within close proximity to the

1 home.

2 Q. And after you arrived on scene and spoke to the
3 individuals you mentioned, what was your next course
4 of action? What did you do?

5 A. Of course I needed to get in touch with my
6 victim's advocate. We don't, as a practice, speak
7 with juvenile victims. So I notified them and had
8 Ms. Hall and Minor escorted down to the Kershaw
9 County Medical Center.

10 Q. And what was the reason for having them sent to
11 the medical center?

12 A. Any time there's an allegation of an alleged
13 sexual assault, we do request that the hospital
14 perform the protocol kit for us.

15 Q. Okay. So while you were conducting your
16 investigation, the advocate actually went with the
17 victim and her mother to the hospital?

18 A. Yes, ma'am. I did actually -- before they left
19 Kershaw County Medical, I had cleared what I was
20 doing at that scene and actually met them down there
21 for a few minutes.

22 Q. Okay. So you actually followed them down to
23 the hospital and spoke with them there?

24 A. A short time after. I was there within minutes
25 of them arriving there.

1 Q. And as the lead investigator in these types of
2 cases, did you feel it necessary to process any kind
3 of scene at [REDACTED]

4 A. There was no scene to be processed at [REDACTED]
5 [REDACTED].

6 Q. Okay. And at this point you had the individual
7 identified as the possible suspect; correct?

8 A. Yes, ma'am.

9 Q. So what did you do with that information,
10 especially having a previous relationship with him?

11 A. At some point during leaving the hospital and
12 heading back to the sheriff's office, Mr. Johnson
13 was notified and requested to come back to the
14 sheriff's office.

15 Q. And, again, let me back up a little bit. Did
16 you actually contact another investigator
17 essentially to assist you; Lieutenant Patrick
18 Hickmon?

19 A. Yes, ma'am, I did.

20 Q. And when you spoke were you able to make
21 contact with the defendant yourself or did someone
22 else contact him?

23 A. If I'm not mistaken, either the captain at the
24 time, Captain Chris Phillips, or my chief deputy
25 made contact with Mr. Johnson and his chief of

1 police.

2 Q. And was Mr. Johnson willing to come speak with
3 you-all?

4 A. Yes, ma'am.

5 Q. Tell us how that occurred and how he came and
6 where he went as far as when you encountered and
7 made contact with him.

8 A. He was requested to come to the Kershaw County
9 Sheriff's Office. It took several hours for him to
10 return from Allendale-Fairfax where -- in the Low
11 Country, from my understanding, back to the
12 sheriff's office. That's where he was met at.

13 Q. And when he arrived and -- was he, at the time,
14 still a police officer or in law enforcement, to
15 your knowledge, or do you know?

16 A. To my understanding he was, because my chief
17 notified his chief of police. So I'm assuming he
18 was still employed.

19 Q. Okay. Did he agree to speak with y'all
20 voluntarily?

21 A. Yes, ma'am.

22 Q. And did you apprise him of the nature of why he
23 was being called out there?

24 A. It was my understanding -- I felt like he had
25 an idea of why we were asking to question him. But

1 he did acknowledge that he knew that there were some
2 allegations that we were asking him about.

3 Q. But he appeared to have some knowledge of it
4 prior to coming to you-all?

5 A. Yes, ma'am.

6 Q. And when he arrived, what did you do? When he
7 arrived to headquarters and you began speaking with
8 him, where did y'all go?

9 A. We actually went to -- we have a room at the
10 sheriff's office that's video recorded that we
11 conduct our interviews. He was taken to that room
12 with myself and Investigator Hickmon in the room.
13 He was Mirandized and then we started the interview
14 process.

15 Q. And when yu say Mirandized, tell the jury -- I
16 know we've all seen TV shows, but exactly how you go
17 about performing that process.

