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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
Doyet A, Early, III, Circuit Court Judge

Court of Appeals Case No. 2015-001436

The State of South Carolina, ... Respondent

v.

Nakia Johnson, ... Appellant.

RECORD ON APPEAL VOLUME I OF II

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

Attorney for the Appellant

Alan Wilson
Attorney General

William M. Blitch, Jr., Esquire
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-3727

Daniel E. Johnson
Solicitor, Fifth Judicial Circuit

Attorneys for Respondent

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Rule 210(g), SCACR Certification

State's Exhibit No. 3 is a DVD that will be transported to the Court.

State of South Carolina

Court of General Sessions

County of Kershaw

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

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

Any objections to my opening remarks by the State?

MS. SIMPSON: Nothing from the State.

THE COURT: By the Defendant?

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

THE COURT: Ladies, opening statement, please.

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

THE COURT: Yes, ma'am.

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

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

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

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

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

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

she's calling the police.

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

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

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

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

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

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

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

with a minor in the first degree.

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

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

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

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

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

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

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

The Legislature recognizes the dynamics of these cases. And because of that, they enacted Statute 16-3-657, which simply states: The testimony of the victim need not be corroborated in a criminal sexual conduct case. Ladies and gentlemen, in this case, as I stated before, we welcome our burden of proof because we have corroboration, we have witnesses. Her little sister Nakia Johnson actually saw some of the terrible things that the defendant would do to Tea.

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

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

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

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

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

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

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

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

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

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

THE COURT: Mr. Johnson.

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

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

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

Before he went back to work, what he did was went to the store to buy all of the children some candy. Tea, which is just like his daughter, even though she's not his biological daughter, he raised her, he took care of her, he was a father to her, he took her to the store. He got her to the store. The evidence will show that there was a phone call made and the evidence will show that the phone call came from his phone. The evidence will show that they were not in a graveyard; the evidence will show that they were in the store. And if he was in the store with her, then there's no way for him to be at the graveyard doing what they say he did. And if he wasn't at the graveyard doing what they said he did, then everything that he's been accused of would be called into question.

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

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

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

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

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

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

MS. CAVANAUGH: Objection.

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

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

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

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

THE COURT: You may call your first witness.

MS. CAVANAUGH: State calls Deputy Jerry Barnwell.

THE COURT: Deputy Jerry Barnwell.

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

THE COURT: Deputy Jerry Barnwell.

(Deputy Jerry Barnwell enters the courtroom.)

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

JERRY BARNWELL

being first duly sworn, testified as follows:

THE WITNESS: I do.

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

THE WITNESS: Deputy Jerry Barnwell.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Good morning, Deputy Barnwell.

A. Good morning.

Q. Where are you employed?

A. Kershaw County Sheriff's Office.

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

A. Four years.

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

A. Deputy sheriff.

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

A. Respond to calls of service.

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

A. I was.

Q. And were you employed in your same capacity?

A. Yes, ma'am.

Q. And did you have an opportunity to -- or did you respond to 3046 Stevens Road?

A. I did.

Q. And is that in Kershaw County?
A. It is.
Q. And why did you respond to that location?
A. It was in reference to a sexual assault.
Q. And do you have a copy of your report with you?
A. No, ma'am, not with me.
MS. CAVANAUGH: Your Honor, if I may hand the witness a copy of his report.
THE COURT: Yes, ma'am.
BY MS. CAVANAUGH:
Q. Deputy Barnwell, what time did you respond to Stevens Road?
A. It was -- give me one second. It was 5:53 PM.
Q. I'm going to direct your attention to the top right of your incident report under dispatch time.
A. It was -- it was -- 6:36 PM was the dispatch time.
Q. Okay. And what time did you arrive to Stevens Road?
A. Got there at 7:23 PM.
THE COURT: 7 what?
THE WITNESS: 7:23 PM.
BY MS CAVANAUGH:
Q. And who did you speak to once you got there?
A. I spoke with the mother, Pamela Hall.

Q. Okay. And do you remember what her demeanor was like when you spoke to her?
A. She was upset and wanted us to do something.
Q. And without going into any detail, did she tell you about a phone call that she had overheard?
A. Yes.
Q. Okay. And after speaking to her, did you speak to anybody else on scene?
A. No; just her.
Q. Okay. And who is actually the listed victim in this case?
A. It's the juvenile, her daughter. I'd have to look on the report.
Q. I'll direct your attention to the first page in that middle section.
A. Miss Ford.
Q. Okay. What was her first name?
A. Shawntea.
Q. Okay. And how old was she on October 11th, 2011?
A. She was 11.
Q. And was she at the house that afternoon?
A. She was.
Q. But did you actually speak to her?
A. No.

Q. In your role as a responding officer, would that necessarily be part of your duties?
A. No; just speak to the mother, get the information from the mother, and notify the on-call investigator. And they would take over from there.
Q. And did you do that?
A. I did.
Q. Did you process the scene or anything like that?
A. No, I did not.
Q. And why would that not be -- why was that not what you did?
A. The crime didn't -- wasn't committed at the residence and it wasn't fresh -- a fresh crime.
Q. Wasn't freshly committed that night?
A. Right.
Q. At least at that residence; right?
A. Right.
Q. Now, did a -- was the victim's advocate from the sheriff's department called?
A. They were.
Q. And what did they do?
A. They -- they were to meet the victim and the mother at the hospital.
Q. Okay. And was it your understanding that they

were taken to the hospital?

A. They were.

MS. CAVANAUGH: Thank you, Deputy Barnwell. Please answer any questions from the Defense.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. When you arrived at the scene, was Mr. Johnson there?

A. No.

Q. Did you speak to him?

A. I did not.

Q. Did Ms. Pamela Hall tell you in her report about drawing his pistol and pointing it at him?

A. She told us that that night, yes.

Q. She told you that?

A. Uh-huh.

Q. She told you she drew it and she pointed it at him?

A. She said -- yes.

Q. Okay. That's all. Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Deputy Barnwell, just to follow up on that question, did she tell you why she did that?

A. She was angry with him. She told me after she heard the conversation over the phone, she told him to come home right then and there and to bring her daughter back. And then when her daughter returned home with Nakia, that's when -- that's when she told him to leave, grabbed the pistol and --

Q. And she grabbed his pistol because of what she heard on that phone call; correct?

A. Correct. Correct. She was angry with him. That's why she grabbed the pistol and told him to leave the residence.

Q. From what she heard on the phone call?

A. Correct.

Q. And she provided that particular information to you?

A. She did.

MS. CAVANAUGH: That's all, Your Honor.

THE COURT: All right. You may step down. Next witness, please.

MS. SIMPSON: State calls Shawntea Ford.

SHAWNTEA FORD

being first duly sworn, testified as follows:

THE WITNESS: Yes, ma'am.

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

THE WITNESS: Shawntea Ford.

DIRECT EXAMINATION

BY MS. SIMPSON:

Q. Shawntea, can you spell your name for the Court Reporter.

A. S-H-A-W-N-T-E-A.

THE COURT: Let's make sure we understand everything now. See that nice lady way back over in the back? She's got to be able to hear you. And I'm having a hard time hearing you, so you've got to speak up so everybody can hear you. Okay?

THE WITNESS: Okay.

BY MS. SIMPSON:

Q. Shawntea, how old are you?

A. Fifteen.

Q. And what grade are you in?

A. I'm a sophomore.

Q. In high school?

A. Yes, ma'am.

THE COURT: Hold on one second.

Ladies and gentlemen of the jury panel, if you cannot hear her, please raise your hand. Okay?

Go ahead. Speak up so they can hear you, please, ma'am.

THE WITNESS: I'm a sophomore.

BY MS. SIMPSON:

Q. And where do you go to school?

A. Lee Central High.

Q. Lee Central High?

A. Yes, ma'am.

Q. Okay. Do you have any particular favorite things you like to do; classes or anything?

A. I like history.

Q. You like history?

A. Yes, ma'am.

Q. And do you play any type of sports or do music or anything of that nature?

A. I play basketball.

Q. You play basketball? Do you play basketball for the school?

A. Yes, ma'am.

Q. And how old -- when is your date of birth?

A. October 16th, 1999.

Q. October 16th --

A. 1999.

Q. 1999. And are you a little nervous here today?

A. A little.

Q. A little bit.

Where did you go to middle school?

A. What year?

Q. Where?

A. Lee Central Middle.

Q. And what about elementary school?

A. I went to West Lee.

Q. And where are you currently living?

A. With my step-mom.

Q. And is that here in Kershaw?

A. Bishopville.

Q. And who all lives there with you?

A. My brother and step-mama and my dad.

Q. And your dad. And what are their names?

A. Jocelyn Moses [phonetic], Shawntel Ford [phonetic] and Tyler Ford.

Q. Okay. And you go to Lee Central High School.

How long have you been living with them?

A. About three years.

Q. About three years.

Prior to that, were you actually living with your mother?

A. I'm not understanding.

Q. Prior to going to live with your step-mom and your dad, did you live with your mom?

A. Uh-huh.

Q. Okay. And you've actually lived a number of different places; isn't that right?
A. Yes, ma'am.
Q. Tell the jury about where all you've lived.
A. I lived in Fairfax, Fairfield, and then I moved back down here, then I stayed in Camden, then I moved back.
Q. Okay. And in Fairfax -- and before we talk about that, actually, let's talk a little bit about your family. Do you have any brothers or sisters?
A. Yes.
Q. Tell the jury who they are and what their names are.
A. I have two brothers; one named Nakia and one named Tyler. And I have two sisters; one name Nakiah and one named Kisha [phonetic].
Q. Okay. And who is your mother?
A. Pamela Hall.
Q. And your father, what's his name again?
A. Shawntel Ford.
Q. What about your brothers and sisters; do they have the same father or a different father?
A. Me and my youngest brother have the same father and the other three has the same.
Q. Okay. And who is the father of your other

three siblings?

A. Nakia Johnson.

Q. And was he actually your stepfather?

A. Yes.

Q. And did you -- what did you call him?

A. Kia.

Q. And what are the names of his kids?

A. Nakia Johnson, Nakiah Johnson and Kamari Johnson [phonetic].

Q. And is Nakiah a boy or a girl?

A. Girl.

Q. And then your brother is Nakia?

A. Uh-huh.

Q. And then you have another sister. And who is the oldest out of all of them?

A. I am.

Q. You are. Growing up -- I know now you live with your biological father. But was he there a whole lot growing up before you went to move with him?

A. Yeah.

Q. He was around. Did you actually live with him or did you live with your mom?

A. I lived with both.

Q. When you were living in Fairfax, who did you

live with?

A. My stepfather and my mother.

Q. Your stepfather and your mother. And by your stepfather, who are you referring to?

A. Nakia.

Q. And your little sister Nakiah, was she born yet or did you live there for a period of time before she was born?

A. She was born.

Q. And was she there with you too?

A. Yes.

Q. In Fairfax, after y'all -- why did y'all leave Fairfax?

A. Because they got into a big argument that he was cheating. And he was abusive, so we left.

Q. And by we left, who all left Fairfax?

A. Me, my mother, and my siblings.

Q. And at that time who was born?

A. Nakisha.

Q. Nakisha and Nakia. Your little brother wasn't born yet?

A. Yeah, he was born too.

Q. Okay. And you went with your mother. Where did y'all go to live for a little while?

A. We went back to my grandma's.

Q. And where does she live?

A. She lives in Kershaw.

Q. She lives in Kershaw. And has she been living here most of her life or --

A. Uh-huh.

Q. -- pretty much all of your life?

A. [Nods head].

Q. And do you know where she lives?

A. Yes.

Q. Where is that?

A. It's down 341.

Q. It's down what?

A. 341.

Q. And so you stayed with your grandmother a little while when you left Fairfax. Is there actually -- who's -- what kind of house was it, like, as far as was it a house, a trailer?

A. It was a trailer.

Q. And on that property, is the trailer the only house or is there actually another house that your grandmother lived in?

A. It's actually another house.

Q. Say that again.

A. It's two.

Q. Two houses. Okay. And who did you live with

and where?

A. I lived with my grandma and my mama, and that was at the trailer.

Q. At the trailer. And you said they got into an argument, and that's why they moved, about him cheating. So it was just -- did you overhear arguments or would they argue in front of you?

A. Yes.

Q. And then after living with your grandmother for a period of time, did you actually move somewhere else?

A. Uh-huh.

Q. You have to say yes or no.

A. Yes.

Q. Okay. Where did you live?

A. We moved into a trailer.

Q. Do you remember where that trailer was?

A. It was in the trailer park.

Q. Was it here in Kershaw or somewhere else?

A. It was in Bishopville.

Q. And who lived with you there?

A. Just my mom and my brothers and sisters.

Q. Okay. And when you say brothers and sisters, do you mean --

A. Nakiah --

Q. -- Kia's children?

A. Uh-huh.

Q. Your step-dad's kids?

A. Yes.

Q. Was he actually living there with y'all?

A. Well, he would come visit.

Q. Did he also come visit you when you were living on your grandmother's property?

A. Yes.

Q. Tell the jury about when he came and visited you.

A. He would just come and he'll just act normal or he was like -- he'd send my mama to go get something or he would just make up something, like, that he would go get. But he'd always tell me to go to a place and he'll leave off to go to a place and tell them to do something else and he'll just take me to a place on my own or by myself and --

Q. And so would your brothers and sisters still be there at the house?

A. Yes.

Q. And backing up just a little bit, in Fairfax, did he ever do anything there that made you feel uncomfortable?

A. Yes.

Q. Tell the jury about what happened while y'all were in Fairfax.

A. Before we moved into our brick house, we was staying in a trailer. And I guess he discovered that I had hair on privates, so he would ask and I would say, yes, I do. So he would be like -- he would say -- my mama would go off somewhere and he'll send my sisters and them into the back room while I go into his room. And then he'll ask could he -- he would ask me would I tell, and I would always say no. So he asked me to pull down my pants, and I do. So he would pull down his pants too, and would he touch.

Q. So backing up a little bit, you said that he -- you told him you wouldn't tell. Do you know what he was talking about at that time?

A. [Nonverbal response].

Q. And when he pulled down his pants and you pulled down yours, he touched you. Can you tell the jury in what way he touched you, like, how he touched you.

A. First he'll kiss me on my lips and then he'll -- he'll --

THE COURT: Take a deep breath, young lady, and tell us what happened, please.

THE WITNESS: He'll rub -- he'll rub -- he'll rub on my arms and my breasts. Then he'll rub on my stomach, then he started kissing me. Then he'll put his private in my private.

BY MS. SIMPSON:

Q. And would he say anything to you or do you remember what he was doing while this was happening?

A. Sometimes he'll ask me do I like it, and I always shake my head yeah. I don't give a response, but I always say yeah.

Q. And why did you say yeah?

A. I guess it would be over fast if I say yeah.

Q. Would he always do that? Was he always able to have sex with you?

A. Yes.

Q. Yes. But you said he started touching you first; right?

A. Yes.

Q. And this was in Fairfax where it started?

A. Yes.

Q. When he would come visit you while you were living on your grandmother's property, tell the jury what happened there when he would visit you.

A. He would tell Kiah and my brother and them to either go outside or go to the room and play, then

we'll go down the hallway. And he'll check to see if they can see through the door. So he'll tell them to just to stay put and don't move. And we just go in the room and he pulls his pants down and he'll tell me to suck it.

Q. Tell you to what?

A. To suck it.

Q. To suck it?

A. [Nods head].

Q. What was he telling you to suck?

A. His penis.

Q. Okay. And did you do it?

A. Yes.

Q. What do you remember him doing while he made you do that?

A. He would just rub my hair or move my head back and forth.

Q. Say that last part again.

A. He would move my head back and forth.

Q. And do you remember if anything ever came out at all?

A. White stuff.

Q. White stuff? Do you remember where it would go or where he would put it?

A. He would tell me just to wipe it on the floor

or rub it in, or he'll get a towel or a wash rag.

Q. Okay. Did anything else happen while you were there?

A. He'll tell me to lay down and he'd kiss me. And he'd kiss my thighs and then he'll put his penis in my private.

Q. And in your private, do you mean your vagina area?

A. Yes.

Q. Did he ever try to touch your bottom or put anything in that area?

A. He would rub it, but he wouldn't put it in there.

Q. Okay. So he would just rub on that area, but he never put his penis in there?

A. Yes.

Q. And what type of work did Kia do?

A. He's an officer.

Q. He was a police officer?

A. [Nods head].

Q. And did you ever see him with guns or know he had a gun?

A. I knew he had one.

Q. And, essentially, up until this point, what types of things has he told you? Like, why didn't

you tell anyone?

A. Because he said I'll never be his, because it would drive him crazy. And he said he would have to kill my mama because he know that she was going to tell, including us would tell, then he's going down.

Q. And so that was some of the, I guess, threats he made to you?

A. Yes, ma'am.

Q. And I know we're kind of talking about stuff -- how often did this happen?

A. Any time that he could.

Q. So whenever he got the opportunity, this is what would happen.

After you moved -- at some point while you were at your grandmother's house, did you actually leave there and go live somewhere else for a while?

A. We went to go move back with him again at one point in time.

Q. At one point in time. And as far as him visiting you, was that pretty much wherever y'all were living at the time? If you weren't living with him, you still got to see him?

A. Uh-huh.

Q. And other than what we've talked about as far as the things he would do to you, how did he treat

you in front of, like, your mother and your brother and your sister?

A. He would act like a real person, like a real dad in front of them.

Q. And did you act pretty normal too?

A. I always stayed to myself.

Q. Okay. You always stayed to yourself?

A. Yes, ma'am.

Q. So at your grandmother's house, you said some people would kind of run up, but he'd be on the lookout for them?

A. Yes, ma'am.

Q. Okay. Because I couldn't really hear you well during that part. Can you tell us about that?

A. While we're in the room, we do what we do. My sister Kiah or either Kamari would come to the door or they'll knock or they'll try to, like, peek and see what's going on.

Q. Okay. And would he actually send them away or how would they leave, or do you even know?

A. He'll tell them to go back or he'll walk back around there with them or act like he's playing with them.

Q. Okay. And were there times that -- you said sometimes your mom went to the store. Did she

actually work too?

A. Huh-uh. No, ma'am.

Q. Not during that time? What would happen if she came back from the store?

A. She would just come in the house and he would tell me -- well, he would tell me to hurry up and come sit down. So I hurry up and run back by the time she come back. And she would come in and we would act like nothing happened.

Q. He said would tell you what?

A. Hurry up and come back and sit down.

Q. And that's when, I guess, you could hear her pull up or he knew she was coming back?

A. Yes, ma'am.

Q. So when y'all left and went back to Fairfax, tell the jury a little bit about why you went back to live with them.

A. I guess it was him and my mother decision to come back. But I really wanted to stay with my auntie, but my mama wouldn't let me.

Q. Okay. Which auntie -- now, you have several aunties; right?

A. Yes, ma'am.

Q. Tell the jury, who all are your aunts?

A. Stacey Hall and Melissa Hall.

Q. And those are the two that you actually stayed with off and on?

A. Yes, ma'am.

Q. Which aunt -- when you say auntie, which aunt did you want to stay with?

A. My Aunt Missy.

Q. Your Aunt Missy. But you had to go back to Fairfax?

A. Yes, ma'am.

Q. Who was living with you at Fairfax and who was staying at the house?

A. It was me, my mother, my two sisters, and my brother and Nakia.

Q. Okay. And when you moved back, did things stop or what happened?

A. They just speeded up, just got worse than what it was.

Q. Got worse than what it was?

A. [Nods head].

Q. Tell the jury what you mean when you say it got worse than what it was.

A. It just was hour after hours. He'd just come in -- if he's not at work, he'll just -- he'll play -- he'll do -- he'll watch TV for a while and then he'll come and mess with me. And he'll just

send them off to go somewhere or when they go outside, he'll pull me back in the house.

Q. So with him living there, it happened more often?

A. Yes, ma'am.

Q. And did it happen certain places in the house or just anywhere?

A. The back room, the laundry room, and his room.

Q. And about how old were you when this was happening?

A. I can't really remember.

Q. At some point in Fairfax, was this the time -- did your mom leave for a while?

A. Yes. She was working.

Q. She was working?

A. [Nods head].

Q. Do you remember where she was working?

A. Like, AT&T or something like that.

Q. Okay. And so she would come home?

A. Yes, ma'am.

Q. And when she was home, would anything happen?

A. No -- well, while she was sleeping, he'll get up sometimes.

Q. Okay. Just sometimes, but not all the time?

A. Not all the time.

Q. And about how long do you remember you staying in Fairfax at that point in time? Because this is the second time you went back; right?

A. Yes, ma'am.

Q. Do you remember how long at all?

A. I just know it was a good while.

Q. It was a good while. And was it just -- did you know the defendant's mom or Kia's mom?

A. Yes, ma'am.

Q. Did she live there with y'all or did she live in Fairfax?

A. She lived in her own home.

Q. She lived in her own home. At some point, did you move again?

A. Yes.

Q. And do you remember why you moved or do you just --

A. I just know we moved.

Q. Where did you go once you moved?

A. We went to Aunt Missy house.

Q. Aunt Missy's house. And that's Melissa Hall?

A. Yes, ma'am.

Q. And where was she living at the time?

A. In Cassatt.

Q. In Cassatt. And who was all was at Aunt

Missy's house?

A. It was me, her, and my siblings.

Q. And your siblings?

A. [Nods head].

Q. Where was your mother?

A. She was there.

Q. She lived there too?

A. Yes, ma'am.

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

Q. I'm going to show you what's marked as State's Exhibit 5. Do you recognize what's in that picture?

A. Yes.

Q. What is it?

A. My Aunt Melissa house.

Q. And I know this picture was taken a little more recently, but is that pretty much how it looked --

A. Yes.

Q. -- back in -- when you were living there?

A. Yes.

Q. Okay. And that's -- what's the number on the mailbox?

A. 1927.

MS. SIMPSON: Your Honor, at this time, the State would offer State's Exhibit 5 into evidence.

MR. JOHNSON: No objection.

THE COURT: Without objection.

(State's Exhibit No. 5 admitted in to evidence.)

BY MS. SIMPSON:

Q. So this is Aunt Missy'S house. Did you actually see the defendant while you were staying in this house?

A. Yes.

Q. Tell the jury about how that would come about; how you would see him and what would happen when you saw him.

A. He would come down to come see us. We would go do something, like go to Chuck-E-Cheese or something. We'll come back home and he either want a beer or something. It's a store up the street, but he wouldn't want my mom to go to the store up street, he would want her to go downtown to get something for him. And he'll send my brothers and sisters in the living room to play the Wii. We would go to the computer room and he'd put a towel up under the door because you could see up under it.

And he'd pull down his clothes and he'll tell me to too, and he'll ask me can I sit on his lap. And I'll sit on his lap and he'll talk for a few and

then he'll just start kissing me and rubbing me. So he -- he -- he'll still continue to kiss me. And he'll lick my breasts and kiss my breasts any stomach and rub my butt. And then he'll ask me to sit on his lap some more. And then he'll put his penis in my vajayjay, and he'll just move up and down constantly.

(State's Exhibit Nos. 6 and 7 marked for identification.)

Q. I'm going to show you what's been marked as State's Exhibit 6 and 7. Okay? Do you recognize these pictures?

A. Yes, I do.

Q. Now, these were taken more recently, but are they kind of -- what room is that?

A. The computer room.

Q. And where is the computer room?

A. In the back room.

Q. And in State's 6 and 7, does it look different than it did back then?

A. A little bit.

Q. A little bit different. But it's the computer room at Aunt Missy's house?

A. [Nods head].

MS. SIMPSON: Your Honor, at this time we'd

offer State's 6 and 7 into evidence.

MR. JOHNSON: Without objection.

(State's Exhibit Nos. 6 and 7 admitted in to evidence.)

BY MS. SIMPSON:

Q. So in the computer room, you said that he would make you sit on him.

A. Yes, ma'am.

Q. So where would y'all be sitting? Where would this happen?

A. We would be sitting in the computer chair.

Q. In the computer chair?

A. [Nods head].

Q. And you said he'd put a towel under the door?

A. Yes, ma'am.

Q. Would he ever say anything to you while you were in the room or while this was going on?

A. He'll say, you know I'm going to make you mine, right? Or he'll say, it feel good to you? Or he'll say, just stay right there, don't move. Or he'll say, that's it, right there.

Q. So he would kind of direct you whenever he was done doing whatever he was doing?

A. [Nods head].

Q. And where did you say your sister or your

brother would be?

A. In the living room playing games.

Q. And your mom, he would send her to a store, but not the one that was closest to the house?

A. Yes, ma'am.

Q. And was your Aunt Missy at home much when this happened?

A. No; she'd be at work.

Q. She was at work. Did she work a lot?

A. Yes, ma'am.

Q. And while at Aunt Missy's house, do you remember if y'all took any trips or anything?

A. Yes.

Q. Tell the jury about the types of trips you would take.

A. We went to Disney World.

Q. Disney World?

A. Went to the beach. And that's really it.

Q. So you went to Disney World and the beach while you were at your Aunt Missy's?

A. Yeah.

Q. And when you say we went, who all went to Disney World and the beach?

A. My mom, my brothers and sisters and him.

Q. And him?

A. And Kia.

Q. And Kia. And what happened when y'all went to Disney World? Did anything happen while y'all were at Disney World?

A. Yes, ma'am.

Q. Tell the jury what happened while y'all were at Disney World.

A. We was on our way out, we was fixing to leave and -- no, at the beginning, when we first got there that night, we all was tired, we all was sleepy. So I slept on one side of the bed and they slept on the other side. But I got closer to where he was. But the beds was just that one and that one [demonstrating]. But he would take the cover up and down so I could see his penis that night.

And on the way we about to leave to go home, he sent my mama out to get the car, and he told me to come in and hurry up before he get back. So I came to him before he get in the shower. And he was trying, but it was hurting so I told him, no, just stop. So he just kept touching me and just rubbing me and rubbing himself.

Q. Okay. And you said he told your mom to go get the car. Where were you brothers and sisters?

A. They went with her.

Q. They went with her?

A. [Nods head].

Q. And you said it hurt. What was he trying to do that hurt?

A. Put his penis in me.

Q. Okay. And was he actually able to do it then since it was hurting you?

A. He couldn't because it was hurting.

Q. Okay. So he just touched you instead?

A. Yes.

Q. Is that everything that happened at Disney World?

A. Yes, ma'am.

Q. What about the beach?

A. We was in the ocean and he told me to come closer to him in the ocean because I couldn't go far. So he had to grab me to go far. So he was just touching me underwater and making me grab him underwater.

Q. And why couldn't you go far? Are you not able to swim?

A. Not able to swim.

Q. Okay. And what beach was this?

A. Myrtle Beach.

Q. And where were y'all staying when you went to

the beach; do you remember?

A. We only took a one day -- a one-day thing. Then we came back down to the hotel in Bishopville.

Q. Okay. And did anything happen at the hotel in Bishopville?

A. Yes, ma'am.

Q. Tell us what happened there.

A. That night he sent my mama to the store to get some soap and something else. And he told my sisters and brother to go in the bathroom. But Bubba said, the girls in the bathroom, so I shouldn't go in the bathroom. So he told him -- he said, get in the bathroom and brush his teeth and wash up in the sink with them. And he closed the door.

And he told me to lay back on the bed and take my pants off, so he did the same thing. And he just put his penis in my vajayjay.

Q. Okay. And you call it a vajayjay?

A. Yes.

Q. And by this point, had he been doing this for a while, a long time?

A. Yes, ma'am.

Q. And had he done this a number of times?

A. Yes, ma'am.

Q. Had you gotten used to it?
A. A little. But it was still uncomfortable.
Q. Still uncomfortable. And you didn't tell anybody what was going on?
A. [Nonverbal response].
Q. While you were at your Aunt Missy's house or anywhere else, did he touch you anywhere else or anything else that you can remember?
A. We would drive to a dirt yard -- or a dirt road.
Q. A dirt road?
A. Yes, ma'am.
Q. Would it be the same dirt road or were there different dirt roads?
A. Well, this one was kind of like the same, but it was different ones.
Q. Okay. Different ones. And what do you remember happening -- or tell us about a time that you remember on the dirt road.
A. He'll back the truck up so no one else can see, and he'll look out the windows and see if somebody else come. And he'll pull his pants down and I'll take mines off too. And he'll ask me to get on top of him or he'll ask me do I want to ride. And I said, I don't know how. And he said, I'll teach

you. And just said, move up and down.

Q. So he asked you to get on top of him and ride, and you said you don't know how?

A. Yes, ma'am.

Q. Is this one of the first times that you remember being in the truck on the dirt road or just one of the times?

A. Just one of the times.

Q. And this dirt road, whose house was it close to?

A. Aunt Missy's.

Q. And how often would you say he took you to the dirt road -- or to a dirt road?

A. Multiple times.

Q. And at this point, did he ever actually live with you at Aunt Missy's house or did he just visit with you there?

A. He'd just visit.

Q. Just visited. And would he stay overnight or just come for a little while or how did that work?

A. He'd just come for a little while.

(State's Exhibit Nos. 8 and 9 marked for identification.)

Q. I want to show you what has been marked as State's Exhibits 8 and 9.

MR. JOHNSON: Without objection.

MS. SIMPSON: Well, Your Honor, I'd offer them into evidence at this time without objection.

(State's Exhibit Nos. 8 and 9 admitted in to evidence.)

BY MS. SIMPSON:

Q. I'll show you State's 8 and 9. Do you recognize these?

A. Yes, I do.

Q. And what do we see in State's 8 and 9?

A. Dirt.

Q. Dirt?

A. The dirt road.

Q. The dirt road?

A. Yes, ma'am.

Q. And did you actually point this dirt road out to an officer at one point?

A. Yes, ma'am.

Q. And I know this was a little bit -- this was taken afterwards, but you remember this being one of the dirt roads he took you on?

A. Yes, ma'am.

Q. But you said there were multiple.

A. Yes, ma'am.

Q. How were you able to remember this one?

A. The light off his car and the pole that's in, like, the light thing.

Q. Okay. The power lines and poles and stuff?

A. Yes, ma'am.

Q. So did y'all stay with Aunt Missy for a while?

A. Yes, ma'am.

Q. And after living with your Aunt Missy for a while, did you move somewhere else?

A. Back with our grandma.

Q. Back with your grandma.

Let me ask you this: You've moved around, but did you ever switch schools or anything or did you stay in the same school?

A. When I went back to Fairfax I did.

Q. Okay. So when you went back to Fairfax, where did you go to school?

A. I can't remember the name of the school.

Q. Okay. Were you in Fairfax for very long?

A. For a little while.

Q. So after you left Aunt Missy's house, you moved back -- you say to your grandmother's, but the trailer beside her house?

A. Yes.

Q. Who all lived with you?

A. My mom, my siblings, my grandma, my auntie and

her daughter.

Q. Which auntie?

A. Stacey.

Q. Aunt Stacey?

A. Yes, ma'am.

Q. And her daughter. What's her name?

A. Ronisha [phonetic].

Q. Speak up.

A. Ronisha.

Q. And tell us about living there. Did you ever get to see the defendant?

A. Yes.

Q. Tell us about what would happen when you saw him.

A. He'll come down and he'll be like, I miss y'all. And we say, we miss you too. And then we give him a hug. And then he'll -- he never stay -- when we come, he never stays to the house, so we go get a hotel to stay in.

Q. Okay. So he never stayed at the house, so y'all would go stay somewhere else?

A. Yes, ma'am.

Q. When you say y'all, who would stay with you?

A. My brothers, my sisters, me and him.

Q. Okay. And did he ever just come to the house

for the day or did y'all always stay with him? How did that work?

A. No. He'll -- sometimes he'll stay and sometimes he don't. But when he stay is when we go to a hotel.

Q. So it just kind of depended on what was going on?

A. Yes, ma'am.

Q. And did anything ever happen while you were at your grandmother's house or beside your grandmother's house during this time period?

A. Oh, no.

Q. Nothing. And would he take y'all places besides the hotel? Did he do things with you?

A. Not with him. But we either -- we'll leave before the -- I mean, he might say he's about to go to the store or go get something for the house. And he'll tell me to hurry up and get in the car before the others come, and he'll just drive off.

Q. And when y'all drove off, where did you go?

A. To an off area.

Q. An off area? Just somewhere around? Was it near or far away to the house?

A. It was kind of far.

Q. Kind of far. And how often did that happen?

A. Certain times when he comes.

Q. Just certain times when he would come?

A. [Nods head].

Q. Was there a time period that he didn't come for a while? You said you missed him -- or he asked if you missed him. Were there time periods that you didn't get to see him?

A. Yes.

Q. And do you know why that was?

A. He was in the Army, I think.

Q. Okay. So he'd be gone for a little while and then you'd get to see him?

A. Yes, ma'am.

Q. Tell us what you remember, if anything, about a graveyard?

A. That was the day of -- that my mama found out for herself and actually heard what was going on.

Q. Tell the jury a little bit about what you remember about that day, just generally, and him coming over?

A. We just got home from school and we all ran in the house. And he was -- Mama was cooking a little bit. And he was like -- my little sister Kia said she wanted something from the store. So he asked if we all wanted something. We all said yeah. So Mama

said, wait, I'm going to get shoes from out the back room.

So he told me to hurry up and get to the car. But my Uncle Skeeter come out. Grandma friend Skeeter had stopped him and asked him to get him a beer, and he said, I'll get the money when I come back, because we was in a rush. So we got in the car and my mama had called. And she said, why you left us, you know we all wanted to go? And he was like, I didn't know. He was like, but I'm almost here, so I'll -- what do you want? And she hang up. She said what she wanted and he hang up.

So we pull into the graveyard and he parked it. And he told me to pull my pants down and he pulled his down too. So he said -- so he started touching me and he started feeling, but we never could have done nothing because of the fact that my mama was still on the line and he was just talking. And he was like, Pam, you crazy, I wouldn't say that. He said, why would I do that? And he was just still steady talking, and him and my mama was still steady arguing.

So he pulled off with the car. We hurried up and went to the store. And he went in and he got what he wanted and came back and just threw it in

the car. So he was just driving, he was just swerving on the road. And he was like, whatever you do, whatever you do, don't tell her nothing, don't tell her nothing what happened. He was like, Tea, if you tell her, I'm done, don't tell her nothing. So I didn't say anything.

Q. So you didn't say anything. And you said the phone call from your mom, your pants were down?

A. Uh-huh.

Q. And his pants?

A. [Nods head].

Q. And this stuff had already happened before at the graveyard?

A. Huh?

Q. Or stuff had happened on another occasion at another time?

A. No. We was still in the graveyard.

Q. Oh, y'all were in the graveyard. And when he got the phone call, y'all were starting it. But did you finish? You said he wasn't able to finish?

A. No. We was just talking, but he was starting.

Q. And did you actually hear him on the phone with your mom?

A. Yeah, because the phone was, like, where the stick -- like where you pull the thing back in park,

gas or neutral. The phone was just sitting there.
Q. Okay. And they were yelling and kind of arguing on the phone?
A. Yes.
Q. When you got back to the house, tell the jury who was there and what happened.
A. He couldn't pull into the driveway, so my mom was already waiting at the mailbox. And she opened the door and she pulled me out the car. And she was like, Tea, tell me what happened, tell me what happened. So I just cried because I didn't know what to do. She was crying too. So she told me to get into the house and pulled into the driveway. He was yelling outside. And she was like, Tea, tell me what happened. And I still said, nothing happened, Mama. And she was like, I'm not crazy, because I know what I heard. She was like, Tea tell me. And I said nothing happened, Mama. And she said, I'm going to send you to a home, Tea, tell me what happened now. So I told her what happened.

And she went outside and she said, you molesting my young daughter, you touching my daughter? And she got back in the car and they was arguing, and she put me in the car too. And she said, Tea, now tell me what happened again. So I

told her. And I got back out. She told me go kiss my brothers and sisters and tell them I love them. And that's when she had the gun in her hand and she was pointing it at his head. And he was like, Pam, just stupid. And he was like, Tea, you know I ain't touch you. And I said, yes, you did.

And I said, Mama, get out the car, you got four kids, it's no need for you to even do that. And she was like, Tea, do what I said. And I said, Mama, come on, it ain't worth it, man. And she got out. And she said, leave my yard because I'm going to call the police on you. And he left. And that was it.

Q. So initially you didn't want to tell your -- or didn't tell your mom what happened when y'all got there?

A. I was scared. I didn't know what to do at that point.

Q. Okay. And he told you not to tell.

A. [Nods head].

Q. And how long had this been going on when it finally came out?

A. It was a while. It was just long.

THE COURT: How long?

THE WITNESS: A long time.

THE COURT: A long time?

THE WITNESS: Yes, sir.

BY MS. SIMPSON:

Q. Would you say years?

A. Yes, ma'am.

Q. And you said your mom was really mad and she asked you what happened and was pulling you into the car. Were you in the car when she had the gun or where were y'all?

A. We got back in the car and we was say -- I got in the front and she got in the back. And she said -- she asked me, now, Tea, tell me what you told me in the house. And so I told her. And he looked at me and just shook his head. And I got back out.

Q. Okay. And once he left, what do you remember about that night, if anything?

A. I just had cold feet. I just didn't know what to do.

Q. All right. Who all was at the house or -- I mean, was it really quiet or was there a lot of commotion when everybody found out?

A. My mother, she was stunned. She -- I mean, she neither couldn't stand no more, she just fall. And my grandma, she had just go for -- my brothers and

sisters didn't know what was going on at the moment. But Kiah just started crying because she knew.

Q. Kiah was crying?

A. Yes, ma'am.

Q. And did you actually go to the hospital that night?

A. Yes, ma'am.

Q. And do you remember after going to the hospital -- have you ever had that kind of -- been to the doctor and them performed those kinds of tests on you?

A. No, ma'am.

Q. No. And do you remember talking to police too?

A. Yes, ma'am.

Q. And do you also remember -- did you tell the police a little bit about what happened?

A. Yes, ma'am.

Q. And did you also remember going to, I think, the Family Resource Center and talking to a Mr. Kellin?

A. Yes, ma'am.

Q. On that day when you talked to him, were you able to tell him much about what happened?

A. Not really. I could only just put points of what happened and where some places took place.

Q. And how were you feeling when you went to meet with Mr. Kellin?

A. I was sick.

Q. You were sick?

A. I was still scared and embarrassed.

Q. So you were sick, scared, and embarrassed --

A. Yes, ma'am.

Q. -- when you went to talk to him?

And when you say you were sick, tell the jury what was wrong with you.

A. I was nervous and I -- I really didn't want to talk. And everything just happened so fast, so it just made me gag.

Q. All right. And did you also have to talk to another lady at some point?

A. Yes, ma'am.

Q. Do you remember her name at all?

A. No, ma'am.

Q. No. But was it similar to the type of conversation that you had with Mr. Kellin?

A. Yes, ma'am.

Q. And during that time talking with her, were you able to give her information about what Kia, your stepfather, had been doing to you?

A. Yes, ma'am.

Q. Do you know whether your Aunt Missy and Aunt Stacey ever found out what was going on?

A. My Aunt Stacey found out that night.

Q. Okay. And as far as giving specific details, have you really talked to many people about this, as far as telling details and exactly what happened like we're doing here today?

A. No.

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

BY MS. SIMPSON:

Q. As far as -- and let's be clear, Kia, your stepfather, besides when y'all were alone and these things were happening, how did he treat you? Was he nice to you or was he mean to you? How did he treat you?

A. Like, our relationship with each other?

Q. Uh-huh.

A. He was -- he was just a guy. I mean, he's not bad when it comes to me. But he was just a father.

Q. So he was the father in your life for a while. And did he treat you, like I said, outside of this, like your other brothers and sisters? You were included in going to Chuck-E-Cheese and to the beach and --

A. He treated us equally.

Q. Okay. And the person who touched you and had sex with you for a period of years, a long time, do you see him in the courtroom here today?

A. Yes.

Q. And can you point him out for the jury and tell us what he's wearing?

A. [Indicating]. He's wearing blue.

Q. Blue?

A. Blue.

Q. Sitting between his attorneys?

A. Yes.

MS. SIMPSON: Your Honor, let the record reflect she's identified the defendant.

THE COURT: Thank you.

MS. SIMPSON: Thank you, Shawntea.

THE COURT: Ladies and gentlemen of the jury, we're going to take our morning break at this time. I would ask that you please select the foreperson between the 12 of you. Please don't discuss the case or do any type of deliberations.

We're going to go until about 12:45 when you come back, and then your lunch will be here then. We'll take about a ten-minute break, come back, and then continue on. Everyone please remain seated.

(The jury exits the courtroom at 10:49 AM.)

THE COURT: All right. Ma'am, you're in the middle of your testimony. Obviously I'll let you get down and go to the bathroom and stretch your legs, whatever, but please don't discuss it with anyone while you take a break, okay, because you'll have to answer questions from Mr. Virgin Johnson when we get back. Fair enough?

THE WITNESS: Yes, sir.

THE COURT: Thank you. You may step down.

All right. The defendant is in custody. We'll take about a ten-minute break. Thank you.

(Brief recess.)

THE COURT: Anything by the State before we start back?

MS. SIMPSON: Yes. Captain Knafelc is one of our investigators. I know we have our lead. He assisted in the investigation. But I don't know -- we said lay witnesses were sequestered. But is law enforcement -- can he be present? If not -- we'll leave it up to the Defense or whatever.

MR. JOHNSON: Your Honor, at this point I think he's sat in already. So there's no need to run him out now.

THE COURT: Thank you.

Anything else?

MS. SIMPSON: No.

THE COURT: Bring the jury in, please.

(The jury enters the courtroom at 11:09 AM.)

THE COURT: Little quick change. You're the forelady?

THE FOREWOMAN: Yes, sir.

THE COURT: Congratulations on your election victory.

I think it will be about 1:00 until lunch gets here. They couldn't quite get it at 12:45.

Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Shawntea, I'm going to stand right here. My name is Virgin Johnson. And I'm going to have you questions; do you understand that?

A. Yes, I do.

Q. And I'm going to have to ask you some very serious tough questions; do you understand that?

A. Yes.

Q. And if at any time when I'm asking you questions, if you need to stop, take a break or anything, you tell me. Okay?

A. Okay.

Q. All right. Let's start with how many people -- and I want you to tell me who -- you've talked with about this case.

A. Like, do you mean have I expressed myself to anyone?

Q. Said anything about this -- have you talked -- you talked with your mama about it?

A. I talked to -- I did -- I talked to my step-mom about it. But me telling my mama about it, I haven't.

Q. Did you talk with your mama about it the night it happened?

A. No. I was tired.

Q. So where did your mama get the information to call the police from?

A. She -- I told her the day that he -- the day that it happened. I told her that he has been touching me places and we have been doing stuff. That's as far as it gotten.

Q. So you did talk with your mama about it?

A. I never expressed, like, what had actually -- like, details about it. I just told her what happened.

Q. So details that you gave to law enforcement, she didn't get them from you?

A. What do you mean?
Q. When she did a statement -- she gave information to law enforcement. I just want to know did you give her the information to give to law enforcement?
A. I don't think I was there when she wrote the statement or I was around. So I don't really actually remember, because it's been so long.
Q. Okay. I don't want to be redundant. I'm just asking you -- you might have not been there. I just want to know, did you give her the information to give to them?
A. I don't remember.
Q. You don't remember. Okay.
Now, didn't you talk to Nakiah about this?
A. No.
Q. And I think you just said you talked to Mr. Killings [sic] about this.
A. Mister who?
Q. Mr. Killings.
A. You're talking about the man?
Q. Yes, ma'am.
A. Yes.
Q. Okay. And then I think you also said you talked to another lady about this.

A. Yes.
Q. And when you talked to Mr. Killings, did you tell him the truth?
A. Absolutely.
Q. And when you talked to the other lady, did you tell her the truth?
A. Absolutely.
THE COURT: Speak up for me, please.
THE WITNESS: Yes, I did.
BY MR. JOHNSON:
Q. Okay. And you talked to -- did you talk to a nurse at the hospital that night?
A. Like, what do you mean talk to?
Q. The night they took you to Richland Memorial?
A. She asked me a few questions.
Q. Did you talk with her?
A. Yeah.
Q. Did you tell her the truth that night?
A. Yes.
Q. And I think the next day up to a couple days later, you were taken to a doctor and she asked questions. Did you tell her the truth?
A. Yes.
Q. Okay. Do you remember -- when you were talking to Mr. Killings, do you remember him asking you how

many times this occurred?
A. No, I don't remember.
Q. So you don't remember what you told him?
A. I don't know what I -- I remember some things that I told him. But that particular question, no.
Q. Okay. I don't want to be confusing. So you remember some of what you told him, but you don't remember all of it?
A. I remember some.
Q. You remember some. All right. Do you remember telling him that there were three -- that it was only three times this happened to you?
A. No.
Q. Do you remember telling him it was the truck and Disney World and the beach?
A. I remember telling him something about the truck and Disney World and the beach. But --
THE COURT: Speak up for me.
A. -- I don't remember the time.
Q. Do you remember telling him home -- it happened home?
A. I remember that too.
Q. Okay. And did you tell him home was 346 Stevens Road?
A. I don't remember off my hand, but I don't know.

Q. Wasn't 346 Stevens Road the place you were living at at that time?

A. Yes.

Q. And did you tell him home was 346 Stevens Road?

A. I can't really give you a complete answer, because I don't remember telling him that.

Q. Do you remember telling him that the computer room was at 346 Stevens Road?

A. No, because it wasn't.

Q. And the computer room is not at 346 Stevens Road, is it?

A. No.

Q. Okay. Let's start with when Mr. Johnson left to go to the store. You went with him to the store; is that correct?

A. Yes.

Q. Okay. And he didn't ask you to go. You went and got in the car; isn't that correct?

A. No; he forced me to go.

Q. Now, you were in the house at this time. Wasn't Mr. Skeeter in the house?

A. No; he was outdoors.

Q. Okay. Wasn't your grandmama in the house?

A. Yes.

Q. Wasn't your mom in the house?

A. Yes.
Q. And wasn't your brothers and sisters in the house?
A. Yes.
Q. So he didn't force you, you went; correct?
A. No. He forced me, sir.
Q. He forced you with all of them there watching?
A. No. He told me to come on and get to the car, and that's what I did.
Q. So you're saying he forced you by --
A. A command.
Q. He commanded you to get to in the car?
A. Yes.
Q. Okay. And you wasn't fearful or nothing like that now, were you?
A. Was I what?
Q. Fearful. Afraid to get in the car.
A. I don't have no other choice but do what he say at that point.
Q. I understand command. But were you fearful or afraid?
A. I'm always afraid.
Q. Of him?
A. Yes.
Q. Okay. And y'all left to go to the store; is

that correct?

A. Yes.

Q. Okay. And y'all -- and the first thing you said was y'all went to the Manning Church cemetery; isn't that correct?

A. Yes.

Q. And that wasn't the truth, was it?

A. It was the truth, sir.

Q. Okay. But then you said you went to the Bethany cemetery; isn't that correct?

A. That is the cemetery.

Q. Well, isn't the St. Matthews Church --

A. No. That's the -- the St. Matthews Church is right there. We never been there. We went straight to the cemetery that's a road down.