18 A. I have the form I can refer to. I think y'all
19 have entered it as number 1.

20 Q. I'll show you what's been marked as State's
21 Exhibit 1 for ID. Do you recognize that?

22 A. Yes.

23 Q. And what is that?

24 A. That is a Statement of Miranda Rights form that
25 we commonly use at the sheriff's office.

1 MS. SIMPSON: Your Honor, at this time I'd
2 offer State's Exhibit 1 into evidence.

3 THE COURT: Mr. Johnson?

4 MR. JOHNSON: No objection.

5 (State's Exhibit No. 1 admitted in to
6 evidence.)

7 BY MS. SIMPSON:

8 Q. And is this the statement from which you
9 advised him?

10 A. Yes, ma'am, it is.

11 Q. And he -- did you ask him a couple questions?
12 I mean, with him being in law enforcement, was he
13 pretty familiar with the Mirandizing process?

14 A. From my understanding, he had been in law
15 enforcement for numerous years, so I would assume he
16 did know about the Miranda process. I would hope he
17 did.

18 Q. And tell the jury how you went about
19 Mirandizing him. And is this your standard
20 procedure and practice?

21 A. It should be everybody's standard procedure.
22 But my procedure since I've been an investigator is
23 I actually read each portion of the Miranda out loud
24 to make sure that they understand it. And once I've
25 read that, I check that sentence off before I move

1 on to the next one. And I did that in this case.

2 Q. And can you read for the jury what's contained
3 in State's Exhibit 1?

4 A. Absolutely. The Miranda is followed -- there's
5 five parts. The first sentence is, you have the
6 right to remain silent. After I read that, I
7 checked it off and asked if it was understood.
8 Anything you say can and will be used against you in
9 a court of law. That was also checked off. You
10 have the right to talk to a lawyer and have him or
11 her present with you while you're being questioned.
12 It was in turn checked off. If you cannot afford to
13 hire a lawyer, one will be appointed to represent
14 you before any questioning if you wish. That was
15 also checked off. You can decide at any time to
16 exercise these rights and not answer any questions
17 or make any statements. That was checked off. And
18 once understood, it was signed by me as the officer
19 that actually read it to him.

20 Q. Okay. And the portion of the advisement, was
21 anyone present with you when you did that?

22 A. Lieutenant Hickmon was present with me.

23 Q. Okay. And did he appear -- and by he I mean,
24 at this point, the defendant. Did he appear to
25 understand those rights as you read them?

1 A. Yes, ma'am, he did.

2 Q. And was he under the influence of anything when
3 he arrived, to your knowledge?

4 A. Not to my knowledge.

5 Q. Okay. And tell us about the next portion of
6 that advisement.

7 A. The next portion of the advisement is what they
8 call a waiver of rights. Would you like me to read
9 them?

10 Q. Yes, please.

11 A. Okay. The waiver of rights says: This is to
12 certify that I have read or have had read to me the
13 above statement of rights.

14 Understanding each of these rights and having
15 these rights in mind, I waive them and willingly
16 make a statement. No promises or threats have been
17 made to me, and no pressure or coercion of any kind
18 has been used against me.

19 Q. Okay. And did he, in fact, waive his rights?

20 A. Yes, ma'am, he signed the waiver.

21 Q. He actually signed the waiver acknowledging?

22 A. Yes, ma'am.

23 Q. And did he also tell you that he agreed to
24 speak with you?

25 A. Yes, ma'am.

1 Q. And at all times during the course of this, did
2 you make it known to him that he could stop at any
3 point if he wanted to?

4 A. From the beginning when he signed the waiver.
5 But I made that verbally clear.

6 Q. Did y'all threaten or coerce him in any way to
7 make this statement?

8 A. No, ma'am.

9 Q. And if he had asked for a lawyer at any
10 portion, would he have been given that opportunity?

11 A. Yes, ma'am.

12 Q. So was the statement to you and other
13 investigators made freely and voluntarily?

14 A. Yes, ma'am. That's the way I perceived it.

15 Q. In addition, you said he was transported to the
16 interview room. At Kershaw County, is that
17 interview preserved or documented in any way?