Q. But didn't you tell them at first that you went to the St. Matthews Church?

A. Say what?

Q. Didn't you tell them first that you went to the St. Matthews Church cemetery?

A. I never said that.

Q. Okay. So then you said you left the house. And how far is the house from the cemetery?

A. I could say it's maybe a three-minute or a two-minute drive.

Q. Okay. And I think you said he went back to the cemetery and drove high in the cemetery back there; is that correct?

A. Can you repeat yourself?

Q. Did you not say he drove behind the cemetery?

A. I didn't say anything about he drove behind.

Q. Okay. Did he drive behind the cemetery.

A. No. You can't drive behind it because there's trees.

Q. There's not a road beside the cemetery?

A. I can't remember offhand because it's been a while since I been.

Q. Okay. But don't you live right down the road from the cemetery?

A. No, I don't live right down the road. You have to go to a -- have to cross another road to get to it.

Q. Do you live within a mile of the cemetery?

A. I don't really know offhand if it's a mile or not.

Q. Okay. He did not park -- allegedly, he did not park in front of the cemetery, he parked behind the cemetery; correct?

A. There's no way to get behind it. He parked on the side.

Q. Okay. And just so I'm understanding, there's a road on the side of the cemetery that goes back to a lake; is that correct?

THE COURT: Goes back to a what?

MR. JOHNSON: Back to a lake.

A. I don't know.

Q. You don't know? Okay.

And I want to be sure about this: You said that when your mother called, y'all were at the cemetery?

A. When my mother called?

Q. When your mother called.

A. No. We was heading -- we was like -- we was there, but we was pulling in when she called.

Q. You were pulling into the cemetery. But I thought you told the jury you were in the cemetery when --

A. We basically were. Where the dirt roads are, you just turn the wheel and we end there. So --

Q. But didn't you say you also had your pants down?

A. I did.

Q. Okay. So you couldn't have your pants down while you were turning in --

A. Oh, yes, you can.

Q. Okay. So he had you taking your pants down on the road going back to the cemetery?

A. Yes.

Q. So you while you were at the cemetery, how long did y'all stay at the cemetery?

A. I can't really answer that because I don't know.

Q. You don't know? Okay.

Did you not say that when you were at the cemetery you had your pants down, the phone call interrupted him, and y'all left the cemetery and went to the store?

A. Can you repeat yourself?

Q. Did you not say that while you were at the cemetery, the phone call came -- you had your pants down, the phone call interrupted him and he got up and y'all went to the store?

A. I did say that.

Q. You did?

A. Yes.

Q. Okay. So that means y'all were at the cemetery, allegedly, with your pants down?

A. Yes.

Q. And not putting your pants down while you were turning in the road?

A. My pants were down, and as we pull into the cemetery, it was still down.

Q. Okay. Let's skip to the -- I'm coming back to that one.

Let's go to the brick house. The brick house is in Fairfax; is that correct?

A. Yes.

Q. Okay. And if I'm understanding correctly, you're at the brick house, your mother was down there at the same time too; correct?

A. Yes.

Q. Okay. Now, do you remember telling Mr. Killings that when you was at the brick house, that all he did was put the dresser behind the door and he never touched you?

A. I didn't say that.

Q. You didn't say that?

A. I never said that he never touched me, but I did say that he put the dresser behind the door.

Q. Do you remember Mr. Killings saying -- say what did he do, and you said, all me was put the dresser behind the door and he asked me would I tell and I said no and then he removed the dresser?

A. I don't remember saying that.

Q. You don't remember saying that? Okay. But if

that was the case, then that would be different from what you're saying today; is that correct?

A. Would that be different?

Q. Right.

A. She didn't never ask me no question about --

Q. I said Mr. Killings.

A. Who?

Q. Mr. Killings?

A. Repeat your question.

Q. Mr. Killings. I said -- not she, he. If --

THE COURT: Hold on. Repeat your question so she can hear you, please.

BY MR. JOHNSON:

Q. The question was, if you did tell Mr. Killings that he just drove the dresser behind the door and moved the dresser, that would be different from what you testified to this morning; isn't that right?

A. Would it be different? No. I wouldn't lie.

Q. This is very -- this is a very difficult question for me to ask you. But can you -- you remember telling either Mr. Killings or the other person that you don't remember the location that he took you in Kershaw County?

A. I don't remember the location he took me?

Q. Yeah. Do you remember telling him you don't

remember the location?

A. No. What I remember me saying was I could only point out a few of them, but I can't really say that I know too many other places.

Q. Okay. And in either interview, there's a location that Officer -- I can't pronounce his name correctly, so I don't want to mispronounce it. But about two or three months ago, you took him to a new location; is that correct?

A. What do you mean?

Q. You took him to a new location where you said Mr. Johnson did something to you.

A. That she showed me in the picture?

Q. Yes.

A. That's the location that he took me to.

Q. Okay. This happened and you -- let's begin back in 2011. You didn't remember that location until about three months ago?

A. What are you saying?

Q. I'm asking you, you didn't tell anybody until about three months ago; is that correct?

A. I didn't tell anyone?

Q. Yes, ma'am. You said you didn't know where the location was, didn't you?

A. Wait. I'm confused.

Q. Okay. You took him to a location three months ago --

THE COURT: Who is him?

MR. JOHNSON: Officer -- I don't want to mispronounce your name.

MR. KNAFELC: Knafelc.

THE COURT: All right.

BY MR. JOHNSON:

Q. Do you remember Officer Knafelc taking you to a location about three months ago?

A. Yes, I remember.

Q. And the purpose of going to that location was the fact that you said you had just remembered it.

A. Uh-huh.

Q. Okay. And it was like three years later you remembered it?

A. No, I always remembered it. It was just that it was really hard for me to come -- to talk and get it all out. But since I knew we had to come to trial, I really needed to express myself and get over that to heal.

Q. Okay. So you just knew it and you kept it for three years?

A. I didn't keep it for three years. I told you I expressed myself to my stepmother and I told her

what I could at times.

Q. Okay. Now I'm going to go back to the -- the cemetery. When the phone call came, I think you said, y'all got up and went to the store.

A. I didn't say that.

Q. Did y'all get up and go to the store?

A. When the phone call came in?

Q. Yes.

A. They were arguing, then we jumped up and went to the store.

Q. Okay. How long do you think they argued?

A. I don't -- I'd say at least about -- I don't know. I know that it had been about -- I could say 30 seconds at least, maybe less. I don't know.

Q. All right. And so they argued right there. And then -- okay.

Tell me, from the location you were at the cemetery, did he have to turn around or what did he have to do when y'all started to the store?

A. He didn't have to turn around. He just drove a little -- a little turn. And he had to turn to go to the store.

Q. Okay. And y'all went on to the store?

A. [Nods head].

Q. Okay. Now, when y'all got to the store, who

went in the store?

A. He did.

Q. All right. And after y'all -- after he went in the store, what did he bring out of the store?

A. I can't remember all that. But I know he got some sunflower seeds. I know that.

THE COURT: He got what?

THE WITNESS: Sunflower seeds.

Q. Did -- you don't remember -- did he get the beer for Mr. Skeeter?

A. I can't remember that.

Q. So while he was in the store, you just kind of sat in the car or what were you doing?

A. I just sat in the car, I believe.

Q. Okay. Do you remember when -- when you talked to Mr. Killings, do you -- do you remember not mentioning anything about hair on your privates at that time? Did you --

A. No. I never told him that.

Q. You didn't tell him that?

A. No.

Q. So when you were in the -- this was back in, I think, '10, '12, '11; is that correct?

A. I can't remember dates.

Q. Okay. It happened on the 11th. I think you

went to Mr. Killings the next day. You don't remember?

A. I don't remember.

Q. Okay. And you were closer to what happened then than you are now; is that correct?

A. What do you mean?

Q. I mean, you were closer to the event then than you were when you met with Mr. Killings; is that correct?

A. I'm not understanding.

Q. Okay. When you went to talk to Mr. Killings, did you say anything about hair on your privates?

A. No.

Q. Okay. And you didn't say anything about kiss you on the lips, did you?

A. Nope.

Q. And you didn't say anything about rubbing your arms or rubbing your breasts, did you?

A. Yes, I did.

Q. Did you say touch your breasts or did you say rub them?

A. I said touch.

Q. Okay. So you didn't say anything about rubbing, did you?

A. I can't remember.

Q. And you didn't tell him anything about he said did you like it, did you?

A. I can't remember.

Q. And you never mentioned anything about kissing your thighs, did you?

A. I can't remember.

Q. And you never told him anything about killing your mother, did you?

A. I don't remember.

Q. Now, when you talked about the computer room, you never said anything about licking your breasts, did you?

A. I can't remember.

Q. Never said anything about licking your stomach?

A. To who?

Q. Mr. Killings.

A. No. I mean, I can't just sit there and -- like, at that moment that that just happened a day before, like, I just, in my head, my mind was like, not confused, but how can I just sit there and, like, honestly tell this man -- like, tell this man every -- everything. I can only point out certain parts. Like, I could only say what was there at that moment.

Q. Okay. Well, I can understand that. But then

you went and talked to another lady sometime in November, didn't you?

A. I believe so.

Q. And you had over -- about 30 days to get it together; isn't that correct?

A. That's 30 days compared to four years. That's still kind of hard for me to express. Still to this day, I still can't get therapy because I'm still afraid.

Q. So you didn't tell the lady 30 days later about licking your breasts, did you?

A. No.

Q. Did you tell any of the law enforcement about that?

A. I can't remember.

Q. And on the Disney World trip, you didn't tell anything about the bed or the covers, did you?

A. Nope.

Q. And you didn't tell anything about him showing you his penis, did you?

A. No, sir.

Q. And you didn't say anything about him hurting you, did you?

A. When?

Q. Either to Mr. Killings or the other person.

A. What you mean by hurting?
Q. Well, you said that they -- I tried, but it was hurting, so I said stop. You didn't say anything about that, did you?
A. No.
Q. You didn't say anything about him rubbing himself at that time, did you?
A. I don't remember.
Q. Okay. At the beach, you said, he was touching you in the water; is that correct?
A. Yes, sir.
Q. Okay. You didn't tell anybody before today about him touching you in the water, did you?
A. You said before today?
Q. You didn't tell anybody that you interviewed before today that he -- this is the first time you told anybody about that; isn't that correct?
A. It's not my first time telling anybody about it, but -- no, it's not my first time.
Q. Okay. Who did you tell?
A. My step-mom --
Q. Okay. But you --
A. -- and my lawyers. I talked to them about it.
Q. Okay. So you did talk to your lawyers about it?

A. Yes.
Q. Okay. When I asked you just now who did you talk about, you said you didn't.
A. No. You asked me another question about something else, and I said, no, I haven't.
Q. Okay. Well, forgive me.
Who all did you -- now, did you talk to your lawyers about it?
A. About what?
Q. About what happened.
A. As we was going through my videos and she asked me if I remember anything at them times then bring it to her attention, that's what I did.
Q. And how many times did you talk with your lawyers? I'm not asking you what you said, I'm asking how many times did you talk with them.
A. I can't remember.
Q. Was it more than one?
A. Absolutely. I mean --
Q. So you have talked with more than one person and you've talked about this incident much more than one time?
A. What do you mean?
Q. You had conversations about this incident with different people more than one time?

A. I'm doing it now.
Q. I understand that. But I'm talking about before today.
A. Yeah.
Q. Okay. So why didn't you say that when I asked you upfront?
A. Because I asked you what you mean and you asked me one particular question, so I told you.
Q. Now, when you were at the beach -- and I want to make sure I ask this question. If it's redundant, I apologize. I said that you didn't tell anybody about him touching you in the water. Is that correct?
A. Uh-huh.
Q. Okay. And I won't go back to that.
Where was your mother while this was going on?
A. In the water? She was with my other brothers and sisters playing in the sand. She had to watch out for my little sister Kamari because she can't swim and the other two.
Q. So was she on the beach or in the water?
A. She was halfway in the water, but she was also running around with my little sister.
Q. Now --
MR. JOHNSON: Your Honor, may I have a second,

please?

THE COURT: Sure.

BY MR. JOHNSON:

Q. Okay. Do you remember telling anyone you took pictures in the computer room and didn't do anything else?

A. I never said he took pictures in the computer room.

Q. You never said he just took pictures and tried to look out to see if anybody was coming?

A. I said that part, but I never said it was in the computer room.

Q. Did you say that because he took pictures in the computer room?

A. Did I say what?

Q. That he took pictures in the computer room; did you say that?

A. I never told anyone that.

Q. Okay. And then did you tell Mr. Killings that in the computer room he sat in the chair and made you sit on top of him?

A. I can't actually remember.

Q. Can't remember. So you don't remember what you told Mr. Killings?

A. I remember some things, but I don't remember

all. So...

Q. So today you don't remember what happened in the computer room?

A. Oh, I remember.

Q. Okay. Could you please tell me what happened in the computer room?

THE WITNESS: Do I have to answer that?

THE COURT: Ma'am?

THE WITNESS: Do I have to go through that again?

THE COURT: Answer his question one more time. Okay?

Re-phrase the question.

THE WITNESS: He asked me can --

THE COURT: Re-ask the question.

BY MR. JOHNSON:

Q. Do you remember what happened in the computer room? Do you remember what you told Mr. Killings after --

THE COURT: Well, that's two questions now.

BY MR. JOHNSON:

Q. Do you remember what happened in the computer room?

A. Yes, I remember what happened in the computer room.

Q. Now, please tell us what happened in the computer room.

THE COURT: Take a deep breath, ma'am. Answer one more time and that will be it.

A. He told my sisters and brothers to go in the living room and play the game, which they did. We went in the back room and he took the towel and put it under the door. He told me to take my clothes off and he took his off. He asked me to come sit on his lap, so I did. He started kissing and touching me and licking my breasts. And then he put his penis in my vajayjay.

Q. Thank you, ma'am. I'm sorry for causing you problems. That's what you said happened?

A. Yes, sir.

Q. Okay. I want to thank you. I have one or two more questions and I'll be done. Okay?

A. Okay.

Q. All right. You said this went on over a period of three or four years?

A. Yes.

Q. Were there times when Mr. Johnson wasn't even around you because he didn't live where you lived? Is that correct?

A. Yes.

Q. Matter of fact, there were times when he went out of the country because he was overseas; is that correct?

A. Yes.

Q. Okay. And you didn't think to share that with your mother then?

A. No. Because at that time -- I mean, it's hard to even think about it. I mean, knowing that he have other children with my mother, I mean, how would it affect them, too?

Q. Okay. And on the day it happened, I think you told your mother twice that nothing happened; is that correct?

A. Yes.

Q. Okay. And after you told her that, she picked up the gun -- or she had the gun --

A. No, no, no.

Q. Okay. Tell me -- correct me. Tell me what happened.

A. When I told my mother what happened, she got me out the car, we went into the house, and she asked me repeatedly over and over again. That's when I finally told the truth of what happened.

Q. And I think you said she asked you over and over again. And I think what she said was, I'm

going to take you to the doctor --

A. No, that's not what she said. She said, I'm going to take you to a home.

Q. Take you to a home?

A. Yes.

Q. What kind of home?

A. I mean, I wouldn't know. I mean, that's to scare me up, I guess. A home is another place.

Q. Oh, so she said if you didn't tell her the truth, she was going to take you to a home?

A. Yes.

Q. And I think she got you in the car in front of Mr. Johnson; is that correct?

A. Yes.

Q. And Mr. Johnson said, look, tell her the truth, I didn't do this; is that correct?

A. No. He said, Pam, you are stupid. And he looked at me and I looked back at him and he asked -- he was like, Tea tell her the truth that I didn't.

Q. That's right. He said, tell her the truth, he didn't do it; is that correct?

A. He did do it.

Q. Okay. But I'm saying --

A. His statement, that's what he said.

Q. I'm sorry?
A. That's what he said.
Q. He did say that? Okay. Now I'm confused. He did say, Tea, tell Pam that I didn't do that; right?
A. Yes.
Q. All right. And at the time, y'all were in the car, she had his gun; is that correct?
A. Uh-huh.
Q. And she had put the gun to his head and threatened to kill him; is that correct?
A. I mean, it was still in the holster, but she just was pointing it.
Q. Okay. And you said -- I think you did say that -- something about that he said that if you told, she would go to jail for life or something like that?
A. She would go away or get killed.
Q. You did say that; correct?
A. Uh-huh.
Q. Okay. And after he went to jail, for some reason or another, did she leave and have to go to jail?
A. I mean, yes.
Q. Okay. Thank you.
MR. JOHNSON: That's all, Your Honor. Thank

you very much.

THE COURT: Redirect, if any.

MS. SIMPSON: Yes, Your Honor, briefly.

REDIRECT EXAMINATION

BY MS. SIMPSON:

Q. Shawntea, he asked you about pictured and he said specifically the computer room. I don't think we went over this. Did he ever take pictures of you?

A. In the computer room?

Q. Anywhere at any point.

A. Yes.

Q. Tell the jury about what pictures he would take and what pictures you remember.

A. He'll take pictures of my breasts and my privacy area and my butt.

Q. And do you remember where he would take those pictures, like what locations or --

A. In his room.

Q. In his room?

A. Yes, ma'am.

Q. Like a bedroom in his house?

A. Yes, ma'am.

Q. And with those pictures -- did you ever see them? Would he show them to you?

A. I seen, like, not -- one night when he went out to go somewhere, I took his phone and looked through them myself.
Q. Okay. But he made you pose for those pictures?
A. Uh-huh.
Q. And you say they didn't happen in the computer room, they happened --
A. At the brick house.
Q. He also asked you a lot about what you remember telling Mr. Kellin. Was that the interview that you were sick for?
A. Yes.
Q. And did it actually have to end early?
A. Yes. He wanted to.
Q. Okay. And then you also talked to another lady, but you had to go to another interview; right?
A. Yes, ma'am.
Q. And between that one interview -- you were how old when you met with Mr. Kellin?
A. Eleven.
Q. And did you have a birthday between meeting with Mr. Kellin and meeting this other lady?
A. Yes.
Q. Okay. So you turned 12 before you met with her?

A. Yes.

Q. And when you talked to her, were you able -- and I'm not going to ask you specifically what you remember. But were you able to give her some more detail about what happened to you?

A. Yes.

MS. SIMPSON: Thank you, Shawntea.

I have nothing further, Your Honor.

THE COURT: Next witness, please.

MS. SIMPSON: State calls Pamela Hall.

THE COURT: Ms. Hall.

PAMELA HALL

being first duly sworn, testified as follows:

THE DEFENDANT: Yes, ma'am.

MS. SIMPSON: May we approach?

THE COURT: Yes, ma'am.

(Sidebar conference.)

THE CLERK: State your full name for the record, please.

THE WITNESS: My name is Pamela Hall.

THE COURT: Ms. Hall, speak up for me now.

THE WITNESS: My name is Pamela Hall.

THE COURT: There you go. Thank you.

DIRECT EXAMINATION

BY MS. SIMPSON:

Q. Ms. Hall, how old are you?
A. Thirty-four.
Q. And where are you from?
A. Bethune, South Carolina.
Q. Bethune. And tell me a little bit about your family and your children.
A. Well, I have four kids; three girls and one boy. I have two sisters, one brother, my mother. My dad passed when I was five, so it's been pretty much just us.
Q. And by just us, who do you mean?
A. My immediate family, the ones I just named.
Q. Okay. And I want to talk specifically about your children. Can you tell the jury their names and ages and who their father is?
A. Shawntea is the oldest, she's 15, her dad is Shawntel Ford. Then I have Nakiah Johnson, Nakia Johnson and Nakisha Johnson, and they're -- Nakia Johnson is their dad.
Q. Okay. Do they have nicknames that they kind of go by? We've heard --
A. Tea, Kiah, Bubba and Mari or K.K.
Q. And where are you currently living now?
A. In Bishopville.
Q. And are you working?

A. No.

Q. What type of work have you done in the past?

A. I was training for assistant manager at McDonald's. I've worked at Hardee's and at AT&T.

Q. And you mentioned you have brothers and sisters too. Who are they?

A. I have a brother Tracey Hall, a sister Melissa Hall, and another sister Stacey Hall.

Q. And as far as oldest to youngest, who is the oldest?

A. Tracey is the oldest, then it's Melissa, Stacey, and me.

Q. So you're the baby of the family?

A. Uh-huh.

Q. And did you grow up in Bethune?

A. Excuse me?

Q. Did you grow up in Bethune?

A. Yes; between Bethune and Bishopville. It's the same area.

Q. Okay. So kind of back and forth, but in that area?

A. Uh-huh.

Q. I want to turn your attention to this case. Tell the jury some of the relationships in this case; how you met the defendant Nakia Johnson?

A. I initially met him going through a roadblock. And a couple of days later a friend of mine was talking to one of his coworkers, so it was kind of a mutual conversation how we met.

Q. And at the time y'all met, were you actually married or in another relationship?

A. Yes, I was married. But I was separated.

Q. Married but separated?

A. Yes.

Q. And where were you living at the time?

A. In Bishopville.

Q. In Bishopville. Who was living with you?

A. At the time it was just me and Shawntea.

Q. And what -- do you remember about what timeframe that was that you met him?

A. It was around September of 2001.

Q. Did you know him before the roadblock or you just --

A. No.

Q. -- you said through a mutual friend?

A. That was my first time meeting him.

Q. Tell the jury about your relationship and how it developed.

A. We was -- we started -- he was still married at the time. We were kind of seeing each other behind

her back and after I was separated. So we were off and on, off and on, for almost about a year before I got pregnant with Nakiah. And we've been off and on for a few years. And then we moved Wisconsin for a couple months, and I ended up moving to South Carolina and he ended up coming back.. And I ended up moving into Fairfax, I think, in 2005 or 2006.

Q. Let me back up. You said you met him in a roadblock. What was his employment? What did he do?

A. At Lee County Sheriff's Department.

Q. Okay. And was he actually working as a police officer at that time?

A. Yes.

Q. And you said he was married at the time too?

A. Yes.

Q. Did you actually know his wife?

A. She grew up with my sisters. They're around the same age. But I knew her from the neighborhood.

Q. So y'all were seeing each other, and then about a year into the relationship, you had Nakiah?

A. Uh-huh.

Q. When Nakiah was born, where did you live?

A. Still in Bishopville. I still lived -- just me, Shawntea, and Nakiah.

Q. Would you see the defendant -- tell the jury about when you would see him; how frequent, how --

A. Almost every day or every other day. Sometimes his days off, he would come by. When he was working, he would come by on shift. I would ride with him sometimes when he worked night shift. He was around all the time.

Q. And was y'all's relationship, I guess, pretty good at that time? How would you describe it?

A. When we first started, it was pretty good. I think I was seven months pregnant with Nakiah, and that was the first time we got into a physical altercation. We had some issues dealing with me, his wife, and another female that was involved. And he took me to my mom's house one night and we got into an altercation. And he tried to get me to get out the car, and I told him I wasn't getting out until I got home.

So he pulled his gun on me that night. And he got a call -- I think it was on Cameron Church Road [phonetic]. So I rode with him to the call, and when we got there -- I think it was Lieutenant Liam Blakely and Darlene Dillinger. I ended up, I think, right there by -- no, I think I rode back with Darlene. We got into an altercation then because I

had braids in my hair and he pulled a few of my braids out that night.

Later on that night, he came back, apologized, we sat and talked for a while. A couple days later, everything was fine.

Q. And this -- was it unusual for y'all to get physical with one another? I know -- I mean, as far as him being physical with you, would you fight back too? I mean, was this uncommon?

A. In the beginning, I really didn't because I was kind of scared. It wasn't all the time. But we would have physical altercations. It was mostly when he got caught in the wrong and we were arguing, one thing would lead to another.

Q. Okay. And what would you say the, I guess, primary issue was or cause for --

A. Other women.

Q. And are those grown woman or any issues with little kids?

A. They were grown.

Q. So there were never any issues regarding --

A. No.

Q. -- your children?

A. No.

Q. Okay. At some point did y'all actually -- you

said you were off and on. At some point did you actually get divorced or --

A. I -- the divorce wasn't final until 2007. And -- right after I had my last child from him.

Q. Okay. And where were you living when you had Nakia -- Bubba?

A. Nakia, I was living still in Bishopville.

Q. And then the little girl, K.K.?

A. In Colleton County. I was living in Fairfax then.

Q. Okay. At any point in time during the course of y'all's relationship, did you and -- do you call him Kia?

A. I call him Key.

Q. Did you and the defendant, Key, actually live together?

A. Yes.

Q. Tell the jury where all you lived together and who lived with you.

A. We lived together in Wisconsin. It was maybe about three months and then we moved back. We moved to a trailer that his mom had in Fairfax. We stayed there a few months, almost a year. And we then moved to the brick house in Fairfax and stayed there for -- well, I stayed there almost a year and

a half before I left.

Q. Okay. And those were all the places y'all actually lived together --

A. Yes.

Q. -- with your children?

A. Uh-huh.

Q. And your children -- we mentioned his biological children. Was Shawntea with you that entire time too?

A. When I went to Wisconsin, she wasn't with me. But when I moved to Fairfax, she was with me.

Q. Okay. From Fairfax up until, I guess, this point now, living with her stepmother and father --

A. Uh-huh.

Q. -- has she been with you?

A. Since this happened, she's been living with him.

Q. Okay. But prior to that, she --

A. Yeah. She was with me.

Q. Tell me, I guess, essentially, did he -- did the defendant actually provide for you or give you money at times?

A. Yes, he did.

Q. Tell the jury about that and what all he gave you and did for you.

A. When it comes to bills and with the kids, he took care of everything for them. What he bought for his three, he did for Shawntea. He never mistreated her in any way. If I didn't have anything, he provided. He pretty much provided everything.

Q. Okay. And at the trailer, he actually -- in Bishopville, did he -- as far as housing and roofs over your head --

A. Uh-huh. He --

Q. I'm sorry. I interrupted you.

A. Yes. He provided all of that also. And I was going through it -- I wasn't working and I was responsible for paying the bills, and I wasn't able to keep them up.

Q. Did you also -- I guess when y'all -- when you moved from certain locations, what was the cause of that?

A. When I moved from Fairfax, I was working at AT&T and I didn't have money to actually get my own place, so I was in between my sister's and my mom's.

Q. When you say your sister's, who did you go live with?

A. When I first moved back to Bishopville, I stayed with Stacey a little while. And then I ended

up moving to my mom's, and that's when we got the trailer and I was there. And after I left the trailer, I stayed with Melissa a little while. So I was between Melissa and my mom's house because --

Q. And --

A. -- my mom lives in -- one side is Kershaw County and one side is Lee. And they were going to Bishopville schools, so sometimes during the school days, I would stay at my mom's and catch the bus.

Q. So they stayed in the schools --

A. Uh-huh.

Q. -- even though you had moved houses?

A. Yes.

Q. And your mom's property, is that off Stevens Road?

A. Yes.

Q. And describe that property for the jury.

A. It's a single mobile trailer, three bedroom.

Q. And right beside your -- that's where you stayed. Is there actually a house next door?

A. Uh-huh. Now it's my mother's house. My grandmother used to live there.

Q. So you were there and then you stayed, you said, with Stacey when you were in Bishopville, and then Melissa when you moved back?

A. Yes.
Q. Tell the jury a little bit too, while you were staying in places and you weren't living with the defendant, what was your interaction with him and his with your kids during those times?
A. We talked almost -- well, every day. He would come -- some days he would come stay or sometimes we'd get a room, or if we was going places, we would go. But he came back and forth. And during the times when the kids were down there with him, I was working in Orangeburg, so I was back and forth between there -- between Fairfax and my mom's house.
Q. And you said sometimes you would get a place. Tell the jury what you mean by that.
A. I'd get a room for a couple days or if we went somewhere, wherever we went, we'd get a room in that area. We went to the beach in -- we didn't get a room there, but we got a room when we came back to Bishopville. It depends on wherever we went.
Q. And when you got a room, would it be just you and the defendant or who all would go?
A. Sometimes it would be just me and him and sometimes it would be all of us.
Q. And all of us, who do you mean?
A. Me, him, and the kids.

Q. And did y'all have occasions to go on trips together?

A. Yes.

Q. And did he actually pay for you to go on these trips with him?

A. Yes.

Q. Tell the jury what trips he took you on.

A. He came back from Afghanistan, we went to Disney World for a couple days. I think we stayed three days -- I think maybe three days. I mean, he would, like, take the kids different places. But that's the only trip that we've actually been on besides that, and the beach.

Q. Okay. Was it a day trip to the beach or was it a --

A. Day trip.

Q. When he was -- was he still working as an officer throughout this --

A. At that time, I'm not sure whether he started back or not. I know he had just came home like a month before that. So I'm not sure whether he was back working or not.

Q. So did he actually go out of the country for periods of time and then come back for a couple months and then leave for a couple months and --

A. When he'd go, he'd be gone maybe three months. I want to say the whole year that he was gone, he came home maybe three or four times in between, and he'd come and stay maybe two or three weeks.

Q. Okay. So he would stay two weeks with -- or in town --

A. Yes. He was in town.

Q. -- and you'd see him during those two weeks?

A. Yes. Uh-huh.

Q. Did he actually -- since you were living -- I guess where were you living during that timeframe? Was it Aunt Missy's house or your grandmother's or --

A. At that time, I was living with my mom. And that's when we got the trailer.

Q. Okay. And when he would visit with you or come into town, would he want to see his kids?

A. Uh-huh.

Q. And y'all had a pretty good relationship, so --

A. Yes.

Q. -- he got to see the kids?

A. Uh-huh.

Q. All the arguments you had, I guess -- and I'm going to fast-forward a little in time here right prior to the incident. Describe your relationship

at that time.

A. At that time, we were off and on. We really wasn't together because at that time he was living in Fairfax and I was living in Bishopville.

Q. Off and on?

A. Uh-huh.

Q. Were y'all still cordial? Like, did y'all get along in your relationship well enough? Was your relationship still intimate?

A. We got along, we was still intimate, but we still had our arguments here and there.

Q. Okay. And what were those arguments generally over?

A. Mostly we would argue about him cheating with other people.

Q. Okay. Cheating with other women and --

A. Yes, ma'am.

Q. -- that's the essence of it?

But there's no doubt he provided for you --

A. Yes. He did that.

Q. -- and his kids?

A. Yes, he did.

Q. Tell me about the day this happened, what you remember about that day or that all this came about?

A. I think that the week before, he was supposed

to come and pick up our baby girl Kimari. But he didn't come because something came up at work. So he came to pick her up -- I think that was a Tuesday, if I'm not mistaken. He came that Tuesday morning, stayed there for a while. I think we went to CVS to get my medicine and came back. We had sex that day.

The kids got home maybe about 30, maybe 40 minutes after we got back. My mom and her friend was there. The kids came in, he spoke with the kids, played with the kids for a while. And I was helping my son with his homework in the other room. And then I heard the car door close when they were leaving, and I asked Skeeter was -- I think Skeeter was in the front room or outside. And I said, where did they go? He said, they going to the store.

So I called his phone and asked him why did he leave us and why he didn't take the other kids. And he said, I'm going to the store. He said, I'm to get them candy. So I said, are you coming back to get the rest of the kids? He said, yes, he was coming back. I waited for a little while, he didn't come back. Maybe like five minutes -- because the store isn't that far away. So when he never came, I called.

I think I called him maybe twice and he didn't answer. Then when he did answer, he said he was in the store. I told him, bring me some skins and, I think, a beer. He said they didn't have the kind of skins that I wanted. And I said okay. So we hung up the phone, I went and sat back on the chair in the front room, and my phone rung. And when it rung, I picked it up and I was saying, hello, hello. And I could hear the background. I could hear him talking, but he couldn't hear me. I kept saying, hello, hello.

So I got up, I went down the hall in the bathroom. And I heard -- when I put the phone up to my ear again, I said, hello, hello. I could hear him talking. At first I couldn't make out what he was saying, but then I heard him say, you know I want to nut in you, but I can't. And I didn't hear anything. Then I heard him say, you know why? And she didn't say anything. He said, do you know why? And she said, because I'll get pregnant. And he asked her did she miss him. She didn't say anything. And he asked her how does she want to do it; does she want to get on top or does she want him to get on top. And I think she said, you on top.

And that was it. I hung up because I couldn't

take hearing it no more. I hung up and I called his phone back. I don't remember if he answered the first ring or the second ring. But I called and when he answered the phone, I remember saying, I just heard everything you said. I said, you got ten seconds to have my baby back in the yard.

And I don't remember everything I said. I don't remember hanging up the phone, I don't remember putting on my shoes or my jacket, I just remember being outside. And when I got outside, I waited around a few minutes and I didn't see the car. I was down at the road, and then when I walked back to the porch and I came back, his car was coming. He was flying, driving so fast. And when he got to the road, he passed it. When he mashed the brakes, the car was skidding a little bit.

I remember her -- I remember telling her to get out the car, because I looked at her and she was scared. I could tell she was scared because I could kind of see her heart beat because she had on a T-shirt. And I remember jumping in the car and grabbing his gun, and he pulled up -- he was driving up the street. And I remember -- I can't remember word for word what was said. We was arguing, I was mad. I ended up getting out of the car. And I

remember walking back to my mom's house, because it's maybe not even a five-minute walk and I still had the gun in my hand at the time.

I ended up going in the house and I asked her. She was in the bathroom. I said, Tea, what happened? She kept saying, nothing, nothing. And I told her -- I said, Tea, tell me what happened. I said, I know what I heard on the phone. And she kept saying, nothing, Mom, nothing. I said, if you don't tell me, I'm going to take you to the doctor, so you might as well tell me what happened. When I said that, first she said that he was touching her breasts. And when she said that, I said, tell me everything. And she, Mom, it's over, it's over.

So I ended up going outside and I made her go outside with me. And I put her in the front seat and I was in the back seat. And I said, now tell him what you told me. And first she said he didn't. And he said, Pamela -- any time we argue, he call me Pamela. He said, Pamela, you think I would do something like that? You think I would do something like that? I told him -- I said, I know what I heard, I know what I heard you say, and I know what I heard her say.

And first thing his excuse was he reached over

to put her seatbelt on. I'm thinking she's 11 years old, she's capable of putting on her own seatbelt. And at the time, the car -- the Cadillac, the front seatbelts, whenever you fasten them, they get stuck. So we wasn't using them because they got stuck. So the seatbelts wasn't being used. And I told her to get out the car.

I had his gun, I had it pointed at him. And the only thing that I can say that saved him was she said, Mom -- she said, Mom, you have four of us to take care of, he's not worth it. She said, it's out, you know he's not worth it. And that's the only thing that saved him that day.

Q. I want to back up just a little bit to that phone call, because you said she, she. Whose voice did you hear?

A. Shawntea.

Q. And what did she say?

A. When he asked her why, the first time she didn't say anything, and then she said because I'll get pregnant. And then when he asked her about her being on top, him being on top, she said, you. And after that, I just hung up because I didn't want to hear any more.

Q. And is there any doubt in your mind as to whose

voice that was that was responding to him?

A. No.

Q. When they left to go to the store that day, who all left?

A. It was just him and her.

Q. And everybody else was still at the house?

A. Everybody else was still at the house.

Q. Grandmother, other kids?

A. Yes.

Q. You said -- you mentioned the black Cadillac. Did he actually have several vehicles?

A. He had the black Cadillac and he also had a white Suburban.

Q. Okay. And the Cadillac, was that actually his police car or did he have a separate --

A. That was personal car.

Q. That was a personal car?

A. Uh-huh.

Q. And was that the car he was in that night?

A. Yes.

Q. With respect to -- I know you said you were very upset and angry and pulled the weapon. What was his demeanor? How was he acting?

A. He was laughing it off. He was trying to say -- he kept saying, do you think I would do

something like that? Do you think I would do something like that? And then when she said about him touching her breasts, he said -- that's when he said about he reached across to grab the seatbelt. And like I said, it didn't make any sense because she's capable of fastening her own seatbelt, and I knew that they didn't work.

Q. And you also heard what you heard on the phone?

A. Yes.

Q. Tell me, y'all had a number of other arguments regarding other women and the cheating. Was this similar, his reaction, or how --

A. Huh-uh.

Q. Describe how --

A. Because normally whenever he would get caught up, he would get mad and want to argue.

Q. He would get mad and --

A. And want to argue.

Q. So y'all would kind of go back and forth?

A. Yes.

Q. What was different about this argument?

A. His whole demeanor. And I've been knowing Nakia long enough to know when he's lying to me. And the fact that he couldn't look me in my face and the fact that I know exactly what I heard and all he

could say was, you think I could do something like that, and he was, like, saying it in a -- like kind of laughing it off instead of being serious about it.

Q. The point after the conversation where he said pretty much what Tea told you is what saved his life --

A. Yes.

Q. What happened after that, that you can remember?

A. I remember getting out the car. I remember hugging her. We stood there for a while. I was crying, she was crying. She went in the house. I told her to go in the house. I gave him his gun back and told him to get out my yard because I was calling the police. And I called. I said it, like, twice, and he didn't move. And I actually dialed the number, 911, when he was in the yard. And when he heard me talking, that's when he left.

Q. Okay. And when the police arrived, tell me what you remember about once they got to the scene.

A. I remember it started raining. I was outside in the rain waiting because it took a while for them to get there. And I think dispatch called back and said -- I don't know if he couldn't find the address

or what. But I was outside when he pulled up.

When he pulled up, he asked me what happened, and I told him.

Q. And you told him -- when you say you told him what happened, did you tell him everything that happened that night?

A. I think I told him about the phone call. I remember telling him I pulled the gun, all of that.

Q. Okay. So you told him about your actions as well as what you heard?

A. Yes.

Q. And then did you also, that night, have to give a statement?

A. Yes.

Q. A written statement?

A. Yes.

Q. And in that statement, were you asked just to provide information about what happened?

A. Yes.

Q. And is that what you did?

A. Yes.

Q. Did you have to go somewhere else that night?

A. They told us to be in Kershaw County for her to -- well, they took us to Kershaw County, I think. And when we got there, they said we had to go to

Richland. And I remember when I was asking him about did they find him -- I remember him -- he had his gun. And after he left and I was outside waiting for the police to come, his car was in the area because the car passed by. It pulled into, like, a neighbor's driveway and it turned around. And I remember asking him because I was scared --

Q. Slow down just -- I know you're nervous. But slow down just a little bit so she can take it down.

A. I remember asking them could they send someone to make sure they were okay.

THE COURT: Hold on a second. Take a deep breath so we can hear.

Q. What do you remember about the hospital?

A. We was there. We went to Richland County and they did some interviews on her when we was waiting in the waiting room. And one of the ladies from the victims advocate, she told us that they had him at the police department. We got home maybe about 4:00 that morning.

Q. And they told you they had who?

A. Nakia. They had him in custody, I think.

Q. And at the hospital, backing up just to make sure we understand, you were talking to the nurse or asking somebody about something?

A. Before we left Kershaw County Hospital, I asked one of the officers about could they have someone check on my mom and the other kids at the house. My sister had just got home from work. And, you know, he had his gun, and I know sometimes about the altercations that we've had, I was worried about them.

Q. And you said he had his gun. Did he also have some other guns or had you seen him with any other guns?

A. Not that day. I don't know if he has any others, but I didn't see any others.

Q. Okay. Just that one gun that day?

A. Yes.

Q. Okay. And that was actually his service weapon?

A. Yes.

Q. After going to the hospital that night, did you and Shawntea come home?

A. Yes.

Q. At some point did you talk to your sisters?

A. I think my sister called me while I was at the hospital. And I think I told her -- I think my mom had already told her what happened. And when I got home, she came and sat -- Tea came home, went to

sleep, and my sister sat up and talked to me for a little while and I told her what happened.

Q. And as far as what happened in your conversations with Shawntea, did she go into very much detail about what happened or was it --

A. When she started -- she started saying about that that wasn't the first time. She said the thing about when we went to the beach, she said something about at, I think, Missy's house. But she didn't go into detail because when she was trying to explain it and trying to go into it, I didn't want to hear it. I would just stop it there. I told her that whenever she talk to them, just tell them.

Q. And talk to -- who were you talking about?

A. To the police and to the doctors.

Q. But you just told her to stop talking?

A. Yes.

Q. You said your mom knew too. Was your mom actually there that night?

A. She was there. During the time when I got the phone call, she was sitting on the chair. She don't know -- she didn't know about what happened until after I called the police, because she was in the house. And I remember coming in and out of the house. I remember her saying something to me, but I

just blocked it out.

Q. Okay. At that point you're really upset and angry?

A. Yes.

Q. So the only people -- who was actually outside that night?

A. Just me, Shawntea, and Nakia.

Q. You've actually -- in addition, you've actually had some issues -- personal issues as well; correct?

A. Yes.

Q. And that includes things with alcohol and things of that nature?

A. Yes.

Q. Tell the jury about when you actually went to rehab and where your children lived.

A. I went to rehab in November of 2010. And at that time, they went to go live with Nakia and his mother in -- I think the middle of September -- middle of September in 2010 until -- they came home, I think it, was December -- no; it was right before Christmas, like two days before Christmas.

Q. And so he essentially -- did he agree to take the children in with his mom?

A. Yes, he did.

Q. And did you voluntarily go to get help?

A. Yes.

Q. As far as your issues with alcohol or drugs, were you ever out of your children's lives as far as other than going to rehab for that period of time?

A. No. Actually, after this happened -- about a month and a half after this happened, I was currently on probation at that time. And I violated my probation and I ended up doing 18 months after this happened.

Q. And when you say after this happened, after this all this came out?

A. Yes.

Q. Is that part of the reason that Shawntea went to go live somewhere else?

A. Yes; live with her dad.

Q. And what were you on probation for; do you remember?

A. It was for, I think, financial card transaction, if I'm not mistaken.

Q. And you actually -- like, I said, you went to jail. You had a fraudulent check from back in 2002?

A. Yes.

Q. And you also have -- you were on probation for financial identity fraud in 2009?

A. Yes.

Q. And that was a couple different counts; right?
A. Yes.
Q. So you never actually went to jail or anything for the alcohol?
A. No.
Q. And as far as the pervasive of your issues, did that ever affect your ability to be in your children's lives other than that one --
A. No. And, actually, it came after -- after I got the -- the charges were in 2009, actually. So the drug use came after that.
Q. Okay. And how would you describe your issues with it?
A. It was battling off and on. And it was mostly because -- like, growing up, I went through the same issues as Shawntea, and I didn't know how to express it. Talking to my mother about it, she didn't do anything about it, and I kind of had to deal with my issues on my own.
Q. Okay. And you had your children as well?
A. Yes.
Q. And to be fair, did the defendant kind of help you out, like, financially, as well as being supportive?
A. Yes, he did.

Q. At some point, did he know about some of your issues?

A. Yes.

Q. And y'all actually talked about it?

A. Yes.

Q. And was he supportive when you went to rehab?

A. Yes, very supportive.

Q. And is that when he agreed to talk your children, to include Shawntea, back to Fairfax?

A. Yes.

Q. For a period of time did y'all actually stay and live with -- or was Stacey living with you at one time too?

A. When I first moved back from Fairfax, I lived with Stacey. And during this time was happening, Stacey was living with my mom also.

Q. Okay. And when you say living with, y'all were in the trailer beside?

A. Well, actually, my mom was still living in the trailer because my grandmother was still living at the time.

Q. Oh, she was still alive.

A. Uh-huh.

Q. And you also lived for a period of time with Melissa?

A. Yes.

Q. And where was that?

A. In Cassatt.

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

BY MS. SIMPSON:

Q. The father of your three children and Shawntea's stepfather, do you see him here in the courtroom today?

A. Yes.

Q. And can you point out for the jury who he is and what he's wearing.

A. Nakia Johnson, blue shirt and light blue and navy blue tie [indicating].

MS. SIMPSON: Your Honor, let the record reflect she's identified the defendant.

THE COURT: Thank you.

MS. SIMPSON: Thank you, Your Honor.

THE COURT: Mr. Johnson.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Ms. Hall, I'll say the same thing to you I said to Shawntea: These are some questions I must ask you. You understand that?

A. Yes.

Q. If you need a break or something, you let me

know. Okay?

A. Okay.

Q. I just want to establish, Nakia was a good stepfather to Shawntea?

A. Yes, he was.

Q. Okay. And he was a good provider and good person to you?

A. Yes, he was.

Q. Okay. And up until the time you got this phone call, you had no indications of anything like this?

A. No, I hadn't.

Q. And even when you were going through the rehabilitation, like you said, he was supportive?

A. Yes.

Q. Okay. Now, let's deal with that a little bit. There was a period, I think, he bought you a house or a trailer?

A. Yes.

Q. And then he went overseas?

A. Yes.

Q. And when he came back, it was gone?

A. Actually, when he came back, it was still there. I was having issues paying the -- keeping the upkeep with the bills and also with the lot rent. And the people I owed the lot rent to, which

was Plantation Parks, they came and they moved it off their property and took it to their lot. It accumulated over a period of days with the amount of money that I had to pay to get it back, and I didn't have it.

Q. Okay. Wasn't he sending you money from overseas?

A. Actually, when he came -- when he came home, he -- that's when he purchased the trailer and left the money for everything. But whenever he would buy for the kids during that time, after I went to rehab -- no, that was before I went to rehab. There were periods of time he would buy them stuff and actually bring it to them or he would actually take them shopping.

Q. Okay. Now let's go directly to the day of October 11th, 2011. Mr. Johnson left to go to the store. One of your baby girls had a note in her bag for not doing something in school; is that correct?

A. Yes. Nakiah, she got in some trouble on the bus.

Q. Right. And you were -- when he got ready to go to the store, you were dealing with the situation with Nakiah; right?

A. No. When he went to go to the store, I was

helping my son with his homework. I already talked with Nakiah about that.

Q. All right. And I think the both of y'all sat down and helped him with the homework; isn't that correct?

A. No. Actually, I was down the hall helping my son with his homework and Shawntea was sitting on the chair. I think he was helping her. Matter of fact, she was sitting here and he was sitting behind her helping her with her homework [demonstrating].

Q. Okay. So you were helping your son with his homework. Where were the other kids?

A. They were down the hall.

Q. So Shawntea was the one in the living room with him or wherever they were?

A. I guess so.

Q. Okay. So it wouldn't be unreasonable for her to go with him to the store, would it?

A. It would be unreasonable for him to take her and not the others, because nine times out of 10 whenever they go anywhere, all of them go.

Q. Okay. But I think you said he was just like, if not -- I think you called him her stepfather. It wouldn't unreasonable for a stepfather and stepdaughter to go to the store, would it?

A. No, it wouldn't be.
Q. Okay. Now, when they went to the store, there were a series of phone calls made, weren't there?
A. Yes.
Q. Okay. All right. And this whole issue arised when you said you thought you heard him talking to Tea on the phone; is that correct?
A. No. I didn't say I thought; I said I heard.
Q. Okay. And I think what you were told and the conclusion we come to is that when you heard the phone call, they were somewhere in the cemetery, is that correct, or the graveyard?
A. At that time, I didn't know where they were, because the first call I placed to him, I asked him why he didn't take -- why he left us. And he said he was coming back. He didn't come back, so I called him again and he said that he was in the store.
Q. Okay.
A. And I think I called -- that's when he told me -- asked me what I wanted. I called one time before that, he didn't answer; and second call, he picked up and said they were on the way back. I went and sat back down in the living room and that's when his phone called my phone, and that's when I

heard the conversation.

Q. And what -- did you do a statement for the Kershaw County Sheriff's Department?

A. Yes, I did.

Q. Okay. And --

MR. JOHNSON: Your Honor, may I approach, please?

THE COURT: You may.

BY MR. JOHNSON:

Q. May I ask you to look at that, please, and tell me if that's the statement.

A. Yes, this is it.

Q. Okay. All right. And in that statement, you said he parked in the graveyard; is that correct?

A. She said that -- after they got back and me and her talked about the conversations, she said that he was at the graveyard. And initially when she said graveyard, I thought she was -- because there's a church right up -- maybe a minute up from my mom's. I thought that's what she was talking about, which is St. Matthews. But later to find out, it wasn't that one; it was the further one up the street.