18 A. Audiovisually, yes, ma'am.

19 Q. And I'm going show you what's been marked as
20 State's Exhibit 2 for identification purposes. Do
21 you recognize this?

22 A. Yes, ma'am.

23 Q. Have you had a chance to review it?

24 A. Yes, ma'am.

25 Q. What is it?

1 A. It's the audiovisual recording of the interview
2 with Mr. Nakia Johnson.

3 Q. And does it fairly and accurately depict what
4 occurred on that day?

5 A. Yes, ma'am.

6 Q. And the portion of the advisement -- and you've
7 reviewed this video; correct?

8 A. Yes.

9 Q. Is there a portion of the advisement where the
10 video is not, I guess, recording or this copy that
11 we have didn't show it?

12 A. Yes, ma'am.

13 Q. What portion is that?

14 A. The first part of the advisement where you go
15 through Miranda. It was read and checked off, but
16 for some reason, whichever investigator burned that
17 copy for me, for some reason cut off the first
18 minute or so of it, which does not show that
19 advisement.

20 Q. But the whole portion where he's waiving his
21 rights and agreeing to speak with you freely and
22 voluntarily is contained?

23 A. Yes, ma'am.

24 Q. As well as his entire statement?

25 A. Yes, ma'am.

DIRECT EXAMINATION OF RICK BAILEY BY MS. SIMPSON

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1 MS. SIMPSON: Your Honor, at this time I would
2 offer State's Exhibit 2 into evidence.

3 MR. JOHNSON: Your Honor, at this time I have
4 no objection.

5 MS. CAVANAUGH: Your Honor, may we approach
6 briefly?

7 (Sidebar conference.)

8 MS. SIMPSON: Your Honor, at this time,
9 permission to publish the interview, as well as we
10 do have transcripts for the jury to follow along.

11 THE COURT: All right. What we're going to do
12 now is show the interview with the defendant
13 conducted by this witness. I had to make some
14 pretrial rulings on it, so I suggested that you be
15 given a transcript of it. I think you saw me
16 yesterday reading along with a transcript. I got
17 one for you on this one. Sometimes it got a little
18 mumbled for me to hear -- not mumbled, but talking
19 down like this. So we got transcripts for you to
20 follow along with. It makes it a little clearer.
21 Everybody got one?

22 THE JURY: Yes, sir.

23 MS. SIMPSON: Beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 (Video played for his Honor and the jury.)

1 (Video paused.)

2 THE COURT: All right. Madam Forelady, ladies
3 and gentlemen, we've probably got another 30 minutes
4 or so. Your food is here. I'm going to let y'all
5 break now for your lunch. It's 1:00 now. Can we
6 start back at 2:00?

7 Please don't discuss the case, please don't
8 start any deliberations. Once you finish your
9 lunch, you're welcome to go downstairs and get some
10 fresh air, but please be back at 2:00. Leave your
11 transcript in your chair, please.

12 (The jury exits the courtroom at 1:02 PM.)

13 THE COURT: Investigator Bailey, you're right
14 in the middle of your testimony. Please don't
15 discuss it with anybody during the lunch break.

16 THE WITNESS: Yes, sir.

17 THE COURT: Anything for the record before we
18 break?

19 MS. SIMPSON: Nothing from the State.

20 THE COURT: Mr. Johnson?

21 MR. JOHNSON: Your Honor, nothing from the
22 Defense. I think we did mention about putting
23 something on the record -- Your Honor, let me think
24 about it. It wasn't nothing major, but --

25 MS. SIMPSON: You did tell us to remind you

1 about the Lee County issue.

2 MR. JOHNSON: Right.

3 THE COURT: But y'all -- nobody has mentioned
4 that.

5 MS. SIMPSON: Right.

6 MR. JOHNSON: No.

7 THE COURT: All right. I'm going to make him
8 available during lunchtime for his lawyers.

9 May I see the lawyers in chambers for a quick
10 second?

11 MR. JOHNSON: Yes, sir.

12 (A luncheon recess transpired 1:03 PM - 2:05
13 PM.)