Q. And it goes on and you said he left the graveyard and went to the store; correct?

A. Yes. That's what she said.
Q. Okay. So when you heard the phone call, it would have had to have been while they were at the graveyard; is that correct?
A. I'm not sure -- when the phone call -- I don't know where they were. All I know is I heard the conversation.
Q. Okay. But Tea told you it was at the graveyard?
A. I know she said that after I called him, he came back and he was saying -- telling her not to tell me. I can't tell their exact location because I don't know. All I can tell you is what I heard on the phone.
Q. But this is what you wrote in your statement.
THE COURT: Refer to what part you're talking about in the statement, Mr. Johnson.
MR. JOHNSON: I'm sorry, Your Honor?
THE COURT: Refer to what part you're talking about in the statement.
MR. JOHNSON: Yes, sir.
BY MR. JOHNSON:
Q. Did you write in your statement: She said he parked in the graveyard down the street today and her pants were down and he tried to penetrate her.

I called and he left the graveyard and went to the store.

Did you say that in the statement?

A. Okay. Which part are you on?

Q. On page 2, about middle ways down.

A. She said he parked in the graveyard down the street and had her pants down and tried to penetrate her. But I called and he left the graveyard and went to the store. This has been going on for years.

Q. Okay. The only thing I want to make sure we got clear is, she said, and you put in your statement, that they left the graveyard and then went to the store.

A. Yes, because that's what she told me.

Q. Okay. And that's what you put in the statement?

A. Yes.

Q. Okay. And did you, at any time, identify the time the call was made?

A. No.

Q. Did you not tell the law enforcement the time the call was made?

A. I told him -- I showed -- I didn't -- I showed him what was on my call log on my phone. I can't

remember. It was almost four years ago.

Q. Okay. I'll ask him.

But you did show him the call log on your phone?

A. Yes, I did.

Q. And the call log identified the time?

A. Yes.

Q. And the phone -- and the time that's on your phone would be the correct time that the incident occurred?

A. I can't pinpoint exactly which call it was the incident occurred because it was a few calls going in and out the whole time.

Q. Okay. But --

A. So I can't say exactly which call it was.

Q. Did you not tell the police officer it was the call that lasted two or three minutes?

A. The one that lasted two or three minutes was the one that I heard him talking to her.

Q. That's my point exactly.

A. Yes.

Q. Didn't you tell him the one that lasted two or three minutes?

A. That's the one that I heard, yes.

Q. And that's the one when they left the graveyard

and then went to the store?

A. At that time, that's -- at that time -- I can't say that's when they left the graveyard because I didn't know. I didn't know about the graveyard until after she came back.

Q. I understand clearly what you're saying. The only thing I'm trying to get established is that the two-minute call is the call when they were at wherever they were.

A. Yes. That's when I heard the conversation.

Q. Okay. And later on you found out wherever they were was the graveyard?

A. Yes.

Q. Okay. And you made that call and then you listened to that call for about two or three minutes, I think you said?

A. No. I think it was right at two minutes.

Q. Okay. So you listened to the call for two minutes; is that correct?

A. Yes.

Q. And whatever was on your phone would be the -- whatever would be the correct time --

A. Yes. It would be the incoming call from when he called, yes.

MR. JOHNSON: Your Honor, I beg the Court's

indulgence for a second.

BY MR. JOHNSON:

Q. I think you testified that you went with her to someplace for a test; Palmetto Richland or someplace.

A. Yes.

Q. Okay. And I'm asking you only what you said. I'm not asking about anybody else. Okay?

Did you tell anybody at Palmetto Richland I -- it was happening about two or three minutes?

A. Two ore three what?

Q. Did you tell anyone at Palmetto Richland that I listened to what was happening for two or three minutes?

A. Yes.

Q. Okay. And did you tell them that he denied it?

A. Yes.

Q. Okay. And did you also tell them that she said, I got in the back seat of the car and he made her get in the front -- I got into the backseat of the car and made her get into the front -- no, I'm sorry. My mistake.

Did you say, he said -- she said he touched her chest?

A. Yes.

Q. Okay. All right.
A. And he said he touched her chest when he reached to fasten the seatbelt.
Q. That's correct.
A. Yes.
Q. You said you were angry and you -- where did you pick his revolver up from?
A. He had it in the front -- in the car in the front and stuff. In the floor, there's a hump between the driver 's and passenger's seat. It was on the floor. When I got in the car, that's the first thing I saw.
Q. And I think you said had it not been for what Tea said, you probably would have shot him?
A. Yes.
Q. Okay. And you told all that to law enforcement?
A. Yes, I did.
Q. And I think he tried to call you several times after he left the house; correct?
A. Yes, he did.
Q. And then I think you might have -- did you call him back one time?
A. I don't remember if I called him back or not. I know he called after -- when I called the police,

I know that's when he backed out and he tried to call me several times. After that, I'm not sure whether I called him back or not. I called his mother and I informed her of what happened and let her know that I had called the police. And she said she was going to try to get in touch with him.

Q. Okay. So just so I understand, was it 10 minutes, 15 minutes, 5 minutes after he left? How many minutes before you called --

A. Sir, I can't answer that, because at that time my emotions were hot. I wasn't thinking about the time or anything.

Q. And it was storming during that time, wasn't it?

A. Actually, at that time -- it didn't start raining until after the -- I want to say when the police got there, it was just drizzling a little bit. But it wasn't storming bad.

Q. It wasn't bad weather? Y'all weren't waiting for the storm?

A. Not in that area. It was drizzling a little bit, but it wasn't no storm.

Q. And you are 100-percent sure that the voice you heard was Tea's?

A. I'm 100-percent positive that was my daughter's

voice.

Q. And you're 100-percent sure that the phone call for two minutes and something was the time all this was going on?

A. Yes, because that was the incoming call that I had from him.

Q. Okay. I think you said -- when Mr. Johnson and Tea left the house, you said it was strange for him to -- not to take all the kids.

A. Yes. If all the kids were in the house, he wouldn't just take one and don't take the others.

Q. Okay. And that was probably his general routine, wouldn't it be?

A. Yes. He would take all of them, take everybody.

Q. Okay. And you got to know him. And it would be strange for him to take her by herself like that?

A. Okay. If all the kids are in one room and all of them are there, if he say he's going to the store, all of them are going to ask to go.

Q. Okay. My point is, to you it would be strange for him just to take her?

A. I'm not saying it's -- there's times -- it was time when it has been just him and her. So, no, it's not strange. But that particular day it was,

because I want to say either my son or my baby girl had wanted some candy. That was the purpose of going to the store, because they asked for it.

Q. Okay. And he brought the candy back from the store?

A. To be honest, I didn't see anything he brought back because after that time, I mean, everything done happened.

Q. Okay. And the fact that you got angry and he got angry and the fact that y'all argued has no relevance on him having any relationship with any minors or --

A. See, that's -- when? Prior?

Q. No. You testified that y'all argued and you might even testified that he got physical one time. But that has nothing to do with these charges; right?

A. No.

Q. Okay. And that's not an indicator that he did anything; right?

A. No.

Q. Okay. Would it be possible when you told him that, that he thought it was just so crazy that you would even think that he'd do something like that?

MS. SIMPSON: Objection; calls for speculation

as to what the defendant is thinking.

THE COURT: Rephrase the question.

MR. JOHNSON: Okay. Your Honor, I can't rephrase it other than --

THE COURT: No, sir. It calls for speculation, so that's why I gave you the chance.

MR. JOHNSON: I'm not going to try.

THE COURT: Thank you.

MR. JOHNSON: All right.

THE COURT: Anything else?

MR. JOHNSON: Your Honor, I'm just trying to frame one question in my mind.

BY MR. JOHNSON:

Q. Did he help Nakiah with her homework that same day?

A. I don't recall him helping her with her homework. I remember him helping Shawntea with hers and I was helping my son with his.

Q. Okay. And did you ever talk with Nakiah about this incident?

A. Actually, I think me and Shawntea -- I think I took her to -- I think she had a counseling session a couple days after this happened. And when I came back, my mom said, Pam, you need to talk to Nakiah. And I said, why? And she said, Nakiah, tell your

mama what you just told me. And then when I asked her what happened, she said that she saw some things that happened, and I think they were at the house in Fairfax. She saw some things that he did.

And when she told me that, that's when I called Detective Bailey or called someone and let them know what she just told me. And that's when they set up an interview for her to come talk to someone.

Q. I thank you for the litany. But I just said, did you tell Nakiah -- did you tell Nakiah --

A. I didn't tell her anything.

Q. Did you talk to Nakiah at any time about this?

A. After the fact, I explained what happened to her.

Q. Did you talk with her?

A. Yes.

Q. Okay. Did you talk with her any time before she had the interview?

A. No.

Q. You did not?

A. Before -- when -- after this happened, I explained to them what happened that day. I explained that to them, yes. But I didn't go into no details as far as what -- everything that took place.

Q. Did you talk to her before she went to the interview?

A. I'm sure I talked to her. That's my daughter.

Q. So did you -- you did discuss it?

A. I didn't discuss this with her, no.

Q. Okay. Let's get it straight, because I don't want to keep yelling.

Did you discuss this incident with her? I know you talked with her. Did you discuss this incident with her before she went to her interview?

A. Yes, I did.

MR. JOHNSON: Thank you. That's all I wanted.

THE COURT: Thank you. Is that it?

MR. JOHNSON: Yes, Your Honor.

MS. SIMPSON: Brief redirect.

REDIRECT EXAMINATION

BY MS. SIMPSON:

Q. One question: That statement where he was focused on the graveyard, as far as your knowledge, you gave a two-page statement to the police; correct?

A. Yes.

Q. And that was your statement?

A. Yes.

Q. And just before that, you were actually talking

about what she -- who were you referring to?

A. To Shawntea.

Q. That highlighted portion, what did she tell you before the graveyard?

A. She started crying and told me that it has been happening for a long time. I asked what did he do. She said, he made her put her mouth on his private area and he also put his mouth on hers. She said he put his thing in her, and it was going on since '07 up until today.

Q. And then it goes into the portion about the graveyard. Is that your personal knowledge or is that what she's telling you?

A. That's what she's telling me.

Q. And you also told police how you pulled the gun on him and everything that happened that night?

A. Yes.

Q. And as far as your conversations with Nakiah prior to the interview, you stated that Nakiah told who?

A. I think she told my mom, because when I came home, she told me I needed to talk to Nakiah.

Q. Okay. And based on what Nakiah said, at that point you informed who?

A. I'm not sure whether it was Investigator

Bailey, but I know I called someone to let them know.

Q. And did they decide she was going to be re-interviewed?

A. Yes, they decided. Because that was Nakiah's first time being interviewed was when I made the call.

Q. Okay. Did you discuss with her anything about the details of what she observed; specific details or anything like that?

A. No. The only thing I explained to -- well, to all the other three kids was that -- because they saw their dad on the news. They happened to catch the news that came on and they actually saw it. I kind of had to break it down and explain it to them. But I didn't get into detail, I just told them that he did something bad and he was in jail.

MS. SIMPSON: Thank you. That's all.

THE COURT: Thank you, ma'am.

MR. JOHNSON: Your Honor, can I -- one --

THE COURT: I don't -- recross is discretionary, and I don't do recross.

MR. JOHNSON: Thank you, Your Honor.

THE COURT: I do that with both sides in all cases.

Next witness, please.

MS. SIMPSON: May we approach just for timing and scheduling issues?

THE COURT: Well, we're going to go til 1:00 and then break for lunch. Do you not have a short witness or one that you can get started on?

MS. SIMPSON: Yes, sir. I'll call -- I think she'll be short. We'll try to keep --

THE COURT: No, ma'am. You can have all the time you want, I just told them we're going til 1:00.

MS. SIMPSON: The State calls Stacey Hall.

(Stacey Hall enters the courtroom.)

THE COURT: Come around, ma'am. Place your left hand on the Bible and raise your right.

STACEY HALL

being first duly sworn, testified as follows:

THE WITNESS: Yes, ma'am.

THE CLERK: Be seated and state your full name for the record.

THE COURT: Give us your full name for the record, spelling your last.

THE WITNESS: Stacey Hall, H-A-L-L.

DIRECT EXAMINATION

BY MS. SIMPSON:

Q. Ms. Hall, how old are you?

A. Forty-three.

Q. And where do you live?

A. I live in Bishopville, South Carolina.

Q. And have you lived in Bishopville all of your life or have you moved --

A. Moved.

Q. You currently live in Bishopville?

A. Yes.

Q. And where do you work right now?

A. I work for Smiles Home Care and Believers Home Care.

Q. And how long have you been providing health care and things of that nature?

A. Three months.

Q. And prior to that, what type of work did you do?

A. Manufacturing.

Q. And what were your shifts like?

A. Twelve hours.

Q. Did you do rotating shifts, night --

A. Yes, rotating.

Q. I want to turn your attention to how you know some of the people in this case. Tell us, how do you know Shawntea?

A. My niece.

Q. And who is her mother?

A. Pamela Hall.

Q. So that's your sister?

A. Yes, my sister.

Q. Do you have any other sisters?

A. Yes; Melissa Hall.

Q. I'll talk to you too about how you know some of Pamela's -- I guess your relationship with some of Pamela's other children. Do you have a relationship with them?

A. Oh, yes, I do.

Q. Tell the jury their names and ages.

A. Nakia, he is 10, I think, and Nakiah, she's 11, and Nakisha, she's 8, I think.

Q. And Shawntea is --

A. She's 15.

Q. Okay. So she's the oldest?

A. Yes.

Q. Do they spend time with you?

A. Yes. The three -- the last three do. Me and Shawntea see each other every ow and then.

Q. And they're a little bit younger, so --

A. Yes.

Q. Okay. Going back to 2011 when all this came

about, where exactly were you living at that time?

A. At that time, in Turkey Creek in Bethune.

Q. Turkey Creek. Do you remember what road that's on?

A. Stevens Road.

Q. Is that near where your mother was living?

A. Yes; same house.

Q. Okay. Same house?

A. Uh-huh.

Q. And did you know the defendant?

A. Yes.

Q. And how did you know the defendant?

A. Through my sister Pamela.

Q. And how long had you known him? Have you known him since they started dating or how did that work?

A. Since they started dating, yes.

Q. Okay. And how would you describe your interactions with him; frequent or --

A. It wasn't -- whenever he would come to see the kids, I'd see him. And when he worked in Bishopville as a police officer, I'd see him from time to time.

Q. Were y'all close at all?

A. No, not really.

Q. Not really?

A. Huh-uh.

Q. And did Pamela talk about him a lot or anything of that nature?

A. No, just that he was the kids' father and that's about it. Didn't really talk about nothing.

Q. And to your knowledge, did he actually provide for those kids?

A. Yes, he did.

Q. And was it just his kids or also Shawntea?

A. All of them; Shawntea and his.

Q. And did he also help out Pam financially?

A. As far as I know, yes.

Q. At times did she also need your help?

A. Sometimes, yeah, maybe to babysit the kids, something like that.

Q. And did she even -- or did y'all stay together with your mom for a period of time as well?

A. Yes.

Q. And when was that, if you remember?

A. I know it was in -- maybe 2008 -- 2008, -9. Can't remember if it was 2010.

Q. And Pamela and her children, they've kind of moved a lot of different places back and forth during those years?

A. Yes.

Q. Did you know the defendant's wife at the time?
A. Yes, I knew her. We went to school together.
Q. You grew up together?
A. Uh-huh.
Q. And did you ever have any interactions with her about the defendant or anything of that nature?
A. No, ma'am.
Q. And did you ever have any encounters with the defendant at all?
A. Not really, no.
Q. So y'all didn't talk much or have any real relationship?
A. No.
Q. How was he with Shawntea, as far as what you observed?
A. He was -- he acted normal, you know, like normal. Yes.
Q. And how did Shawntea act around him?
A. She acted normal too.
Q. So you didn't really have any indication that anything was going on?
A. No, ma'am.
Q. Tell me about -- were you actually living at the house in Turkey Creek when all of this came about?

A. Yes, ma'am.

Q. How did you find out what happened?

A. My sister called me when I got off work that night at 12:00.

Q. And do you remember what she said to you?

A. She told me that something happened to Shawntea, and I asked her what. And she said that -- my sister got a phone call -- well, the defendant pocket-dialed her phone back and told what -- I can't remember everything that he said. I kind of blocked it out. I can't remember everything. All I know is something happened and they was at the hospital and at the sheriff's office.

Q. And what was her, I guess, demeanor? Like, how was she on the phone? How was she acting?

A. She was nervous and scared and just couldn't believe it.

Q. And what did you do as a result of that? Were you still at work?

A. No. I got off at 12:00. And when I was on my way home, she called me.

Q. When you got home, who all was there?

A. My mom was there, my son, my daughter, and I think the other kids were there too.

Q. Okay. And did you actually speak with or talk to Shawntea that night?

A. No.

Q. Did you ever talk to her after this about kind of what happened?

A. No, I didn't.

Q. Okay. What did you talk to her about?

A. I asked her if she was okay. I gave her a hug and told her everything was going to be all right.

Q. All right. And you weren't actually there for anything that happened?

A. No.

Q. But you did live at Stevens Road during that time?

A. Yes.

Q. And you lived there for a period of years? Would you say a period of years? Months? Weeks?

A. A period of years.

Q. And that's prior to 2011 you'd been living there?

A. No. I moved to Bishopville -- I wasn't living there in 2011. I stayed there maybe six months and then I moved out.

Q. All right. So this all came about in October of 2011. When it all came about, how long had you

actually been living at Stevens Road?

A. Before this came about?

Q. Yes. This actually came about in October of 2011. How long had you been at the house?

A. Maybe two or three years.

Q. And the person you know as Nakia Johnson, the, I guess, father of your nieces and nephews and, essentially, father-like, stepfather role to Shawntea, do you see him here in the courtroom?

A. Yes.

Q. Can you point him out for the jury?

A. Sitting right there [indicating].

Q. And prior to -- or post-incident, after all this happened, did you have any contact with him at all?

A. Oh, no.

Q. All right. Thank you.

MR. JOHNSON: No questions, Your Honor.

THE COURT: No questions.

All right, ma'am, you may step down. You're excused.

All right. You got a two-minute witness?

MS. SIMPSON: No, sir.

THE COURT: Madam Forelady, ladies and gentlemen, I don't think your meal is here, but

should be here any minute. When it comes, obviously I'll let you eat it back there or, if you want to go outside, you're welcome to go outside and eat it. We'll start back at 2:15. So however y'all want to do it, and if one wants to stay and one wants to go out, that's perfectly fine too.

Please don't let anyone discuss the case with you, don't discuss the case with anyone. Please don't start any type of deliberations. Enjoy your lunch. We'll start back at 2:15 and probably go to around 5:00.

Everyone else please remain seated.

(The jury exits the courtroom at 12:59 PM.)

THE COURT: Anything for the record while they're out -- hold on one second, please.

Ma'am?

MS. SIMPSON: Nothing for the record, really; just scheduling issues for this afternoon as far as the --

THE COURT: We'll go in chambers to talk about that.

MS. SIMPSON: Perfect.

THE COURT: Mr. Johnson, anything for the record?

MR. JOHNSON: No, sir.

THE COURT: All right. We'll stand at ease until 2:15. Defendant is in custody. Make sure he gets something to eat.

(A luncheon recess transpired 1:00 PM - 2:16 PM.)

THE COURT: Anything for the record before we start back, by the State?

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

THE COURT: From the Defense?

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

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

(The jury enters the courtroom at 12:17 PM.)

THE DEFENDANT: Did you enjoy your lunch?

THE JURY: Yes, sir.

THE COURT: Okay. You may call your next witness.

MS. CAVANAUGH: State calls Temple Hart.

THE COURT: Come around, please. Raise your left hand to be sworn in.

TEMPLE HART

being first duly sworn, testified as follows:

THE WITNESS: I do.

THE CLERK: Please state your name for the record.

THE WITNESS: Temple Hart.

THE CLERK: Have a seat, please.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Good afternoon, Ms. Hart. Where are you employed?

A. Palmetto Health Richland in Columbia, South Carolina.

Q. And what is your profession?

A. I'm a registered nurse.

Q. And how long have you -- can you give your educational and employment background for me?

A. Yes. I graduated from nursing school in 2003 with my Associate's Degree in nursing and began working as a labor and delivery nurse.

In 2009, I got my Bachelor's Degree from University of South Carolina, and I worked as a labor and delivery nurse for seven years. And in 2010, I started working as a forensic nurse examiner or a sexual assault nurse examiner.

Q. And did you have to -- before I get into that, are you actually licensed in the state as a registered nurse as well?

A. Yes, ma'am.

Q. And you just described your certification as a sexual assault nurse examiner. Can you describe the training that you went through in order to receive that designation.

A. Yes. After being a registered nurse, you then go through a 40-hour didactic or classroom training specializing in sexual assault courses and simulations, and from there you will do 40 pelvic exams with a gynecologist in their office, under their supervision, along with supervised sexual assault evaluations and examinations for adolescents and adults; spend time with law enforcement, spend time with a sexual assault response team in the community, in the crime lab, and then, again, additional training for pediatric sexual assault nurse examiner.

Q. Okay. And you went through that certification process in 2011?

A. 2010 for adults and then later for -- peds was a little bit later in 2010. And my certification was in 2010 and 2011.

Q. Okay. And can you approximate about how many times you performed a sexual assault exam?

A. Between 250 and 300; right around 260s.

Q. And do you know how many of those included examinations of a child?
A. I don't have that exact number. It may be about 40 percent. Those are details that are in the database.
Q. Okay. And have you testified in court before regarding sexual assault exams?
A. Yes, I have.
Q. And have you been qualified as an expert in the field of sexual assault examination before?
A. Yes, I have.
Q. And how many times?
A. I believe four times for Richland County and once for Sumter County.

MS. CAVANAUGH: Your Honor, at this time I'd ask that Temple Hart be qualified as an expert as a sexual assault nurse examiner expert.

THE COURT: Any cross-examination on her qualifications?

MR. JOHNSON: None, Your Honor.

THE COURT: All right. Madam forelady, ladies and gentlemen, I'm going to qualify her as an expert. And what that simply means is that she'll be allowed to give opinion testimony, if asked, whereas a regular lay witness is not allowed to give

opinion testimony. I'll instruct you at the close of the case about the weight to give an expert's testimony.

Ma'am.

BY MS. CAVANAUGH:

Q. Ms. Hart, did you have occasion to perform a sexual assault exam on Shawntea Ford?

A. Yes, I did.

Q. And before we get -- well, what date did you perform that exam?

A. I believe -- October 11th, 2011.

Q. And how old was she on October 11th, 2011?

A. She was 11. She would have been 12 on the 16th, so just a few days before her 12th birthday.

Q. And what time did she arrive at the hospital?

A. 2150.

Q. And that's military time?

A. Yes.

Q. So that would be --

A. 9:50 PM.

Q. And who did she arrive to the hospital with?

A. She arrived in the emergency room with her mother.

Q. And did you have any information at all from law enforcement?

A. I don't know exactly how I found out when she arrived. The -- either the hospital calls to let me know that there's a patient there to be seen. Sometimes law enforcement does call and let us know ahead of time. I don't recall in this case who told me first. I just came to the hospital upon her arrival.

Q. And which particular agency was associated with this exam? Which sheriff's department?

A. Kershaw County.

Q. And can you describe -- once she comes to the emergency room, can you describe the steps that are taken before the actual exam is performed?

A. Yes. When a patient arrives in the emergency room, they come to triage where they're asked what they're there for. And from there they go to either the pediatric side of the emergency room or the adult side, based on their age. And once they get into triage, they're then taken to a room where they are assigned a nurse and a physician.

The nurse will do her assessment, the doctor will do his assessment, medical assessment, and do a medical clearance. And from there they're call the nurse examiner on call, which was me, and we come into the room.

Q. And once you arrive, do you collect any history from either the victim or the mother?
A. Yes, both. And if it's a child and they're there with their parent, we'll talk to the parent first and get a complete history, both medical history and history of the assault, and see whatever they can tell us to help us guide in talking with the child.
Q. Okay. And did you do that in this case?
A. Yes, I did.
Q. And who was actually present during the collection -- during your gathering of her history?
A. The sexual trauma services advocate was there during that time.
Q. Okay. And was she also there during the exam?
A. Yes, she was.
Q. And as far as the basic medical history that you obtained from the mother in this case, what -- can you describe that?
A. We ask about their previous medical history, immunizations, any surgeries, and then we ask any kind of medications they're taking at that time, if they have any injuries at that time, and then demographics, who the child lives with. We ask questions pertaining to -- depending on the age of

the child -- you know, what the private parts are called to them so we can try to speak in the same language as the child and ask about the sexual history -- assault history, I'm sorry, anything the mom could offer for that and give me any of those details.

Q. Okay. And was there anything as far as in her general medical history -- not -- separated from why she was there -- to get a sexual assault exam? Was there anything in her medical history that stuck out to you as significant?

A. No. She had a history of asthma noted and bronchitis, but nothing else.

Q. Once you obtained her general medical background, can you explain what you did next?

A. Then I talked to Tea, the patient, with the advocate in the room. And I begin by, you know, asking her why -- we have a series of questions that are all ready that we ask, just open-ended general questions, to ask them what brought them to the emergency room and have them explain to us what happened to them and any details they can offer.

Q. Okay. And before you start your exam, do you also ask her questions related to whether she went to the bathroom, whether she ate anything prior to

your exam?

A. Yes, we do. Everything that happened, what she was doing leading up to the assault, and then what happened immediately afterwards. That helps to guide the exam in collecting any evidence. So anything she had to eat or drink, whether she had gone to the bathroom, whether she changed her clothes, showered, anything that could change which evidence I would try to collect or any testing I would do.

Q. Okay. As far as -- you said you did speak to Tea before the assault?

A. Yes, I did.

Q. And did she rely to you that she had been sexually assaulted in the past?

A. She told me that she was there because of her step-dad touching her and that he had touched her inappropriately.

Q. Specifically about that night, what did she say occurred?

A. Do you want me to --

Q. Well, let me ask you this: Did she tell you that particular night she had been penetrated?

A. No. She said he had put his hand on her private part.

Q. Okay. And despite that information, did you still -- as far as what happened that night, did you still perform your exam?

A. Yes, I did.

Q. Okay. And had she -- did it come to your -- did she disclose to you that she had been sexually assaulted for a period of years prior to?

A. She described that it had happened before, the month prior, and she named a couple of occasions where that -- what had happened that night was touching and other things that had happened to her with her step-dad.

Q. Okay. Including penetration?

A. Yes.

Q. When you performed -- once you got the information from Shawntea, did you begin your examination?

A. I did.

Q. And can you describe this particular examination; what you did, what you collected.

A. Yes. We have the patient undress on the sheet where any kind of debris that might fall off would fall off and we'd collect that sheet, and it goes into the evidence kit. Tea undressed for me and put on a gown. We were in a private room, the advocate

was there, and I just did a visual inspection looking for any injuries and -- which included a genitalia assessment.

Q. And was her mom present in the room when you performed this exam?

A. According to my notes, just the advocate was in there.

Q. Okay. And what were your findings from your exam?

A. One of the tools that we use is called toluidine dye, and it's just a blue liquid dye kind of like ink that we apply with a soft cotton swab. And that helps us to visualize any injuries that we might not be able to see.

I noticed some redness in her genitalia, and that dye was used just to make sure that it wasn't just a change in color. And that dye, which we call positive uptake, if it adheres to the nucleate cells, that dye was present indicating there was some trauma to that area. So I noted redness and then positive uptake of the dye.

Q. And that redness that you observed, would that be consist to what she described happened to her that night?

A. Yes.

Q. Which was the touching?

A. The touching, the rubbing.

Q. Did you observe any other type of injury in her genital area?

A. No, I did not.

Q. And was that unusual for you? Did that seem unusual, based on her description?

A. No. No.

Q. Can you explain that? Why is that?

A. Tea has had a period. She was postpubertal. She's had a period for almost two years. And during that puberty cycle, you produce estrogen. Estrogen is one of the hormones that keep that area supple, elastic, stretchy and, therefore, it's not usual that you would see any kind of trauma to that area because it's an area that is able to adapt.

Q. And you mentioned that she had started her period. Did she indicate when that actually -- and just to be clear, it wasn't that night that she had a period --

A. No, it was not. I believe her last period, according to my notes, was September 26th.

Q. Okay. And did she tell you when she started experiencing her periods, at what age?

A. When she was ten.

Q. And she was 11 this evening --

A. Almost 12, yep.

Q. And, again, that is significant as it relates to the vagina area?

A. Yes. And not having any kind of trauma or, you know, any severe damage or any kind of injuries, because that -- even though she was only 11 or almost 12, she has estrogen and a very mature body.

Q. So in other words, that area can heal quickly?

A. It does heal quickly, yes.

Q. In your experience of conducting the sexual assault exams, do you expect to find evidence of sexual assault as far as injuries or lacerations or anything like that?

A. It's not likely. No.

Q. And can you expand a little bit on that?

A. Again, with the hormones and the -- that area, the hymen that surrounds the vaginal opening, is very elastic, and it's meant to stretch, it's meant to -- with the lubrication and hormones, we rarely see trauma to that area unless it's something very forceful or violent.

Q. So in your experience, in cases that there's confirmed penetration, for instance, where the patient might be pregnant, there still might not be

evidence of penetration even in the case that you know that there is?

A. That is correct. There's not always trauma or injuries, no.

Q. About how long did your examination take?

A. The physical exam took about 50 minutes. According to my notes, I started at 11:04 with the interview process, and the physical exam began at 1:10, and the exam was completed at 2:00 a.m.

Q. And you indicated that you took swabs from her vaginal area?

A. Yes, I did. Part of the evidence collection is to swab based on the assault history. So I swabbed her mouth based on what she had told me had happened in the past, I swabbed the vaginal area, and the anal area on the outside.

Q. Okay. And do you do this in most of your sexual assault exams?

A. Based on the assault history, based on the disclosure, so what the patient has told me has happened to them.

Q. And what do you do with those swabs once you take those?

A. We collect the evidence and it is in a secure area room that nobody else can get into. They're

dried in a drier, they're sealed, they're put into a sealed collection evidence kit, and then it's locked up in a refrigerator and held until law enforcement comes and signs it out from our department.

Q. And, again, what specifically did Shawntea describe to you happened that particular night?

A. You want me to read what she said?

Q. As far as the type of touching that she alleged?

A. She said he had touched her inappropriately, that he had put his hand on her private part.

Q. And, again, your findings were consistent with that statement?

A. Yes.

Q. Going back to what she told you happened that night, did she say -- I'll point you to your -- your -- the part of your report where you documented your conversation with her.

A. Okay.

Q. Where did she say -- did she say he touched over or under her clothing?

A. The question was asked in two separate occasions. At one point there's a place where we specifically ask was it over or under, and at that time she said it was over her clothing. I did not

know -- I didn't ask exactly was it over her underwear or over her pants, she just said over.

But then during some -- during -- just while talking to her and asking her questions, I asked her specifically about the contacts to her. And she answered that, yes, there had been oral sex while at the beach, but then that night it was touching and that he had -- let me find it.

She wasn't aware of the terms that I had used, such as masturbation and ejaculation. So we try to ask them in their own words what they're talking about. And she described that he was playing with his private and that she knew that the white stuff, when he would nut, could get her pregnant.

Q. And specifically when you asked her about that night, you did not ask her whether it was over her underwear or over her pants?

A. I did not. She replied, he touched my private part with his hand.

THE COURT: With his what?

THE WITNESS: With his hand.

MS. CAVANAUGH: I beg the Court's indulgence.

Thank you, Ms. Hart. Please answer any questions from Mr. Johnson.

THE COURT: Any questions, Mr. Johnson?

MR. JOHNSON: Yes, sir, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Ms. Hart, how are you?

A. Good, thank you. How are you?

Q. Pretty good.

I tried to get into contact with you several times. We were never able to talk; is that correct?

A. No, sir. We talked on the phone twice.

Q. I mean about the medical stuff. You said you couldn't talk about that. We talked on the phone, but not about what happened.

A. Well, we did talk. The day I talked to you, you didn't have the report in front of you. But...

Q. We never talked about what actually happened in the report.

A. I answered your questions that day. I don't remember exactly everything we talked about. But you didn't have the report with you on that day.

Q. All right. The -- there is a Palmetto Health FNE Program, Pediatric, Forensic Intake Form. Is that the form that you used to do an intake?

A. Yes.

Q. And on that form -- do you have a copy of that form with you?

A. Yes, I do.

Q. I do have mine today, so we could talk about the form, if that's all right.

A. All right.

Q. And on that form, it asks a lot of questions and you ask the questions from what you found that night, correct -- you answer the questions from what you find that night; is that correct?

A. Yes, sir.

Q. All right. On page three of 14 -- page 1 and 2 just has background and history; would you agree with me?

A. Yes, sir.

Q. On page 3 of 14, it has pertinent medical history, any previous history of sexual abuse. And how did you check that?

A. No.

Q. All right. And we keep going and it has pulse or subtle hygiene activities, and you check yes and no to that. And I think you checked yes to urinated, and yes to ate and drank, and no to everything else.

A. That's correct.

Q. Okay. Then at the top of page 4 of 14, it has the history of assault per the parent caregiver.

And that actually means what -- I'm assuming the mother gave you when she came with Tea. Correct?

A. Yes, sir. The history was by the mother Pamela Hall.

Q. Okay. All right. And on page -- going directly to what Tea said, on page 5 of 14, history of assault per patient. And it got parenthesis, exact words; is that correct?

A. Yes, sir.

Q. Okay. And here's what it says -- it asks the question: Why do you come did you come to the hospital today. What does she say?

A. Cause my step-dad.

Q. And did something happen to you? What did she say?

A. He touched me inappropriately.

Q. Uh-huh.

A. He -- keep reading?

Q. Yes, ma'am.

A. He touched my private part.

Q. Read the whole thing.

A. Asked Tea how he touched her. She replied: He just reached his hand in. Asked Tea where they were when this happened. She replied: This happened in the car. Asked Tea who was with them. She replied:

Just me and him. Asked Tea what he touched her with. She replied: He touched me with his hand. He touched my chest too.

Q. All right. Now, where did she say she was touched?

A. My private part.

Q. Okay. And she put: I was touched. And then the next question was, was the touching over or under the clothes.

A. On top of my clothes.

Q. Okay. There's another question: How did your private part feel? And you -- and what was your answer to that?

A. I did not ask her this question. This is a guideline of questions to ask the patient. And if it doesn't apply or if it's not appropriate, then we don't ask.

Q. And since I was asking the question -- it would have been wrong for me to ask just some. Now I want to go to page 6. It has, did any other part of his or her body touch you? What was your answer?

A. No.

Q. Okay. Did you touch any part of his body? What was your answer?

A. Her answer was no.

Q. All right. All right. Now, on page 7 at the bottom of the page under the time 5 -- 1550: Were any injuries inflicted upon assailant during the assault? What was your answer?

A. No.

Q. Okay. All right. Page 8, you have penetration of vagina, and then it has a spot that has penis. It has yes -- no, yes, attempted, unsure. What did you check?

A. Unsure was checked.

Q. All right. And it had the finger under that. It says: No, yes, attempted, unsure. What did you check?

A. Unsure.

Q. Okay. And then it went to penetration of anus. What did you check?

A. No.

Q. And finger?

A. No.

Q. And object?

A. No.

Q. All right. And you had oral copulation of genitals of patient. What did you have? What did you check?

A. I'm sorry?

Q. Under oral copulation of genitals, under that is of patient. What did you put?

A. No.

Q. And then you have of assailant. What did you check?

A. Yes.

Q. Okay. And what did you -- why did you check yes? You have the little writing on the side.

A. There's an area for description, and I had made a note that said: Reported to law enforcement that she did; however, did not disclose this to me during the interview.

Q. Okay. It has a section that has nongenital and genital acts, and it has under that licking. What did you check?

A. No.

Q. Kissing, what did you check?

A. No.

Q. Suction injury, what did you check?

A. No.

Q. Biting, what did you check?

A. No.

Q. And you had -- fondling, what did you check?

A. Yes.

Q. All right. Other acts -- I mean, other acts.

It has other. What did you check?

A. No.

Q. Videotape, what did you check?

A. No.

Q. Video showing, what did you check?

A. No.

Q. Okay. All right. It has --

A. Would you like the description on that one?

Q. Ma'am?

A. Did you want the description on that?

Q. Yes, ma'am. Tell it all. Yes, ma'am.

A. Photos taken with assailant's cell phone on different occasions.

Q. But there no photos brought to the emergency room that night; right?

A. No, sir.

Q. Okay. It had: Did ejaculation occur? And it has a space for the mouth. And it had the no, yes, and unsure. What did you check?

A. No -- I'm sorry. Unsure.

Q. And pronounce V-A-G-I-N-A.

A. Vagina.

Q. Okay. What did you check?

A. Unsure.

Q. And anus, what did you check?

A. No.

Q. Body, what did you check?

A. Unsure.

Q. And clothes, bedding, and others, what did you check?

A. No.

Q. Okay. And on page 10, there's a drawing. There was no marks done to the drawing; is that correct?

A. That's for physical injuries. That's correct; nothing, no findings.

Q. Okay. On page 11 there is an examination of females. And I think you got a drawing with a number one and a two, and it has checked F-O-S-S-A N-A-V-I-C-U-L-A-R-I-S. I'm spelling it because I can't pronounce it.

A. Okay. Fossa navicularis.

Q. Okay. And what is that?

A. That's on the inside of the vagina, the bottom portion.

Q. And that's the place that you said had the redness?

A. That's correct.

Q. Okay. And because of the redness, it doesn't -- you don't know the -- you don't know what

would cause -- there are a number of things that would cause the redness; is that correct?
A. That is correct.
Q. Okay. So as we go through the report from that night -- and if I sum it up wrong, you sum it up correctly for me. Basically, other than some redness that could have been caused by anything, there's nothing to show any kind of sexual act or any kind of penetration.
A. I can only base my assessment on what the patient tells me.
Q. Oh, yes, ma'am. I understand that. I'm just talking about from your report, you found nothing.
A. I found that the redness that I saw and observed with the positive dye uptake was consistent with what the patient told happened me that night.
Q. But it could have been consistent with something else too; isn't that true?
A. I just know it was consistent with what she told me happened.
Q. Okay. I'll say it one more time. It's a yes or no. It could be consistent with something else?
A. Yes.
Q. Thank you.
MR. JOHNSON: That's all I have.

THE COURT: Redirect?

MS. CAVANAUGH: I beg the Court's indulgence.

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Ms. Hart, I'll point your attention to page 8 at the top. Mr. Johnson was asking you about the boxes you checked regarding penetration of vagina, and specifically referring to the penis, you checked unsure. He didn't ask you to read the description next to that though. Can you do that now, please.

A. Yes. I made a note, and it said: Mother reported that Tea told her he was rubbing himself on her, and she, the mother, heard him saying he wanted to nut in her.

Q. And then just one more to follow up on that. The next question about penetration of the vagina by the finger, and he asked you if you checked unsure. Can you read your description beside that as well?

A. I wrote unclear if fondling over clothes or digital penetration.

Q. And, again, this information that you're collecting and that you're checking these boxes with, where are you getting that from?

A. The database is -- where am I getting -- I'm sorry. I'm getting the information from Mom and the

patient.

Q. And I'm going to point you to page 6 of your report. The third full paragraph, when you discuss speaking to the victim Tea --

A. Yes.

Q. -- she did disclose to you, specifically, that she had been penetrated by the stepfather on several occasions?

A. Yes.

Q. Thank you.

MS. CAVANAUGH: No further questions.

THE COURT: Ma'am, you may step down.

And may she be released from her subpoena?

MS. CAVANAUGH: No objection.

MR. JOHNSON: No objection.

THE COURT: You're released from your subpoena, ma'am.

Next witness, please.

MS. CAVANAUGH: State calls Jerry Dobbins.

(Jerry Dobbins enters the courtroom.)

THE COURT: Sir, please come around. Put your left hand on the Bible and please raise your right.

JERRY DOBBINS

being first duly sworn, testified as follows:

THE WITNESS: I do.

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

THE WITNESS: My name is James Dobbins D-O-B-B-I-N-S.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Mr. Dobbins, where are you employed?

A. I'm a contractor for AT&T.

Q. And what do you do for AT&T?

A. I make court appearances to certify and testify as to their records.

Q. Okay. And how do you actually -- are you the person who actually receives the subpoena?

A. No. That would have been received by our subpoena center.

Q. Okay. And once the subpoena center actually receives a subpoena, are records produced?

A. Yes.

Q. And pursuant to that subpoena?

A. Yes.

Q. And do you receive those records?

A. Yes, I do.

Q. And can you explain the process from the time the subpoena center receives the subpoena until they get to you.

A. The subpoena center will work with whoever issued the legal command. When an appearance has to be made, they will send records to me via a secure e-mail. I will get them, review them, discuss them if necessary, and then make an appearance on their behalf to certify that they are indeed AT&T's records.

Q. And from the time that they're actually retrieved from the database and sent to you, are they altered or tampered in any way?

A. No.

Q. And are they kept -- we're talking phone records; correct?

A. Yes.

Q. Are they kept in the normal course of business?

A. Yes, they are.

Q. Are you considered the records custodian?

A. Yes. I'm appearing as the records custodian for those records.

Q. Did you in fact receive a subpoena in this case -- or did AT&T receive --

A. Yes.

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

Q. I'm going to show you what's marked as State's

Exhibit 10. I'll ask you to review these records. Do you recognize them?

A. They're a lot of records. Let me look through not all of them. Yes, I recognize these records. These are the records that AT&T sent to me.

Q. Okay. For this particular case?

A. Yes.

Q. Okay. And --

MS. CAVANAUGH: Your Honor, at this -- I beg the Court's indulgence.

THE COURT: Any objection?

MR. JOHNSON: None.

THE COURT: Without objection.

(State's Exhibit No. 10 admitted in to evidence.)

BY MS. CAVANAUGH:

Q. Mr. Dobbins, what records are those; what number? The specific number.

THE COURT: You mean exhibit number or telephone number?

MS. CAVANAUGH: Telephone number.

A. These are records for a telephone number (865) 360-3322.

Q. And who is the subscriber of that particular number?

A. A Nakia Johnson.
Q. Okay. And what period do these records cover?
A. The records begin October the 1st, 2011; the records end October 16th, 2011.
Q. Okay. And what time zone are these records actually produced in?
A. The records are shown in UTC, which is universal coordinated time. It really equates to the time that we would probably know as Greenwich Mean Time, absent any Daylight Savings Times. So it's typically four or five hours different than eastern time, depending on whether we're in Daylight Savings Time.
Q. Okay. So in October of 2011, how many hours off Eastern Standard Time would we be?
A. Four hours' difference. Any record on these would be showing as though it appeared four hours later than the call actually occurred.
Q. So if a call is captured on these records at, say, 2154, what time would that be in Eastern Standard Time?
A. Well, 2154 would be like 9:54 PM, minus four; nine minus four is five, so 5:54 PM.
Q. Okay. And do -- the records that you have in front of you, do they show cell tower locations?

A. They do not.
Q. Okay. So from these records, we don't know where the phone is actually travelling; is that correct?
A. Correct.
Q. As far as cell tower locations are, if we're talking about an area that's, say, a mile from one location to the next, could you still -- with cell tower location, could you still pinpoint exactly where someone is anyway?
A. They're difficult within a mile. You can tell they're in the same state, same city or region, but sometimes cell -- sometimes a phone call will hit the nearest tower, sometimes that tower is busy, sometimes that tower is down for maintenance. So it would not be unusual for some calls to be within two or three different towers away from the closest one. But, of course, that doesn't mean a person could be thousands of miles away. But for these purposes, there's no location information anyway.
Q. Okay. Mr. Dobbins, I'm going to point you -- direction your attention to page 53 of these records. And, again, these are records of Nakia Johnson; is that correct?
A. Yes, per the 3322 -- the number ending in 3322.

Q. Okay. And I'm going to direct you to -- let's just briefly go over certain phone calls in this case.

Are there some phone calls that appear twice -- that look to appear twice on these records or in duplicate?

A. Yes.

Q. Can you explain --

A. It represents one phone call. What you see is when the times are the same, you can tell there are two AT&T subscribers involved; there's an originating call that would be captured, or a terminating call would be captured if it's another one of our customers. So you'll see two calls; you'll see the call going out, which would be recorded, and you'll see the information from the number that was received if it's an AT&T customer. So it will appear as two calls when, in fact, it's only one.

Q. And that's if one of the numbers are also -- if they're both AT&T numbers?

A. Yes.

Q. Okay. I'm going to direct you to phone call -- specifically phone call number 815 and 816. Are those in fact the same phone call on top of page 53?

THE COURT: Is that less than four hours or is that 8:00?

THE WITNESS: She's talking about a line number. The 815th call and the 816th call of the record are --

THE COURT: That's not time?

THE WITNESS: No. That's just the quantity -- the number of the call -- number on the record chronologically.

BY MS. CAVANAUGH:

Q. Is that, in fact, one call?

A. Yes.

Q. And was the -- the terminating number, that's the person that actually received the call?

A. Yes.

Q. Was that the subscriber in this case, Mr. Johnson?

A. That call was terminated to the number ending in 3322, the subscriber number.

Q. Okay, which comes back to Mr. Johnson?

A. Yes.

Q. Okay. And what -- that phone call was made what time --

THE COURT: On what date? Date and time,

please.
A. That call shows as October 11th, 2011. The time of connection shows as 2141, which would have been 9:41 PM; but absent the four hours, that's 5:41 PM.
Q. Okay. And, again, those were incoming calls to Mr. Johnson?
A. The terminating number, phone jargon, is the 3322, Mr. Johnson.
Q. Okay. And approximately --
A. Mr. Johnson's phone. I -- the records don't show who is at the end of the phone, but that's --
Q. The subscriber's phone.
A. -- that instrument. Yes.
Q. And approximately how long does that phone call last?
A. Fifty seconds.
Q. I'm going to direct your attention to line item number, so line number 819. Was that -- what time and date was that particular phone call made?
A. Number 819 shows as October 11th, 2011. The UTC, or the time, is 2147, which really would have been 5:47 PM Eastern Time.
Q. Okay. And beside -- all the way towards the end -- okay. So that would have been six minutes

later than the call I just asked you about; is that correct?

A. 41 to 47, yes, about. Uh-huh.

Q. Okay. And as far as the -- on that particular call that came in at 5:47, did that call go straight to voicemail?

A. Yes. That was a voicemail call.

Q. Okay. And that's indicated under the feature column of the phone records?

A. Under feature column, and also under the -- there's a number underneath that corresponds to the routing number for voicemail.

Q. Okay. And I'm going to direct your attention to a call that was made, going further down the records, number 828 and 829.