14 THE COURT: Ms. Simpson, anything for the
15 record before we start back?

16 MS. SIMPSON: Briefly. I think we remembered,
17 and I spoke with Mr. Johnson, what we wanted to put
18 on the record. The redacted version of the video
19 was switched out from what was actually used for
20 pretrial purposes.

21 Also, Your Honor, we would let Mr. Johnson know
22 that it's actually formatted and it does say
23 formatted. Not only written on the CD does it say
24 redacted, which was scratched out, but on the file
25 itself it says redacted. So we're just doing one

1 that is renamed so that they don't know it was
2 redacted.

3 THE COURT: What that was, was actually
4 redacted in reference to the polygraph?

5 MS. SIMPSON: Yes, sir.

6 THE COURT: We all agreed in chambers that it
7 would come out. And we just substituted the one
8 that we used for the Jackson v. Denno with a
9 redacted copy for today.

10 MS. SIMPSON: Correct.

11 THE COURT: Mr. Johnson, any problem with that?

12 MR. JOHNSON: No, sir.

13 THE COURT: Thank you.

14 All right. Everybody ready?

15 MS. SIMPSON: State is ready, Your Honor.

16 MR. JOHNSON: Defense is ready.

17 THE COURT: Bring the jury in, please.

18 (The jury enters the courtroom at 2:07 PM.)

19 THE COURT: We're going to continue on with the
20 playing of the tape. Everybody find their places in
21 the transcript? I'll say this is for you as well as
22 for me: I know it's dark in here, I know you just
23 had pizza, but everybody pay attention, please.

24 All right. Y'all ready to start back?

25 THE JURY: Yes, sir.

1 THE COURT: All right.

2 (Video resumed for his Honor and the jury.)

3 (Video concluded.)

4 THE COURT: Madam Forelady, ladies and
5 gentlemen, y'all step back into the jury room just a
6 second. We need to take a quick little break.
7 Don't discuss the case and don't deliberate.

8 (The jury exits the courtroom at 2:55 PM.)

9 THE COURT: All right. We'll take about a
10 five-minute break. Thank you.

11 (Short break.)

12 THE COURT: Bring the jury in, please.

13 (The jury enters the courtroom at 3:02 PM.)

14 DIRECT EXAMINATION

15 (Continued)

16 BY MS. SIMPSON:

17 Q. Sergeant Bailey, at the close of that
18 interview, what was the defendant taken into custody
19 and arrested for?

20 A. A warrant I swore out. Judge Todd was --

21 THE COURT: Speak up, please.

22 THE WITNESS: I'm sorry, sir.

23 A. The warrant was for criminal sexual conduct or
24 attempt, victim under 11 years of age, first degree.

25 Q. Okay. I'm going to go to just a couple things

1 that were in the interview. Specifically with
2 respect to your portion or the other investigator's
3 portion where they're talking about DNA and we have
4 DNA results and things of that nature.

5 A. Uh-huh.

6 Q. Would you have gotten test results back this
7 quickly from any kind of processing?

8 A. Absolutely not.

9 Q. Okay. So what is the purpose of trying to
10 confront a potential subject with DNA and things of
11 that nature?

12 A. I've seen in the past where officers will bring
13 that up to try to elicit a response to there
14 possibly being DNA on a victim. So this is a line
15 of questioning they'd use to try to get a response
16 to determine if there was DNA or not.

17 Q. So, essentially, a tactic of sorts --

18 A. That's the word for it, tactic.

19 Q. -- investigative tactic.

20 And with respect to this case, the defendant
21 responded, I know about DNA.

22 A. Correct.

23 Q. And he was with law enforcement; isn't that
24 right?

25 A. Correct; for 12 years, is what he told us.

1 Q. So he was pretty familiar with police officers
2 and their forms of questions and things of that
3 nature?

4 A. I would think so.

5 Q. In the course of your investigation, did you
6 actually learn whether the night of this disclosure
7 **Minor** was actually -- the sexual assault was
8 completed that night? Did you learn whether or not
9 it was completed?