A. Okay.

Q. What date and time was that phone call made in Eastern Standard Time?

A. October 11th, 2011, at Eastern Time 5:54 PM.

Q. Okay. And was that actually a phone call coming from the subscriber's telephone?

A. That's from the subscriber number, 3322, the one assigned to Mr. Johnson.

Q. And how long did that phone call actually last?

A. Two minutes, three seconds.

Q. And was that actually a completed call that didn't go to voicemail?
A. Yeah. That was a regular outbound call from the 3322 number.
Q. Okay. Right after that, phone call terminated. Did the subscriber's phone receive an incoming call?
A. Yes.
Q. And what date and time was that?
A. October 11th, 2011, at 5:56.
Q. And approximately how long did that phone call last?
A. A minute and 23 to a minute and 25 seconds.
Q. Okay.
MS. CAVANAUGH: I beg the Court's indulgence.
BY MS. CAVANAUGH:
Q. Going back to those two phone calls we just discussed, the two-minute outgoing phone call and the incoming call, as far as the first phone call that lasted two minutes at 5:54, the outgoing call, can you read the number that was dialed that 5:54 PM?
A. The number that was called is (865) 230-3369.
Q. And going to the next incoming call that you just described at 5:56, what number called the subscriber's number?

A. The number that was dialed on the two-minute-and-three-second call was the number that called back on the minute-and-20-something-second call.

THE COURT: Same 230-3369?

THE WITNESS: 3369 called back 3322 immediately afterwards.

MS. CAVANAUGH: I beg the Court's indulgence.

Thank you, Mr. Dobbins. No further questions.

THE COURT: All right.

Mr. Johnson, cross?

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Good morning, Mr. Dobbins. I just have a few questions for you. I think the numbers on the side, like 815, 816, those are item numbers. That's the list -- the item number?

A. Yes.

Q. Okay. Under item numbers, I want you -- if you look at item 818, and it's on 10/11/11, and the time is 2145 and -- who --

(Phone ringing.)

A. I'm sorry, Mr. Johnson. Go ahead.

Q. That's okay. I'm just glad it wasn't me.

THE COURT: Okay. So number 818.

BY MR. JOHNSON:

Q. Number 818, that phone call is from -- what number is the originating number and what number is the terminating number?

A. Call 818 began with a number ending in 3369 and ended with the subscriber's number which ends in 3322.

Q. Okay. And if we look at Item No. 819, would you tell me what the originating number is and what the terminating number is?

A. The originating number is (803) 571-5158, and the terminating number is also the subscriber number, the one ending in 3322.

Q. And I think at the bottom of that -- there is a number at the bottom which shows that it was forwarded or went to voicemail or something like that; correct?

A. Yes.

Q. Okay. If you look at item 820, 10/11/11, I think the connect time is 2148. Would you tell me the originating number and the terminating number?

A. That is a call that originated at (803) 686-0804 and terminated on the subscriber's line ending in 3322.

Q. Okay. And item 821 on the same date at 2148,

would you tell me the originating number and the terminating number?

A. Item 821 originated from (803) 571-5158 and terminated on the subscriber's number ending in 3322.

Q. Okay. Now I'd like to go back to items 828 and 829. And both of those were at the time of 2154, which would be 5:54; is that correct?

A. 5:54 PM, yes, sir.

Q. And 828 and 829, that's the same call; is that correct?

A. Yes. That's two views of the same call.

Q. Okay. So it's one AT&T phone number calling to another AT&T phone number --

A. Yes.

Q. -- so -- it would show up twice, but it's one call?

A. Yes.

Q. Okay. Okay. And that call lasted two minutes and three seconds. So that's just one call at two minutes and three seconds; is that right?

A. Yes.

Q. Okay. And would you please give me the originating number and the terminating number?

A. The call that was for two minutes and three

seconds originated with the subscriber line, the one ending in 3322; it terminated in (865) 230-3369.

Q. Okay. And what was the time of that call?

A. It was at 5:54 PM.

Q. Okay. Thank you. And then Item No. 830 and 831, which I think -- what time was -- what was the connect time on that call? 21 what?

A. By connect time, do you mean the -- the duration of the call or the time the call occurred?

Q. The time the call occurred.

THE COURT: Which item number are you talking about?

MR. JOHNSON: Item 830 and 831.

THE WITNESS: 830 and 831 also represent one call as shown from the point of view of two different AT&T customers. That call occurred at 5:56 PM and lasted -- it shows one record as a minute 25 seconds, another record a minute 23 seconds, which would have been when the different ends of the phone disconnected.

BY MR. JOHNSON:

Q. Okay. That's what I want you to explain. That's one dialing and one picking up; is that correct?

A. Yes. That's just different actions on

different handsets.

Q. Okay. Now, Item No. 28 and 29, which is one call, received the call from 3369, and Item No. 31 and 32 -- I mean, item 28 -- item 828 and 829 called 3369. That was the terminating call?

A. That's the call that received --

Q. Right.

A. The receiving end of the call.

Q. Right. And then item 830 and 831 was the number 3369 --

A. Calling back --

Q. -- calling back --

A. -- 3322.

Q. Calling back to 3322.

Okay. And it was 5:56 when the call came back?

A. Yes.

MR. JOHNSON: That's all I have, Your Honor.

THE COURT: Redirect, if any.

MS. CAVANAUGH: I beg the Court's indulgence.

No further questions.

THE COURT: All right, sir --

Any objection to Mr. Dobbins being released from his subpoena?

MS. CAVANAUGH: No, Your Honor.

MR. JOHNSON: Nothing from the Defense, Your

Honor.

THE COURT: Next witness, please.

MS. SIMPSON: The State calls Melissa Hall.

(Melissa Hall enters the courtroom.)

MELISSA HALL

being first duly sworn, testified as follows:

THE WITNESS: Yes, I do.

THE CLERK: Be seated in the witness chair and state your fall name for the record, please.

THE WITNESS: Melissa Hall.

DIRECT EXAMINATION

BY MS. SIMPSON:

Q. Ms. Hall, how old are you?

A. Forty-six.

Q. Forty-six. And do you live here in Camden?

A. No, ma'am.

Q. Where do you live?

A. In Bishopville.

Q. Bishopville. Are you from Bishopville?

A. Well, the area, yes. I'm from Lee County.

Q. Lee County. And --

THE COURT: Hold on one second. Just take a deep breath.

Q. Where do you work?

A. At Invista.

Q. And what do you do there?
A. I'm a scales operator.
Q. And how long have you been with that company?
A. Ten years.
Q. What type of shifts do you work?
A. Rotating day to night, night to day.
Q. And how long are your shifts?
A. Twelve hours.
Q. You say you work shifts similar to what your sister had back in 2011 too --
A. Yes.
Q. -- that Stacey had?
A. Yes.
Q. I want to talk to you a little bit about your family. Who is Pamela Hall to you?
A. My sister.
Q. And do you have any other sisters?
A. Stacey Hall.
Q. And who is the oldest?
A. I am.
Q. You are. Did you live in Kershaw for a period of time?
A. Yes.
Q. Tell the jury about that and how you ended up there and what time period you stayed there.

A. I was at 3046 from '97 to 2000, I think it was.
Q. Okay. And Stevens Road, is that where your mother and grandmother lived?
A. Yes.
Q. And then you moved to Bishopville?
A. Yes.
Q. At some point did you also move back to -- I'm sorry, I want to make sure my areas are right -- Cassatt?
A. First, I think I moved back to 3046, and then to Cassatt at 1927.
Q. Okay. And when did you live at 1927 -- or what's the street?
A. Cassatt Road.
Q. And when did you live there?
A. I think it was 2011 until 2015.
Q. So you only recently made a move from that house?
A. Yes.
Q. I want to show you what's already been introduced as State's Exhibit 5. Is that the home where you lived?
A. Yes.
Q. And when you lived at 1927 on Cassatt Road, did Pamela and her children come to visit you?

A. Yes.
Q. And tell us about that and how she came to be with you and who all came.
A. She came the end of the school year in May of, I want to say, 2012, and she stayed until August of the next school term of 2012.
Q. Okay. And did she actually live with you before all the stuff came out about Shawntea?
A. Yes.
Q. Okay. Tell us about that time. Because I believe she -- all of this came out in October of 2011; correct?
A. Yes.
Q. And she lived with you prior to that?
A. It came out in 2011?
Q. Yes. It's okay if you don't remember the dates or the years exactly.
A. Okay. Well, when it came out, she was with me from May to August.
Q. Okay. May through August, the year of the disclosure?
A. Yes.
Q. Tell the jury a little bit about the makeup of your house; how many rooms and where everybody was kind of staying.

A. It was a three-bedroom. It had a living room, kitchen, two baths.

Q. Okay. And did you also have a room that we've kind of referred to as the computer room in your home?

A. Yes.

Q. Okay. I'll show you what's in as State's Exhibit 7. Is that the room?

A. Yes.

Q. Now, these are fairly recent photos. Is -- the room, has it recently changed any or did it change any --

A. No.

Q. -- since 2011?

A. No, it didn't.

Q. That's generally how it was set up?

A. Yes.

THE COURT: Everybody with me on the jury?

Q. And who all did Pam -- which of her children were there with you?

A. I think all of her kids; Shawntea, Kamari, Nakiah, and -- we call him Bubba, but his name is Kyrie.

Q. And do you know the defendant in this case, Nakia Johnson?

A. Yes, I do.
Q. And tell the jury how you know Nakia.
A. Through my sister Pam.
Q. Through your sister Pam. And when did y'all actually meet?
A. After they started dating.
Q. Okay. And did you have much interaction with him at all?
A. No.
Q. No. So y'all didn't have any type of relationship?
A. No.
Q. No. Were you aware of whether or not he was supportive of the children? Like, would he provide clothes for them or money to Pam?
A. Yes, ma'am.
Q. Tell us about that, as far as him helping out.
A. I guess whenever she called saying they needed whatever it was, if he could, he'd give her money for whatever it was they needed.
Q. And during that time that they were staying with you, did you have any idea that anything had happened with Shawntea?
A. No. You would never know.
Q. You'd never know. And, like I said, he didn't

have -- well, let me move to the night all this came out. How exactly did you find out?

A. I was at work and Pam called me, and she was upset.

Q. Okay. And what shift were you working on; the nightshift?

A. Yes; the 7:00 PM to 7:00 AM.

Q. And she was upset. Did she tell you -- without telling me exactly what she said, did she tell you why she was upset?

A. Yes.

Q. Did you come home at that point or did you finish your shift?

A. I finished my shift.

Q. What happened when you went home -- or did you go directly home or did you go --

A. I went home.

Q. Went home to your home?

A. Uh-huh.

Q. At some point did you see Shawntea or Pamela afterwards?

A. I can't remember exactly -- no, because I think I went to my house. The dates and the times of where they stayed is kind of foggy, so I'm not sure about where I was living and where they were living.

Q. Okay. But did you make contact with your sister at some point?

A. Yes, I did.

Q. Did she tell you about what happened that night?

A. Yes.

Q. And even her pulling the firearm on him --

A. Yes.

Q. -- and things of that nature?

A. Yes.

Q. As far as details about, I guess, the abuse, did Shawntea ever give you any of those details or talk to you about what happened?

A. No, she didn't.

Q. Tell me how she reacted with you once she found out.

A. She didn't react in a negative way. She seemed relieved.

Q. That it was --

A. She just --

Q. She just seemed relieved?

A. Yes.

Q. And how did you respond to her? Did you question her at all about details of what happened or anything of that nature?

A. No, I didn't.
Q. What did you do?
A. Just -- you know, just -- if there was anything she needed, I did what she needed. But she didn't ask for anything. She didn't seem indifferent. She just seemed like a burden was lifted off her shoulders. We didn't talk about it.
Q. So y'all didn't talk any more about what happened. And did you talk to the defendant, Nakia Johnson, about what happened?
A. No, I didn't.
Q. Thank you, Ms. Hall.

THE COURT: Any questions?

MR. JOHNSON: No questions.

THE COURT: You may step down.

Next witness, please.

MS. CAVANAUGH: The State calls Nakiah Johnson.

(Nakiah Johnson enters the courtroom.)

THE COURT: Come around, please, ma'am.

NAKIAH JOHNSON

being first duly sworn, testified as follows:

THE WITNESS: Yes.

THE CLERK: Please be seated in the witness chair and state your full name for the record.

THE COURT: Okay. Answer ay questions the lady

has for you, ma'am. Speak up loud so all of them on the jury can hear you. Okay? You understand?

THE WITNESS: Yes.

THE COURT: Speak loud now.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Nakiah, how are you?

A. Good.

THE COURT: Speak loud.

Q. Speak loud into the microphone. Okay?

How old are you?

A. I can't --

THE COURT: Ma'am, that's not going to work. You just have to relax a little bit and speak loud for me. Okay? She asked how old you are. How old are you?

THE WITNESS: Twelve.

THE COURT: There you go. That's much better.

BY MS. CAVANAUGH:

Q. And it's summertime, so are you in school right now?

A. No, ma'am.

Q. What grade did you just finish?

A. 6th.

Q. And where did you go to school?

A. Lee Central Middle school.

Q. And what are some of your favorite subjects?

A. Math.

Q. And do you make pretty good grades?

A. Yes.

Q. Do you play any sports?

A. Basketball.

Q. Do you play for your middle school team?

A. No, ma'am.

Q. Just for fun outside of the school?

A. Yes.

Q. And do you like to do other things? Do you have any favorite TV shows?

A. SpongeBob.

Q. You still like SpongeBob?

A. Yes.

Q. Nakiah, do you have any brothers and sisters?

A. Yes.

Q. Who are they? What are their names?

A. Shawntea, Nakisha, Nakia.

Q. What's your mom's name?

A. Pamela Hall.

Q. And do you live with your mom?

A. Yes.

Q. And who else is in the house with you and your

mom right now?

A. My auntie and my sisters and brothers.

Q. Okay. And where -- whose house is it?

A. My mom's.

Q. Okay. And where is that?

A. East College Street.

Q. Is that here in Kershaw?

A. Yes.

Q. Have you always lived on East College Street?

A. No, ma'am.

Q. Can you describe some of the places that -- where did you live before you moved to East College Street?

A. Stevens Road.

Q. Okay. And whose house is on Stevens Road?

A. My grandma's.

Q. And which grandma is that? Is that your mom's mom?

A. Yes.

Q. Do you remember -- who lived with you on Stevens Road?

A. My mama and my grandma.

Q. Did Tea live with you on Stevens Road?

A. No.

Q. What about your younger brother and sister?

A. Yes.

Q. Do you remember when you lived with your grandma on Stevens Road?

A. Yes.

Q. When was that?

A. I don't really remember.

Q. Okay. Do you know about how long you've lived on East College Street?

A. I don't remember.

Q. Were you in 5th grade at East College Street? Do you know?

A. No, ma'am.

Q. So you were on Stevens Road when you were in 5th grade?

A. Yes.

Q. Where did you live before you lived with your grandma on Stevens Road?

A. I don't remember.

Q. Okay. Did you ever live in Fairfax?

A. Yes.

Q. Okay. And who did you live in -- who did you live in Fairfax with?

A. My mama.

Q. And who else?

A. And my daddy.

Q. And who is your dad?

A. Nakia.

Q. Did Shawntea live with you in Fairfax?

THE COURT: You okay?

Q. Nakiah, do you need some water?

THE COURT: Are you going to be able to answer these questions? You want to step down and let's come back after while?

THE WITNESS: [Nods head].

THE COURT: That will make you feel better?

THE WITNESS: Yes.

THE COURT: I'll let you step down. We'll do this later on. Okay? You want to step out with your mama?

THE WITNESS: [Nods head].

(Nakiah Johnson exits the courtroom.)

THE COURT: All right. Madam Forelady, ladies and gentlemen, let's take our afternoon break. Is ten minutes okay? Please don't discuss the case, don't deliberate and we'll come back and go to about 5:00.

(The jury exits the courtroom at 3:37 PM.)

THE COURT: All right. We'll take about a ten-minute break. Ms. Cavanaugh, why don't you -- I don't know if this child is going to be able to

testify or not. She seems very upset. I know her mom is out talking to her, but y'all talk to her and sort of see where we are.

MR. JOHNSON: Your Honor, may we approach a second?

THE COURT: Yes, sir.

MS. SIMPSON: And, Your Honor, our victim advocate is actually going to go. She's been spending time with her and is talking with her right now.

(Side bar conference.)

THE COURT: All right. We'll stand at ease for a few minutes. Defendant is in custody.

(Short break 3:39 PM - 4:07 PM.)

THE COURT: All right. Nakiah, come back up here, young lady.

All right. Miss Johnson, we're going to get ready to start back up. We took the opportunity for you to have a little break. You think you'll be okay?

THE WITNESS: Yes.

THE COURT: You think you'll be able to finish up?

THE WITNESS: Yes.

THE COURT: It's very important for everybody

involved, so take a deep breath and they'll ask you questions. Now, you didn't talk about the case to anybody when we broke, did you?

THE WITNESS: No, sir.

THE COURT: You didn't talk at all about the case; right?

THE WITNESS: No, sir.

THE COURT: Mr. Johnson, does that satisfy your --

MR. JOHNSON: Yes, sir.

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

(The jury enters the courtroom at 4:08 PM.)

THE COURT: All right. You may proceed, ma'am.

MS. CAVANAUGH: Thank you.

DIRECT EXAMINATION

(Continued)

BY MS. CAVANAUGH:

Q. Nakiah, what did you see happen to your sister?

THE COURT: Speak up loud so we can all hear, please, ma'am. Nakiah, you have to answer the question, please.

Q. Did you see something happen to your sister, Nakiah?

A. [Nods head].

Q. Can you answer out loud? Did you see something happen to your sister, Nakiah? Nakiah, is this hard for you?

THE COURT: You have to answer for me, please, ma'am. Are you going to be able to tell us the story? Ma'am?

Q. Nakiah, can you tell us what happened to your sister?

THE COURT: All right. Madam Forelady, ladies and gentlemen, I hate to ask you to do this, but step back out just one second, please.

(The jury exits the courtroom at 4:11 PM.)

THE COURT: Nakiah, can you listen to me? I know this is difficult. It's important that the whole story come out. And if you're able to do it, we want you to tell us; but if you're not able to do it, I need to know that as well. You don't think you can do that in front of all these people?

THE WITNESS: No.

THE COURT: I can't hear you, sweetie.

THE WITNESS: No.

THE COURT: No, you don't think you can?

THE WITNESS: [Shakes head.]

THE COURT: It's just too much for you?

THE WITNESS: Yes.

THE COURT: Okay.

All right. I'm not going to -- she's obviously unable to do this. I don't know if -- you want to try it again tomorrow? I don't know.

MS. CAVANAUGH: Your Honor, I beg the Court's indulgence.

THE COURT: All right, ma'am.

MS. CAVANAUGH: Your Honor, if we -- see if we could get away from what she witnessed to see if she's able to answer any other questions in front of the jury and then make her available for cross-examination by the Defense.

THE COURT: Well, if she can't answer the questions you're asking her, I'm certain he won't be able to any the questions on cross-examination because she hasn't said anything other than talking about her family; nothing about the case in general. I just -- we tried it twice.

Nakiah, you don't think you'll be able to tell this jury your story? Please talk to me. Okay? And it's okay if you can't; I just need to know.

MS. CAVANAUGH: Nakiah, would you be able to answer one yes-or-no question?

THE WITNESS: [Shakes head.]

THE COURT: All right. She's just not going to

be able to do it.

All right. You may step down. Thank you.

And this also -- she had one of the statements, an interview?

MS. CAVANAUGH: Yes, Your Honor.

THE COURT: Right. She's not subject to cross-examination, so I can't let that come in. Do you have any other witnesses for this afternoon?

MS. CAVANAUGH: Yes, Your Honor, we do.

THE COURT: All right.

MS. CAVANAUGH: I beg the Court's indulgence.

THE COURT: Y'all go ahead and talk.

MS. CAVANAUGH: Your Honor, if she is able to get herself to calm down tonight and to -- without anybody, of course, discussing her testimony, and be recalled for the State tomorrow, we'd ask that we be allowed to do that.

THE COURT: Mr. Johnson?

MR. JOHNSON: Your Honor, out of an abundance of caution, I think I would say, Your Honor, I think that she can't testify and I'd be very concerned if she came back, after she'd been home with her family, to testify. I know the Court has the decision, but that would cause me grave concern. I would ask that if she can't testify now, to let her

go home with her family where we have no idea what's said and she's going to come back and testify, I think that would be a detriment to my client.

MS. CAVANAUGH: And, Your Honor, may I reply? This is the first time that she's seen her stepfather since these allegations arose in 2011 --

THE COURT: Her father.

MS. CAVANAUGH: Her father. I apologize. So I do understand why she's so hesitant.

THE COURT: Well, where would she stay tonight?

MS. CAVANAUGH: She would stay with her mother where she lives tonight.

THE COURT: Where is her -- is her grandmother here?

MS. CAVANAUGH: I don't think she's here in the courthouse, but she's on Stevens Road which is very close to the courthouse. So if we could -- we'd ask permission to -- even if it's just later on today, that she be subject to cross-examination; if it was tomorrow morning, that she not discuss the case with anyone and that we have the ability to recall her if she is able to calm down and testify.

MS. SIMPSON: And, Your Honor, it would be our position that you would have the ability, just as you do overnight with any witness, to ask them

whether or not they've discussed their testimony with anyone or anything of that nature. And if there's anything that gives cause for concern at that time, we would see. But it's our position that it would really be no different than --

THE COURT: Ms. Pamela Hall, stand for me. You're still under oath. Obviously you've seen how upset your daughter is, and she's sort of frozen up on the stand. I'm going to let her go home with you tonight, but I'll instruct you and order you not to discuss the case at all with her.

MS. HALL: Okay.

THE COURT: You understand that?

MS. HALL: Yes.

THE COURT: Obviously, if I find out you did, you'll be contempt of court and subject to being punished. I'm not fussing at you, just telling you what the rules are. And just make sure she gets a good night's sleep and makes sure she's comfortable and rested, and we'll give it a shot in the morning to see if she'll be able to testify. But I instruct you and order you that there is to be absolutely no mention of the trial, her dad.

MS. HALL: Yes, sir.

THE COURT: Is her stepsister -- or half-sister

staying with y'all as well?

MS. HALL: No, she's not. She stays with her dad.

THE COURT: Okay. So no one can have access to her by telephone or anything else. Okay?

MS. HALL: Yes. And I'll make inquiries in the morning when I make the decision as to whether or not I'll allow her to continue her testimony.

Yes, sir?

MR. JOHNSON: Your Honor, I would just ask that the Court would consider expanding the order not only to her, but to not let anybody talk to her about the case.

THE COURT: Ms. Pamela Hall, obviously that not only means you, but anybody in the family or anybody calling or sisters or family or friends or anyone. Just let her have a nice, pleasant evening, watch her TV shows or whatever she wants to do, and we'll try it in the morning. Fair enough?

MS. HALL: Yes.

THE COURT: All right. Do y'all have another witness for this afternoon?

MS. SIMPSON: We do, Your Honor.

THE COURT: Bring the jury in, please.

(The jury enters the courtroom at 4:19 PM.)

THE COURT: Madam Forelady, ladies and gentlemen, we're going to give this young lady over the evening to see if she can perhaps give another shot tomorrow to see if she'll be able to testify. If she is, she is; if she can't, she can't. We'll all understand that. We'll do another witness this afternoon. I've been instructed she'll be staying with her family, but everybody has been instructed that she is not to discuss the case tonight and nobody is to discuss the case with her. I'll make inquiries tomorrow and make sure that order has been complied with. Nobody is to coach her tonight, nobody is to do anything other than just let her have a restful evening. And if she's able to tomorrow, she'll be able to; if she can't, I understand that. So we're going to go at least until 5:00.

Ladies?

MS. CAVANAUGH: State calls David Kellin.

DAVID KELLIN

being first duly sworn, testified as follows:

THE WITNESS: I do.

THE CLERK: Please have a seat in the witness box and state your full name for the record.

THE WITNESS: Mahlon David Kellin.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Good afternoon, Mr. Kellin. Can you state what your profession is.

A. Social worker.

Q. And how long have you been a social worker?

A. Twenty-three years.

Q. And are you licensed as a social worker?

A. I am.

Q. Can you -- where did you go to college? Can you describe your educational background for us.

A. I have an undergraduate degree in psychology from Lander University and a master's degree in social work from University of South Carolina.

Q. And when did you receive your master's degree?

A. In 1992.

Q. And can you go over your employment history with us since then?

A. I've been employed various places; most recently with Family Resource Center here in Camden as a counselor and forensic interviewer, and working now at Palmetto Citizens Against Sexual Assault in Lancaster as a counselor.

Q. And when did you work at the Family Resource Center?

A. From 2008 through 2012, I believe.
Q. And what exactly is the Family Resource Center?
A. It's a child advocacy center. It's a center where children are referred after disclosure of abuse. They're brought there for potential interview, like, you know, if the police request an interview be done, also for counseling. But it all revolves around children and it gives them a safe place to talk and to communicate.
Q. And were you one of the interviewers at the Family Resource Center?
A. I was.
Q. And you were employed in that capacity in 2011?
A. Yes.
Q. Did you have an occasion to interview Shawntea Ford?
A. I did.
Q. And what day did you interview Shawntea?
A. If I can refer to my notes. My interview was conducted October 12th, 2011.
Q. Okay. And how old was Shawntea at the time of your interview?
A. Eleven years old.
Q. And what was her date of birth?
A. It was 10/16/1999.

Q. And who actually referred Shawntea to the Family Resource Center?
A. Rick Bailey of the Kershaw County Sheriff's Office.
Q. Okay. And is it typical for law enforcement to refer children to the Family Resource Center?
A. Yes.
Q. Can you describe the interview process for us as far as the type of room and who's in the room with you at the time?
A. We have a small room at the Family Resource Center. There's a small room set off to the side with a camera system and a one-way mirror. The camera system records both audio and video of the interview. We have a couch and a chair, a pad of paper on an large board. Myself and the person interviewing would be in the room.

On occasion there would be someone observing, but with my interview, there was not. And everything that happens in that room is contained within that audio and video recording for the particular person that's being interviewed.
Q. And is the fact that it's being recorded relayed to the child?
A. Yes. We do indicate that the camera is there

and is recording.

Q. And is there anyone else besides you and the child present in the room at the time of the interview?

A. No.

Q. And what information, if any, did you have before you interviewed Shawntea?

A. Basically I went in with little or no information about her case and just the referral from Investigator Bailey that a forensic interview needed to be done and that the allegations were sexual abuse.

Q. Okay. Have you had an opportunity to review your video and interview of Shawntea recently?

A. Yes.

Q. How did you begin that interview?

A. I interviewed by introducing myself, and very briefly in the beginning, we talk about just general topics. We check and see if they're aware that this is being recorded. We provide a couple of semi-instructions just about how to respond if they don't know something so that they're not trying to provide information to us just to try to provide us information or to guess.

So we encourage them to -- if they don't know

something, to say they don't know; if they don't understand, to say I don't understand and not to guess. We also ask in the beginning if will they tell the truth during the interview process.

MR. JOHNSON: Your Honor, may it please the Court. I have a motion, please, sir.

THE COURT: Make it. You want to make it outside the presence of the jury?

MR. JOHNSON: Yes, sir.

THE COURT: All right. Ladies and gentlemen, y'all step out just a second.

(The jury exits the courtroom at 4:27 PM.)

THE COURT: Mr. Johnson.

MR. JOHNSON: May it please the Court.

At this time, I move that that comment be struck. And, Your Honor, I move for a mistrial based upon the fact of the words saying he instructs them to tell the truth, knowing one -- at least one of the cases I read, and I'll define it for you, Your Honor, says one of the things that you -- any time you -- the interviewer says they tell the child to tell the truth, that gives the impression the child is being truthful. I'll have to find the case. I don't --

THE COURT: That's Kromah.

MR. JOHNSON: Yes. And that was one of the things I think they specifically spelled out.

THE COURT: Well, it's not grounds for a mistrial. It might be grounds to exclude the playing of the interview.

MR. JOHNSON: Your Honor, for the record, I move to strike too.

MS. CAVANAUGH: Your Honor, the State v. Kromah deals with him rendering an opinion on whether or not she was truthful. He's not rendering an opinion in any way or bolstering her credibility. We'll be happy to move on from this set of questioning. But he did not render an opinion at all, and that's what State v. Kromah deals with.

THE COURT: Well, in the case of State vs. Miama Kromah, that was a case where they talked about forensic interviewing, and that was the case where they were mainly concerned about the interviewer commenting on the credibility or the believability of the person giving the interview. And, obviously, I think in that case it was physical abuse, and that interviewer testified that there was compelling finding of physical abuse.

And it went on to discuss the fact that the jury is the ultimate finder of fact and witnesses

should not be bolstering credibility or giving opinions about credibility or believability of the children who are being interviewed.

And at the conclusion of that case, the Court says this: Because the admissibility of forensic interviews and the testimony based thereon at trial has been the subject of recent appeals, we believe it would be helpful to set forth, by way of exactly the kinds of statements that the forensic interviewer should avoid at trial; one, that the child was told to be truthful, a direct opinion as to a child's veracity or tendency to tell the truth, any statement that indirectly vouches for the child's believability such as stating that the interviewer has made a compelling finding of abuse, any statement indicating to a jury that the interviewer believes the child's allegations in the current matter, or opinion that the child's manner indicated the child is telling the truth.

However, the interviewer may testify regarding the following: Time, date, and circumstances of the interview, personal observations regarding the child's behavior or demeanor, or statements as to the events that occurred within the personal knowledge of the interview.

Of course yesterday we had a hearing to determine the admissibility of this interview under 17-23-175, and I had the opportunity to review the video as well as read the transcript of the video, and, also, Mr. Johnson's questions about that statement that the child was encouraged to tell the truth.

Nowhere else in the interview was there any bolstering by the interviewer or any comment on the child or whether or not he thought the child was telling the truth or not telling the truth. And, quite frankly, I think he conducted the interview according to the statute, and that there was no problems dealing with he -- he being the interviewer -- commenting on the believability of the or the credibility of the witness. So I'm going to deny your motion for mistrial.

And I think the context in which he has testified about the truthful statement would not taint it so as to make it inadmissible. And I'll let you be protected on the record. Anything else you want to tell me, Mr. Johnson.

MR. JOHNSON: Yes, sir, Your Honor. The next logical step is that it could be more prejudicial than probative to follow that. And that statement,

at this point, would be more prejudicial than probative.

THE COURT: Well, the question was asked: Tell us generally how you conduct the interview. And he started off by telling us a number of things, including encouraging her to tell the truth, is basically what he said. I don't find that to be more prejudicial than probative, so I'm going to allow him to continue on with his testimony.

MR. JOHNSON: Thank you.

THE COURT: But you're protected on the record.

MR. JOHNSON: Thank you, sir.

(The jury enters the courtroom at 4:33 PM.)

THE COURT: You may continue.

BY MS. CAVANAUGH:

Q. When you conduct your interview, are open-ended questions utilized?

A. As much as possible.

Q. And does that to ensure that you don't put words in the child's mouth?

A. Yes.

Q. When you were interviewing Shawntea, did she appear to understand your questions?

A. Yes.

Q. And was she able to answer them to the best of

her ability?

A. As far as I know, yes.

Q. Did she disclose to you that she had been sexually assaulted?

A. She did.

Q. And was she able to tell you when that occurred?

A. She told me in some of the disclosure about trips that they had taken, which would define a when. She did not give a date or time.

Q. And you can look at your notes as well. Did she disclose that this had happened in several different places?

A. Yes.

MR. JOHNSON: Objection, Your Honor; leading.

THE COURT: Sustained.

Rephrase your question.

Q. Was she able to tell you where these occurred?

A. She described locations, yes, that she had been when the abuse occurred.

Q. Did -- was Shawntea sick during this interview?

A. She asked to leave the room twice to throw up.

Q. Based on that fact, did you make -- did you end the interview?

A. After the second time when she asked to leave

to throw up, I started to conclude the interview at that point.

Q. Going back to where she disclosed to you that these incidents happened -- and you can look at your notes -- where did she disclose that these incidents had occurred?

A. She described the location -- one at home, at 3046 Stevens Road. She also described at the beach that was north or near one of the side Myrtle Beaches, is what I have here; at Walt Disney World, at a dirt road, and also at a graveyard or cemetery.

Q. And I'll direct your attention to the middle paragraph. Did she also say it occurred in a computer room?

A. Yes, she did.

Q. And, again, she was able -- not -- to give you a timeframe of when these things occurred?

A. I think she said at one point it was during the summer or at times when he would come down. He was not -- according to her, he was not living in the home at the time. So it was during times when he would come down, is how she described it.

Q. And, again, I'll direct you towards the bottom of page 3 of your notes from this interview.

A. Okay. She also described that it started three

years ago, from the point of the interview, at his brick home in Fairfax.

Q. And, again, this interview with Shawntea was recorded?

A. It was.

Q. And have you had an opportunity to review the interview recently?

A. I have.

Q. And I'll show you what's been marked as State's Exhibit 3. Is this a copy of her forensic interview?

A. That's a copy of the interview, yes.

MS. CAVANAUGH: I beg the Court's indulgence.

BY MS. CAVANAUGH:

Q. And just to reiterate, you stated -- why did you end the interview?

A. After the second time she went to the bathroom to throw up, I felt like at that point we needed to close the interview or to wrap it up. She continued to talk after that, so it was shortly after we finished talking that last bit that we wrapped up the interview.

MS. CAVANAUGH: Your Honor, at this time we'd ask that State's Exhibit 3 be introduced into evidence.

THE COURT: Any objection?

MR. JOHNSON: Yes, sir.

THE COURT: Sir?

MR. JOHNSON: Yes sir. At this time, I would object to the entrance of it.

THE COURT: Same reasons as stated yesterday?

MR. JOHNSON: Same reasons. And just out of an abundance of caution, whenever you see fit, I'll put my reasons on the record.

THE COURT: We will do that after the jury leaves. Remind me to do that, Mr. Johnson.

MR. JOHNSON: Yes, sir.

THE COURT: All right. You may publish it. How long is it?

MS. CAVANAUGH: This one is approximately 40 minutes.

THE COURT: All right. We'll listen to 20 minutes of it today and the last 20 minutes of it tomorrow morning, unless the jury wants to listen to all of it today. I'll give them that option at 5:00.

(State's Exhibit No. 3 admitted in to evidence.)

(Video played for his Honor and the jury.)

THE COURT: Can everybody see it?

THE JURY: Yes, sir.

THE COURT: We're going to fast-forward it while she's in the bathroom.

MS. CAVANAUGH: Your Honor, I apologize, this is a different laptop than we used yesterday.

(Video paused.)

THE COURT: All right. Madam Forelady, ladies and gentlemen of the jury --

How many more minutes of it?

MS. CAVANAUGH: About 20 more, maybe a little less.

THE COURT: All right. Madam Forelady, I'd like to finish this up this afternoon. That would take us to about 5:20. Is that okay with everybody?

THE JURY: Yes, sir.

THE COURT: All right. Let's finish this one up.

Then we'll cross-examine tomorrow, Mr. Johnson.

All right. Move along.

(Video resumed.)

THE COURT: Let's move it forward while she's in the bathroom the second time.

(Video concluded.)

THE COURT: All right. Ms. Cavanaugh, I'll let you continue you direct examination of this witness,

Mr. Kellin, tomorrow morning, unless you're through.

MS. CAVANAUGH: Tomorrow is fine, Your Honor.

THE COURT: All right. Mr. Kellin, you're right in the middle of your testimony. Please don't discuss it with anyone tonight, don't let anyone discuss it with you. We'll start back tomorrow morning at 9:15, so please be back and ready to go.

THE WITNESS: Yes, sir.

THE COURT: All right. Ladies and gentlemen, we'll start at 9:15 in the morning. I think we're doing pizza for lunch tomorrow. And I'll talk to the lawyers tonight so I can get some sort of an idea of where we stand for tomorrow. Please don't let anyone discuss the case with you and please don't discuss the case with anyone else. Please don't try to do any type of research, and please don't start any type of deliberations in the jury room.

I hope you have a pleasant evening and we'll start bright and early in the morning at 9:15. We'll be here at 8:30 to so some things so we'll be ready by the time you get here. Thank you very much. You've paid very close attention. I look forward to seeing you in the morning.

(The jury is excused for the evening at

5:22 PM.)

THE COURT: All right. Sir, you may step down.

Mr. Johnson, I told you I'd let you put that on the record after the jury went out. You made an objection and --

MR. JOHNSON: Yes, sir.

THE COURT: I think you made an objection to publishing the tape or the DVD.

MR. JOHNSON: Yes, sir.

THE COURT: And your objection is, please?

MR. JOHNSON: Your Honor, the first objection I want to make is, I want to object to the fact that it is not trustworthy. And it's not trustworthy because of the inconsistency of the statement saying something happened one time, saying it happened one place, saying it happened another, saying it happened three times one place, saying it was the first time one place in Kershaw County and then first time one place in Fairfax -- I mean, in Allendale County.

I would -- the questions, I think, were suggestive because the questions that were asked were like, where did you do this and where did you do that. And the questions were more directed and pointed at this particular points.

And if Your Honor denies that, then I would go to more prejudicial than probative. And then if Your Honor denies that -- and, Your Honor, to renew my motion for the Kromah motion for the bolstering of the testimony.

THE COURT: Thank you, Mr. Johnson. And I appreciate you protecting the record on that. But I'm going to respectfully deny it. I find that -- I made the determination yesterday in-camera, out of the presence of the jury, as to whether or not this would be admissible. And, obviously, I don't see where anything has changed. It will be ultimately for the jury to determine the credibility of the victim -- or the alleged victim. And, obviously, you and I have been doing this a long time, and it's not unusual to have some discrepancies when people try to relate what happened in the past.

Obviously, you had the opportunity to cross-examine the victim in the case. You'll be afforded the same opportunity to cross-examine the interviewer, Mr. Kellin, tomorrow when he comes back to complete his.

So I stand by my previous ruling that the tape of the interview is admissible, complies with 17-23-175, and I find that it is not -- prejudicial

value does not outweigh the probative value, and I stand by my ruling on the bolstering that we already discussed.

MR. JOHNSON: Thank you, Your Honor. I was reading the case and it says that I have to state the rule. That's 801 (d) -- 801 (c) -- I see ones or -- Your Honor, I was reading those cases and I just want to --

THE COURT: You're perfectly protected. If you look tonight and that's not the correct rule, you can correct it in the morning. Fair enough?

MR. JOHNSON: Yes, sir, Your Honor.

THE COURT: All right. Anything from the State before we break for the evening?

MS. SIMPSON: Nothing further from the State.

MR. JOHNSON: Nothing from the Defense.

THE COURT: All right. You requested in chambers that I lift my requirement that your client be in custody for the evening. Mr. Johnson, I practiced law beside you for 30 years -- well, not beside you, but we had many, many cases, as I've said, over the years and we've had criminal cases together. And I've been on the bench now 11 years, and it's just been my standard practice, particularly in a case of these types of allegations

and with the minimum mandatory of 25 years, if he's convicted, I just -- I -- I cannot grant your request. He will be in custody until the conclusion of the trial.

MR. JOHNSON: Yes, sir.

THE COURT: Anything else by anyone?

MS. SIMPSON: No, Your Honor.

THE COURT: All right. If y'all don't mind, let me see y'all in chambers so we can discuss a little bit of where we are. We'll stand adjourned.

(Court adjourned for the evening at 5:27 PM.)

THE COURT: Anything from the State before we proceed?

MS. SIMPSON: Yes, Your Honor. Just to put on the record what we discussed in chambers regarding the testimony of Nakiah Johnson. I spoke with my co-counsel, Ms. Cavanaugh, at length last night.

Based on what was presented yesterday and she initially got up there and was able to talk about everything, essentially, but the substance of what we are here for and her observations, Your Honor allowed us a break to calm down. And at that point, the victim advocate spoke with her and she said she would be able to testify and that she could do it. And I think Your Honor even talked to her prior to

that. And then once again when the jury was in here, one question was asked and the subject matter and she broke down again.

In our trial preparations with her, she reviewed her forensic interview and was able to alk to us and we were capable of thinking that she could take the stand and testify. However, at that time, her mother indicated to us that she may need counseling. We've actually set that up and it's in the process. She will be seeing a counselor.

These things together, plus the Defendant's objection about us recalling her this morning if she were able to get up there and testify, his worries and concerns as far as potential pressures or discussions about the case -- and I have no doubt that Ms. Hall followed instructions. But due to the potential trauma of putting her on the stand, and she is not the victim in this case, we're not going to recall her. Additionally, we're not going to put in, of course, her forensic interview as it does not qualify under the statute now since she's not subject to cross-examination.

I think in the interest of justice, both on behalf of the Defendant and the State, I think it's best not to go forward with this witness. And

whatever curative instruction Your Honor wants to give to the jury or whatever the Defense requests, if the request a curative instruction, the State would not be opposed.

THE COURT: Mr. Johnson.

MR. JOHNSON: Your Honor, as I previously told you in the back, the curative instruction you told me is satisfactory. The only thing I need is -- I need to make the Court aware, I am going to -- you said you were going to redact the portion about the lie detector. I just want to protect myself on the record for that.

THE COURT: That's on your client's statement?

MR. JOHNSON: Yes, sir.

THE COURT: I assume the State has done that.

MS. SIMPSON: It's actually being done now. It just needs to be downloaded to a CD that can be played. So prior to Sergeant Bailey testifying, we'll have to -- and if the Defense wants to review it first, that's fine.

THE COURT: Do you have Mr. Kellin here and ready to go?

MS. SIMPSON: We do. He's outside.

THE COURT: All right.

MS. SIMPSON: And we also have Dr. Foster here.

But if you want to --

THE COURT: Well, I don't want my jury waiting. And somehow or another we got cross-legged with the jail and they're 45 minutes late. So that pretty much put a damper on our attempt of getting an early start.

Bring the jury in, please.

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

THE COURT: Madam Forelady, ladies and gentlemen, good morning. I hope you enjoyed your snacks and coffee. We were here at 8:30. We were going to try to get 45 minutes' worth of stuff done outside of your presence, but we had a mix-up in communications and -- anyway, we were not able to waste the 45 minutes. But we're not wasting your time, and that's why we're starting right on time.

One matter of housekeeping: The young girl who was on the stand yesterday, Nakiah, I've made a determination that she's just not able to testify in this case, so her testimony will be stricken from the record. I will instruct you to not consider what she said or how she appeared or anything in your deliberations of the guilt or innocence of the defendant.

Obviously, we can't use that portion she

testified to because the Defendant didn't have the option or right to cross-examine her. So please, her testimony will be stricken and do not consider that in your deliberations.

Okay. You may recall Mr. Kellin to finish up with him.

MS. CAVANAUGH: Thank you, Your Honor.

THE COURT: Any objection to my curative remarks to the jury?

MS. SIMPSON: None from the State, Your Honor.

THE COURT: Mr. Johnson?

MR. JOHNSON: No, Your Honor.

THE COURT: Thank you.

(David Kellin enters the courtroom.)

THE COURT: Come on up, sir. I remind you, you're still under oath from yesterday.

Ms. Cavanaugh.

DIRECT EXAMINATION

(Continued)

BY MS. CAVANAUGH:

Q. Good morning, Mr. Kellin.

A. Good morning.

Q. Outside of the interview that we observed yesterday afternoon before we broke for the day, did you have any other involvement with this case?

A. No.

MS. CAVANAUGH: I beg the Court's indulgence.

No further questions.

THE COURT: Mr. Johnson?

MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Other than the information you collected in that video, that's all the information you have as it relates to this case; is that right?

A. Yes.

Q. And the video shows what information you got; is that right?

A. Yes.

MR. JOHNSON: That's all I have, Your Honor.

THE COURT: I assume no redirect.

MS. CAVANAUGH: No, Your Honor.

THE COURT: You're excused. You're free to go.

Next witness, please.

MS. CAVANAUGH: State calls Investigator Dave Capps.

(Dave Capps enters the courtroom.)

DAVE CAPPS

being first duly sworn, testified as follows:

THE WITNESS: Yes, ma'am.

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

THE WITNESS: Good morning.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Investigator Capps, where are you employed?

A. Lee County Sheriff's Office.

Q. And what is your position at the Lee County Sheriff's Department?

A. I am a criminal investigator in the inhouse IT and local agency security officer.

Q. And IT, what does that stand for?

A. Information technologist. I handle their computers, camera systems, and things like that.

Q. Okay. And how long have you been with Lee County Sheriff's Department?

A. Since July of 2010.

Q. So you were there in October of 2011?

A. That's correct.

Q. Do you work with Lieutenant Patrick Hickmon?

A. I do. He's my supervisor.

Q. And back in, I believe it was, October 2011, did he ask you to go to the Fountain Grocery Store?

A. He did.

Q. And why did he and you to go to the Fountain

Grocery Store?

A. Mr. Fountain has a security system in his store -- Mr. Ron Fountain's store, he has a security system. And at that time, it was -- the USB port would not allow you to download the video, and if you did, it was in such a format that it could not be viewed otherwise.

Q. So did you have your own equipment that you used when you went to the grocery store?

A. Yes. It's a very simple technique. I just took a digital camera and made a recording. And that recording is an ABI file which can be viewed on any Windows media player.

Q. And did you already have some information about where to go on that particular surveillance?

A. Yes. After having been instructed to go there by Lieutenant Hickmon, as a result of our conversation, I was informed that he and Mr. Fountain had already marked the location on the video regarding two individuals he needed me to video.

Q. Okay. And just to -- did you meet with Mr. Fountain that afternoon?

A. I did. And he -- well, I believe it was the next morning, the morning of the 21st -- I think it

was the morning of the 21st.

Q. In October?

A. Yes. I --

Q. Sorry. What?

A. I don't recall the exact date to be quite honest with you. But I know it was the 21st of something.

Q. I'm going to show you what's marked as -- well, what will be marked as State's Exhibit 11. Do you recognize this recording?

A. Yes.

Q. And is that a copy of the video that you just described?

A. Yes.

MR. JOHNSON: No objection.

MS. CAVANAUGH: Your Honor, at this time I'd ask that State's Exhibit 11 be entered in to evidence and that we publish it to the jury.

MR. JOHNSON: No objection, Your Honor.

(State's Exhibit No. 11 marked for identification and entered in to evidence.)

(Video played for his Honor and the jury.)

BY MS. CAVANAUGH:

Q. So, Investigator Capps, you can hear voices in the background. What are those voices?

A. That was Mr. Ron Fountain and I having a conversation about the people that I was to video.

Q. So that was why you were using your own equipment to record it?

A. Yes.

Q. So that wasn't necessarily voices from the day of this surveillance video?

A. No. That system did not have audio or anything in the store. The background was either he and I talking and/or customers talking on the other side of the wall of the office.

Q. Okay. Was that the extent of your involvement in this particular case?

A. That was all I did.

Q. And you had no other outside information other than to go to the store and get that particular video; correct?

A. That is correct.

MS. CAVANAUGH: I beg the Court's indulgence. Thank you. Please answer any questions from the Defense.

THE COURT: Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor. May it please the Court.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Investigator Capps, aren't there two other videos, little clips, that go along with that one?

A. I believe there were two videos and a still picture.

Q. That's right. So that was not the only one that you took down?

A. No, sir.

Q. Okay. And you were the one that -- did you, by the way, bring a copy of the other still pictures or video with you?

A. No, sir. When I downloaded those to the computer system at the office, I burned them straight on a disc. And the computer system they were downloaded subsequently onto was destroyed by a lightning strike a couple years ago. We have new systems now.

Q. Okay. If --

MR. JOHNSON: Your Honor, can we approach, please?

THE COURT: Yes, sir.

(Sidebar conference.)

MR. JOHNSON: Your Honor --

THE COURT: You will need it?

MR. JOHNSON: Yes, sir.

THE COURT: Okay. No problem.

Madam Clerk, may I borrow your --

Your Honor, may I approach?

THE COURT: Absolutely.

Let me have a technician down here to help play the video for Mr. Johnson, please.

All right. Mr. Johnson, what do you need?

(Video played.)

MR. JOHNSON: I want it to go back to the beginning.

THE COURT: All right. Ma'am, take it back to the very beginning, please.

MR. JOHNSON: Can you stop it right there? And back it up, please.

(Video paused.)

BY MR. JOHNSON:

Q. Investigator Capps, can you see this?

A. Yes, sir.

Q. At the bottom there, is that like -- gives the time of what's going on?

A. That's the system time on that device. Yes, sir.

Q. And on the system time right here, it has the number 17 lighted up, and the rest of the numbers are dark; is that correct?

A. Yes, sir.

Q. And the number 17 is like military time, it indicates the hour; is that correct?

A. Yes, sir.

Q. And down below this, there was another number that indicates the minutes; is that correct?

A. Yes, sir.

Q. Okay. And we're unable to see it on this one, but there is a minute section that will show you the minutes at the bottom.

A. That is correct.

Q. And that would tell the time the person that you saw would have been -- if you look at this and look at where the person was, you would know where they were at that time; is that correct?

A. Yes, sir.

Q. Okay. And you did make two other short videos along with this one; is that correct?

A. A total of two short videos and one still picture.

Q. All right. And when you went down there, did anybody not tell you to make sure you showed the time?

A. No, sir.

Q. So they just told you to -- they already had

them identified at what they wanted you to look at?
A. Yes.
Q. And in their identification, they didn't tell you to identify the time that the person was going to be in the store?
A. No, sir.
Q. If I was to show you a copy or a photo of the still shot, would you be able to recognize it?
A. Yes, sir.
MR. JOHNSON: Thank you, Your Honor.
Your Honor, she'd like to approach.
THE COURT: Mark it for identification. Defendant's 1; is that correct?
MR. JOHNSON: Yes, sir.
(Defendant's Exhibit No. 1 marked for identification.)
BY MR. JOHNSON:
Q. I'd like for you to look at it and tell me, can you identify that?
A. This is a representation of Ron Fountain's store in front of the video box.
Q. Is that the still shot?
A. Yes, sir.
Q. Can you tell me the time on it?
MS. CAVANAUGH: Objection.

THE COURT: What's the objection?

MS. CAVANAUGH: That that is not in evidence, Your Honor. He can't talk about it. It's not in evidence.

THE COURT: He's not introducing it, he's just refreshing his memory with it. Overruled.

BY MR. JOHNSON:

Q. Can you tell me the time on it?

A. I can't tell you the exact time, but I can tell you close to the time would be 1700 and approximately 58 or 59 minutes.

Q. Okay. Thank you.

A. Okay.

MS. CAVANAUGH: Investigator Capps, in your experience as --

THE COURT: He's not finished.

MS. CAVANAUGH: I apologize.

BY MR. JOHNSON:

Q. Can you tell me what time 1758 is in Eastern Standard Time?

A. A minute before 6:00 [sic].

Q. Okay. Would that be 5:58?

A. Yes, sir.

Q. Okay. Thank you, sir.

THE COURT: That's it?

MR. JOHNSON: Yes, sir.

THE COURT: Ma'am.

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Investigator Capps, in your experience as an investigator in looking at surveillance videos with the sheriff's department, are the surveillance video times always 100-percent accurate?

A. No, they're not.

Q. And do you know if Ron Fountain's video was 100-percent accurate on this particular night?

A. I don't recall that. I don't know whether it was or wasn't. I can't say whether it was or wasn't either way.

Q. And your sole purpose with this video was to identify that those two individuals were in the store that particular afternoon?

A. That was the purpose of the video, yes.

MS. CAVANAUGH: Thank you.

THE COURT: All right. You may step down.

May he be excused from his subpoena?

MS. CAVANAUGH: No objection.

MR. JOHNSON: No, sir, Your Honor; I didn't have a subpoena on him.

THE COURT: Next witness, please.

MS. CAVANAUGH: State calls Ron Fountain.

(Ron Fountain enters the courtroom.)

RON FOUNTAIN

being first duly sworn, testified as follows:

THE WITNESS: I do.

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

THE WITNESS: Ronald H. Fountain.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Good morning, Mr. Fountain. Are you the owner of Fountain's Grocery Store?

A. I am.

Q. And where is that located?

A. On Highway 341 between Bishopville and Bethune.

Q. And is that near Stevens Road?

A. Yes, ma'am.

Q. Okay. Did you have an opportunity to meet with investigator -- well, first of all, explain the surveillance systems that you have at your store.

A. Well, I got a camera system that films everybody in and out the store and --

Q. And is it common for investigators with the sheriff's department to come to you and ask to view that surveillance?

A. Right. They came out and wanted to see that day's surveillance.

Q. And they do that if your store is robbed also?

A. Yeah. If it's robbed, they have the film.

Q. Or if there's a break-in?

A. Right.

Q. Or if somebody has taken something from your store. Is this a common occurrence for you?

A. Right. It films it at all times.

Q. Okay. And have you had -- how long have you owned Fountain Grocery Store?

A. Forty-three years.

Q. Okay. And since you began having surveillance, have you had multiple systems?

A. I think this is the third or fourth system I put in.

Q. Okay. And why have you had to put in multiple systems?

A. Well, they're fixing to wear out and updates and things like that come up.

Q. Okay. And did you have surveillance back in 2011?

A. I did.

Q. And back in the fall of 2011, did an investigator come meet with you to obtain

surveillance?
A. He did.
Q. Did your system at the time have the ability to copy itself?
A. No.
Q. So the sheriff's department had to use their own recording device to make a copy; is that correct?
A. That's correct.
Q. Back in 2011, as far as the timing on your surveillance system, could you say that it was 100-percent accurate?
A. At first I was thinking maybe it was an hour off. But then we got to thinking it was -- I think a break-in, it was an hour off. This was fairly close. And from looking back at it, I can tell from the customers coming in that it was, like, after 5:00, going on 6:00 when these customers come in, because they get off work at 5:00 and they show up, you know, about the same time every day.
Q. Right. But your system wasn't necessarily 100-percent accurate to the minute, was it?
A. Oh, no, ma'am.
Q. Back in October of 2011, you met with Investigator Capps and provided him -- and allowed

him to view your system?

A. That's correct.

Q. And did he make a copy of that surveillance from that day?

A. He did.

MS. CAVANAUGH: I beg the Court's indulgence. Thank you, Mr. Fountain.

THE COURT: Mr. Johnson.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. How are you this morning, sir?

A. All right.

Q. On your system -- I think you just said it, but I want to clear it up. It films everybody coming in and everybody going out?

A. Correct.

Q. So that means it would show the time a person coming in and show the time a person comes out?

A. Right.

Q. Okay. And you just testified a minute ago about it's not 100-percent accurate. On the day they're talking about, all you know is the system ran. You don't know if it was accurate or not. All you know is the system was running that day; right?

A. Yes.

Q. And let me ask you this: I heard your voice on the background. Did you -- on the day we're talking about, on October 11th, did you see a male and a female in the store that y'all were looking at?

A. Correct.

Q. It was not just a male, it was a male and a female?

A. Right. It was a male and a little girl.

Q. A male and a little girl?

A. Yes.

Q. Who were in the store together?

A. Right.

Q. Thank you, sir.

MR. JOHNSON: Thank you.

THE COURT: Redirect?

MS. CAVANAUGH: No redirect.

THE COURT: Thank you, Mr. Fountain. You are released from your subpoena.

Next witness, please.

MS. CAVANAUGH: The State calls Laurie Caldwell.

MS. SIMPSON: Your Honor, actually, we're going to call a different witness.

THE COURT: Very well.

MS. SIMPSON: The State calls Paul Meah.

(Paul Meah enters the courtroom.)

(State's Exhibit No. 12 marked for identification.)

PAUL MEAH

being first duly sworn, testified as follows:

THE WITNESS: I do.

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

THE WITNESS: My name is Paul Meah.

DIRECT EXAMINATION

BY MS. SIMPSON:

Q. Mr. Meah, where are you employed?

A. I'm employed at SLED in Columbia.

Q. Okay. What is SLED?

A. That's the South Carolina Law Enforcement Division. We provide a forensics laboratory and other services for the State.

Q. And what is your position with SLED?

A. I'm a DNA scientist. I'm in the forensic DNA section.

Q. And how long have you been at SLED?

A. Approximately eight years.

Q. And how long have you been with the forensics portion involving DNA analysis?

A. That entire time.

Q. Can you tell the jury about your educational background and training?

A. I got my bachelor's degree in 2001 from the University of South Carolina. And then I got my master's degree in 2003, and that was in molecular biology. I did three years of Ph.D. work, but I got hired away by SLED before I finished my Ph.D.

Q. And with respect to SLED, tell the jury about your lab. Is it accredited in some way?

A. Yes, it is. We're accredited by ISO Standard, which is the highest in the world right now. We do testing every two years -- I mean, twice a year. I have to do proficiency testing in my field, which means that I get a blinded sample or several samples and I have to make sure that I do them correctly.

Q. And is your work actually peer-reviewed or your analysis or examinations with respect to any particular case?

A. Every single case is technically reviewed, which means that they go back and they go through all of the things that we did to make sure that we did them properly. And it's also administratively reviewed to make sure all of the evidence was handled properly and sorted and the report is correct.

Q. Okay. And tell the jury, what is DNA?

A. DNA is in every cell of your body. It identifies you and makes you the human that you are. You get half of it from your mother and half of it from your father. It's a blueprint for building a body.

And in this example, we use it to identify people. We can use it to identify body fluids or anything like that.

Q. And is DNA unique to every individual? Can you explain that?

A. It is, except for twins. Twins have close to the same DNA. I mean, there are 3 million base layers in the body, and that's a lot. And some twins may have different little snips, but as far as person to person goes, there's very large differences in DNA that we can see.

Q. And with respect to your qualifications, have you ever testified as an expert before in the field of DNA analysis?

A. I have.

Q. And how many times?

A. Approximately 25 or 30 times.

MS. SIMPSON: Your Honor, at this time we'd offer Mr. Meah as an expert in DNA analysis.

MR. JOHNSON: No objection.

THE COURT: All right. He'll be qualified to render opinions in regards to the area of DNA.

BY MS. SIMPSON:

Q. Explain a little bit about how cases or evidence is referred to you typically.

A. We pick up in a couple of different ways. It used to be -- and I'm not sure in this case. But we used to pick up evidence from a room that was beside our laboratory and stored there. And then we -- that changed over and we got an evidence storage procedure in place, which is downstairs. So I'm not sure how I received these items.

But they come in a heat-sealed pouch so I can tell that no one has tampered with it. It's got the dates and initials of whoever sealed that. So it would come in from an officer. The intaking person heat-seal package that, initial it, and date it, and then put it in the storage somewhere, either in that room or downstairs. And then I would just request those items whenever I'm ready to work the case. I just e-mail down to say I need to come pick them up.

Q. And when you receive an item of evidence, do you make sure or are there methods in place to make sure they're not tampered or altered in any way

prior to coming to you?

A. Yes. The heat-sealed pouch, if it were tampered with in any way, I would not process the evidence, in protection of myself. I check those things very closely. I also check to make sure that the things haven't been opened improperly, have evidence seal tape, I mean, things you probably see on TV commonly. It's just protection for all of us to make sure that it hasn't been tampered with.

Q. And with respect to DNA, explain to the jury about what a profile is.

A. It's sort of like a locker combination. That's a really good way to look at it, is that each individual is going to have a combination. All we look for -- we size for certain areas of the genome. We don't seek sequence, we don't look for the letters that make up a genome; we just look for the size of the tiny bits in several different locations, like 15 different locations.

And everybody just has a different size there. So some people may have a 7 or an 8 or a 9. That's an example of my data. And we just look at 15 of those different locations. And people don't generally match up, and we can estimate how rare that genome type is in a population by modeling and

statistical analysis. That's the second part of my job, is to estimate how rare a sample is in the population.

Q. So statistical analyses are not always used, it just kind of depends on the evidence that's provided and what's requested?

A. Correct. For example, if there was a victim stain on a mattress that was at a house somewhere, I would need to say how sure I was that that belonged to that victim. I mean, that's the important part of DNA. And a lot of times it's to say how sure we are that we can match this sample to that other sample.

Q. Okay. And in that same vein, explain what a buccal swab is and the importance of a known profile.

A. Sure. So a buccal swab -- buccal is referring to the buccal cells in your mouth that are a type of epithelial cell that's shared very easily. And we often collect those as known standards. We can use blood as a known standard because your white blood cells have your DNA profile in it.

But a buccal swab is not intrusive; it's just a cotton swab like you buy at the Revco or CVS or anything that you just swab the inside of your

cheeks with. And we use that to generate a known profile. So say, God forbid, you were a victim in a crime, we would need something to compare to that crime.

So say you got at a bar or something and blood was on the floor. So we would take your buccal swab and match it to that blood on that floor. So we have a known standard to measure against the unknown.

Q. And so without a known standard, you really can't make any determinations with respect to a match or anything of that nature?

A. Correct.

Q. Are there certain sources, I guess, that are better or -- for collecting DNA, like, such as seminal fluid or things of that nature?

A. Sure. So the amount advantage that we have with semen is that spermatozoa are tougher; they don't lyse the same way. That means to break open. They don't break open the same way that other cells do.

So the cells on your body that -- from your mouth or your skin or from anywhere, they break up pretty easily. You can just use a little bit of detergent or -- and some Prodene Aseptil, which just

breaks down the protein, and you can convert those pretty easily. But sperm cells are really tough and they don't break that way. So we can separate out something like skin from what's inside of a sperm cell by the addition of some extra chemicals. And we didn't have to do that in this case, but...

Q. And just kind of a general question with respect to DNA, can you actually date that DNA or determine when that DNA actually got onto an item?

A. We cannot, not -- not with our current technology. And I can't imagine a way that you could.

Q. So that DNA could have been there for a minute, a year; you just don't know?

A. Correct.

Q. There's just no way to determine?

A. Correct.

Q. Tell the jury a little about what comes -- do you actually receive sexual assault kits?

A. I do. So in sexual assaults, we have -- it's a pretty standard kit. It's got a bunch of those swabs that I was telling you about, the swabs for different areas. There's a protocol that the nurse is supposed to follow, and she gets us a buccal swab, an oral swab, a rectal swab, a vaginal swab,

any probable places for other body fluids we call suspected body fluids. So if there's an ejaculate on a different part of the body that the victim indicates, the nurse would collect that and send it on to me for identification.

Q. Okay. And are they often collected just as a matter of course in some cases and submitted to you for testing?

A. Definitely, because oftentimes -- well, there's several reasons. Victims can be incapacitated or misremember. I think that's probably the strongest reason that these are collected in a matter of course. Even if a victim was, say, a week or two out from the sexual assault, they still would attempt the sexual assault collection kit.

Q. And what exactly -- you said swabs or anything else that's collected from the nurse at the actual -- at the hospital or wherever the evidence is included.

A. Yes, everything. There are smears that -- a smear is a microscopic slide that we can look for spermatozoa. That's a really -- it's not an efficient way, it's actually quite slow. And it's a very exacting method to look and see if any spermatozoa could be in a, you know, oral, vaginal

and rectal, are usually the smears in most -- in the sexual assault collection kits.

We also sometimes collect hairs or hairs are collected for us. I'm trying to think of anything else that -- oh, fingernail scrapings. If a victim says she was trying to defend herself, that's a common way.

Q. Okay. Did you actually receive some evidence in the case that we're here for today?

A. Yes, I did. I received a sexual assault evidence collection kit from a Shawntea Ford. Excuse the pronunciation for Shawntea if it's incorrect.

Q. And what was included in that kit?

A. Well, first thing I do when I get the sexual assault evidence collection kit is break it down into its components and see what's there. So in this case, we got the smears that I was referring to, the vaginal, oral and rectal smears; we got vaginal swabs, oral swabs, buccal swabs, particle swabs, which is the standard, for Shawntea Ford; we got a suspected body fluid swab and debris collection.

And debris collection means they were looking for hairs or anything that could give indication to

the crimes occurred.

Q. Okay. I'm going to show you what's been marked as State's Exhibit 12. Do you recognize this?

A. It might be inside of this.

Q. Would you like a pair of -- I think we have --

A. Here we go. These are the heat-sealed pouches I was referring to.

THE COURT: Mr. Meah, my court reporter has asked that you slow down just a tad.

THE WITNESS: I'm sorry. This is the -- may I move this too?

THE COURT: Sure. She has to take everything down. Every now and then we get a witness who is --

THE WITNESS: I can only imagine. That's -- and it's very technical too. I will try to slow down.

THE COURT: Please continue.

THE WITNESS: So these are the heat-sealed pouches I was referring to. This is probably a debris collection or -- item 2 -- I'm trying -- I did not analyze this item.

This is the sexual assault evidence collection kit. You can see my initials and the date that I worked on it. So this would come to me sealed up and I'd cut it with a scalpel and then initial and

date when I closed it back.

Those are the smears I was referring to. There's the debris collection. And the envelope in front of that debris collection is what would contain the swabs.

BY MS. SIMPSON:

Q. Okay. And you said you had a buccal swab of the victim, Shawntea Ford, in this case?

A. Correct.

Q. So you had a known standard for purposes of your analysis?

A. Correct.

MS. SIMPSON: Your Honor, at this time we would offer State's Exhibit 12 in to evidence.

THE COURT: Any objection?

MR. JOHNSON: No objection.

THE COURT: 12. Thank you.

(State's Exhibit No. 12 admitted in to evidence.)

BY MS. SIMPSON:

Q. I want to go through what you tested and the examination that you've done. Tell the jury how you conducted your examination and your analysis of the items conducted in this kit.

A. Okay. Well, I go through each sample and I

test for -- usually for semen. It depends on what's indicated. The nurse indicates on -- sometimes on the envelopes what we're looking for in that example. So given what the victim has told the nurse about the assault, it could be saliva, it could be semen, or it could be blood. So we'll get a request on the envelope.

And in this case, it was to test for semen. And I just go through and test each swab. So in this case, I tested -- I looked at the smears, I didn't see any spermatozoa. I tested the vaginal swabs and I didn't find any semen; I tested the oral swabs and no semen was identified; I tested the rectal swabs and no semen was identified.

Q. Let me stop you right there. Once you determine spermatozoa -- and how is that different than semen?

A. Semen is the fluid that carries spermatozoa. So it's the -- just the liquid portion.

Q. And if there isn't any identified or -- on the item, do you stop your examination or what do you do?

A. We do. We generally stop there, because that's really where the strength of DNA lies. When we have semen on something, the spermatozoa stronger, as I

told you about earlier, the way it differentially lyses, that's where we can really identify a male subject. That's the strength of our analysis. Touch DNA doesn't do very well in these cases. And for a vaginal swab, if you can imagine, if I were to grab your arm and tried to swab your arm to identify myself on your arm, it won't do very well because I'm going to collect many more cells from you than I would from just the few that I left just by touching you.

Q. So that creates problems with things like mixtures and things of that nature?

A. It does. And just how many -- the contribution to the mixture is the problem. So you can imagine pennies -- let's say we have 100 pennies and we know that one was a 1934 penny. Well, DNA can't tell the difference between a 1976 or a 1934 penny; it just says these are all the pennies. Well, all of the other pennies would outweigh the 1934. We'd never be able to tell which one was the 1934 just by looking at it. That's pretty much what this comes down to.

Q. And I believe we were on item 1.5, the buccal swab.

A. Yes. So I did take the buccal swab and

generate a profile from the victim. That was just for in case we needed future comparisons for, maybe, a blanket or some underwear, which are often submitted later on.

Q. And with respect to -- and had any -- I almost forgot an item. Items 1.6 and 1.7, what were your findings and results with respect to those?

A. Item 1.6 was a suspected body fluid swab, and there was no semen identified on that. And item 1.7 was debris collection, and there weren't any hairs found in the debris collection to test.

Q. And outside of the sexual assault kit, did you actually examine any other items of evidence in this case?

A. I don't believe so. No.

MS. SIMPSON: I beg the Court's indulgence. Thank you, Mr. Meah.

THE COURT: Cross?

MR. JOHNSON: Yes, sir.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Mr. Meah, you said you tested for semen because the nurse indicated semen?

A. Yes, sir. That's usually what we test for. It depends on what it says on the front of the envelope

and -- yes. The test for semen in this case was negative.

Q. That's what was on the front of that envelope?

A. I can't recall. I can open the kit and I can look at the front of the envelopes, but --

Q. But you just tested for semen?

A. Yes, sir.

Q. Okay. And one short question: His semen wasn't found in anything you tested; is that correct?

A. No, sir.

MR. JOHNSON: That's all I have.

THE COURT: Redirect?

MS. SIMPSON: Brief redirect.

REDIRECT EXAMINATION

BY MS. SIMPSON:

Q. Was there any semen or sperm identified in any of the items that you analyzed?

A. No, ma'am.

MS. SIMPSON: Nothing further, Your Honor.

THE COURT: All right. Thank you. You may step down. You're released from your subpoena.

Next witness, please.

MS. CAVANAUGH: The State calls Investigator Steve Knafelc.

STEVE KNAFELC

being first duly sworn, testified as follows:

THE WITNESS: So help me God.

THE CLERK: Have a seat, please, and state your full name for the record.

THE WITNESS: Steve Knafelc.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Good morning, Investigator Knafelc.

A. Good morning.

Q. Are you a captain now?

A. Yes, I am.

Q. I apologize, Captain.

Where are you employed?

A. Here at the sheriff's office in Kershaw County.

Q. And you just stated you're a captain. How long have you been a captain?

A. A little over a year now. Before that I was a lieutenant over criminal investigations.

Q. And as a captain, what are some of your duties with the Kershaw County Sheriff's Department?

A. I oversee all crime scenes, assign cases, all criminal cases, criminal investigation cases that

come through the sheriff's office, assign different points of the job itself, and I also oversee some criminal sexual conduct cases also.

Q. So you do oversee --

A. Pretty much.

Q. -- those type of cases?

A. Yes, ma'am.

Q. Okay. And did you work -- do you work with Sergeant Rick Bailey --

A. I do.

Q. -- with the sheriff's department?

A. Yes, ma'am.

Q. As far as the investigation into the defendant, Nakia Johnson, back in 2011, did you have any involvement with that investigation?

A. At that time, no, ma'am. In fact, I was going to a conference during that time. Like I said, I was a lieutenant at that moment in time, but Rick Bailey was the on-call. So dispatch did call me and let me know what was going on, but I was heading to the class itself. So I asked them to just give Rick and a call since he was on call at the time. I didn't have anything, at the time, to do with the case.

Q. At that time, did you -- were you part of the

special victims unit team?
A. Yes, I was.
Q. And can you explain what all that encompasses?
A. Well, we have certain investigators that mainly deal with these type cases. And at that particular time, I can't remember if we had a unit set aside just for these type cases, but today we do. But again, I was a lieutenant, so I think they called me just because I was dealing with a lot of these type cases at the time. But, like I said, I wasn't in the county to assist.
Q. And you have experience in investigating criminal sexual conduct cases?
A. Yes.
Q. But with this particular investigation, you were not directly involved; correct?
A. I was not.
Q. Back last October of 2014, so about nine months ago, did you have some involvement with this case?
A. Yes, ma'am. I was asked to meet a member of the defendant's staff -- I believe his name is Mr. Dowling -- to meet him and also the victim in this case and the victim's mother to an alleged incident location in Cassatt.
THE COURT: Where?

THE WITNESS: In Cassatt.

THE COURT: Someone from the defendant's side and the mother and who?

THE WITNESS: The victim of the case.

BY MS. CAVANAUGH:

Q. And just to clarify, that particular afternoon, did you -- did the investigator with the defense's staff meet with you?

A. He did not. We -- I believe we spoke on the phone. And he said -- he was supposed to meet me at the Cassatt Country Store, obviously in Cassatt, and then from there we were supposed to go to the residence of the aunt, if I'm not mistaken.

But he got tied up with some things that was going on, so we didn't meet personally at that particular time.

Q. Did you meet the victim and the victim's mother?

A. I did. He instructed -- Mr. Dowling instructed to go ahead and do what I was supposed to do as far as going to the alleged incident in Cassatt. But I did meet with the mother and the victim at the residence on Cassatt Road.

Q. And is -- the residence on Cassatt Road, is that located in Kershaw County?

A. Yes, ma'am.
Q. Okay. When you arrived at the aunt's home, where did y'all -- where did y'all go after that?
A. Obviously, I arrived at the residence. They were waiting on the victim and the victim's mother was waiting in a car. I told them who I was. I believe I gave the mother my business card. The victim got in the front seat of my car and the mother got in the back seat and we went to a location just from here as -- it would be easier for y'all to understand it this way: It's from here to maybe the post office across the street to a location off of Cassatt onto a dirt road.
Q. So it was very close?
A. Very close.
Q. Was it still in Kershaw County?
A. Yes, ma'am.
Q. Who was actually giving you the directions as far as where to go?
A. The victim. She was sitting in the front seat with me, and I asked her to tell me where to go and that's what she did.
Q. Is that Shawntea Ford?
A. Yes, ma'am.
Q. I'm going to show you what's already been

entered in to evidence as State's Exhibit 5. Is this the house that you met Shawntea and her mom at?

A. Yes, ma'am.

Q. And was that Aunt Missy's house?

A. Yes, ma'am, I believe so.

Q. I'm also going to show you what's been entered into evidence as State's Exhibits 8 and 9. Does that look familiar?

A. Yes, ma'am.

Q. And is that the road that you just referred to?

A. Yes, ma'am. That's the dirt road off of Cassatt Road.

Q. In Kershaw County?

A. Yes, ma'am.

Q. Investigator Knafelc, once you -- did you have any information about what occurred at that dirt road?

A. Investigator Bailey just -- we talked about it. Obviously when I got back from the conference, he told me what was going on. He just basically told me that there was an alleged incident that happened on that road. And that's where I met up with the victim.

Q. And you met with him back in October of 2014?

A. Yes; October 6th.

Q. When you got to the dirt road, did you take photographs of the dirt road?

A. I did. The mother and her daughter stayed in my vehicle. I parked, got out, took several photos, and got back in and went -- took them back to the residence, to their aunt's house.

Q. And while you were in the car, did the victim have any trouble directing you to this dirt road's location?

A. No, ma'am, not at all. No, ma'am.

Q. After you took the pictures, where did you go, Investigator Knafelc?

A. I took them back to the residence, to the aunt's house, and dropped them off.

MS. CAVANAUGH: I beg the Court's indulgence.

BY MS. CAVANAUGH:

Q. Later on did you have an opportunity to meet with the investigator from the Defense?

A. Yes, ma'am, I did.

Q. And did you show him this location as well?

A. I did.

MS. CAVANAUGH: I beg the Court's indulgence. No further questions at this time.

THE COURT: Mr. Johnson?

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. I just want to identify two things. I think you were on the way to a conference or something on 10/11/11 when the call first came in, in 2011.

A. Yes. I believe it was -- October, I normally go to a hostage negotiation conference at the beach. And I believe that's probably where I was heading to.

Q. All right. And the date that you took them to see the scene was two years later; it was 10/6/2014?

A. Yes, sir.

Q. Thank you, sir.

THE COURT: Ma'am, anything else?

MS. CAVANAUGH: No, sir, Your Honor.

THE COURT: You're excused. You may be released from your subpoena.

Next witness.

MS. CAVANAUGH: Your Honor, may we approach?

(Sidebar conference.)

THE COURT: Move along.

MS. CAVANAUGH: State calls Laurie Caldwell.

(Laurie Caldwell enters the courtroom.)

LAURIE CALDWELL

being first duly sworn, testified as follows:

THE WITNESS: Yes, ma'am.

THE CLERK: Thank you. Be seated in the witness chair and state your full name.

THE WITNESS: Laurie Varnedoe Caldwell.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Ms. Caldwell, what is your profession?

A. I am, right now, a contract agent with the State Law Enforcement Division. I'm retired law enforcement.

Q. What do you -- is that commonly known as SLED?

A. Yes.

Q. And what is your contract position with SLED right now?

A. I'm assigned to the Social Security Disability Fraud Investigative Unit.

Q. And prior to contracting with SLED, did you work -- can you describe your employment before.

A. Yes. I retired from SLED in February 2011, and there I did criminal investigations primarily focused on crimes against children and vulnerable adults. Upon retirement, I joined the staff at the Dickerson Center For Children, which is a community-based child advocacy center in West Columbia, and I was over their child forensic program and their multidisciplinary team and victim

advocacy program.

Q. So who -- when --

THE COURT: Hold on a second.

MR. JOHNSON: Your Honor, may we approach again?

THE COURT: Sure.

(Sidebar conference.)

THE COURT: Mr. Johnson, it might just be best to do it now.

Madam Forelady, ladies and gentlemen, step out just for a second, please. It won't take but a second. Don't discuss the case and don't deliberate, please.

(The jury exits the courtroom at 10:20 AM.)

THE COURT: Mr. Johnson.

MR. JOHNSON: Your Honor I'd like to object to any testimony from this witness because they -- I have reviewed the -- I reviewed the interview. I think they're leading questions, I think they're suggestive questions, I think they're inconsistent questions, and I would just object to that -- the testimony on that -- on those grounds.

And if his Honor decides to overrule that, then I would object and ask the Court to rule on the issue of is the testimony more prejudicial than

probative.

THE COURT: It's my understanding this witness conducted an interview of the child.

Is that correct?

MS. CAVANAUGH: Yes, Your Honor. Our position is that she is part of the investigation. She was asked to interview Miss Ford, the victim in this case, because the other interview was ended short because she did get sick.

Under 801 -- we're not going into any aspect of the issues that the Court did have, you know, under State v. Kromah and that sort of thing. We're solely going on that Ms. Caldwell is a fact witness, she's part of the investigation, and her testimony as to time and place under 801(d)(1)(d) is --

THE COURT: Hold on. I'm not in my courtroom, so I'm not sure where the rules are.

What bothers me is, this an out-of-court statement by the child under 12. But we have to do a 17-23-175 analysis?

MS. CAVANAUGH: Your Honor, she's actually over 12. And I believe that particular statute deals with admitting the video. We're not seeking to introduce the video in this case since she was over the age of 12.

THE COURT: I understand that. So -- the victim; right?

MS. CAVANAUGH: Yes, Your Honor.

THE COURT: So her interview was after she was 12?

MS. CAVANAUGH: Yes, Your Honor. It was -- her first interview was conducted October 12th, 2011, she was 11 years old. Her birthday is October 16th. So she turned 12, and then Ms. Caldwell interviewed her in November, three weeks later, when she was 12. I believe that -- so we're not putting in the video, just Ms. Caldwell is part of this investigation and we believe that her testimony is admissible under 801(d) --

THE COURT: 801 what?

MS. CAVANAUGH: 801(d), and then under that section, Section D, the very last subsection.

THE COURT: D like dog?

MS. CAVANAUGH: Yes, sir.

THE COURT: What's under that?

MS. CAVANAUGH: (D)(1)(d).

THE COURT: (D)(1)?

MS. CAVANAUGH: (D)(1)(d).

THE COURT: So you're going to limit her testimony -- her being Ms. Caldwell -- to time and

place of the incident?

MS. CAVANAUGH: Time and place, Your Honor, yes. And we also are not asking her to identify the defendant, we're not asking her to say the defendant's name; solely limited to time and place.

THE COURT: What the victim says where it took place and when?

MS. CAVANAUGH: Yes, Your Honor. And, I mean, I have a highlighted copy of her interview that I can hand up so she can specifically address time and place.

THE COURT: And that interview of the victim by this witness, Ms. Caldwell, has been given to Mr. Virgin Johnson?

MS. CAVANAUGH: Yes, Your Honor.

THE COURT: And the victim has been subject to cross-examination not only on her forensic interview, but this -- well, she was able to be cross-examined on this statement as well?

MS. CAVANAUGH: She was, Your Honor.

THE COURT: Mr. Virgin Johnson, anything else you want to tell me?

MR. JOHNSON: Your Honor, if they're going -- I was looking at the case Kromah. And, Your Honor, maybe the Court can clarify for me time, date and

circumstances of the interview. I'm of the opinion that just meant what they observed at the interview. I don't think that -- and I want the Court to clarify that for me. I don't think that means testify to any other events or occurrence that happened in the past.

I'm trying to understand time, date, and circumstance of the interview. What are they trying to get? I'm trying to determine, what are they trying to get her to testify to? If they're not going to use his name, is she going to testify to what the child said about other incidents or what?

THE COURT: The child is going to testify as to what happened on such-and-such date and where, and that be it; right?

MS. CAVANAUGH: Yes, Your Honor. The --

THE COURT: Do the proffer. Ask the question on a proffer.

EXAMINATION

BY MS. CAVANAUGH:

Q. Ms. Caldwell, did you make a report in this particular case regarding your interview of Shawntea Ford?

A. Yes.

Q. And is this actually a copy of your report?

A. Yes.

THE COURT: Now, use that to refresh her memory and to focus in on the exact -- the exact evidence that can be elicited under 801(d)(1)(d).

Q. Did -- does that report serve to refresh your memory of the interview you conducted on Miss Ford?

A. Yes, it does.

Q. And did Miss Ford indicate to you that she had been sexually salted?

A. Yes, she did.

Q. And did she indicate to you when those assaults took place?

A. Yes. She provided timeframes, yes.

Q. And can you -- did you put those timeframes in your report?

A. Yes, I did.

Q. And what were those timeframes?

A. She said that some of the victimization took place in Fairfax, South Carolina when she was in the 1st and 2nd grade. And she described living in a brick house when she was in 1st grade. And she said that some incidents happened at her sister's house in Bishopville.

And then she talked about when she was in 3rd and 4th grade, she lived with her grandmother and

that some incidents took place there. And she talked about an incident when she was in the 4th grade where they were in a hotel and an incident took place there.

She described -- she talked about her family, in 5th grade, moved into a trailer in Bishopville, and the incidents took place in her bedroom, the living room, the bathroom, and her brother's room.

She talked about the summer between her 5th and 6th grade years when she went to Disney World on vacation, that something happened at that location. And then during the summer when she lived with her aunt in Cassatt, that an incident took place down a dirt road.

THE COURT: And that would be the sole testimony you would elicit from her?

MS. CAVANAUGH: Yes, Your Honor. And we believe it's admissible under 801(d)(1)(d), as well as the fact that Mr. Johnson has repeatedly put the victim's credibility and the different statements that she's given into question. So we believe that this testimony is appropriate and it is under the rules.

THE COURT: All right. Mr. Johnson, why is it not admissible under 801(d)(1)(d)?

MR. JOHNSON: Your Honor, may I have a look at 801(d)(1)(d)?

THE COURT: Absolutely.

MR. JOHNSON: I just don't know what it says.

THE COURT: It says this: A statement is not hearsay if -- that's D -- 1, prior statement by a witness; D, declarant -- who is the young lady -- testifies at the trial and is subject to cross-examination concerning the statement and the statement is, D, consistent with the declarant's -- young child -- testimony in a criminal sexual conduct case or attempted CSC where the declarant -- the child -- is the alleged victim -- she is -- and the statement is limited to the time and place of the incident. It's dead on.

MR. JOHNSON: Your Honor, I understand. My objection would be, number one, she alleged other incidents. They're not consistent. And I just want to put it on the record. The other interviewer that testified, her statements are not consistent with what she said -- this witness -- I know we're not under that 17-1-25, but there were questions of leading or other things.

And so I'm assuming -- do I just get the right to cross-examine her about everything?

THE COURT: This witness?

MR. JOHNSON: Yes, sir.

THE COURT: You get to cross-examine her on all relevant issues in the trial of the case.

MR. JOHNSON: Your Honor, if you would just note my objections.

THE COURT: I do.

MS. CAVANAUGH: Your Honor --

MR. JOHNSON: And the more probative than prejudicial.

THE COURT: Overruled on 403.

MS. CAVANAUGH: Just to be clear, Your Honor, if he opens the door to certain issues on his cross, then she's not limited just to testimony under 801 --

THE COURT: That is correct. He's a seasoned lawyer, he knows.

MS. CAVANAUGH: I just wanted to clarify that.

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

(The jury enters the courtroom at 10:32 AM.)

THE COURT: Okay. Madam Forelady, ladies and gentlemen, we're ready to proceed.

You may proceed, ma'am.

DIRECT EXAMINATION

(Continued)

BY MS. CAVANAUGH:

Q. I believe you were in the middle of discussing the fact that you did interview Miss Ford.

A. Yes, I did.

Q. And what day did you -- what date did you interview Shawntea Ford?

A. I interviewed her on November 9th, 2011.

Q. And how old was she at the time that you interviewed her?

A. She was 12.

Q. And when was her birthday?

A. Her birthday was -- or is October 16th, 1999.

Q. So she had just turned 12 about three weeks prior?

A. Yes.

Q. And when you conduct these interviews, and this one in particular, who is in the room when you do the interview?

A. No one is in the room other than myself and the alleged victim.

Q. Do other individuals associated with the case or with the Dickerson Center have opportunity to observe outside of the room?

A. Yes. They can do that through the camera

system in a room located downstairs. The child forensic interview room at the Dickerson Center is upstairs.

Q. And are these interviews recorded?

A. Yes, they are.

Q. When you interviewed Shawntea, did you ask open-ended questions?

A. Yes, I did.

Q. And did she appear to understand your questions?

A. Yes, she did.

Q. Did she disclose to you she was sexually assaulted?

A. Yes, she did.

Q. And did she tell that these had occurred over a period of years?

A. Yes; approximately four years.

Q. And, specifically, did she tell you when these assaults began?

A. Yes.

Q. And do you actually have your -- do you make a report of your interview?

A. Yes, I do.

Q. And do you have those notes up there with you?

A. Yes, I do.

Q. Do they help refresh your memory?
A. Yes.
Q. Again going to back to when she said they began, what grade was she in when it began?
A. Started when she was in the 1st grade.
Q. And did she indicate where she was living at that time?
A. She was living in Fairfax, South Carolina.
Q. And did these occur in a house?
A. She said that it occurred in a brick house and -- when they lived in Fairfax, and then eventually they moved into a trailer and they continued.
Q. Okay. Did she indicate what room these occurred in?
A. In the brick house she said it started -- that she --
Q. Was it in her bedroom?
A. His bedroom --
Q. His bedroom?
A. -- was one of the locations.
Q. Okay. Did she --
THE COURT: Hold on a second.
MR. JOHNSON: Your Honor, could we approach?
THE COURT: Sure.

(Sidebar conference.)

BY MS. CAVANAUGH:

Q. Ms. Caldwell, did she indicate they continued into 2nd grade?

A. Yes, she did.

Q. And what -- where was she living in 2nd grade?

A. Apparently they had moved to Bishopville, South Carolina.

Q. Did she indicate she had been assaulted in Bishopville in 2nd grade?

A. Yes, she did.

Q. Did they continue into when she was in 3rd and 4th grade?

A. Yes.

Q. And did she give you locations where they occurred during those grades?

A. In 3rd and 4th grade, she said that she was living with her grandmother and that the assaults continued there, as well as a hotel in Bishopville when she was in 4th grade.

Q. Okay. Did they -- did she indicate to you that the assaults continued into 5th grade?

A. Yes. She said that her family moved into a trailer located in Bishopville and that she was in the 5th grade, and that she was assaulted in her

bedroom and the living room, the bathroom --

MR. JOHNSON: Your Honor, objection, move to strike.

THE COURT: Okay. Disregard where -- just the location, ma'am, time and place, time and location; house and what year.

Q. So 5th grade, they occurred in her home?

A. Yes.

Q. Did she also tell you that they occurred in the summer between 5th and 6th grade?

A. Yes, she did.

Q. And what -- at that time she was living with her aunt in Cassatt?

A. Correct, yes.

Q. Other than interviewing Shawntea, is that the extent of your involvement with Miss Ford after this interview?

A. Yes.

MS. CAVANAUGH: Thank you, Ms. Caldwell. Please answer any questions from the Defense.

MR. JOHNSON: No questions for Ms. Caldwell.

THE COURT: All right. You may step down. Have a pleasant day.

Is she released from her subpoena?

MS. CAVANAUGH: Yes, Your Honor.

MR. JOHNSON: No objection.

THE COURT: Please call your next witness.

MS. SIMPSON: Your Honor, we have one issue. She should be here --

THE COURT: Go check.

MS. SIMPSON: -- but if we could just have a couple seconds to check.

THE COURT: Absolutely.

MS. SIMPSON: Your Honor, may we approach?

(Sidebar conference.)

THE COURT: All right. Madam Forelady, ladies and gentlemen, the next witness, I have to conduct what's called a proffer, which means I have to listen to her testimony to determine whether or not it's admissible. That's what I planned to do at 8:30 this morning. It's not going to take nearly that long. But we had some scheduling mess-ups and -- well, I won't go any further than that.

So I'll have to ask you to step out just for a second and let me do this proffer. Don't discuss the case and don't deliberate.

(The jury exits the courtroom at 10:42 AM.)

THE COURT: All right. Ma'am?

MS. CAVANAUGH: State calls Dr. Alison Foster.

THE COURT: Come around, please.

ALISON FOSTER

being first duly sworn, testified as follows:

THE WITNESS: I do.

THE CLERK: Have a seat and state your full name for the record.

EXAMINATION

BY MS. CAVANAUGH:

Q. Good morning, Dr. Foster.

A. Good morning.

Q. Can you briefly -- or can you describe your education and training background for the Court?

A. Certainly. College, Emory University in Atlanta. And then I worked for a year at a residential treatment facility called the Devroe Center, after which I relocated to Columbia, South Carolina where I attended the Ph.D. program in clinical community psychology at the University of South Carolina.

I graduated in the spring of 1996, completed a postdoctoral year of training from '96 to '97 at William S. Hall Psychiatrist Institute -- excuse me. That was from 1994 to 1995, then I graduated in 1996, then did a year of postdoctoral supervised practice. And I was already employed as the program director of the Assessment & Resource Center, which

became an accredited children's advocacy center in 1999.

So I've been continuously employed from 1995 to the present at the ARC. My current title is chief psychologist. I'm there part-time now since 2012. And then I also have a private practice of forensic clinical psychology work.

Q. And does your education and training and the background that you described, does that include research on child victims of sexual and physical abuse?

A. Yes. So I've been training -- specialized training I began in the 1990s. And certainly all of my postdoctoral continuing education is in the area of children, child abuse, forensic evaluations. So I'm constantly attending national, regional and statewide conferences and updating my education and knowledge in those areas.

Q. And have you actually -- have you been the author of any publications on this topic?

A. I authored a chapter on -- or a monograph, it would be called, on child development for the American Prosecutors Research Institute. And I a book chapter coming out, but that's actually more about child custody evaluations.

THE COURT: Well, let me ask you this, ma'am: Does your education and your experience and work history, has that dealt with the common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by children?

THE WITNESS: Yes, sir.

THE COURT: And the effect of sexual abuse on a victim's subsequent conduct, such as delayed reporting?

THE WITNESS: Yes.

MS. CAVANAUGH: Your Honor, at this time I ask that Dr. Foster be qualified as an expert in child abuse assessments.

THE COURT: All right. Mr. Johnson, do you any cross-examination as to her qualifications?

MR. WILLIAMS: No, Your Honor --

THE COURT: I'm sorry.

MR. WILLIAMS: -- no cross-examination as to her qualifications; just that you rule as far as qualification and reliability under 702.

THE COURT: Now, do you have any dispute that this is a subject matter that is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.

MR. WILLIAMS: Yes, Your Honor. We -- since her testimony is only to the behavior or common behavior of the individual in similar circumstances, we would say that a jury would be able to understand on their own without an expert in this particular --

THE COURT: Well, in light of the ruling in the State vs. Brown, which went into a long explanation, dissection, of whether or not this is a subject that an expert could testify to, I respectfully overrule your objection as to that.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: And it's all set forth in State vs. Brown, and the other cases are cited therein, and from numerous jurisdictions elsewhere that is cited in that case.

MS. CAVANAUGH: Thank you, Your Honor.

EXAMINATION

(Continued)

BY MS. CAVANAUGH:

Q. And just before we start, did you have any direct involvement in the investigation of the defendant, Nakia Johnson?

A. No.

Q. Did you interview the victim in this case, Shawntea Ford?

A. No.

Q. Did anyone at the Assessment & Resource Center interview Shawntea Ford?

A. No.

Q. So you're essentially a blind witness in this case?

A. That's correct.

THE COURT: And you will not be offering any opinion regarding the credibility or the believability of the victim and/or other witnesses; is that correct, ma'am?

THE WITNESS: That is correct, sir.

THE COURT: Or commenting on whether or not she was actually assaulted.

THE WITNESS: Correct.

THE COURT: Just simply an opinion about the effects sexual assault has or responses to sexual assault on children?

THE WITNESS: Correct.

THE COURT: Anything else you need cross-examination on, on the proffer?

MR. WILLIAMS: No, Your Honor.

THE COURT: All right.

I will allow it, as long as it's limited to the scope that we just talked about; that she will not

have any opinions concerning the believability or the credibility of any of the witnesses, including the victim in this case.

MS. CAVANAUGH: Thank you, Your Honor.

THE COURT: Bring the jury in, please.

(The jury enters the courtroom at 10:51 AM.)

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

MS. CAVANAUGH: Thank you, Your Honor. The State calls Dr. Alison Foster.

THE COURT: All right. Ma'am, come around and be sworn by our Clerk, please.

ALISON FOSTER

being first duly sworn, testified as follows:

THE WITNESS: I do.

THE CLERK: Be seated and state your full name for the record, please.

THE WITNESS: Alison Foster.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Dr. Foster, where are you employed?

A. I'm employed in two places in Columbia, South Carolina. I work for the Assessment & Resource Center, which is a children's advocacy center in Columbia. I was the program director there for 17

years and I'm still there part-time as chief psychologist.

And then I also have a private practice as a clinical psychologist involved in forensic matters. So that means court ordered evaluations of children and families, including issues in family court and criminal court.

Q. And can you describe your -- where did you work prior to having your -- what you just stated?

A. Sure. So my employment, I -- before I finished my Ph.D. in clinical psychology, I was already hired at the ARC. So beginning in 1995, I became the program director there. So for 17 years, 1995 to 2012, I was full-time at the ARC. And I also had a private practice during the time of 1998 forward. Then beginning in 2012, I split my time now between half time at the ARC and the other half at my private practice.

Q. And can you tell us your educational background?

A. I went to college at Emory University in Atlanta, graduated in 1988. I worked for a year in a residential treatment facility for emotionally disturbed adolescents. Then I graduated --

THE COURT: What was your degree in, ma'am?

THE WITNESS: I'm sorry, sir. I graduated with Bachelor's degrees in English and psychology. Then when I came to USC in Columbia, I completed the Ph.D. program there in clinical community psychology. So I have a Ph.D. in clinical community psychology, which leads to a licensure after a year of postdoctoral work that's supervised. And I've been a licensed clinical psychologist since 1997.

BY MS. CAVANAUGH:

Q. And do you teach any -- at any locations?

A. Yes. I have what's called an adjunct appointment with the University of South Carolina School of Medicine, Department of Neuropsychiatry and Behavioral Science. That appointment dates back to 1998, I believe. So I teach medical students and residents who are trained to become family practice physicians, child psychiatrists, and forensic psychiatrists.

And then I also train nationally in various academies that focus on child abuse and forensic interviewing of children. So, for example, the National Children's Advocacy Center, the National Child Protection Center, the National District Attorneys Association, and then I conduct here in the state of South Carolina, senior faculty for a

five-day forensic interview training course called ChildFirst.