10 A. No, it was not completed. It was attempted,
11 but it was not completed.

12 Q. So really no evidence of any semen or
13 ejaculation or anything of that nature?

14 A. Based on her testimony, there should not have
15 been, because it was not completed.

16 Q. And the interview with the defendant, that was
17 the same day of the disclosure, or evening?

18 A. I believe because it was in the late night
19 hours, the switching, everything supposedly happened
20 on the 11th, but I think by the time Mr. Johnson
21 appeared back at Kershaw County, it was right around
22 12:00 or maybe just a little bit after. So what I'd
23 consider the same workday, it was actually two
24 different dates, the 11th and 12th.

25 Q. But he was interviewed, essentially, close in

1 time to the actual disclosure?

2 A. Oh, yes, ma'am.

3 Q. And the victim was also taken to the hospital
4 that day as well?

5 A. Yes, ma'am.

6 Q. Did you schedule a forensic interview on behalf
7 of the victim?

8 A. We tried to get them done as quickly as
9 possible. We were fortunate at the time to be using
10 the Kershaw Center next door, so it was actually
11 done -- the first interview was done within close
12 proximity within the day.

13 Q. The next day it was done?

14 A. I think that's correct. Yes, ma'am.

15 Q. And that was her initial interview with
16 Mr. Kellin, I believe?

17 A. Yes, ma'am.

18 Q. During the course of this investigation, did
19 you actually -- did SLED become involved?

20 A. Yes, ma'am, they did.

21 Q. What is SLED and why would they become involved
22 in a case such as this?

23 A. There was, I believe, two members of SLED here
24 during this week. SLED is the South Carolina Law
25 Enforcement Division. We rely on them a good bit

1 for their labs and other resources that they have
2 that we don't have on a local level. So they were
3 asked to come in because there was what I would
4 consider two reasons: We had a jurisdictional issue
5 between Kershaw County, Lee County, and Allendale, I
6 believe it is, and Fairfax. And, also, Mr. Johnson,
7 at the time, was a law enforcement officer. Usually
8 we like to have a State agency come in to be an
9 unbiased outside agency to help with the
10 investigation.

11 Q. So they act as an assisting agency to Kershaw?

12 A. Yes, ma'am.

13 Q. And respect to their lab and forensics, does
14 Kershaw County actually have their own forensics lab
15 like Richland County?

16 A. I wish. But the answer is no.

17 Q. No. And in this case, after scheduling the
18 forensic interview with **Minor** the victim,
19 did SLED become involved fairly quickly?

20 A. Yes, ma'am, I think so; within the next day or
21 so.

22 Q. And once they become involved, whose
23 responsibility is it with respect to interviewing
24 witnesses and things of that nature or other
25 scheduling of other interviews?

1 A. If they became involved and they had a
2 different aspect of the case or a different part of
3 the case, they'd schedule the interviews and then do
4 the interviews themselves.

5 Q. Okay. So as being the lead investigator with
6 the Kershaw case and everything that was happening
7 here, were you privy to that information and
8 eventually everything came to you?

9 A. Yes, ma'am.

10 Q. With respect to Pamela Hall, was she -- without
11 going into detail as to what she said, was she
12 interviewed early in this case as well?

13 A. By me?

14 Q. By law enforcement.

15 A. Yes, ma'am. She did a -- she gave statements
16 to the responding deputy that night. She also spoke
17 with me several times during that night and into the
18 next morning.

19 Q. And did she also give some written statements?

20 A. She did give written sworn statements, yes,
21 ma'am.

22 Q. Regarding the incidents that occurred?

23 A. Yes, ma'am.

24 Q. Additionally, I want to get out -- during the
25 course of your interview, a name came up with the