Q. And have you been the author of any clinical research in the area of child abuse?

A. A little bit. I'm mostly a practitioner. But I did publish a monograph, it's called, for the American Prosecutors Research Institute all about child development and benchmarks of child development from 3 to 18.

And then I conduct -- I do a lot of presentations more than publications. So I train at various national child abuse conferences, regional and statewide conferences, every year.

Q. And are there certain behaviors of alleged child victims that are different from what the average person might believe?

A. I would say so, yes.

Q. And does your -- does your education and training and employment and the presentations that you've presented, do those involve that type of behavior?

A. Yes, it does.

MS. CAVANAUGH: Your Honor, at this time I'd ask that Dr. Foster be admitted as an expert in the field of child abuse assessment.

THE COURT: Any cross-examination on her qualifications?

MR. WILLIAMS: No Your Honor.

THE COURT: All right. Dr. Foster will be allowed to render opinion testimony and I do qualify her. Thank you.

BY MS. CAVANAUGH:

Q. Dr. Foster, did you have any direct involvement in this particular case as far as interviewing the victim?

A. No, I did not.

Q. And you stated that you work at the Assessment & Research Center. Was the victim in this case, Shawntea Ford, interviewed at the Assessment & Resource Center?

A. No, she was not.

Q. So you have no direct involvement in this case?

A. Correct.

Q. As you just stated, are there behaviors of child victims of sexual assault that are atypical in these cases?

A. Well, relative to what parents and others often expect, yes. There are behaviors that sometimes are called counterintuitive or just different than expected. I could provide some examples if you'd

like.

Q. Right. For example, is it common for a child to immediately disclose whether she's been sexually assaulted?

A. Right. No, it is not. In fact, that is the most atypical or uncommon disclosure process. That doesn't mean that there aren't some child victims who do make an immediate outcry, but they're the exception to the rule.

Q. And are there statistics regarding the delayed disclosure?

A. There are. At this point, there's been about 25 or more years of research. So we now have data from a wide range of sources and pretty good agreement that it is probably as much as two-thirds of what we called bona fide victims of child sexual abuse; in other words, there is very good reason to believe that child sexual abuse did occur. And in studying those cases, about two-thirds of those children do not tell anybody in the course of their entire childhood. So it only is revealed in adulthood, in fact, for the majority of victims.

We know that a subset of victims will tell at some point in childhood, but we know that that process is typically delayed by months, certainly,

but more commonly, years.

Q. And do certain dynamics in the family, for instance, if the alleged perpetrator is a stepfather or father figure, does that play a role in the delayed disclosure?

A. Yes, it plays a significant role, because the relationship dynamics are so complex and the child is in an ever-present sort of association with that person. So they don't get really much physical distance or psychological distance.

And what I mean by so complex is that person plays so many roles; authority figure, provider, might be the biological parent of a sibling, somebody that, you know, the child can look to the mother and say, well, this person is meaningful to my mother's life. So there's so many ramifications or consequences for the child to consider when they consider what it's going to mean to tell.

Q. And if threats are made, does that also play a role into the disclosure process or the delayed disclosure?

A. Certainly, yes.

Q. Is it more likely for a child to believe those threats than, perhaps, an adult?

A. Yes. Again, young children don't really --

don't critically evaluate what adults tell them. I mean, obviously young children see adults as very powerful and possessing much more knowledge and ability. So they're going to assume that if a parent says they can make something happen, they can make something happen.

Obviously as children get older, certainly into the adolescent years, they can start to evaluate threats a little differently, and that can be part of what opens up a victim to feeling like they can take a risk and make a report. But if they've experienced a lot of years of believing in the power of the offender, it takes a substantial amount of courage to switch that dynamic and decide on telling, as opposed to keeping quiet, is the right way to go.

Q. What if the child has witnessed altercations between their mother and the alleged perpetrator, if that person is the stepfather?

A. So witnesses of domestic violence would do a few things, potentially. And every case is different. I'm speaking generally. But for one, in terms of what's called observational learning, if a child is seeing, for example, an adult, their mother, being physically victimized by a father

figure, stepfather, the observational learning is, well, my mother can't, my mother is powerless, my mother is being victimized; it could lead to the child's appraisal that the mother can't protect me, can't protect the child, that there will be retribution for the mother, in other words, consequences or revenge for the mother.

So that can seriously underscore both the viability of the threats -- in other words, he's making good on a physical threat, his powerfulness, as well as possibly weakening the child's belief that the mother can protect.

Q. And what is meant by the term of accidental disclosure?

A. In our field we talk about discovery or disclosure of abuse sometimes being accidental and sometimes being purposeful. So an accidental discovery or an accidental disclosure happens when a child says something, but didn't mean for it to -- didn't mean for it to get to the adults or didn't really mean for it to be the telling.

So an accidental discovery can happen -- for example, with a young child, it could happen if the child is exhibiting sexual behaviors and it causes a parent to be concerned about abuse. That would be

an accidental discovery. Another accidental would be, in some way the offense gets interrupted by an eyewitness walking in or by somebody hearing something or overhearing something that leads to a confrontation that the child wasn't prepared for, didn't expect, but something triggered questioning that may very much catch the victim off guard.

Q. When the disclosure does come about, whether it's delayed or accidental, is there a difference in how the child might remember the abuse, if it's chronic versus acute?

A. Absolutely. First of all, you said it was accidental. So one thing, if it's accidental and suddenly questions are coming at a victim, they have to do a lot of very quick coping. So they can be emotionally overwhelmed, anxious, you know, denying is often a first stage of response in cases of child sexual abuse, even when there's medical evidence. I mean, the first thing, when children are confronted with questions they weren't expecting, is just to deny.

But then, two, in terms of being able to give details about what you said -- you asked about chronic. So chronic sexual abuse is considered abuse that's been ongoing for some period of time as

opposed to something that just recently happened for the first time.

The challenges there for a child just include the fact that they may be asked to recall details about events where they've spent so much mental energy suppressing, trying not to synthesize those memories; they all blend together. So there are emotional challenges to recall, there's also just time challenges to recalling. And if the child has spent so much time suppressing thinking about those memories, it's a lot to suddenly organize those recollections and then deliver them when being asked. It takes -- it often goes through stages. We know the children will report a certain amount -- it's what we call piecemeal, where they might tell us a certain amount, and as they begin to realize, perhaps, that they're safe and protected -- if they realize they're safe, that they're protected, then they may provide more information gradually as they go forward in time.

Q. And so not only are there difficulties with the memory, but there are difficulties in speaking about the abuse in general?

A. Right. Right. It can be psychologically overwhelming. So depending on their level of

anxiety and distress, how much support they have, even just and language skills, I mean, to start talking about something they never wanted to talk about.

Q. You mentioned language skills. Do children have a hard time sometimes associating adult anatomy with what they know to be anatomy at the time of 10 or 11 years old?

A. Yes. You know, some children do use accurate language; other children may have some limited understanding of, you know, their own anatomy, especially little girls, especially before they are menstruating and having to tend to things. They may not have a really good understanding of all of their anatomical features, and they'll use general words like bottom that aren't as specific as what adults would use.

Q. And is it difficult for children to relay, victims to rely, to strangers what occurred to them if they're being interviewed by law enforcement or another agency?

A. Yes. It is hard enough for adult victims, and it's certainly no easier -- and it's embarrassing. And there's, you know, this sense of making something private public. So there are -- we know

there are many barriers, which is why so much training goes into having specialized interviews who can establish a rapport and work through some of those barriers.

Q. So you mentioned, in cases of chronic abuse, it's difficult for children to pinpoint exact times and places that the assaults occurred.

A. Correct.

Q. Do they use maybe -- is it often that they use other things to associate when something happened?

A. Right. So children, especially --

MR. JOHNSON: Your Honor, may it please the Court. I'm trying not to jump up out of my seat, but I object to leading.

THE COURT: Just object. I can't rule unless you object.

Please do not ask leading questions. Rephrase your question.

BY MS. CAVANAUGH:

Q. Are there certain events that help relate with time, timing of the assaults with these cases?

A. Yes. With children, time is a developmental challenge for young children. And, of course, as children get older, they get a better and better handle on managing time. But, obviously, what is a

long time or a short time or marking seasons or thinking in terms of a calendar, that's not the strength of children, certainly not elementary school children or younger children.

So often when we're trying to figure out when something happened, it's important to ask questions that assist the child in making associations to things that are more relevant to the child as opposed to when in a calendar sense. So sometimes they can make associations once they -- or we, as adults, can make associations once we get information from them about what bedroom they were residing in, who their school teacher was, maybe a particular family reunion or birthday party or something like that that's associated with the timing of an event.

So children, when asked just when questions, perform very poorly. And, actually, all humans have a hard time thinking back about when things happened. But as adults, we can do things like pull out our calendars and we're more practiced at making associations. So children, they really need help with contextual questions that allow us to then figure out when in time events may have occurred.

Q. And in cases of chronic sexual abuse, is it

difficult for children to estimate how many times something happened?

A. Definitely. Again, a sequence of events with a beginning, a middle, and an end, and that being a unit of one, and then another sequence of events with a beginning, middle, and an end that's somewhat different, somewhat the same, and that being another unit of one, and then being able to count up all of these units over time, especially when it's something that, again, was not -- well, typically, a lot of victims put a lot of energy into suppressing, deflecting, avoiding thinking about these, so they really haven't put a lot of effort into consolidating them into their memory; they're running away from the memory more than they are, you know, calculating them.

So when we ask -- now, older children, teenagers, can begin to provide a decent estimate. And I'm talking 15-year-olds. But the research on children's abilities to provide estimations of the number of times that something happened suggests that it's just -- it's developmentally beyond children before their high school years to be very accurate in something like that.

Q. And you just mentioned ages. Does the research

show that it's different for a child that's 11 versus an older child?

A. Yes. There's some very good research from the University of Southern California evaluating children of various ages and asking them to estimate the number of foster homes that they've resided in or number of times they appeared in dependency court.

And so these are cases -- this is research where the researchers know exactly what number of foster homes a child was in, for example, and what number of times a child presented in dependency court, and they evaluated children from about the age of eight forward. And that's how we know, I mean, that these children's abilities to estimate even something like that, number of changes in houses or number of times they had to go to court, they're just not able to provide reliable estimations until their later teen years.

Q. Do some of the memories of certain events overlap with each other?

A. Yes. You mean -- so we talk in terms of something called, in our field, script memory versus something called episodic memory. So if you're involved in an activity, whatever it is,

driving to work every day, how you brush your teeth, how you make dinner, whatever, and somebody asks you, well, how do you go to work, you're going to have a script, a memory.

A script memory allows you to be an efficient thinker and talk about how you usually go to work and what sequence things typically go in or how you get ready for work in the morning. So that's a script memory. We all make script memories for everything that goes on in our life with any repetitiveness. So if I ask questions and learn about the script of memory for abuse, you know, a child may talk about how things usually went or what he would normally do or normally say. And that's important information, but it can gloss over unique details and help us figure out what we would call episodic events.

So when we're seeking episodic memory, we're trying to get single episodes. So if I -- for way of example, if I asked you to tell me about a TV show you like, you could give me script memory about how the show generally goes, but then if I said, well, tell me all about the last episode, that would one unique event and then you would provide specific details about that event.

What we know is that children can sometimes tell -- if they're well-anchored, they might be able to provide episodic memory details for maybe the last time or one time that stands out for whatever reason. It might not be the worst time. But, generally speaking, that's just more challenging for them to parse it out and think of specific episodes.

And many episodes aren't going to be remembered, maybe a few will stand out but, otherwise, what they will tend to provide is script memory.

Q. And are these behaviors common with a lot of child sexual assault cases?

A. Yes.

MS. CAVANAUGH: I beg the Court's indulgence.

BY MS. CAVANAUGH:

Q. And, Doctor, even though there are some common behaviors, does each child victim act the same in all cases?

A. Definitely not.

Q. So it depends on the family dynamics?

A. Yes.

Q. And how long the abuse has occurred?

A. Yes.

Q. And who the alleged perpetrator --

MR. JOHNSON: Your Honor, again.
THE COURT: Again what?
MR. JOHNSON: She's leading.
THE COURT: She is. You have to object.
Rephrase your question.
BY MS. CAVANAUGH:
Q. Basically, is each child different?
A. Yes. Factors that make children and the dynamics in each case different include the age of the child, the sex of the child, the sex of the perpetrator, the relationship between the perpetrator and the victim, the length of time that the events had been going on. So all of those features will create the kind of complex interplay, so some children will present differently than other children.
Q. Is it unusual for, perhaps, family members not to notice anything different about the child even after the abuse is occurring?
A. Absolutely.
MR. JOHNSON: Your Honor, it's a leading question -- it's leading.
THE COURT: Sustained.
Rephrase the question.
BY MS. CAVANAUGH:

Q. Is it immediately obvious to other family members that a child might be abused?

MR. JOHNSON: Your Honor --

THE COURT: Sustained.

Madam Forelady, ladies and gentlemen of the jury, the rules are, when you're directly examining a witness, you have to ask direct questions: What day is it? If you're on cross-examination you, can lead them: Isn't today Thursday? It's a fine line, but I have to make them play by the rules.

Ask a direct questions, please.

BY MS. CAVANAUGH:

Q. Do family -- is it -- do family members always know what's happening to the child?

MR. JOHNSON: Your Honor, leading.

MS. CAVANAUGH: I don't --

THE COURT: I'll allow her to ask that.

A. No, they do not. And one of the more painful dynamics in child sexual abuse cases involving family members is that mothers -- and I'll say mothers because most often it is the mother who is saying, how could I not have seen something was going on? So every week -- and at my job at the ARC, that's a question that --

MR. JOHNSON: Your Honor.

THE COURT: What's the objection? She's answered the question.

MR. JOHNSON: Your Honor, sidebar?

THE COURT: Yes, sir.

(Sidebar conference.)

THE COURT: Disregard that last statement and answer, ladies and gentlemen of the jury.

Anything else, ma'am?

MS. CAVANAUGH: Thank you, Dr. Foster. Please answer any questions from the Defense.

THE COURT: Mr. Johnson -- Mr. Virgin Johnson.

Mr. Johnson, was Mr. Williams going to cross-examine this witness?

MR. JOHNSON: Your Honor, I understand. I'm trying to get my thoughts together.

THE COURT: Well, was he prepared to do it?

MR. WILLIAMS: I was prepared, Your Honor.

THE COURT: Okay. Either way. I'll let either one of you do it. But y'all know the rules; if you do the objecting, you got to do the questioning. But I'll bend the rules in this particular --

MR. WILLIAMS: Thank you very much, Your Honor.

THE WITNESS: May I ask for a cup of water?

THE COURT: You certainly may.

Mr. Williams?

MR. WILLIAMS: Briefly, Your Honor. Thank you.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Dr. Foster, I think you testified, you never examined the victim in this case, did you?

A. Correct.

Q. And, Dr. Foster, you testified about behavioral -- common behaviors in alleged victims; is that right?

A. Yes.

Q. Dr. Foster, would it be fair to say that there's no set pattern of behavior for victims of sexual abuse?

A. Speaking generally, I think that would be fair to say. Yes.

Q. Okay. Dr. Foster -- and also, you didn't conduct any tests in this particular case?

A. None.

Q. Okay.

MR. WILLIAMS: I beg the Court's indulgence, Your Honor.

THE COURT: Absolutely.

BY MR. WILLIAMS:

Q. Dr. Foster, would it be fair to say that your

entire testimony was just a general statement about how some victims may act in these particular situations? Is that correct?

A. It would be fair to say my testimony pertained to -- I responded to questions that pertained to chronic sexual abuse cases. And I provided a wide range of information to relate to children of various ages. But there were some specifics provided to me in the questions pertaining to parent figure and that sort of thing. So we weren't discussing every single type of child sexual assault cases.

Q. Dr. Foster, let me back up just a moment. You said you published a book, Child Development for American Prosecutors; is that correct?

A. A monograph, yes.

Q. Would it be fair to say that most of your work has been the prosecution side? Is that correct?

A. For the criminal -- in the criminal part of my practice, that would be fair to say, yes.

Q. And, Dr. Foster, isn't it true that in this particular case you interviewed no witnesses?

A. Correct.

Q. Not the victim?

A. Right.

Q. Made no reports?

A. Right.

Q. And you're speaking just to, what, your general observances?

A. General expert knowledge.

Q. Thank you.

MR. WILLIAMS: One moment, Your Honor.

THE COURT: Sure.

MR. WILLIAMS: Thank you. No further questions, Your Honor.

THE COURT: Ma'am, anything on redirect?

MS. CAVANAUGH: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Mr. Williams just asked you about your participation for the prosecution. Do a number of agencies actually refer children to your -- to the Assessment & Resource Center?

A. Yes.

Q. What are those agencies?

A. Law enforcement agencies from about 17 counties every year, child protective services, DSS, sometimes family court judges, sometimes guardians ad litem. So those are the usual referrals.

Q. So not just criminal cases?

A. No.

THE COURT: Thank you. You may step down.

May she be released from her subpoena?

MS. CAVANAUGH: No objection.

MR. JOHNSON: No objection.

THE COURT: You are excused.

Madam Forelady, ladies and gentlemen, I know you have been out a couple times, but my court personnel has not, so they need a little break. Let's do about ten minutes and come back and go till about 1:00.

(The jury exits the courtroom at 11:25 AM.)

THE COURT: Mr. Johnson, you got a motion you wanted to make at the sidebar?

MR. JOHNSON: Your Honor, yes. And, quite frankly, I don't remember the particular statement, but --

THE COURT: You said you wanted to make a move for a mistrial when the lady was talking -- Dr. Foster was talking about, I think, Mom and -- Mom blaming herself for not noticing and, perhaps, believing the child or something like that.

MR. JOHNSON: Yes, sir, Your Honor. I think that goes directly in this case to bolstering the credibility of the -- of what was said by the mom

and the daughter. And that testimony elicited is so prejudicial and would impact the jury that I think that -- it's prejudicial, would impact the jury, and I think the proper remedy would be a mistrial.

In this case, Your Honor, right up as of yet, we have no physical evidence. And everything now is hearsay --

THE COURT: Everything is credibility.

MR. JOHNSON: I mean, everything is credibility. And testimony like that already, the fact that she testified as an expert, bolsters it. But when her testimony becomes more specific to this particular case, it bolsters it more. And I think once you ring that bell, you can't un-ring that bell with the jury. And I would move, in the interest of justice and fairness, because of the prejudicial effect, that we be granted for mistrial.

THE COURT: Well, I didn't quite perceive it in the manner that you have. I think Dr. Foster was warned or advised to stay away from any testimony dealing with her opinion as to the credibility of any witnesses in this case. I think she replied in that one question, which I told the jury to disregard; it wasn't talking about credibility of anybody in this case, it was talking about mom s

feeling guilty about not being able to recognize what was going on under their own noses, so to speak. I think I gave a curative instruction. And I respectfully deny your motion for mistrial.

MR. JOHNSON: Thank you, Your Honor. And if I could add to that, just for purposes of the record, the number of leading questions that went before that enhanced it more. So I just add that --

THE COURT: Well, with all due respect to you, Mr. Johnson, I can't make the objections.

MR. JOHNSON: I understand.

THE COURT: Once you made it, I made her rephrase the questions. And, really and truly, I didn't think they were that prejudicial, they were just a tad leading.

Anything else?

MR. JOHNSON: That's all. Thank you, sir.

THE COURT: Thank you.

What you got left?

MS. SIMPSON: Your Honor, we have Dr. Susan Luberoff, and then Sergeant Rick Bailey will be our --

THE COURT: Doctor who?

MS. SIMPSON: Dr. Susan Luberoff with the Assessment & Resource Center. She did a forensic

medical exam on Shawntea Ford.

THE COURT: All right. We'll take about a ten-minute stretch-your-legs break.

(Short break.)

THE COURT: Ms. Simpson, anything for the record before we start back?

MS. SIMPSON: Nothing from the State.

THE COURT: Mr. Johnson?

MR. JOHNSON: Nothing from the Defense.

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

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

THE COURT: Okay. You may call your next witness.

MS. SIMPSON: The State calls Dr. Susan Luberoff.

(Susan Luberoff enters the courtroom.)

SUSAN LUBEROFF

being first duly sworn, testified as follows:

THE WITNESS: Yes.

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

THE WITNESS: I'm Susan Breland Luberoff.

THE COURT: Speak loud enough so the very back row can hear, as well as me.

DIRECT EXAMINATION

BY MS. SIMPSON:

Q. Dr. Luberoff, where are you employed?

A. I work for the USC School of Medicine Department of Pediatrics. And I'm stationed at the Assessment & Resource Center which is a clinic that sees children with concerns of abuse or neglect.

Q. What is your position?

A. I'm the medical director there, clinical associate professor of pediatrics at the medical school, and I'm division director for the Division of Forensic Pediatrics at the Department of Pediatrics.

Q. And can you tell the jury a little bit about your educational background and training with respect to pediatrics?

A. Sure. I graduated from the USC School of Medicine in Columbia in the third class to graduate in 1983, and completed a three-year residency in pediatrics at Children's Hospital at Richland Memorial.

And since then I've practiced pediatrics. My concentration has been in the subspecialty field of child abuse pediatrics. That's where I've spent the majority of my professional time. I've had specific

training in that field including a six-week fellowship at the Kemp National Center of Child Abuse in Denver. I'm board certified in general pediatrics and also board certified in the subspecialty of child abuse pediatrics.

Q. Okay. So in addition to maintaining your board certification, do you also attend certain classes and courses of that nature to keep your training and your license up to date?

A. Yes. In South Carolina, actually, we have a system for all of us, all of the medical providers who work in this field; a system that requires that we have a certain amount of ongoing continuing medical education each year. We meet together three times a year and undergo peer review and have educational sessions at those meetings.

Q. And with respect to your actual position, tell the jury a little bit about what you actually do as far as your role with the Assessment & Resource Center.

A. I have two main roles; when children come in to that clinic for a worry about abuse or neglect, I do the medical part of the evaluation. So if the child needs to have a medical exam for part of the evaluation, that's the part that I do. I do a

complete physical examination, I decide whether any laboratory testing needs to be done or X-rays and that kind of thing, and I'll order those as necessary.

I'll also respond to the hospital if there's a child admitted to the hospital with an injury, or where there is worry about abuse, then the hospital staff will consult me to come over and help with that part of the evaluation.

Q. Okay. And with respect to physical or medical examinations of children, do you deal -- you said allegations of abuse. Does that involve all types of abuse?

A. Yes.

Q. And tell the jury a little about the different types that you see.

A. We see children for worries about sexual abuse, physical abuse, neglect; we will sometimes have children come through our clinic who have been witnesses to a homicide or some kind of traumatic event that they need to be interviewed about that.

Q. And how many medical examinations of children, with particular emphasis on sexual assault examinations, would you say you performed during the course of your career?

A. Thousands.
Q. And have you ever testified as an expert in the field of sexual assault examinations?
A. Yes.
Q. About how many times?
A. They call it something different just about every time I go to court. So if you include child abuse pediatrics, sexual assault examinations, sexual abuse evaluations and so on, it's been well over a hundred times. I stopped counting years ago.
MS. SIMPSON: Your Honor, at this time I'd like to qualify Dr. Susan Luberoff as an expert in the field of child sexual assault examinations.
THE COURT: Any cross-examination of her qualifications?
MR. JOHNSON: No cross-examination. I agree she is an expert.
THE COURT: All right. This doctor will be allowed to give opinion testimony in the field of sexual assault examinations and pediatrics in general.
BY MS. SIMPSON:
Q. Dr. Luberoff, did you actually examine a child involved in this case?
A. I did.

Q. Tell the jury who that was and when she came to you.

A. I examined Shawntea on October 14th, 2011, Shawntea Ford.

Q. Okay. And tell the jury -- well, first of all, when a patient is presented to you, do you have any kind of background information that's provided to you, if there's any available?

A. Different amounts of background information. Whoever calls to set the child up for an evaluation through the resource center gives enough information to us to know whether the child is appropriate for us to see. And sometimes we have a wealth of information and sometimes we don't have a lot of information.

Q. So it's just kind of dependant on the case and timing of the actual exam as to what you receive?

A. Yes.

Q. And what is Shawntea -- her last name is Ford. How did she present to you? What were the allegations or the nature of them?

A. It was for a sexual abuse concern.

Q. And so in this instance, tell the jury about the examination you actually performed on her and how you conducted that exam.

A. First, she was oriented to the room. One of our employees called a child life specialist spent some time with the child in advance, explaining the whole exam to the child and answering any concerns or worries they might have about the exam, explains every position that I might need the child to be in so the child can comfortable and cooperative with the exam, because I do need a good, cooperative, and comfortable child for me to see everything that I need to see in detail.

And then the exam itself of Shawntea included a careful examination of all of her skin, a careful examination of her genitalia. And we used a colposcope, which is an instrument that's like a set of binoculars with a bright light just so I can see things with some magnification and with a good, bright light to look at the genital area, and a lot of things that are general physical exam parts, like listening to her heart, looking in her ears, looking at her teeth, examining her abdomen.

When a child comes to the Assessment & Resource Center for an evaluation, we don't limit our examination just to whatever type of abuse or neglect is the concern; we actually examine for any type of abuse or neglect. So it's a very thorough

physical examination with some extra attention to the genitalia.

Q. So you're also looking to see if there's any visible signs of, like, bruising or scarring or any potential physical abuses as well; right?

A. Correct.

Q. I want to go back to what you said about the orientation and the positioning of the child. Is the nature of this exam similar to what, I guess, an adolescent or adult female would have when she goes to the gynecologist?

A. It is, with the exception that -- ordinarily when a woman goes to the gynecologist, a pap spear is done, and that involves placing the speculum inside the vagina. We rarely have to do that as part of our evaluation of children. So it's an examination similar to that at a GYN, but we don't do the speculum exam.

Q. So with younger children, have they typically been through this type exam when they come to you?

A. Well, typically, if a younger child is being followed by a pediatrician for regular checkups, that pediatrician should be looking at the genitalia at every regular checkup. The pediatrician is not going to use a special light for it and probably

isn't going to do the time of traction of moving the labia or the apart to see up inside to the degree that we do. But a child should be accustomed to a physician looking at his or her genitalia when they go for a regular exam.

Q. Okay. And do you actually document your findings in the form of a report?

A. I do.

Q. With respect to your examination of Shawntea Ford, tell the jury what you found as far as your physical examination.

A. She had two old burns on her body; one, she didn't remember what it was from, and I believe the other was from a curling iron or something like that. They were accidental burns.

And then the rest of her exam was essentially normal. Her genital examination in particular was normal. She had reached puberty several years earlier. She listed her date or her age of her first period as having been eight years old, and she was now 11 when I saw her. And so she was well into the advanced stages of puberty; she had breast development and her hymen had grown in the way that hymens grow, she had hair distribution and so on, consistent with her pubertal history.

Q. Okay. And tell the jury -- you said her -- your examination of the genitalia area, you didn't notice anything abnormal.

A. Right.

Q. What exactly is included in the genitalia are as far as a female genitalia?

A. Parts, body parts?

Q. Yes?

A. That would be the labia or lips of the vagina, the hymen, the more distal or more closer to the external part of the actual vagina itself, the anal area, the perianal area, and the perineum.

Q. Okay. And what exactly is the hymen?

A. The hymen is a piece of tissue that is part of the vagina. It's near the beginning of the vagina. It -- it goes through a big change when puberty happens. When a child is born and in the first few years of life, the hymen tends to look fairly thin and looks fragile. It's actually not particularly fragile, it's normal living human tissue which is mucus membrane kind of tissue, which means that it is bathed in moisture all the time; it's always moist because of the secretions in the vagina. It, before puberty, as I said, looks kind of thin. If you were trying to look through it from front to

back, sometimes you can see light through it.

At puberty, when so many other changes are happening in the body of a girl, the breasts are growing, the hips are spreading, hair is starting to sprout in the vaginal area and armpits, the vagina and the hymen undergo a dramatic change through the course of puberty.

And at the hymen level, what happens is, it thickens. It thickens to such a degree that where before puberty it was in the enough that I might be able to see light through it, by the end of puberty, it's thick, almost like as thick as my thumb. And in addition to growing thicker during that course of puberty, it grows on its surface area, so that before puberty, the opening -- and there's an opening in the hymen from before birth. The opening in the hymen might be a circular opening where the hymen sort of just surrounds that opening.

The hymen grows so much during the course of puberty, that it ends up folding around the edges so that at the end of puberty, when the body is now prepared for reproduction, an object can be introduce into that opening and it's got enough surface area that it will simply spread out of the way and allow entrance of a normal penis size object

without destroying the hymen or -- and, actually, without usually injuring the hymen at all.

Q. So it essentially develops to where penetration is possible and almost easier, in a sense?

A. Correct.

Q. With respect to a normal exam -- and you said her findings were normal?

A. Yes.

Q. Is that uncommon or typical?

A. It's quite typical. The vast majority of girls who have been through puberty who have had vaginal penetration with an object or a penis have completely normal exams when we see them at the Assessment & Resource Center, even children that we see that are pregnant. Their exams are usually completely normal. And when they're pregnant, we know for sure a penis has been in there. Those hymens are usually completely normal. And this is, you know, a little different than what I grew up believing and what I was told by my mama, but it's a fact, it's the way the body actually is.

Q. And if penetration has occurred over a period of time -- you used the example about pregnancy. But over the course of years, would you still expect to still have a normal exam?

A. Yes, unless something extraordinary has happened to that hymen. And sex is not extraordinary; sex is the part of what the hymen is there for. And by extraordinary, I mean something like -- like if there's some type of brutal assault where there is a bad injury. It can be injured, it's not very easily injured. Or if there's been surgery involving the hymen, for example, if someone has had cancer of the hymen and had a piece removed, that's not going to normal on exam anymore.

But, ordinarily, the hymen looks normal without injury, even after repeated penetration of the vagina.

Q. And as a medical doctor, as far as your purpose and your goals in performing the medical exam, what are those, particularly in children?

A. The main purpose of doing the exam is to see if there are any injuries. If there are, then we need to know that and the child needs to know and the parents need and the system needs to know that. But, mainly, we're examining the child for any signs of abuse and to make sure -- to ensure that the child is healthy.

If the child has experienced sexual abuse, for example, then part of the evaluation would be to

determine what kind of testing needs to be done for sexually transmitted infections to ensure that the child didn't contract an illness from what happened.

So the overarching purpose of the exam is to ensure that the child is healthy, and that all of the steps to evaluate that health related to that concern are done.

Q. All right. And would that be your -- as far as your examination of Shawntea, the extent of your involvement with this case?

A. Yes. I only saw her the one time.

MS. SIMPSON: Thank you, Dr. Luberoff.

THE COURT: Mr. Johnson, any questions?

MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Dr. Luberoff, how are you doing?

A. Good. Thank you. How are you?

Q. Fine. Fine. I just want to clear up one thing: The -- as you sit there right now, you couldn't testify whether she had sex or didn't have sex; all you could do is testify that the exam you did, you found it normal; correct?

A. Correct.

Q. And I looked at -- do you have your intake

report with you, the one -- the child maltreatment protocol?

A. I do.

Q. Okay. If you would, turn to page 9.

A. Yes.

Q. Will you read that -- I can't pronounce those words, so I wanted to point you to the page.

A. I'll help you.

Q. Okay. Under the subject no injuries identified, what's that next word?

A. Anogenital. That means injuries in the region of the anus or the genital area.

Q. Okay. And on your report, you found no abrasions, no bruises, nothing?

A. Correct.

Q. No scars, no tears, no lacerations, nothing?

A. Correct.

Q. So in other words, all you're testifying today is that a report was done, and it can't say whether something happened or whether it didn't?

A. That's correct.

MR. JOHNSON: Thank you.

MS. SIMPSON: No redirect, Your Honor.

THE COURT: Thank you. Thank you, Doctor. Thank you for coming.

Next witness, please.

MS. SIMPSON: The State calls Sergeant Rick Bailey.

RICK BAILEY

being first duly sworn, testified as follows:

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

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

THE WITNESS: Rick Bailey, B-A-I-L-E-Y.

DIRECT EXAMINATION

BY MS. SIMPSON:

Q. Sergeant Bailey, where are you employed?

A. Currently employed with the Kershaw County Sheriff's Office.

Q. And how long have you been with Kershaw County?

A. Been with Kershaw County since the year of 1998, but I had four years of previous law enforcement before that.

Q. And what was your previous law enforcement background?

A. I worked, I believe it was, about three and a half years or close to it with Camden City Police Department. And then I worked a year with the Bishopville Police Department; that's where I started out.

Q. And what is your current position with Kershaw County Sheriff's Office?

A. I'm a sergeant in the criminal investigations unit.

Q. And as a sergeant in that division, what do your duties include?

A. I receive orders from the captain and the lieutenant, I'm assigned cases for investigation, take up special tasks they assign me to do and delegate those tasks accordingly to other investigators in that division.

Q. Okay. And do you work, I guess, with all types of investigations?

A. Yes, ma'am. I've done all types of investigations.

Q. And tell the jury just a little bit about your experience in law enforcement and your background as far as types of cases you've responded to and your investigations?

A. I'm assigned to the criminal investigations division. I've worked everything from somebody writing a bad check, assault and batteries of people hitting each other, property crimes like break-ins to homes, theft to personal items, homicide investigations, what is commonly considered

white-collar crimes like embezzlement, and juvenile investigations.

Q. So pretty much everything?

A. Yes, ma'am.

Q. And turning your attention back to 2011, did you actually become involved in criminal sexual conduct cases involving minors too?

A. Yes, ma'am.

Q. Specifically the one we're here for today?

A. Specifically, yes, ma'am.

Q. Tell the jury how you were notified and how you became involved.

A. With the sheriff's office, we have a certain number of investigators and each of us getting a week of on-call. That means we're subject to recall 24/7 for seven days straight.

On the date in question, which was October 11th, road deputies were called to respond to a scene on Stevens Road. It's really -- it's an oddity, Stevens Road; you got Kershaw County, Lee County, but it kind of bounces back and forth. Some people call it Bethune, some people call it Cassatt, some people call it Bishopville, because there's that many, you know, different lines on that road.

But deputies were called to the scene at

Stevens Road where they made contact with Ms. Hall and, I think, the victim in the case. Because of the nature of the case, I was notified to respond to the scene by, I believe it's Corporal West. I believe he's a sergeant now. So I responded to the scene and met with the deputy.

Q. Okay. So you actually went to the location at Stevens Road that night?

A. Yes, ma'am.

Q. And you spoke with the responding officer -- or at least who was present on the scene?

A. I believe one that's already testified, Deputy Barnwell, and his immediate supervisor Mr. West, and also Ms. Pamela Hall.

Q. So you made contact with the mother as well?

A. That's correct.

Q. And were you able to gather information as to what had occurred and what was going on?

A. Yes, ma'am. It was reported to me first by responding officers that there was allegations of attempted or actual sexual assault by the suspect in the case, a Mr. Nakia Johnson.

As soon as I heard the name, I recognized who it was because of past experience. And they relayed the events of what was relayed to them.

Q. I want to back up just for a minute. You said you recognized the name. Tell the jury how you were able to recognize Mr. Johnson's name.

A. Me and Mr. Johnson worked on the same shift when I was a road supervisor.

Q. So y'all were familiar and actually worked together?

A. Yes, ma'am.

Q. And during that time of working together, did you actually establish kind of a working relationship or a friendship, so to speak?

A. In small departments like this, most of the time you spend during the day is actually with people on your shift, so you actually build a rapport with the people that you work with because they've got your back and you've got theirs. So you get pretty close. At that time I think we had four- or five-man shifts to cover the whole county.

Q. Okay. At that time though, was he actually still working with Kershaw County?

A. On October 11th?

Q. Yes.

A. No, ma'am, he was not.

Q. And backing up just a little bit, who was the victim that you -- or who was the alleged victim?

A. The alleged victim reported to me was Miss Shawntea Ford.

Q. And what was her relationship with Mr. Nakia Johnson, the defendant?

A. I've heard it mentioned a lot the past few days that he was the stepfather. But I don't think they were actually married, but he was playing the role as a father or a stepfather.

Q. So he was in a relationship with Ms. Hall, the victim's mother?

A. Yes, ma'am.

Q. To your understanding, was he actually living at the location at 3046 Stevens Road?

A. To my understanding, he was not there -- or residing at the Stevens Road address.

Q. Okay. And was the victim actually living there with her mother at that time?

A. To my knowledge, at the time.

Q. And with respect to -- and you said you learned of an attempted sexual assault or something of that nature. Were you aware of where that had possibly occurred; like, was the home that you responded to the actual location?

A. The alleged incident location was not at the home, but at a church within close proximity to the

home.

Q. And after you arrived on scene and spoke to the individuals you mentioned, what was your next course of action? What did you do?

A. Of course I needed to get in touch with my victim's advocate. We don't, as a practice, speak with juvenile victims. So I notified them and had Ms. Hall and Miss Ford escorted down to the Kershaw County Medical Center.

Q. And what was the reason for having them sent to the medical center?

A. Any time there's an allegation of an alleged sexual assault, we do request that the hospital perform the protocol kit for us.

Q. Okay. So while you were conducting your investigation, the advocate actually went with the victim and her mother to the hospital?

A. Yes, ma'am. I did actually -- before they left Kershaw County Medical, I had cleared what I was doing at that scene and actually met them down there for a few minutes.

Q. Okay. So you actually followed them down to the hospital and spoke with them there?

A. A short time after. I was there within minutes of them arriving there.

Q. And as the lead investigator in these types of cases, did you feel it necessary to process any kind of scene at 3046 Stevens Road?

A. There was no scene to be processed at 3046 Stevens Road.

Q. Okay. And at this point you had the individual identified as the possible suspect; correct?

A. Yes, ma'am.

Q. So what did you do with that information, especially having a previous relationship with him?

A. At some point during leaving the hospital and heading back to the sheriff's office, Mr. Johnson was notified and requested to come back to the sheriff's office.

Q. And, again, let me back up a little bit. Did you actually contact another investigator essentially to assist you; Lieutenant Patrick Hickmon?

A. Yes, ma'am, I did.

Q. And when you spoke were you able to make contact with the defendant yourself or did someone else contact him?

A. If I'm not mistaken, either the captain at the time, Captain Chris Phillips, or my chief deputy made contact with Mr. Johnson and his chief of

police.

Q. And was Mr. Johnson willing to come speak with you-all?

A. Yes, ma'am.

Q. Tell us how that occurred and how he came and where he went as far as when you encountered and made contact with him.

A. He was requested to come to the Kershaw County Sheriff's Office. It took several hours for him to return from Allendale-Fairfax where -- in the Low Country, from my understanding, back to the sheriff's office. That's where he was met at.

Q. And when he arrived and -- was he, at the time, still a police officer or in law enforcement, to your knowledge, or do you know?

A. To my understanding he was, because my chief notified his chief of police. So I'm assuming he was still employed.

Q. Okay. Did he agree to speak with y'all voluntarily?

A. Yes, ma'am.

Q. And did you apprise him of the nature of why he was being called out there?

A. It was my understanding -- I felt like he had an idea of why we were asking to question him. But

he did acknowledge that he knew that there were some allegations that we were asking him about.

Q. But he appeared to have some knowledge of it prior to coming to you-all?

A. Yes, ma'am.

Q. And when he arrived, what did you do? When he arrived to headquarters and you began speaking with him, where did y'all go?

A. We actually went to -- we have a room at the sheriff's office that's video recorded that we conduct our interviews. He was taken to that room with myself and Investigator Hickmon in the room. He was Mirandized and then we started the interview process.

Q. And when yu say Mirandized, tell the jury -- I know we've all seen TV shows, but exactly how you go about performing that process.

A. I have the form I can refer to. I think y'all have entered it as number 1.

Q. I'll show you what's been marked as State's Exhibit 1 for ID. Do you recognize that?

A. Yes.

Q. And what is that?

A. That is a Statement of Miranda Rights form that we commonly use at the sheriff's office.

MS. SIMPSON: Your Honor, at this time I'd offer State's Exhibit 1 into evidence.

THE COURT: Mr. Johnson?

MR. JOHNSON: No objection.

(State's Exhibit No. 1 admitted in to evidence.)

BY MS. SIMPSON:

Q. And is this the statement from which you advised him?

A. Yes, ma'am, it is.

Q. And he -- did you ask him a couple questions? I mean, with him being in law enforcement, was he pretty familiar with the Mirandizing process?

A. From my understanding, he had been in law enforcement for numerous years, so I would assume he did know about the Miranda process. I would hope he did.

Q. And tell the jury how you went about Mirandizing him. And is this your standard procedure and practice?

A. It should be everybody's standard procedure. But my procedure since I've been an investigator is I actually read each portion of the Miranda out loud to make sure that they understand it. And once I've read that, I check that sentence off before I move

on to the next one. And I did that in this case.

Q. And can you read for the jury what's contained in State's Exhibit 1?

A. Absolutely. The Miranda is followed -- there's five parts. The first sentence is, you have the right to remain silent. After I read that, I checked it off and asked if it was understood. Anything you say can and will be used against you in a court of law. That was also checked off. You have the right to talk to a lawyer and have him or her present with you while you're being questioned. It was in turn checked off. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. That was also checked off. You can decide at any time to exercise these rights and not answer any questions or make any statements. That was checked off. And once understood, it was signed by me as the officer that actually read it to him.

Q. Okay. And the portion of the advisement, was anyone present with you when you did that?

A. Lieutenant Hickmon was present with me.

Q. Okay. And did he appear -- and by he I mean, at this point, the defendant. Did he appear to understand those rights as you read them?

A. Yes, ma'am, he did.

Q. And was he under the influence of anything when he arrived, to your knowledge?

A. Not to my knowledge.

Q. Okay. And tell us about the next portion of that advisement.

A. The next portion of the advisement is what they call a waiver of rights. Would you like me to read them?

Q. Yes, please.

A. Okay. The waiver of rights says: This is to certify that I have read or have had read to me the above statement of rights.

Understanding each of these rights and having these rights in mind, I waive them and willingly make a statement. No promises or threats have been made to me, and no pressure or coercion of any kind has been used against me.

Q. Okay. And did he, in fact, waive his rights?

A. Yes, ma'am, he signed the waiver.

Q. He actually signed the waiver acknowledging?

A. Yes, ma'am.

Q. And did he also tell you that he agreed to speak with you?

A. Yes, ma'am.

Q. And at all times during the course of this, did you make it known to him that he could stop at any point if he wanted to?

A. From the beginning when he signed the waiver. But I made that verbally clear.

Q. Did y'all threaten or coerce him in any way to make this statement?

A. No, ma'am.

Q. And if he had asked for a lawyer at any portion, would he have been given that opportunity?

A. Yes, ma'am.

Q. So was the statement to you and other investigators made freely and voluntarily?

A. Yes, ma'am. That's the way I perceived it.

Q. In addition, you said he was transported to the interview room. At Kershaw County, is that interview preserved or documented in any way?

A. Audiovisually, yes, ma'am.

Q. And I'm going show you what's been marked as State's Exhibit 2 for identification purposes. Do you recognize this?

A. Yes, ma'am.

Q. Have you had a chance to review it?

A. Yes, ma'am.

Q. What is it?

A. It's the audiovisual recording of the interview with Mr. Nakia Johnson.

Q. And does it fairly and accurately depict what occurred on that day?

A. Yes, ma'am.

Q. And the portion of the advisement -- and you've reviewed this video; correct?

A. Yes.

Q. Is there a portion of the advisement where the video is not, I guess, recording or this copy that we have didn't show it?

A. Yes, ma'am.

Q. What portion is that?

A. The first part of the advisement where you go through Miranda. It was read and checked off, but for some reason, whichever investigator burned that copy for me, for some reason cut off the first minute or so of it, which does not show that advisement.

Q. But the whole portion where he's waiving his rights and agreeing to speak with you freely and voluntarily is contained?

A. Yes, ma'am.

Q. As well as his entire statement?

A. Yes, ma'am.

MS. SIMPSON: Your Honor, at this time I would offer State's Exhibit 2 into evidence.

MR. JOHNSON: Your Honor, at this time I have no objection.

MS. CAVANAUGH: Your Honor, may we approach briefly?

(Sidebar conference.)

MS. SIMPSON: Your Honor, at this time, permission to publish the interview, as well as we do have transcripts for the jury to follow along.

THE COURT: All right. What we're going to do now is show the interview with the defendant conducted by this witness. I had to make some pretrial rulings on it, so I suggested that you be given a transcript of it. I think you saw me yesterday reading along with a transcript. I got one for you on this one. Sometimes it got a little mumbled for me to hear -- not mumbled, but talking down like this. So we got transcripts for you to follow along with. It makes it a little clearer. Everybody got one?

THE JURY: Yes, sir.

MS. SIMPSON: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

(Video played for his Honor and the jury.)

(Video paused.)

THE COURT: All right. Madam Forelady, ladies and gentlemen, we've probably got another 30 minutes or so. Your food is here. I'm going to let y'all break now for your lunch. It's 1:00 now. Can we start back at 2:00?

Please don't discuss the case, please don't start any deliberations. Once you finish your lunch, you're welcome to go downstairs and get some fresh air, but please be back at 2:00. Leave your transcript in your chair, please.

(The jury exits the courtroom at 1:02 PM.)

THE COURT: Investigator Bailey, you're right in the middle of your testimony. Please don't discuss it with anybody during the lunch break.

THE WITNESS: Yes, sir.

THE COURT: Anything for the record before we break?

MS. SIMPSON: Nothing from the State.

THE COURT: Mr. Johnson?

MR. JOHNSON: Your Honor, nothing from the Defense. I think we did mention about putting something on the record -- Your Honor, let me think about it. It wasn't nothing major, but --

MS. SIMPSON: You did tell us to remind you

about the Lee County issue.

MR. JOHNSON: Right.

THE COURT: But y'all -- nobody has mentioned that.

MS. SIMPSON: Right.

MR. JOHNSON: No.

THE COURT: All right. I'm going to make him available during lunchtime for his lawyers.

May I see the lawyers in chambers for a quick second?

MR. JOHNSON: Yes, sir.

(A luncheon recess transpired 1:03 PM - 2:05 PM.)

THE COURT: Ms. Simpson, anything for the record before we start back?

MS. SIMPSON: Briefly. I think we remembered, and I spoke with Mr. Johnson, what we wanted to put on the record. The redacted version of the video was switched out from what was actually used for pretrial purposes.

Also, Your Honor, we would let Mr. Johnson know that it's actually formatted and it does say formatted. Not only written on the CD does it say redacted, which was scratched out, but on the file itself it says redacted. So we're just doing one

that is renamed so that they don't know it was redacted.

THE COURT: What that was, was actually redacted in reference to the polygraph?

MS. SIMPSON: Yes, sir.

THE COURT: We all agreed in chambers that it would come out. And we just substituted the one that we used for the Jackson v. Denno with a redacted copy for today.

MS. SIMPSON: Correct.

THE COURT: Mr. Johnson, any problem with that?

MR. JOHNSON: No, sir.

THE COURT: Thank you.

All right. Everybody ready?

MS. SIMPSON: State is ready, Your Honor.

MR. JOHNSON: Defense is ready.

THE COURT: Bring the jury in, please.

(The jury enters the courtroom at 2:07 PM.)

THE COURT: We're going to continue on with the playing of the tape. Everybody find their places in the transcript? I'll say this is for you as well as for me: I know it's dark in here, I know you just had pizza, but everybody pay attention, please.

All right. Y'all ready to start back?

THE JURY: Yes, sir.

THE COURT: All right.

(Video resumed for his Honor and the jury.)

(Video concluded.)

THE COURT: Madam Forelady, ladies and gentlemen, y'all step back into the jury room just a second. We need to take a quick little break. Don't discuss the case and don't deliberate.

(The jury exits the courtroom at 2:55 PM.)

THE COURT: All right. We'll take about a five-minute break. Thank you.

(Short break.)

THE COURT: Bring the jury in, please.

(The jury enters the courtroom at 3:02 PM.)

DIRECT EXAMINATION

(Continued)

BY MS. SIMPSON:

Q. Sergeant Bailey, at the close of that interview, what was the defendant taken into custody and arrested for?

A. A warrant I swore out. Judge Todd was --

THE COURT: Speak up, please.

THE WITNESS: I'm sorry, sir.

A. The warrant was for criminal sexual conduct or attempt, victim under 11 years of age, first degree.

Q. Okay. I'm going to go to just a couple things

that were in the interview. Specifically with respect to your portion or the other investigator's portion where they're talking about DNA and we have DNA results and things of that nature.

A. Uh-huh.

Q. Would you have gotten test results back this quickly from any kind of processing?

A. Absolutely not.

Q. Okay. So what is the purpose of trying to confront a potential subject with DNA and things of that nature?

A. I've seen in the past where officers will bring that up to try to elicit a response to there possibly being DNA on a victim. So this is a line of questioning they'd use to try to get a response to determine if there was DNA or not.

Q. So, essentially, a tactic of sorts --

A. That's the word for it, tactic.

Q. -- investigative tactic.

And with respect to this case, the defendant responded, I know about DNA.

A. Correct.

Q. And he was with law enforcement; isn't that right?

A. Correct; for 12 years, is what he told us.

Q. So he was pretty familiar with police officers and their forms of questions and things of that nature?
A. I would think so.
Q. In the course of your investigation, did you actually learn whether the night of this disclosure Shawntea Ford was actually -- the sexual assault was completed that night? Did you learn whether or not it was completed?
A. No, it was not completed. It was attempted, but it was not completed.
Q. So really no evidence of any semen or ejaculation or anything of that nature?
A. Based on her testimony, there should not have been, because it was not completed.
Q. And the interview with the defendant, that was the same day of the disclosure, or evening?
A. I believe because it was in the late night hours, the switching, everything supposedly happened on the 11th, but I think by the time Mr. Johnson appeared back at Kershaw County, it was right around 12:00 or maybe just a little bit after. So what I'd consider the same workday, it was actually two different dates, the 11th and 12th.
Q. But he was interviewed, essentially, close in

time to the actual disclosure?

A. Oh, yes, ma'am.

Q. And the victim was also taken to the hospital that day as well?

A. Yes, ma'am.

Q. Did you schedule a forensic interview on behalf of the victim?

A. We tried to get them done as quickly as possible. We were fortunate at the time to be using the Kershaw Center next door, so it was actually done -- the first interview was done within close proximity within the day.

Q. The next day it was done?

A. I think that's correct. Yes, ma'am.

Q. And that was her initial interview with Mr. Kellin, I believe?

A. Yes, ma'am.

Q. During the course of this investigation, did you actually -- did SLED become involved?

A. Yes, ma'am, they did.

Q. What is SLED and why would they become involved in a case such as this?

A. There was, I believe, two members of SLED here during this week. SLED is the South Carolina Law Enforcement Division. We rely on them a good bit

for their labs and other resources that they have that we don't have on a local level. So they were asked to come in because there was what I would consider two reasons: We had a jurisdictional issue between Kershaw County, Lee County, and Allendale, I believe it is, and Fairfax. And, also, Mr. Johnson, at the time, was a law enforcement officer. Usually we like to have a State agency come in to be an unbiased outside agency to help with the investigation.

Q. So they act as an assisting agency to Kershaw?

A. Yes, ma'am.

Q. And respect to their lab and forensics, does Kershaw County actually have their own forensics lab like Richland County?

A. I wish. But the answer is no.

Q. No. And in this case, after scheduling the forensic interview with Shawntea Ford, the victim, did SLED become involved fairly quickly?

A. Yes, ma'am, I think so; within the next day or so.

Q. And once they become involved, whose responsibility is it with respect to interviewing witnesses and things of that nature or other scheduling of other interviews?

A. If they became involved and they had a different aspect of the case or a different part of the case, they'd schedule the interviews and then do the interviews themselves.

Q. Okay. So as being the lead investigator with the Kershaw case and everything that was happening here, were you privy to that information and eventually everything came to you?

A. Yes, ma'am.

Q. With respect to Pamela Hall, was she -- without going into detail as to what she said, was she interviewed early in this case as well?

A. By me?

Q. By law enforcement.

A. Yes, ma'am. She did a -- she gave statements to the responding deputy that night. She also spoke with me several times during that night and into the next morning.

Q. And did she also give some written statements?

A. She did give written sworn statements, yes, ma'am.

Q. Regarding the incidents that occurred?

A. Yes, ma'am.

Q. Additionally, I want to get out -- during the course of your interview, a name came up with the

defendant, a Nikki Chisolm.

A. That's correct.

Q. Do you recall Ms. Chisolm being contacted during that interview from the defendant's phone?

A. From the defendant's phone?

Q. Or a call being made to Nikki?

A. I do recall a call being made to her.

Q. And do you recall the phone number that was given for Ms. Chisolm?

A. Give me just one second. (803) 571-5158.

Q. Okay. And during that, did the name Louise Pinkney also come up?

A. Yes.

Q. And what was the number for her?

A. The number I have for Ms. Pinkney is (803) 686-0804.

Q. During the course of your investigation, did these names become significant to you with respect to the defendant's statement?

A. They were relayed to me by him through the interview that those were people who had been either incoming or outgoing calls to him that night -- that afternoon.

Q. And during the course of that interview, did he actually confirm that there was a call on his phone

at, I believe, 5:54 or whatever with Pamela Hall, an outgoing call?

A. He did confirm it. He didn't understand it, but he did confirm it.

Q. Do you recall whether he actually had his service weapon in the car or on him when he was placed into custody?

A. He didn't have it on him at -- from the interview. I think -- I didn't go look in the car, someone else did. But I think there was a .22 rifle.

Q. But not his actual service weapon --

A. No, ma'am.

Q. -- that you're aware of?

A. That I'm aware of, no, ma'am.

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

BY MS. SIMPSON:

Q. I want to talk to you about a couple locations brought up in this case. With respect to Stevens Road and the, I believe, Fountain Grocery Store --

A. Yes, ma'am.

Q. -- is that in pretty close proximity?

A. Several miles. It's not far.

Q. Okay. So one could drive there fairly quickly?

A. Yes, ma'am.

Q. And in the course of your investigation, I know a graveyard's been mentioned. Tell the jury a little bit about your initial understanding about the graveyard and what you subsequently learned about which graveyard was being referred to.

A. My initial thought when they mentioned a church right down the road from the home and graveyard, not too far from the home on Stevens Road there's a church on the right-hand-side of the road with a small graveyard. That was my initial thought, that that was the incident location. It was later determined that it was actually another church probably a mile or so past that into Lee County. So there was a difference at first before we -- I actually thought where the incident location was. I though it was one church, but it ended up being another church a little bit further up the road.

Q. And having worked in Kershaw County and around this area, are you pretty familiar with the St. Matthews and Bethany Cemetery and Stevens Road, all the places that had been --

A. Down in the Turkey Creek area, yes, ma'am, I'm familiar.

Q. Did you say Turkey Creek?

A. That's what the locals call it, Turkey Creek.

(State's Exhibit Nos. 13, 14, and 15 marked for identification.)

Q. I'm going to show you what's been marked as State's 13, 14 and 15. Do you recognize these?

A. Not so close, please.

Q. Sorry.

A. I do recognize them.

Q. And do they fairly and accurately depict the location in the picture?

A. Of Bethany Cemetery, yes, ma'am.

MS. SIMPSON: Your Honor. At this time, I would offer State's 13, 14 and 15 in to evidence.

MR. JOHNSON: No objection.

THE COURT: Thank you.

(State's Exhibit Nos. 13, 14 and 15 admitted in to evidence.)

Q. So the Bethany Cemetery in State's 13 and 14 and 15, was that actually the cemetery or graveyard area --

A. It was later determined to be that location instead of the first one I went to.

Q. And with respect to close proximity, just so we can sort of orient ourselves, Stevens Road, is that fairly close to this?

A. It's fairly close. It's not on Stevens, but

it's very close.

Q. And what about relationship with the Stevens Road location, Bethany Cemetery, and Fountain Grocery?

A. They're all within several miles of each other.

Q. So one could drive it in a matter of minutes?

A. Yes, ma'am.

Q. And was -- Shawntea, was she interviewed a second time in this case as well?

A. As far as a forensic?

Q. Yes.

A. Yes. She was actually interviewed a second time at the request of a SLED agent that was involved in the case.

Q. And did you learn that her first interview had actually ended due to her being sick?

A. I actually watched the forensic interview where she got sick and it was ended early.

Q. Okay. So you were present and observing?

A. No, ma'am. I watched the video after it was --

Q. Oh, watched it.

A. Yes, ma'am.

Q. The person you spoke with on the date of October 11th, 2011, and ultimately charged with criminal sexual conduct charges, do you see him in

the courtroom today?

A. Yes.

Q. Can you point him out?

A. Mr. Nakia Johnson, he's between his two co-counsels, wearing what appears to be a bluish-black suit.

MS. SIMPSON: Your Honor, let the record reflect he's identified the defendant.

THE COURT: Yes, ma'am.

MS. SIMPSON: Thank you, Sergeant Bailey. Please answer any questions from the Defense.

THE COURT: Mr. Johnson?

MR. JOHNSON: May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Let's start with that night. Someone from your department called to Fairfax, to Allendale, and he came right back up, didn't he?

A. Yes, sir.

Q. Okay. And I think that you read him his rights and he signed the waiver, didn't he?

A. That's correct, sir.

Q. Okay. And he talked with you freely, didn't he?

A. Yes, sir.
Q. Okay. So he really did not hold back from saying what he thought was going on, did he? Did he hold back anything from you --
MS. SIMPSON: Objection; calls for speculation as far as what the defendant held back or didn't.
THE COURT: Sustained.
BY MR. JOHNSON:
Q. When he got back, before you started questioning him, you had the warrant already, didn't you?
A. Yes, sir. The warrant was in-hand.
Q. So all of the questioning that was done, it wasn't done to get information; he was already charged, wasn't he?
A. No, sir. There was an arrest warrant for him. But it was up to my discretion whether he was actually processed on the warrant.
Q. So -- and the arrest warrant was done just solely based upon the allegations that were given to you and nothing else?
A. Based on the statements made by the mother and the victim in the case and the records we had from the mother's phone.
Q. Okay. And I just want to be sure, you had

nothing else, other than the allegation from the mother -- which you said you didn't talk to the girl, so allegation from the mother and the mother's phone records?

A. That's correct, sir.

Q. All right. In the video, I saw y'all were looking at the phone records. I'd like to ask you something. I think the State has some marked up there if you want to -- if we could look at the phone records.

THE COURT: That's exhibit 10; is that correct?

MS. SIMPSON: Yes, sir.

BY MR. JOHNSON:

Q. I'd like for you to turn to Item No. 828, 829.

THE COURT: 828 and 829.

THE WITNESS: I'm not sure how to find that on this report, Your Honor.

THE COURT: Mr. Johnson, you know how to find it?

MR. JOHNSON: Yes, sir.

THE COURT: Come show him how to find it, please.

MR. JOHNSON: It's an item number.

THE COURT: It's an item number, not a telephone number.

BY MR. JOHNSON:

Q. Did you locate the 828 and 829?

A. Yes, sir, I have.

Q. Were you in yesterday when the gentleman from the phone company was testifying?

A. When he was trying to explain the Greenwich Mean Time? I never understood it, but I followed what he was saying.

Q. Well, let me try to explain it.

A. What I meant by that, Mr. Johnson, is I don't understand Greenwich Mean Time. I understand the four-hour conversion, I just never understood why there's such a thing as the Greenwich Mean Time.

Q. All right. Well, anyhow, I'll start you with 828 and 829. Let's walk down to it.

A. Yes, sir.

Q. We understand, I think, from his testimony that 2145 would be 1745 because of the four-hour deduction difference between the Universal Time and the Eastern Standard Time. Would you agree with that?

A. Yes, sir, I would.

Q. All right. At 819, 10/11/11, at 2147, there was a call that went to voicemail from (803) 571-5158 to -- and the one that's calling it is the

originating number, and the one that's terminating is the one the call goes to; do you understand that?

A. Yes, sir.

Q. Okay. So the calling number in that was -- and I think you gave -- just a few minutes ago, you gave the name for the number 571-5158. I think that was Ms. --

A. Ms. Nikki Chisolm.

Q. Yes, sir. So Ms. Nikki Chisolm called him at 2145?

A. Yes, sir. I see that.

Q. And that was Nakia Johnson's number she called to?

A. 3322, the last four digits, yes, sir.

Q. Right. And then at Item No. 20, there was --

THE COURT: At 8:20?

MR. JOHNSON: Item No. 820.

BY MR. JOHNSON:

Q. There was another call right behind Nikki Chisolm at two minutes -and 33 seconds from the number (803) 686-0804, and the terminating number was Nakia Johnson's number; is that correct?

A. Yes.

Q. Okay. And then Item No. 821, which would be 2148, which would be 5:48, there was another call

from 571-5158 to Nakia Johnson's number; is that correct?

A. Yes, sir.

Q. Okay. All right. So if you watch the video, one of the questions y'all had for him was -- y'all said he didn't get a phone call from Nikki until 6:30-something. So isn't that two phone calls before 6:00?

A. I lost my place. 821, okay. I'm not understanding what the number below that one is that's got the F out beside it.

Q. I think that's call forwarding. That's my understanding from the little training I had.

THE COURT: Well, ask your question again. He can either answer it or he can't.

BY MR. JOHNSON:

Q. Okay. There's no question that there was a call at item 819 from Nikki Chisolm to Mr. Johnson, then there was a call out of 820 from Louise Pinkney to Nakia Johnson, and then at 821 there was another call from Nikki Chisolm to Nakia Johnson?

THE COURT: When you say 821, you mean the item not the time?

MR. JOHNSON: Item No. 821.

THE COURT: All right. Let's keep the record

straight.

Is that a question?

BY MR. JOHNSON:

Q. The question was, were there calls placed from those numbers to Nakia Johnson?

A. It says in the originating number -- I'm assuming that's a call. I'm not sure. Like I said, the forwarding thing, I think, is throwing me off a little bit.

Q. Okay. If you remember the testimony of the man from AT&T, he said the number that's the calling number is the originating number; is that correct?

A. I think that's right.

Q. Okay. And the terminating number would be the number that was called; is that correct?

A. Correct.

Q. Okay. All right. So go right back to those items again. Those numbers called Nakia Johnson's number, correct, based upon the phone bill?

A. Based on this bill, yes, sir.

Q. And this is from AT&T?

A. I have to take your word for it.

Q. Well, you'd have to take his word for it, correct --

A. Right.

Q. -- the guy that testified, because he testified these were the correct bills. So this is from AT&T; is that correct?

A. Yes, sir, I guess so.

Q. All right. Then there's a phone call, Item No. 8- -- 822 and 823 got ones by it. But Item No. 824, there's a phone call from the number that is Nakia Johnson, the 3322, and it called 3369, which is Ms. Pamela Hall's number; is that correct?

A. I believe that's her number, yes, sir.

Q. Is that correct?

A. I think so, yes, sir.

Q. Okay. And then Item No. 826 at 2152, there was another call from 3322 and that call went to Ms. Pamela Hall's number; is that correct?

A. Yes, sir.

Q. Okay. Now let's go to item 828. Item No. 828, 829, same phone call at 2154. And 2154 would be 5:54; is that correct?

A. Yes, sir.

Q. All right. At 2154 a phone call came from Nakia Johnson's number to Ms. Pamela Hall's number; is that correct?

A. Yes, sir.

Q. All right. And that was the number that y'all

were talking about in the station that that was the time -- whatever was going on with Nakia and Shawntea, that's the time they're supposed to be in the cemetery or wherever they're supposed to be; right?

A. That's supposed to be, like, a two-minute call, so I'm guessing.

Q. Well, that's the only two-minute call between the numbers on here, correct; the only two-minute call from his phone number and her phone number; correct?

A. Yes.

Q. Okay. So this was the call that y'all were talking about?

A. Yes. I'd have to assume that.

Q. Okay. And to verify this was the call y'all were talking about, immediately after that, on 830, there was a call from Ms. Pamela Hall's number back to Nakia's number for a minute and 25 seconds?

A. Yes, sir.

Q. Okay. And that was the time that -- I think y'all was saying on the video that that was the time she called him back and said bring the child home; is that correct?

A. Yes.

Q. All right. Now, as the investigating officer, did you have an opportunity to watch the video from Mr. Ron Fountain's store?

A. Yes, sir, I did.

Q. You watched the whole video?

A. Yes, sir.

Q. Did you hear the testimony from Mr. Capps about what time Mr. Johnson was in the store?

A. Yes, sir.

Q. Okay. Mr. Capps said Mr. Johnson was in the store at 5:58; is that correct?

A. That's what he said.

Q. Okay. And the call originated at 5:54, correct, the one from Mr. Johnson to Ms. Hall?

A. Yes, sir. Was it Item No. 828?

Q. Yes, sir.

A. Yes, sir.

Q. And it was at 5:54, and the call last two minutes; correct?

A. Correct.

Q. Were you in here when Ms. Pamela Hall testified?

A. Yes, sir.

Q. Okay. And she testified -- and I think --

MS. SIMPSON: Objection, Your Honor, with

respect to pitting witnesses.

MR. JOHNSON: I'm not -- I'm just asking --

THE COURT: Ask the question and then I'll --

MR. JOHNSON: Okay.

BY MR. JOHNSON:

Q. Did you hear Ms. Hall's testimony?

A. I did.

Q. Okay. And she testified and answered yes to my question that it was -- 5:54 was the call that she was talking about; is that correct?

A. If I'm not mistaken, I believe that's right.

Q. Okay. And she also testified that she called back at --

MS. SIMPSON: Objection, Your Honor.

MR. JOHNSON: Your Honor, I'm just -- I'm not pitting --

MS. SIMPSON: Pamela Hall's testimony --

THE COURT: He's not pitting, he's just saying that's what she said --

MR. JOHNSON: Yeah.

THE COURT: -- and did he hear it.

Overruled.

MR. JOHNSON: Thank you.

BY MR. JOHNSON:

Q. So if the call was at 5:54 and the call lasted

two minutes, that would be 5:56; would that be correct?

THE COURT: If that's --

A. Plus two minutes would be --

Q. If the call was at 5:54 and allegedly lasted two minutes, then that -- 2 plus 4 is 6, it would be so 5:56; would that be correct?

A. That makes sense, yes, sir.

Q. All right. And then there was another call for a minute and 25 seconds, so that would be 5:56 and another minute would be 5:57; is that correct?

A. I'm assuming you're speaking of item 830.

Q. Yes, sir.

A. Okay. That's what's on the record, 5:57.

Q. That was on the record. So we know -- based upon the testimony that was presented and the records, we know at 5:58, he was in Mr. Ron Fountain's store; is that correct?

A. 5:50-something and some change.

Q. 5:58 on the -- from the testimony that Mr. Capps said, 5:58, he was in the store.

A. I'm not sure if it's 5:57 and some change or 5:58, but just rounding off, that sounds about right.

Q. Okay. Wherever you want to round it off at.

But now -- and you said the cemetery was more than a mile or so from the store; is that correct?

A. A few miles. It's not far.

Q. Okay. So if you're in the cemetery -- I'm just asking you, do you think that you can get from that cemetery --

MS. SIMPSON: Objection, Your Honor.

THE COURT: He can't give an opinion. He's not qualified to give an opinion.

BY MR. JOHNSON:

Q. On the video at 5:58, he was walking around in the store. We don't have -- okay. Could someone be in the cemetery and the store at the same time?

MS. SIMPSON: Objection -- well, I take that back. I withdraw my objection.

A. I would think not. It would be a pretty nice trick.

Q. All right. That's good. Let me go on to another question. So Nakia was a police officer. And I think the other officer in there that was asking the questions about the DNA, that was Officer Chris Phillips; is that correct?

A. Yes, sir.

Q. Okay. And at that time y'all had not even had

the DNA results?

A. No, sir. I know they were trying to take DNA samples, but to have the DNA results back, no, sir.

Q. All right. So in other words, you were trying to entice him -- using police tactics and trying to entice him to admit something?

A. I wasn't.

Q. Not you, but that's what was going on?

A. It was a tactic that he was using.

Q. Okay. Okay. And he -- and if you watch the video, he continued to say, I didn't do it; is that correct?

A. Yes, sir.

Q. So we're talking the difference in the phone call at the cemetery at 5:57 and being in the store at 5:58; is that correct?

A. Going by your records here, yes.

Q. Okay. And the video we saw showed Nakia and Shawntea in the store; is that correct?

A. That appeared to be Shawntea with him, yes.

Q. Okay. And the video showed her going -- matter of fact, to pick up candy and show him which one -- did you watch the video?

A. Yes.

Q. Okay. Candy or something, showing him about

the candy?

A. I think both hands had something in them, yes.

Q. Okay. And, matter of fact, when you started watching the video, he was in the back of the store already and she was walking around in the store; is that correct?

A. Seemed like -- if I remember right, it seemed like he was coming in from the side. But he walked into the shop where the camera was at.

Q. Okay. Wasn't he coming from the back aisles in the video?

A. I'm not sure how the cameras are situation in the store.

Q. Would you like to see the video?

A. It doesn't matter. I agree that he came from somewhere in the store.

Q. Okay. Well, you agree he came from somewhere in the store?

A. Yes.

Q. Which would say he was already in the store at 5:58; isn't that correct? If he had come from somewhere, he had to be in the store.

A. By the time on Mr. Fountain's video, yes.

Q. Okay. You remember Officer Phillips taking the telephone and saying the network doesn't lie?

A. I'm sorry?
Q. Do you remember Officer Phillips at the time taking Mr. Johnson's telephone and saying the network doesn't lie?
A. I remember that.
Q. He said, forensically, it doesn't lie.
A. Uh-huh.
Q. Mechanically, it don't lie?
A. I think it was electronically.
Q. Okay. Okay. I'm assuming it applied to the phone, but it doesn't apply to the video?
A. I don't understand the question.
Q. Wouldn't -- you're saying you're not sure whether the video is giving the proper time. You don't know whether the time is proper or not, but it's the time that is on the video?
A. It's the time that is on the --
Q. And it's the time that shows him in the store?
A. That's what it shows on the video.
Q. And he was in the store at 5:58?
A. According to the video.
Q. Okay. And Shawntea was in the store with him?
A. Yes, sir.
Q. Okay. What was the weather like that day?
A. I'm sorry?

Q. What was the weather like that day?
A. They said it had rained earlier that day. When I was called to the scene, the rain had slowed down to a light drizzle, if I remember correctly, when I got there.
Q. Okay. Was there some forecast -- and it might have been just rain. But was there some forecast -- if you remember, fine; and if you don't --
A. I don't.
Q. Was there some forecast about a storm coming?
A. Honestly, I couldn't tell you.
Q. Okay. Was the questioning about the telephone network a strategy to make him -- entice him to say something just like the testimony about the -- about the DNA? Was the testimony about --
A. No, sir. I was honestly trying to understand why -- what was coming from Ms. Hall's phone and what the allegations were to match up to his phone. I was really trying to understand and get, I guess, his side of the story to try to poke holes in his story or get to the bottom of what was going on. It wasn't used as a tactic to elicit any kind of a response; I was looking for information.
Q. But if you would have followed with that phone bill, wouldn't what he told you mirror the phone

records?

A. No, sir. He stated he was on the phone with Nikki Chisolm. And even with your records, he wasn't on the phone with Nikki Chisolm when the butt-dial went to Ms. Hall.

Q. He said he wouldn't. But that's the whole thing: Weren't you the one who said it was a butt-dial? He never said he did a butt-dial, did he?

A. And that was for lack of a better term. I don't know what the correct terminology --

Q. But you were the one who brought up butt-dial. He never said he did a butt-dial, did he?

A. He said he never called her, but we showed that it was an outgoing call.

Q. He said -- if you look at the video -- the good thing about this, the video is going to go with the jury. If you look at the video -- if you look at the video, didn't he repeatedly tell you she called him to -- and then the records says she called him two or three times and then he called her back? Doesn't the record -- didn't he say that?

A. I think the record -- and I think that's what Ms. Hall was telling me, that she called several times. I guess -- and he even confirmed about pop

oil skins [phonetic]. I don't even know what that is.

But she called him back after she had heard the conversation at 5:54, I think it was. So there were phone calls back and forth, yes, sir, to answer your question.

Q. I want to make sure your reasoning for arresting this police officer was because there were discrepancies in the phone call in your mind; that's one of the reasons?

A. The allegations --

Q. The allegations --

A. -- and the phone call.

Q. Okay. And there was no proof in the allegations other than the allegations?

A. The allegations and what I had on the phones at the time.

Q. And when you said you had some other evidence he didn't have, there was really no other evidence, was there?

A. Just the sworn statements by Ms. Hall.

Q. Okay. Do you remember how long he stayed in jail after he was arrested?

MS. SIMPSON: Objection, Your Honor; relevance.

THE COURT: Sustained.

BY MR. JOHNSON:

Q. You do understand that the time of the phone call, the technology, the electronics, all of that says he was in the store?

A. At which time? And I'm not being aloof, I'm just -- if you'll refer to a number.

Q. The 5:50, he was in the store.

A. The 5:54, that's the phone call, I think. We said the time on the phone call was --

Q. Okay. But he was walking around in the store at 5:58. He couldn't get in there to walk around without already being in the store.

A. I guess. I don't know.

Q. And the other thing too: I think y'all were using information from Ms. Hall's phone to ask him questions and using information from his phone and asking questions; is that correct?

A. Yes, sir.

Q. And when his answers didn't equate with Ms. Hall's phone, that was when y'all said there was a problem; is that correct?

A. His statements in the interview were that he never called her; that it was an incoming call from her, when it's actually showing an outgoing call to her. That was the discrepancy.

Q. Okay. But the phone records show the two-minute call came from her -- to his phone from her, didn't it?

A. No, sir.

Q. That 5:54, it didn't --

A. The phone call shows an outgoing call from his phone to her phone.

Q. At 5:54?

A. And that's when she heard what she heard and she put it in her statement. It wasn't an incoming call, it was an outgoing call from Mr. Johnson's phone to Ms. Hall's phone.

Q. But didn't he tell you over and over he wasn't sure, he was just guessing at the time? Didn't he tell you that?

A. He gave us several times.

Q. Okay. But didn't he tell you that? Didn't he tell you over and over, I don't know why, I don't understand, you know, what's on the phone is on the phone, but I knew I talked to these people? Didn't he tell you that?

A. Yeah, he said he didn't know.

Q. Okay.

A. He said he couldn't explain why it showed him having an outgoing call when he said it was an

incoming call.

Q. Okay.

A. He couldn't explain it.

Q. Okay. The officers in the room said it was an incoming call. Didn't he say it was an outgoing call?

A. No, sir.

Q. Doesn't the phone records say it was an outgoing call?

A. From him to Ms. Hall.

Q. Correct.

A. Yes, sir.

Q. And you'll agree that at 5:58 he was in the store?

A. According to your phone records and what's on the video.

Q. According to my records or AT&T's records?

A. The same.

MR. JOHNSON: That's all.

THE COURT: Redirect?

MS. SIMPSON: Brief, Your Honor.

REDIRECT EXAMINATION

BY MS. SIMPSON:

Q. I'll actually start with the phone. At the time of the interview -- and let's be clear. He was

arrested the day of the disclosure; correct?

A. Within hours. The dates were different, but within that day.

Q. And the phone -- you're not actually utilizing the records at that point; correct?

A. Correct.

Q. What do you have to do in order -- or were you -- what phone were you looking at? Was it records or a physical phone?

A. A physical phone.

Q. Whose phone was it?

A. Mr. Johnson's.

Q. Okay. So y'all didn't actually have the records at that time?

A. Like this here?

Q. The phone records.

A. No, ma'am.

Q. In order to get the phone records, what did you do have to do?

A. Send off a search warrant.

Q. Okay. So after he was arrested, did your the investigation, along with SLED's, continue in this case?

A. Yes, ma'am.

Q. And in order to get an arrest warrant, tell the

jury the process you have to go through as an officer. Do you get to just write up something and say, hey, I'm going to arrest him based on what I write down?

A. It's not that easy.

Q. Tell the jury what you have to do.

A. We have to establish what they call probable cause. Probable cause is a little bit less than what you would call reasonable doubt, which is required here today for a conviction. Probable cause means you have to prove that because of the circumstances surrounding the affidavit you fill out, this alleged crime probably happened.

Q. And who do you -- before we get into too much of a legal discussion, who do you present it to? Is information presented to someone who actually --

MR. JOHNSON: Your Honor, I object to relevancy.

THE COURT: Well, you opened the door on didn't he have an arrest warrant at that time, so she can ask how he gets the warrant.

Who did you go before to get the warrant, that's the question.

THE WITNESS: I went in front of a county magistrate here in Kershaw County.

BY MS. SIMPSON:

Q. Okay. So at that time, after you presented the information to the Magistrate, were you actually issued the warrant?

A. I was actually issued the warrant.

Q. Did you actually serve it at that time?

A. At the time that --

Q. As soon as you got it, before he walked in?

A. No.

Q. And I believe you stated on direct that it's your discretion whether you actually serve it.

A. My affidavit is -- like you said, it's my discretion whether someone is actually processed on a warrant that I obtain.

Q. And as I said, your investigation -- she -- had the victim even been forensically interviewed yet?

A. No, ma'am. That was not until the next day.

Q. So that was after the arrest. And with respect to the testing in this case, the forensics that were presented to SLED, when was that done? Was that subsequent to his arrest as well?

A. It was after his arrest.

Q. Going to the whole can you be in two places at once and the timing on the records and the Fountain Grocery Store, I want to focus on what counsel was

talking to you about on cross.

With respect to surveillance systems and locations, have you had some experience in dealing with surveillance equipment from wherever?

MR. JOHNSON: Objection, Your Honor. I don't know that he's qualified to talk about surveillance.

MS. SIMPSON: I'm asking about --

THE COURT: He can testify about his experience; he can't give opinions.

THE WITNESS: Can she repeat the question, please?

BY MS. SIMPSON:

Q. In your experience as an investigator, have you dealt with different surveillance systems?

A. Yes, ma'am.

Q. And what types of cases have you dealt with them?

A. Bank robberies, homicides, armed robberies, petty thefts, things of that nature.

Q. Okay. And are surveillance systems always accurate in your experience?

MR. JOHNSON: Objection; that asks for an opinion.

MS. SIMPSON: I think he --

THE COURT: The ones that you've dealt with,

not an opinion. The ones that you've had first-hand knowledge with.

BY MS. SIMPSON:

Q. With respect to the ones you actually dealt with, are they always accurate with respect to the timestamps on it and what time the incident actually occurred?

A. Most of the ones I deal with, the time and dates are set by the actual owner-operator, so that could differ. My wristwatch may say something different than your wristwatch. But I have noticed from time to time the information on a video that I retrieve does not match the information I have on my watch or my cell phone or something of that nature.

Q. And going to the video from the store, are we within the timeframe of the incident, whether it's a matter of minutes or seconds off, per Pamela Hall, as to when this occurred, the phone call and disclosure?

A. Within the same amount of time or timeframe, but I'm not sure about exact time.

Q. So we're not exact. But who is in the store on the video?

A. Mr. Johnson and Miss Ford.

Q. Okay. Is anybody else with them?

A. I didn't see anybody --
Q. Okay. And --
A. -- that I could relate.
Q. And was that consistent -- them being in the store consistent with what you learned in the course of your investigation?
A. As far as he usually took them to buy candy and things of that nature. I mean -- and her being the sole person with him at that time is consistent.
Q. Okay. And based on your investigation for how this came about that night, where was he going when he left the house with the victim?
A. He told us and, I think, Ms. Hall that he was going to the store to buy the kids candy.
Q. And that's actually confirmed in the video --
A. Yes, ma'am.
Q. -- that they're in the store on that day?
A. Yes, ma'am.
Q. Going to the phone call that counsel addressed -- and we'll just stick with the one at 5:54, the main call at issue here. I don't know what item number it is --
A. 828.
Q. 828. That is an outgoing call; correct?
A. Yes, ma'am.

Q. And with respect to Mr. Johnson's statement and his interview, who did he indicate he was actually talking to during this call, or did he indicate?

A. He stated that he thought he was talking to Nikki Chisolm. But that number wasn't on the phone log. It was an outgoing call from his phone to Pamela Hall's.

Q. Okay. And with respect to what he says in the interview about Nikki Chisolm and that conversation, what was the nature of that conversation that he was having with Ms. Chisolm?

A. Sexual in nature.

Q. Sexual in nature?

A. Yes, ma'am.

Q. And --

MS. SIMPSON: Beg the Court's indulgence. I believe that's all I have for you, sir.

THE COURT: Thank you. You may step down. Next witness.

MR. JOHNSON: Your Honor, may it please the Court. I know the rule, but just for the purpose of the record, she went into new items that I didn't get to ask.

THE COURT: All right. Answer any questions Mr. Johnson may have.

RECROSS-EXAMINATION

BY MR. JOHNSON:

Q. Two questions.

A. Yes, sir.

Q. At 2147 item 819, that was a call from Nikki Chisolm to him; is that correct?

THE COURT: Ask that again.

Q. At item 819 and the time of 2147, there was a phone call from Nikki Chisolm to Mr. Johnson; is that correct?

A. That's what it shows on here, yes.

Q. Okay. And item 821 at 2148, there was another call from Nikki Chisolm to Mr. Johnson; is that correct?

A. Yes.

Q. And that was before 2154?

A. I'm sorry?

Q. That was -- 2148 is before 2154?

A. Yes, sir.

MR. JOHNSON: Thank you, Your Honor.

THE COURT: You may step down.

Next witness, please.

MS. SIMPSON: Beg the Court's indulgence one moment.

Your Honor at this time, the State rests.

THE COURT: Madam Forelady, ladies and gentlemen of the jury, that concludes the evidence on behalf of the State. I need to spend 10 or 15 minutes with the lawyers. We'll come back out and I'll tell you where we are. Please leave your transcript in the chair. Do not discuss the case and do not deliberate.

(The jury exits the courtroom at 3:52 PM.)

THE COURT: All right. Let's take five. Mr. Johnson, I'll be discussing with your client his right to testify when we come back out after you make any motions that you may have.

MR. JOHNSON: Yes, sir.

THE COURT: Go ahead and prepare him for that. We'll take a real short break and be right back.

(Short break.)

THE COURT: Mr. Johnson -- well, first of all, any motions by the State?

MS. SIMPSON: No, Your Honor.

THE COURT: By the Defendant?

MR. JOHNSON: Your Honor, looking at all of the evidence in the light most favorable to the State, I move at this time, Your Honor, on the charge of criminal sexual conduct first degree, that there was no evidence put in the record in Kershaw County

that -- there was no evidence in the record that he had any contact, sexual penetration, physical contact --

THE COURT: How about in the computer room? Wasn't that house in Kershaw County?

MR. JOHNSON: That wasn't -- my understanding, that wasn't before 11. When I read the transcript, she said everything started at 11.

THE COURT: She said it started three years ago.

MR. JOHNSON: No. That was Fairfax stuff, which is another county.

THE COURT: Go ahead. What else?

MR. JOHNSON: Just the standard motion on the other two charges. I mean, honestly, looking at the evidence, I guess it is evidence that would go to the jury. But on that one, I was paying close attention to that one all through the trial just to make sure.

THE COURT: All right. Ms. Simpson, what evidence do we have in the record that it happened in Kershaw County?

MS. SIMPSON: With respect to the Kershaw County incidents themselves, we do have the computer room. And Defense counsel's motion relies only on

the forensic interview where Mr. Kellin was interviewing and the victim initially said, yeah, it started when I was 11. But, in reality, we have the timeframe dating back to 2007 --

THE COURT: On a number of occasions. There was a good bit of testimony saying -- about going back several years.

MS. SIMPSON: Yes, Your Honor. And during that time -- and part of the reason we put up both Melissa Hall and Stacey Hall, which you have that information on the record, the computer room was actually at Melissa Hall's residence, and that's the 927 Hasty Road in Cassatt. You also have her living with Aunt Stacey at 3046 Stevens Road, which is in Kershaw County. And while it didn't happen at the house, what he would do is when he would visit, he'd take her to a dirt road, which is also located in Kershaw, one that she was actually able to remember that we didn't put on the record.

As far as timeframes, we have them prior to -- her date of birth is October 16th, 1999. During the time of this disclosure, she was actually 11; however, even with the defendant's statement, he was present, she would have been in Kershaw County at times or at least enough to go to jury prior to ten

in which penetration was occurring, sexual batteries were occurring, be it oral or vaginal, because she stated that while, yes, it began in Fairfax, that is also where the sexual batteries, beyond just touching and fondling and things of that nature, began. And once it began, it continued.

This is a case of chronic abuse, so of course dates and times. I think there's clearly enough on the record from the testimony of all these witnesses in their totality to include Ms. Hall that would present enough evidence for the CSC first to be presented to the jury, and that point they can give it any weight that they so need.

THE COURT: Mr. Johnson?

MR. JOHNSON: Your Honor, suppose they did -- I went through the interview and I listened to the testimony. And there was -- both of her forensic interviews said it happened at 11, and on her testimony in the trial, she never said it happened before 11. Now, I think we can make the assumption that maybe it happened, what time it happened at the aunt's house. But we don't know when it happened. But none of the testimony in the record says it happened before 11.

And, Your Honor, it's so jumbled because of the

charges from 2007 to now. But if you look specifically at Kershaw County, there's no testimony that it happened in Kershaw County. There may be testimony it happened in some of the other counties, but none in Kershaw.

MS. SIMPSON: Your Honor, I believe Mr. Johnson actually just kind of made the point. He said that there had been no testimony. But with respect to the victim's actual direct testimony, she said that while it started in Fairfax, at some point they moved back to her grandmother's property. And, again, she actually said it had been going on for a period of years. It's when she would have been back at her grandmother's property, which is Stevens Road here in Kershaw County. And the -- he was clearly -- the testimony has always been that he always visited, of course from the children and the aunt, and when he did, that would be on occasions that he would either send her mom to the store or take her down the dirt road. And so -- and that is based on her direct testimony.

The second forensic interview and transcript he's relying on, of course, is not in evidence. So we're left with her testimony that was presented on the stand which is before the jury. And I believe

there is more than enough to go to the jury as the rule requires the existence.

THE COURT: All right. Mr. Johnson, I'm going to respectfully deny your motion. I think there's sufficient evidence in the record that, if the jury believes it and they believe it's been proven to them beyond a reasonable doubt, would support a verdict for criminal sexual conduct both in the first and in the second degree and/or lewd act. So I'm going to respectfully deny your motion.

MR. JOHNSON: Thank you, sir.

THE COURT: Any other motions by anyone?

MS. SIMPSON: Nothing from the State.

THE COURT: All right.

Mr. Johnson -- Mr. Nakia Johnson, if you would please stand. Please raise your right hand. Do you swear or affirm the testimony you're about to give will be the truth?

THE DEFENDANT: I don't plan to give any testimony, Your Honor.

THE COURT: Do you swear or affirm the testimony you're about to give me will be the truth?

THE DEFENDANT: Yes.

THE COURT: I'm not going to ask you for any testimony, I'm just going to ask you some questions

and make sure you understand. You may be seated.

THE DEFENDANT: Yes, sir.

THE COURT: I'm not going to elicit any testimony from you. I want to make sure you understand your right to remain silent. Fair enough?

THE DEFENDANT: Yes, sir.

THE COURT: All right. We've reached the stage in the trial where you can tell your side of the story; in other words, you can present your defense. And, obviously, you don't have anything to prove. The burden of proof is on the State to prove your guilt beyond a reasonable doubt. So you have no requirement to prove anything.

But if you choose to do so, you obviously can put up your defense. And what that consists of is you can call witnesses to testify on your behalf, you can introduce relevant exhibits, and you can get on the witness stand and testify and tell your side of the story. So listen to me. I'll give you a chance to respond.

If you do that, obviously you'll be subjected to the same cross-examination as anyone else who testifies in a trial.

Does he have a record that would --

MS. SIMPSON: No, Your Honor, not that I'm aware of. No.

THE COURT: So you'd be subject to cross-examination. Now, under the Constitution of the United States the state of South Carolina, you have the right to remain silent. A person who is accused of a crime in our state or in the United States is never, ever required to testify in a trial. You have the absolute constitutional right to remain silent. And if you exercise that right, part of my instructions will be that you have no obligation to prove anything; you have the absolute right to remain silent. And I will tell the jury the fact that you do not testify in this case cannot be used against you in any manner whatsoever, no inferences can be drawn from the fact that you did not testify, and they can't hold that against you in any manner whatsoever.

I will further instruct them that they can't even talk about the fact that you didn't testify, and they can't even consider it when they deliberate your guilt or innocence. You have the absolute right to remain silent. And if you exercise that right, it is your constitutional right, and they can't hold it against you.

Now, do you understand your right to remain silent?

THE DEFENDANT: Your Honor, yes, I do.

THE COURT: And, obviously, you can get the advice of your lawyers, anyone else, but when it comes down to the bottom line, it's obviously your choice. And if you need any additional time to talk to Mr. Johnson, I'll be glad to give it to you, or you can tell me now because, obviously, we got another hour. If you're going to testify, we have to do it this afternoon.

THE DEFENDANT: Your Honor, my testimony has already been made that night when I turned myself in to the Kershaw County Sheriff's Department. And that's the only statement I wish to make at this time.

THE COURT: So you do not wish to testify?

THE DEFENDANT: No, sir.

THE COURT: Thank you.

Mr. Johnson, do you have any other witnesses?

MR. JOHNSON: No other witnesses. And the Defense rests.

THE COURT: All right. Anything else we need to inquire?

MS. SIMPSON: No, Your Honor.

THE COURT: All right. I'm going to bring the jury in and tell them that that concludes all the testimony in the case and what is left are the final arguments and my charge, and that we'll start court in the morning at 9:15.

(The jury enters the courtroom at 4:11 PM.)

THE COURT: Madam Forelady, ladies and gentlemen, fist order of business, please give us the transcripts you were provided. The transcript itself is not evidence in the case. You will have the disc to play if you need to. So please pass those down and give it to the bailiff.

Madam Forelady, ladies and gentlemen, as you heard when we took this last break, the State has rested, which means they've completed all of their testimony. The Defense, likewise, has rested; they're not going to present any testimony. So that concludes all of the testimony that we'll hear in the trial of the case. I've still got about an hour's worth of work to do with the lawyers. I have to go over my instructions with them, make sure that I have everything included that deals with all of the subjects. That will take us to 5:00 or 5:30. So what I think I'll do is have all of that out of the way and start at 9:15 in the morning. I don't

have to wait on anybody in the morning. We'll start at 9:15.

And what will happen in the morning is, first thing out of the gate, the State will make their final arguments, followed by Mr. Johnson. Once those two arguments are made, I'll instruct or charge you on the law. And my instructions are probably 15 minutes, and then you'll be in a position to receive the case and start your deliberations. And when you do that, you'll receive all of the evidence that's been admitted into the trial of the case. And we'll go over the protocol of that.

I want you to go home and have a wonderful evening, get some rest. Y'all have been wonderful. Y'all have paid great attention, I really appreciate it. You're great to work with. Don't discuss the case with anyone, don't let anyone discuss it with you. Don't do any kind of research and do not deliberate amongst yourselves. You'll do that tomorrow. Please everyone be here by 9:15 in the morning.

(The jury excused for the evening at 4:14 PM.)

THE COURT: All right. Ladies and gentlemen, my normal charge is this: Start off by, the fact

that he's been indicted and arrested and charged is not evidence in the case; presumption of innocence, multiple indictments, you have to consider each one of them separate and apart from the other; reasonable doubt is the kind of doubt to cause a reasonable person to hesitate to act, and also firmly convinced charge; credibility of witnesses, duties of the judge and the jury, not to infer anything from what I've done up here, prior conviction of a witness for credibility purposes, failure of the defendant to testify, right to remain silent in other words. I think that's all the general charge.

Then I'll charge the criminal sexual conduct first and second, lewd act. I'll charge that statute about corroboration, unanimous verdict, formal verdict, guilty or not guilty, three separate verdict forms.

Ms. Simpson, anything else you would like?

MS. SIMPSON: Your Honor, just a question. I understand your reasonable doubt will include the hesitate to act. Is the firmly convinced language from Darby? I just want to know for purposes of -- is it proof that leaves you firmly convinced? Can I know what it is?

THE COURT: It's the standard charge we give all over the state. It's the very few things in this world that you can know with absolute certainty, but the law doesn't require that; if you're firmly convinced, however -- you know what I'm talking about. I'll read it to you right now.

MS. SIMPSON: Thank you.

THE COURT: All right. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty.

If, on the other hand, you think there's a real possibility that he's not guilty, you must give him the benefit of the doubt and find him not guilty.

MS. SIMPSON: Thank you.

THE COURT: Is that from Darby?

MS. SIMPSON: It is.

THE COURT: It says it's from State v. Mchoney or State v. Needs. Maybe I should update that.

MS. SIMPSON: This may be old too, Your Honor.

This case may actually be older; it's from '96.

THE COURT: 1998.

All right. Anything else about the general charge from the State?

MS. SIMPSON: No, Your Honor.

THE COURT: Mr. Johnson?

MR. JOHNSON: Your Honor, I just want to ask about the collaboration charge, particularly with this lewd act. This case -- the statute changed, I think, in 2012. In 2011 when this happened, I'm asking the Court, I thought you had to have the collaboration evidence in 2012 -- I mean 2011, but they changed the statute in 2012. And I know you don't need it now. But -- and also, there's the thought out there that even if you can charge it, it's not necessarily a thing that you have to charge.

So I would propose that the charge about collaboration [sic] that needs to -- do not need to collaborate [sic] the testimony. I would ask the Court to consider not charging that.

THE COURT: What's that statute, ladies?

MS. SIMPSON: 16-3-657.

THE COURT: All right. Mr. Johnson, it says: The testimony of the victim need not be corroborated

in prosecutions under 16-3-652, which is criminal sexual conduct in the first degree, as well as criminal sexual conduct in the second degree with minors.

Ladies, why should I not charge it?

MS. SIMPSON: Your Honor, I think the case law is directly on point that if it is the appropriate law in the case, which here it clearly is, our legislature intended it, and as long as it's charged, I think, within the context of credibility of witnesses, like somewhere in line with your charge, that it is appropriate and needs to be charged.

THE COURT: Why not charge it, Mr. Johnson?

MR. JOHNSON: Your Honor, I think the recent case law says it's up to the Court's discretion whether to charge it.

THE COURT: Well, hand -- you got that case?

MR. JOHNSON: No, sir. But I guess I'll try to find it.

And the other things is, this case occurred in 2011, Your Honor. And I could be wrong, but I don't think I'm wrong. On the lewd act --

THE COURT: I'm not going to charge it on the lewd act.

MR. JOHNSON: Oh, okay.

THE COURT: It just -- I don't think it covers lewd act. Does it?

MS. SIMPSON: No, Your Honor, I don't think it does.

THE COURT: 652 and 658.

MR. JOHNSON: Okay. Well then, Your Honor, the only thing is it's in the Court's discretion. If you charge it, I don't have anything, Your Honor.

THE COURT: What is lewd act?

MS. SIMPSON: 16-15-0140.

THE COURT: 16-15 what?

MS. SIMPSON: 140.

THE COURT: So that's not included in those -- that section? So you're right on the lewd act.

MS. SIMPSON: And, Your Honor --

MR. JOHNSON: Your Honor, once you've given your charge though -- once you give that, you got your lewd act and your criminal first and your criminal second. I guess, unless you go specify lewd act --

THE COURT: I stated that the prosecution for criminal sexual conduct with a minor in the first degree and the second degree, no corroboration is necessary, or I'll read the statute.

MR. JOHNSON: Okay.

THE COURT: And I won't mention lewd act.

MR. JOHNSON: All right, sir.

MS. SIMPSON: And along those same lines -- in that same vein, as far as criminal intent and the lewd acts, of course, the intent for that charge versus the strict liability defenses of criminal sexual conduct with a minor. Just as far as what order the charge is going to be read.

THE COURT: The charge will be read criminal sexual conduct in the first, criminal sexual conduct in the second, and lewd act.

MS. SIMPSON: Okay.

THE COURT: The defense has been indicted and charged with the offense of lewd act. In order to prove lewd act, the State must prove beyond a reasonable doubt whatever the elements are --

MS. SIMPSON: All right. Thank you.

THE COURT: -- which are that the defendant was over the age of 14, that the defendant willfully and lewdly committed or attempted to commit a lewd or lascivious act upon the -- on or on the body or its parts of the child under the age of 16 with the intent to arouse. And I'll define what lewd means and lascivious means, and that's it. Very simple

charge. Where did you come in with strict liability?

MS. SIMPSON: No. I mean, as far as, like, mistake of age is not a defense, consent is not a defense, with respect to the criminal sexual conduct with a minor in the first degree and the second degree; however, with lewd act, it differs in that respect.

THE COURT: I'm just going to charge the statute.

MS. SIMPSON: Okay. Thank you.

THE COURT: Anything else?

MR. JOHNSON: Nothing else from the Defense, Your Honor.

THE COURT: We find the defendant not guilty, we find the defendant guilty on each separate verdict form. There will be three verdict forms.

All right. Thank y'all. Anything else for the record before we break for the evening? We need to delete from the exhibits the disc of the young girl who did not testify.

MS. SIMPSON: It was never actually entered, it was just marked for identification. So --

THE COURT: But we'll probably need to leave that as a Court's exhibit in case anybody -- but

we'll certainly not let it go back to the jury. Anything else?

MS. SIMPSON: Nothing from the State.

MR. JOHNSON: Nothing from the Defense.

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

(Court in recess for the evening.)

THE COURT: Anything for the record by the State before we have final arguments?

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

THE COURT: And Mr. Johnson?

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

THE COURT: Okay. Bring the jury in, please.

(The jury enters the courtroom at 9:20 AM.)

THE COURT: Good morning.

THE JURY: Good morning.

THE COURT: Okay. As I said yesterday, we're down to the final arguments. The State will go first, followed by the Defendant. At the conclusion of that, I'll charge you or instruct you on the law, and then you'll be in a position to begin your deliberation.

Please pay close attention to the lawyers. As

I've said, you've now heard all of the evidence that you're going to hear, and that's where you'll make your decision. The final arguments are like opening statements: It is not evidence in the case. Obviously they are adversaries for each particular side and they'll be arguing the evidence in the light most favorable to their position. But you've heard the evidence and that's where you make your decision.

So, having said that, the State may proceed.

MS. SIMPSON: Thank you, Your Honor. May it please the Court.

The face of a predator, what exactly does it look like? Well, for the victim in this case, Shawntea Ford, it wasn't some stranger in the street wearing a mask and carrying a gun and hiding under the cover of darkness; no, it was someone she knew, someone she loved. And he didn't need a gun or a mask because he had the most powerful weapon of all: A veil of trust, together with a position of authority and control that only an adult can have over a child, especially one who is in a father-figure type role.

No, the face of her predator was that of the defendant, Nakia Johnson. Nakia Johnson, like her

father, and was the father to her three siblings; he was trusted, a police officer; her mother trusted him, loved him. And over the course of a period of years, he not only betrayed that trust, but he stole the most precious gift that is given, and that is Shawntea's childhood and her innocence. And, members of the jury, make no mistake about it, as we go through the facts in this case, there's only one victim, and that is Shawntea Ford.

Now, this is contrary and completely contradictory to what the defendant and the Defense would have you believe, because they would have you believe that Nakia Johnson is the victim in this case. As he said in opening statements, this is his nightmare, he's a victim of Shawntea, he's a victim of the police, people he worked with, his friends, his colleagues; he's a victim of Pamela Hall, he's a victim of the State, this is his nightmare. Poor, poor Nakia Johnson.

Well, let's be clear, Nakia Johnson is no victim. He is smart, manipulative and, I submit, perhaps even charming at times because he was trusted and he was loved, but, most importantly for this case, he was feared.

Good morning, members of the jury. As you've

learned during the course of this trial, my name is Nicole Simpson and I, together with my co-counsel Kathryn Cavanaugh, together we represent the State of South Carolina, the citizens of Richland and Kershaw Counties, and the victim, Shawntea Ford. And as solicitors, it's our job to prosecute all crimes that occur here. And as a result of his actions from a period of time from 2007 until the day this finally came out in 2011, the defendant has been charged with three separate offenses; criminal sexual conduct with a minor in the first degree, criminal sexual conduct with a minor in the second degree, and lewd act. And we'll get to those.

But first, I want to thank you. I want to thank you for your time, your patience, and your service in this case. It's often said that jury service is perhaps the greatest service that a man or woman can render his or her country during times of peace. Well, that couldn't be more true than it is here today, because this is a very important case. It is important to the State, it is important to the defendant, and it is important to the victim and her family. And while our system of justice could do without the lawyers, it could do without the judges, it cannot do without you. And so I

thank you.

Now, this is my only opportunity to address you directly, and I'm going to talk to you about the evidence in this case, some of it, as well as the law as it applies to the facts in this case, because as the State, we bear the burden of proof.

Now, the roles in this courtroom are very defined. As the State, we serve as ministers of justice, and it's our job to bring forth to you the relevant admissible evidence to prove our case. Defense counsel's job is to represent his client or their client to the best of their ability and ensure his rights to a fair trial. Now, the Honorable Judge Early is the sole judge of the law in this case. And at the end, he's going to instruct you on the law as you're to apply it to the facts. And with that said, ladies and gentlemen of the jury, no one is going to stand up here and say you don't have the most important job in this courtroom, because you're the sole judges and finders of fact. And what that means is, each one of you here today is wearing a black robe and individually and collectively, you must decide, and only you can decide, if the defendant is guilty. How will you do that? Well, you must consider the evidence and

testimony presented in this case.

Now, criminal cases are somewhat unique because I, don't know if any of you have ever sat on a civil trial or something of that nature, but in a criminal case, the defendant has the absolute constitutional right to confront each and every witness against him. And what that means is that as the State, we must bring to you live testimony from the witness stand. You've heard reference to certain reports and videos and things of that nature, statements, written statements. Well, we can't just put in a video or just put in a report, because that witness needs take the witness stand and be subject to cross-examination. Now, there are a couple exceptions, because you did have a video and, and as my co-counsel told you in her opening, that was because it met the requirements for you to see. But we couldn't just put in that video. No, Shawntea had to get up there, take this witness stand, and talk to you about what happened to her and then be subject to cross-examination. The real only exception in this case to that, is the defendant's statement. Now, I would say that we brought you all the credible evidence that we can. But we put in his statement. And we'll get back to his

credibility.

Now, in every criminal case, the defendant is presumed innocent until proven guilty. And what that means is that as the State, we must prove to you each element of the crime for which the defendant has been charged beyond a reasonable doubt. And we bear the burden of proof in this case, just as we do in the prosecution of every criminal case. And I remind you that while our burden is high, as it should be, it is not insurmountable. And I submit to you that after your deliberations, you will see that we've met our burden here today. And I also remind you that every defendant who is ever convicted at a jury trial, started his trial or her trial until she was ultimately or he was ultimately found guilty beyond a reasonable doubt. And as I said, in this case, on these facts, we welcomed our burden.

So what exactly is it that we're referring to when we say proof beyond a reasonable doubt? Well, the Judge will instruct you that proof beyond a reasonable doubt is essentially proof that leaves you firmly convinced of the defendant's guilt. There are very things that we know in this world with absolute certainty, and the law does not

require the State to produce proof that overcomes all doubt or every possible doubt, but only that doubt which is reasonable.

Now, there are three offenses -- and before I get to the facts, I'm going to talk to you about what the defendant has been charged with, because you will consider each of these separately and individually. One of the first charges is criminal sexual conduct with a minor in the first degree. And a person is guilty of this offense if he engages in a sexual battery of a minor less than 11 years of age; that means up until the age of 10 and that means up until the age of 10. You've heard the testimony, Shawntea was age seven when these events started, up through until she was almost 12. And we're going to get back to the time period in this case.

A sexual battery, as you saw on the board, is any intrusion however slight of any part of a person's body or of an object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized reasons. There's also sexual intercourse, cunnilingus, fellatio, or anal intercourse.

When the defendant made Shawntea perform anal sex on him, that is a sexual battery; when he rubbed her in her vaginal area, that is a sexual battery; when he performed oral sex on her, that is a sexual battery; when he was in that truck with her and put his private, his penis, in hers and told her to ride and moved her up and down, that is a sexual battery; while they were in that computer room and he made her take off her clothes and get on top of him while he sat in the chair and made her move up and down, that is a sexual battery. And she suffered a sexual battery time and time again. We'll get to that.

He's also charged with criminal sexual conduct with a minor second degree. This is essentially very similar to the first: A person is guilty of criminal sexual conduct with a minor in the second degree if the actor engages in the sexual batteries we just discussed with a victim who is at least 14 years of age or less, but is at least 11. So from the time period that she was 10 to 11, criminal sexual conduct with a minor second degree applies. So that year before, that lucky accidental -- and that's what it was, thank goodness. As counsel referred to it, that fatal mistake, that phone call, butt-dial, accidental, whatever, disclosure, until

that day, that is where this applies.

And then finally, he's charged with lewd act. Essentially, it is unlawful for a person over the age of 14, which the defendant clearly is, to willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body or its parts of a child under the age of 16 -- so ages 7 to 11 -- with the intent of arousing, appealing to or gratifying the lusts or passions or sexual desires of the person of the child.

I'm going to make you mines, he said. And even when he would rub himself as she was naked -- and she didn't know the technical terms, and we'll get to that. And as he touched her breasts in the beginning and then went down to her stomach and private areas on top of the clothing, underneath the clothing, kissing on those areas, those things are lewd acts. Rubbing, touching. And it doesn't matter her age. We'll come back to this one again.

But the Judge is going to instruct you that the testimony of the victim need not be corroborated in a criminal sexual conduct case. Now the reason for this, I submit, is that the Legislature has recognized the unique nature of criminal sexual conduct cases over versus, say, a murder or armed

robbery where you might have forensic evidence such as blood or shell casings at the scene, a bunch of DNA, things of that nature, a lot eyewitnesses. No. Rape, and that's what this is, is a crime of secrecy. It occurs behind closed doors and most often over a period of time, be it a matter of weeks, months or, as in this case, years. And so what that essentially means, bottom line, is if you believe Shawntea, that is enough to find the defendant guilty.

But you don't have to just believe her, because we've brought you more than that. But before we get to the State's case, I want to address a few things, because in every case that we prepare for, we have to kind of anticipate what a defense may be. Sometimes in cases such as murder or burglary or whatever it may be, it's I did it but I had a good reason to do it, I was justified in what I did. I acted in self defense, some of it is I wasn't there, I was somewhere else, there's no way this could have happened. And sometimes, as here, it kind of has a theory of evolution. Because it didn't happen, I didn't do it, but they can't point the finger to anybody else because there is no one else. So in his statement, which I beg you to listen to as you

consider the evidence, he knows he's got to explain away certain things. And I think their opening and questioning of the witnesses in this case kind of led us to the defense, where I believe they may be going.

He initially said and brought up to you a quarter: There are two sides to every story. Well, yes, that's true. But there is only one truth. And that is your job, your duty in this courtroom, to find the truth. He also told you the defendant and the victim's mother had sex that day. He raised Shawntea, took care of her like her father; we agree. That phone call wasn't made in the graveyard, but in the store. The implication of this and everything else that he said during the course of this trial is that if you don't believe that phone call, that butt-dial, then just completely disregard everything that Shawntea said on this witness stand because she just got up there and lied. You can't believe a word she says because if it didn't happen within a matter of exact minutes, and we'll get back to that, this way, then you can't believe it. But there's one -- and, look -- timestamp on the video and phone call.

I believe one of the questions yesterday was

you can't be in two places at once. I agree you can't. But what that does is it ignores the testimony, because he said Investigator Capps, I believe, 5:58, he's in the store. And as much as he tried to get Sergeant Bailey to say, yes, 5:58, meaning, yes, it had to be real time 5:58 he was in the store, he told you, the investigator and Mr. Fountain, it's not necessarily accurate, it may be within a matter of minutes. Sometimes the systems are off within a matter of hours. The timestamp in this case doesn't really matter, and I'll get to why in a few minutes.

Additionally, the defendant's own statement validates that a sexual phone call was made and that Pamela heard the conversation. He can't get around that. And listen to his extensive evolving, changing reasons for that call. Look at the video. I'm going to tell you to look at it. Because what does it do? It corroborates both Pamela and Shawntea. What did they all tell you? He came into town that day going to the store. Where did they end up? The store.

Now, I submit to you, and Shawntea got on the stand and told you, I believe I went to the store or I don't know, or I believe I stayed in the truck. I

believe that's what it was. He's like, you stayed in the truck? I believe so, I don't know. Well, I submit, members of the jury, that this was kind of an everyday thing; that perhaps they went in the store fist before the graveyard. The reality is it doesn't matter what came first, what came second. And Pamela said, I can't tell you whether they were in the graveyard or the store, all I can tell you is what I heard. I heard my baby's voice on that phone.

He also said a lot of allegations and no proof, no proof. Again, ignore Shawntea's testimony. He saved all his questions for the end. Well, the real question here is, why would Shawntea lie? His response: Mother put it up to her. But even that one doesn't make sense. And we'll get to it. No injuries.

The medical testimony. And we'll get to that, because as much as the Defense wants you to believe that there has to be scarring, lacerations, things of that nature, the fact of the matter is -- and we know that Shawntea already had her period, she's very mature for her age, and the vaginal area is made for penetration. So chronic abuse over time, there's not going to be any injuries unless some

object was used. And she didn't claim that he was sticking tools in her or that he beat her. There was no force. By this point, she followed his commands. She was in a state of submission. Pamela put Shawntea up to it, mad because of other women. Really? That was their problem from day one, day one.

Let's talk about the State's case and the evidence that we brought to you. You heard from Officer Jerry Barnwell who responded to the scene that night. And what did he tell you? Because this is key: Because for once, which is rare, I would submit Pam Pamela Hall acted exactly the way a mother should when she finds out or even thinks that her daughter is being sexually assaulted by a grown man, the father of her children.

And Officer Barnwell described her demeanor on the scene. And, yes, she admitted to him, I pulled his gun on him, I threatened to kill him, I was going to shoot him, because I know what I heard. And the defendant said, oh, I told her call police, call police. But was he there when they got there? No. He left. And remember, she gave him his gun back. If he wanted to wait around for police, he could have. But you heard him, and he described the

demeanor of Shawntea too; upset, crying.

You heard from Shawntea Ford, Pamela Hall, Temple Hart, Melissa Hall; we brought to you the custodian of records -- and we're going to get to that phone call -- David Kellin who interviewed Shawntea the day after this happened. She didn't even get out of the hospital until 1:00 in the morning, and then the next day she has to go and talk to him. And watch that interview. Does she know -- and I believe defense counsel questioned her time and time again. Well, do you remember telling Mr. Kellin this, do you remember telling him that, you didn't tell him this, you told him that, you didn't tell him this. No, I didn't tell him. Everything was happening so fast. And remember, she's sick to her stomach. That interview has to end. And when did she get sick? The day all this came out. So judge her demeanor, watch that video, and judge her demeanor on this witness stand.

Laurie Caldwell. Now, that taped interview didn't come in. But it didn't need to because Shawntea told you about what happened to her. You also heard from Investigator Capps who got the video from the store as well as Ron Fountain, the owner of the store, which clearly the defendant knew because

he even said in his statement, Mr. Fountain was coming in and out of the store.

And Mr. Fountain knows when people get there because he knows that customers get off at 5:00. He's not looking at a clock or a timestamp. He told you, no, it's not accurate, we get robbed all the time, police are here all the time, it's not always accurate.

Captain Steve Knafelc. What did he tell you? He wasn't directly involved in this case, but then sometime last year he took the victim who remembered the dirt road and they went to that dirt road. She was directing him. Now, she said, and let's be clear, this isn't the only dirt road it happened on. She said, there were a lot more, but I can't remember which ones, but this one stood out to me. Why? Because of the power lines and the lights from the road. So she didn't try to say it happened on this dirt road, this one, this one, this one. And if you're going to make it up, make it good, make it as bad as you possibly can.

Paul Meah, the DNA analyst. And I'll address this a little later, but the reality is, the night this happened, he didn't get to do what he was trying to do. There's no semen because he didn't

get to have sex with her because that phone call and that call he got back from Pamela interrupted him. So there isn't going to be any DNA. And he told you, even if DNA is there, you can't really time it, things of that nature. And the reality is, if it was something other than semen, it would have to be blood, there are no signs that he physically assaulted her because he didn't have to. The threats that he made over the course of time -- I mean, this was her way of life. He didn't have to threaten her. And remember too, it's his truck, his DNA is going to be all over the place. And like I said, no semen, and he knows it. And we'll get to it. That's why he just kind of laughs it off. DNA? My DNA ain't on her. Of course he knows. He's a police officer, he's conducted investigations.

Dr. Susan Luberoff. Again, she testified normal exams are normal, they are a common, typical thing, we expect to find nothing. The reason we do this is because children, we can ensure their safety and make sure nothing else is going on, be it diseases or physical abuse. It's a matter of course. The reality of it is, we expect to find a normal exam.

Dr. Alison Foster. Now, she got up there and

testified about some of the dynamics of child abuse and things that are contrary to what adults may think or what you may believe about what a person would do in a certain situation. And then you heard from Sergeant Rick Bailey who testified about the investigation in this case.

Now, I want to go to, perhaps, the most important witness in this case, and that is Shawntea Ford. And she had a lot of testimony. And I'm not going to go through it all, but this is testimony that the Defense wants you to just simply ignore. Well, I submit you can't. And judge her credibility. What did she say? It started when she was living in Fairfax. That would have been back in 2007 -- or they left in 2007 with her mother, which is corroborated. And why did they leave? She said we left because of abuse and cheating, and they moved back to Kershaw with Grandma down 341. That's that Stevens Road trailer on that property here in Kershaw.

Now, when they moved back in 2007, the defendant was still a part of their life, he still visiting, Nakiah was born, the other children were her. And there's no doubt, no one is questioning that she was supportive, that he was a father,

because that is the facade. That's the trusted man, that's the one that takes care of everybody. So who's going to believe Shawntea over him?

She told you, we moved to a trailer in Bishopville; yes, a trailer that the defendant bought. He would come visit and act normal, and then he would tell me to go to a place or take me someplace by myself. These are crimes of opportunity. She said he would send her mama to the store and get something then hurry up let's go. I mean, he was watching, looking to see if anybody was coming. And the other kids, remember, they're just too young, they're not going to know what's going on. Stick them in the bathroom, send them in the other room, send them outside. And if you think it takes a very long time to get something done, it doesn't. And what did she tell you? He didn't straight jump in to having sexual intercourse with her. It started with questions: Do you have pubic hair growing down there? And then the touching, grooming, touching my breasts, after he asked, are you going to tell? Are you going to tell? I would say no.

And then he'd pull my pants down and pull his pants down, kiss me on the lips. She said, he

rubbed my arms, my breasts, and put his private in my private. Sometimes he'd ask if I liked it and I'd say yes so it would be over fast.

Now, once the grooming is done, this happens every chance he gets. He would pull his pants down and tell me the suck it. When questioned, suck what? His penis. What was he doing? Well, he'd move my head back and forth. When ejaculating -- and she didn't know the term. Let's be clear, masturbation, ejaculation, she's not familiar with all these sexual terms. She just calls it white stuff or whatever a child would call it, what they see. He would get a towel or a rag, kiss my thighs, put his penis in my private and he would rub it. And what did he tell her? He said, all our lives will be over if you tell. He was a police officer, she knew he had a gun, and said he'd kill her mama if she told. It happened any time he could.

And at some point, if you remember, they actually moved back with him to Fairfax while Pamela is in rehab for a short period of time. Always stayed to myself and acted like nothing happened, but when he moved back, it got worse. Hours after hours, in the bathroom, in the laundry room, his room. And even when her mom was there in Fairfax,

she would be sleeping or somewhere.

Aunt Missy's house, the computer room, here in Cassatt. And this is huge because this is -- Dr. Foster talked about episodic memories. So she kind of remembered the way it happened. But it definitely happened in the computer room at Aunt Missy's. He would come down to visit and then he would put a towel under the door so no one could see. He would tell me to sit on his lap, talking to me or moaning as he did it, kissing and rubbing, moving up and down constantly; you know I'm going to make you mine, right there, don't move, does it feel good?

Also during this time, she mentioned a truck which is consistent with what she said from day one. He would pull off so no one could see, pull pants down. Remember what she told you about one of the times when it first happened? He told me to ride. I said, I don't know how. Well, I will teach you. And then it happened again and, I submit, over and over again.

Now, she also told you about a couple other things. She said it happened a Disney World, the beach, and whenever visiting on Stevens Road or Aunt Missy's, which we've kind of talked about. I'm

going to start at the bottom here. He'd been doing it a while, so she didn't tell anyone, still uncomfortable. Drove down dirt roads, which we've addressed, different ones, but could only remember one. Like I said, if she remembered them all, just point them out, or if you're making it up, it's that one, it's that one, it's all the dirt roads at times, multiple times, moved back with Grandma.

And all this moving around, she's back and forth, back and forth over the course of the years. But guess who's always there, even when he's overseas there for the civilian law enforcement? He comes back. You heard the testimony, he comes back and visits because he bought them a trailer in March of that year. So he's always, whenever he's in town, he's visiting. And he's either visiting Aunt Missy's house or Stevens Road, because that's where Pamela had to go when he wasn't able to support her or they weren't in Fairfax with him.

Now, you may wonder too why Melissa Hall and Stacey Hall took the witness stand. Because they're like, hey, I didn't see anything, there were no signs, I had no idea this was going on. Well, you heard about their shifts, 12 hours at a time, 12-hour shifts. And he would send Pamela to the

store. The reality is, they were put up because he is the one who had the children. Other people, and there have been a lot of people's names being referred to in the house, they weren't there. He had the opportunity, corroboration, evidence, proof. That's why we brought them to the stand. And Stacey, she testified about the Stevens Road and them living there. And they knew the defendant would come visit, but didn't have a relationship with him. And if Pamela is putting them up to it, why not get your sisters to help you lie and say, hey, I saw it when I walked in? No, get a grown-up on your side.

Disney World, what did she tell you? They went one time, which he says and Pamela says. And at that point, what she remembers is he moved the covers up and down so that she could see his penis, at one point told him to stop because it hurt, rubbed himself. Now, in one of her interviews, she says something to the effect of, it didn't really go all the way through, he was maybe touching himself. And then she was questioned about it, but you didn't say 'cuz it hurt. But it makes perfect sense. We'll get to what Shawntea says about her disclosures over time, because, I submit, no one

said it better than she could.

Corroboration. Beach day trip, in the ocean, touching me under the water, my mom was with my baby sister in the water watching her. The hotel in the Bishopville, sent mom to the store, laying in the bed. Now, I submit here, and probably with several other things, defense counsel is probably going to get up here and say, why on earth would he do this in the ocean with people around swimming, it's impossible. Why Disney World? Why when he only had a matter of minutes? The people around, the why, I submit, for the thrill of it. There's kind of a rush in that I might get caught, but I'm just so arrogant, I'm just so good, for the thrill of it.

And in that same vein, a lot of times, it's argued, that positions, and I submit defense counsel may get up here and do this too because Shawntea was questioned on the stand about, oh, you can't go down the road pulling your pants down or whatever. And she said, oh, yeah, you can. Well, that computer chair, oh, the way she said, the position she said, it's impossible to happen. The time periods, there wasn't enough time. Nobody said it takes a lot of time to have sex. And this isn't intimate lovemaking, this is the rape of a child.

Shawntea, her final thing, the day her mom found out -- and remember, Shawntea doesn't say, he's been touching on me or anything like that. The day -- she told you what she remembers: We were in the graveyard, I think I stayed in the car, I don't know. Again, I submit she doesn't know because it happened all the time. And what was she focused on? Probably the fact that her mama almost killed him that night and that she finally had to tell somebody what was happening.

Pulled her pants down. Didn't say he got her panties off, didn't say that he was able to rape her in the car or anything of that nature. She tells you about the argument on the phone, the defendant was speeding, driving crazy. Mom asked her, what happened? What happened? She denies. Nothing, nothing. It's not until she's confronted with, I'm going to take you to a home, per her testimony, that she finally gets scared and says, yeah, he's been touching on me. Not details, just, yeah, he's been touching on me.

Confrontation in the car. Now remember -- and this is key, because it's going to be the thing throughout this case. He didn't say, hey, I didn't do it. He said, Pam you're stupid, why would I do

something like this? And ask Shawntea. Tell her I didn't do it. Shawntea says, yeah, you did. And you judge her demeanor on the stand when she was telling you these things. She sat in that car, her mom, gun to the defendant's head, and begged, Mama, don't do this, you've got four of us, who is going to take care of us?

On cross, what did you hear from her? Well, she told me -- or he told me to get in the car. I believe defense counsel said, you're saying he forced you? Yeah, he forced me to go. So he dragged you by the arm? No, he told me to, he commanded me to. A police officer commanded her to do something. Her father -- and, yes, he was like a father -- who raised her, told her to do something. And by year four, yeah, she's going to do it. Pants down, we talked about that and possibility.

What she told or didn't tell Mr. Kellin. Again, watch her demeanor in the interview. She said and told you on the stand, I can't point to everything, I can only point to a few. What is 30 day s or the next day to four years? Shawntea is not that little 11-year-old girl anymore; she's a teenager who took the stand. But she told you about what happened to her. And she said, I still can't

go to therapy because I'm not ready. She said -- so were you really afraid of him? I'm always afraid.

Again, when questioned on her memory, why you didn't you tell this, why didn't you tell that, all these little details, this that and the same, I always remember. And she said, I knew I had to get up here today. And I submit that had she had this same story -- and if you're going to lie, keep it simple -- then it would have been the same to Mr. Kellin, it would have been the same to her mama, it would have been the same to all of the interviewers, exactly the same; no changes, no extra details, no nothing, and the same on this witness stand. I submit to you, her disclosures make her more credible.

Then we get to Mama, which is who the defendant, and let's be clear, is really blaming because it's who he has to blame. But what reason does Pamela Hall have to put her daughter up to this now? What did she tell you? Father of her three children. She met the defendant going through a roadblock back in 2001. Both married at the time, she was separated, but they were having an affair. She got pregnant, had Nakiah, moved to Fairfax, and then she left in 2007 and moved back in with Mom on

Stevens Road where this was going on.

Reasons they moved: Cheating, other woman; he was abusive, but she eventually started to fight back too. She told you, oh, yeah, we got into it, there were always other woman. So why now is she going to come up with this story involving allegations to her daughter? He provided for her, paid her bills, took care of her children, would always visit with them, even when she moved to Stevens Road, bought the trailer in Bishopville. She told you he visited them at Aunt Missy's house. Now, mind you, Pamela, who was not always working, was having to go back to Aunt Missy's house, she was having to stay with her mom when he's not providing. And when this all comes about, let's be clear, she's not living with him, he hasn't threatened to kick her out of the house or take all the money away. That day they had sex, they were doing pretty good. There were no arguments. There's no testimony, even in his own statement, that they were arguing. And she told you, we argued all the time, we got into it, he disrespect ed me or whatever the case, and it was always about other woman. I had no clue about Shawntea.

He left for a while but would come back and

visit during that year, that's the year he's deployed. Rehab, she told you, yeah, I had to go, I had my own issues, I had to deal with what I was going through. But at no point throughout this -- and Melissa Hall, Stacey, everyone you heard from, she's still around. Minus that short period, she's still with her kids.

On the day of the disclosure, came to get youngest daughter, which defendant says, ns spend the day. Going to the store, all the kids wanted to go, including her. So it was strange that he left on that day without the other children. But remember, he hadn't seen Shawntea in a little bit. This was that opportunity that we talked about. But, and she told you, it wasn't unusual for him to take just Shawntea. And again, we know that they went to the store because they're in that store. That's why you have that video.

Now, she called because she knew the kids wanted to go. And he says, no, I'm coming back to get them. But he doesn't come back. And this store isn't miles and miles away; we're talking a matter of minutes. House, cemetery store, dirt roads all in between.

Phone call, couldn't hear anything at first,

saying hello, hello, hello, and he's talking to her. What does she tell you she heard? Do you want to get on top or do you want me to get on top? I want to nut inside you, but you know why I can't. No response. Do you know? And then she heard her baby's voice, because I will get pregnant. Her baby's voice. It wasn't some other woman. She was used to that, she always dealt with that.

And remember what she said about the defendant's demeanor? And we'll get to that. Hangs up, calls back, bring my baby home now. Now, in the statement, which I ask you to watch and listen to, he says, yeah, she was arguing, kind of plays it off, I don't know what she was yelling at. I assume she heard some conversation from another woman. He knows what she heard. And he takes her baby back, pulled in, and she can see that Shawntea was scared. Told her to get out. She was angry, yelling, cursing at the defendant, asking Shawntea, what happened, what happened? She said Shawntea denied several times, and finally she confronts her with what Pam remembers. Now, this isn't the exact same story that Shawntea has, and I submit that makes it more credible because otherwise they're going to think that it fits, it's exact. What does she say?

I know what I heard, tell me now or I'm taking you to a doctor and they will be able to tell me. Finally she says, he's been touching on me.

And then what does the mother do? She pulls his service weapon and threatens to kill him. And she told you that, she told police when she called them. And the only thing that saved his life that day is the person, the child, like a daughter, that he'd been victimizing year after year after year. That is the only thing that saved his life. Please, Mama, don't do it.

I would imagine defense counsel's probably going to argue a lot of the things that -- the reason we put the expert up here. Well, we did it for a reason and that's because chronic abuse in children is a widely studied area because the behaviors are not necessarily exactly what you would expect. And she discussed specifically delayed disclosures, tentative disclosures, how things come about over time. That's consistent with what Shawntea said. And things that affect an ability for a child to tell? The family dynamic, authority figure, Nakia Johnson, a father, a police officer, a provider, which he was, the biological parent to other children, her mom's trust in him. While she

might not have trusted him with other women, she certainly trusted him with her kids. Threats, and she believed them.

Bottom line, that little girl, from age 7 to 11, believed him. And even he said in his own interview, I ain't scared to die. If he said that in an interview, imagine his demeanor when he threatened Shawntea. I will kill your mother, I will send her back to jail, I will kill her, because she would tell and I would go down, and I'm not going down like that.

Accidental disclosures, what did she tell you about those? Quick coping skills, the child will initially deny. That's usually the first stage. Adults do it too, to be quite frank. Nope, didn't happen. But then you get tentative disclosures over time.

Chronic abuse. And what chronic means is just ongoing. And that's somewhat different than acute which would be freshly committed right then, maybe a one-time incident. It affects the ability's child [sic] to recall details because they're spending most of their mental energy suppressing the abuse, avoidance, and coping.

Episodes blend together over time. And listen

to what she says, it usually happened, the same thing happened, what usually happened always did, what happened next was just like it did. She was hesitant to go into details on that first interview, just that it happened, because this was her way of life. He developed, he created, a way of life that no child should have to endure.

Developmental challenges as compared to adults. When questioned about times and dates -- and I submit adults do pretty poorly too when asked to recall certain times and dates. Children perform particularly poorly. So you attempt to relate it to things they can understand, like I was in 5th grade at the time or I lived here or I was doing this, something they can relate to. And sequencing of events is very difficult too. You know, it's difficult for adults, but especially for children. First, second, third, fourth, fifth. If she could recall all that, yeah, that would give pause and cause for a lot of questions if she remembered exactly what happened every day and could tell you it happened at 10:00 that day on -- back in 2008 on February 2nd. If she could spout that out, yeah, you question her. But she didn't try to. She told you what she could remember. She told you about her

life.

Script memory. It allows you to be efficient in explaining repetitive events or behaviors. That's what I just said; the way it usually happened, normally does. That's the way we describe it in chronic abuse.

Episodic events can describe times that stand out in a child's mind. May not be the worst or the worst time. The beach, Disney World, times they went somewhere. I knew it was in the truck, in the car, the computer room at Aunt Missy's, those are things she could tell you.

And they're going to be like, why didn't she tell? Why didn't she tell? Why didn't she tell? Well, a number of reasons: With Shawntea, the abuse started and progressed. I submit he kind of developed her personality, which already was kind of a quiet, she said, a kind of keep-to-myself kind of personality. She held all this in. She is the target child. There are no allegations here that he was touching on Nakiah or Bubba or K.K., any of his biological children. No. It was Shawntea, the oldest. And she loved her brothers and sisters.

And look, the reality of the family unit, it wasn't perfect. They were back and forth, her mom,

she saw some of the abuse. But home is supposed to be the safest place. And a child can't just get up and leave. So what do they try to do? They try to keep the family dynamic intact. Her little sister was the Daddy's girl closest to her. And her little brother and sister, she loved them. She was the oldest. And her mother, even with all their problems, loved him, cared about him. He was trusted by other the adults. Who is going to believe me?

He's a police officer. And a police officer, in the eyes of a child, is even on a higher level than that of an adult. They wear a uniform, they carry a gun, they handle the law. And a man, again, that word, powerful. It was the only life she knew. It always happened, he would do it whenever he could. Shawntea's testimony is enough. If there were no other witnesses in this case, if you believe what she said, it's enough.

Now, as I said, the Defense wants you to believe pretty much that if the phone call didn't happen exactly the way that they said it happened and the times were off, then you can't believe anything that she said. Well, the phone records in this case, which we put in, essentially -- and I

kind of highlighted them a little poorly. But 5:54, that's the time of the call that's been at question here today. 203, no doubt that call was made. Pamela's phone shows it, Nakia Johnson's phone shows it, and that's the call -- he doesn't even in his statement -- well, now they want to kind of gloss over that? That's that call he knows he's got to start explaining away early. And listen to that conversation, that long explanation, which is all over the place. Because he knows he's got to explain it away.

Then immediately after, 125, Pamela Hall, bring my baby home now. And he does. He tries to act like, oh, I just assumed she was mad because of other women and that's why I went home and then I just started yelling. And then look, we have numerous phone calls from Nakia to Pam, and he also calls Nikki because he needs Nikki, Nakia to Pam, Nakia to Pam, Nakia to Pam. Finally, Pam to Nakia, but nothing happens, no real conversation. But just look at the amount of calls outgoing Nakia to Pam, Nakia to Pam, Nakia to Pam, forwarded to voicemail, outgoing, outgoing, outgoing. Please don't call the police, he's trying to get to Pam, calm down, you know this is ridiculous. But this time, he's not

going to be able to talk his way out of it, because this isn't a grown woman, it's her baby.

And finally they talk, which is consistent with what she says. And he also talks to Nikki, no doubt. But those calls -- and I'll go back for just a second -- where he says, I thought I was on the phone with Nikki, I know I talked to Nikki in the store, I was talking to her on the phone, that is not what the records show. At no point does he have a connected call with Nikki. Yes, Nikki is calling him, but it's forwarded to voicemail. The only person he talked to for a period of time prior to the call to Pam is Louise Pinkney. But this Nikki Chisolm call, forwarded to voicemail. He never heard Nikki, he wasn't talking to Nakia. They weren't planning to get up that day when he was picking up his child. And we'll get to that. But basically, they want you to narrow it down, 5:54, the video, it said 5:58 or 6:00, whatever; he can't be here and be there when this phone call happened.

Well, he tell s you the phone call happened, he admits it. And I don't care whether the store came first. I submit that's most likely thing. Shawntea doesn't necessarily remember. But I submit that he went to the store -- and you watch that video, you

watch Shawntea's behavior. Yes, she's getting stuff, but they're distant. Her demeanor, she's kind of leaning over twirling her hair. Hadn't seen him in a while, but I guarantee you she knows what's coming. And it's in the relevant timeframe.

I'm almost to the end. Bottom line is this: Why should you believe Shawntea? Because if you accept that the victim's testimony need not be corroborated, then the only question left is, why should you believe her? Well, she took an oath on that stand. And she's talked to people, yes. Defense said, have you talked to this person, have you talked to that person, did you talk to this person? Well, she told you, I didn't tell them details, I didn't tell them details, I told some of the details to the interviewers. And then finally, what did she do? She took an oath, she got on this witness stand and talked to you about what happened to her.

And do you really think that this was fun for her? Years later -- and she did all that to victimize this poor man? Got up here and told you things that adults don't even like to talk about. She has absolutely no incentive to lie. What does she have to gain or lose? Absolutely nothing.

Nothing. Her family is broken up, everything she was trying to keep intact is apart; nothing to gain or lose by taking this witness stand here today.

And a child who is mad, which even he didn't say she was ever mad at him or angry; well, they get over it. Okay, I got my way, he's never around anymore, I'm done. But even he says, I had no problems out of her, she was perfectly fine. So why would she lie?

And her testimony, as I said earlier, it's corroborated by the medical evidence. Look at her behaviors, judge her demeanor on the stand. Shawntea told you what she could. She told you the truth about what happened. She got up there and she was questioned, did you tell the truth, did you tell the truth? Yes, I told the truth, yes, I told the truth. Testimony corroborated by the defendant's own statements. And we'll get to that.

And finally -- well, not finally. But then is Shawntea really sophisticated enough to pull off this lie? Because, like I said, we're years down the road, she's already lied to her mama, who ut her up to it -- and we'll get to Pam's reasons to lie, because she has done -- then she lied to law enforcement, went through uncomfortable medical

exams, and she just decided, rather than keep it simple, say he was touching on me or he raped me, she comes up with all these details, details that the Defense wants you to ignore. Well, don't be distracted, don't be fooled. And if lying why not exaggerate the lie?

She was questioned, did it happen in the police car? No, it didn't happened there; it only happened in the truck and the car. And why not say, oh, he hit me, there were times he would push me, he shoved me down, he forcefully made it happen? And when it didn't happen, she told you it didn't happen. Her grandmother's house, which was next door, it didn't happen in the house when she was there, it happened in that truck, in that car, on those dirt roads. She told you where it happened, she told you what she could remember.

Defense reasons for Shawntea to lie make no sense. Well, basically, they kind of do because she has none. She has no reason to lie, except for the fact that Pam put her up to it because all these other women.

Basis is knowledge for sexual acts. And what you haven't heard is there's all these men in the house or anything. She's not shown a ton of stuff

that she sees all the time. She doesn't know the exact words, as an adult would as if they had coached her, such as say he masturbated, say he did this, that, adult terminology. She describes what happened. And where else does she get this information?

Her demeanor on the stand -- and the Judge is going to instruct you on the credibility of witnesses. And credibility is essentially this: Believability. And that's what this case comes down to, believability. And you can believe some of what a witness says, you can believe all of what a witness says, or you don't have to believe anything that a witness says. That is up to you and you alone. But we do ask that you judge certain things; importantly, the demeanor on the stand or in the videos of the evidence that you will have back there with you.

Also consider whether that witness was hesitant or forthright in testifying. Was the testimony consistent, corroborated by other evidence? Even though Shawntea's doesn't have to be corroborated, it is. And most importantly, did that witness have any reason to be biased or prejudiced in this case?

Finally, members of the jury, defendant's

statements and defenses. Some of this is from the video and some of this was just from the questionings that were elicited in what I anticipate that Defense counsel will get up here and stand before you and try to say. But in his statement, he said, I raised her like a dad. Yes, we agree. And then, funny, he starts saying Pam wanted to go through his phone records that day. Hmm, how convenient. But they had sex and everything was fine. He was going to get the little girl and go. No arguments.

And what did he say? And you can listen to it because this is exactly from his statement: Pam told him, get down here right now, this, that and the third, I was already around the corner and she pulled my service weapon; bring the child out, talking about Kimari, and let me go so you can stop -- you, Pam, can stop all this foolishness.

It's always something to some nature that she starts going on about. And I'm thinking that, you know, you know she heard me on the phone with a girl, and that's what our problem has been the whole time, me and other women. He starts explaining away the phone call because he knows what Pam heard and he knows what he said. And in this interview -- and

here's the key, because here today they're trying to distance themselves from that phone call -- confirms that the phone call occurred. Just says it was a sexual call in nature to Nikki Chisolm. Something to the effect of, you want me to tap that ass? Police called Nikki and she says she didn't talk to him until closer to 7:00. His phone records, corroboration.

Attorney to Sergeant Bailey -- oh, and let me back up. And he says Pam wanted a Nutty Buddy instead of pork rinds. Terminology, language. And, as I said, the defendant is smart. And pay attention to what he says. Attorney to Sergeant Bailey: Told you he didn't do it the whole time. Listen carefully. What is he really saying: Why am I going to lie about that? DNA: I don't have to lie about that. I promise you, DNA, come on, man. Basically, he knows his DNA isn't there. When the officer says, we've got the test results, he knows good and well they don't have the test results back, and he knows his DNA is not there because his semen isn't on there because he didn't get away with it that day.

Couple months, couple weeks since he's been around, no arguments or problems with Shawntea.

They question him: Why is she making this up? All I can think is Pam put her up to this. She just doesn't care; Pam. I've been trying to set her straight. And then they ask her [sic] again, kind of goes on. He said, here's the deal, she still loves me, man. Because he's so awesome. This is his arrogance: She still loves me, that's the problem. Well, if she loves you, why would she want to see you go down? Because she knows for a fact that she's just not going to be that woman to take me there, and she knows it.

Why this day, they ask him. And that's a good question: Why this day? They were already separated, he was providing for her children, they had sex, no arguments, no threats, and there really weren't any issues about women that day; yeah, in the past, but not that day. And again, listen, doesn't say he didn't do it. He continues to say, why would I lie about that? Pay attention to what he says.

Members of the jury, there are two important witnesses who did not take this witness stand and testify in this courtroom. And that is common sense and human nature. And I'm going to ask that you use your common sense and what you know about human

nature when you decide this case. And when you do, I submit, there will be only one just verdict.

Now, as I prepared for this case, I was reminded of a quote by President Theodore Roosevelt. He said that no man is above the law, no man is below it, and we ask no man's permission when we require him to obey it; said that truth is the mother of justice. And it is your job, your duty here today, to find the truth and to seek justice.

Now, Shawntea has done all that she could do. And I'm going to ask that when you go back in your jury room, you consider the evidence, and you hold the defendant, Nakia Johnson, accountable for his actions in sexually assaulting Shawntea for a period of years. Find him guilty of criminal sexual conduct with a minor in the first degree, find him guilty of criminal sexual conduct with a minor in the second degree, and you find him guilty of lewd act. Thank you.

THE COURT: Madam Forelady, members of the jury, y'all okay? Bathroom anyone?

One second, Mr. Johnson. One second, please.

Go ahead. Let him go use the restroom. Everybody sit tight for just a second.

(Brief pause in the proceedings.)

THE COURT: Okay. Mr. Johnson.

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

THE COURT: Yes, sir.

MR. JOHNSON: Two questions came to my mind about this case: Why and what? And I watched this courtroom the whole week, and my question is, why can't Nakia explain why Shawntea said this? Because fear; you feel it hovering over the courtroom. Why? Well, he can't. All he can do is tell what he knows. All he can do is tell his position.

Here is what we know: He was up here, the phone calls matched the call that come from his phone. Now, there are different stories about why he went back home. In his video -- and I want y'all to watch the video because the video -- when he made that video or when they were questioning him, it wasn't made for the -- he didn't know that video was coming in, he didn't know, so he wasn't putting no one -- or pretending. He came to answer questions. He didn't even know he had a warrant. They asked him to come back and talk with them.

He came back, he signed the waiver, he talked with them and he answered the questions the best he could. I mean, what can he say? All he can say is

what you know. It seems like if he doesn't say he did it, then it's a problem. He just needs to go ahead and fess up because a child said it, and if the child said it, that's it.

And that's the fear of this case. That's the fear of these kinds of cases, because everybody in their minds are concerned about, why would the child say this? But why does he have to give you an explanation? Because he has the same question: Why would she say it?

Yes he was a good father, yes he took care, yes he did all of those things. Why would she say it? So because he can't explain why she said it, does that make him guilty? No, it doesn't.

And that's why our courts have what we call the presumption of innocence. A person is presumed innocent until proven guilty, because there's times like this that -- what do you say other than what you know? I didn't do it. I mean, what else can you say? And everybody wants an explanation. I can't give it to you, all I can tell you is I came back and I told the truth. Okay.

Let's look at the facts some. There is no DNA. Okay. There is that big man, that from 2007 until 2011, who was supposed to be having sex with who was

much littler then, having sex with her. From 2007 until 2011 with somebody sitting on you, somebody going up and down on you, somebody sticking their penis in you, over and over again. Is there not over some kind of sign? Is there not one scratch, one scrape, one anything? And all he can say is, I didn't do it. How do you prove you didn't do it? Only thing they can do is show what they got. No signs -- both medical experts, no signs of penetration; the SLED man, no DNA. All he can say, I don't know.

And they cross-examined him or questioned him pretty hard at that police station or at the sheriff's department. Yes, they did. They tried every trick or every strategy. And I think the assumption is because he's a police officer, he knows their techniques, so he was ready for them. How would he know they were going to take the phone -- take his phone, look at the network and come back and say, the only call you had to Pam -- I mean to Nikki was 6:39, when there were other calls on the phone? How would they know that?

They came back and said, why is your DNA on this girl? My DNA is not on this girl. Why would your DNA be on this girl? They were, like, rough

with it. And the other man, Lieutenant Hickmon, he was in there. And he kept saying, explain to me why she would do that. I don't know, I don't know, I don't know. Were there any other previous history of him doing this? No. She even said that he said he didn't do it to nobody else. Why just her?

And what amazes me, this jury is drawn for Kershaw County. They have to prove the acts. The solicitor has to prove the acts that were done in Kershaw County. They put in acts from Florida, they put in acts from Allendale. No proof that any of it is true, they're putting it in. And they're saying, throw them all together because he has so many accusations, just find him guilty. You can't have this many accusations and not be guilty of this. Well, if you didn't do it, all you can say is I didn't do it. And I'm telling you, on that film he said, I didn't do it, I didn't do it, I didn't do it.

Now, there were six minutes -- and I want y'all to look at those videos. There was a six-minute time period -- and let me explain this is little bit. And you're going to have this, the phone records, in the back with you. Because we started talking about the items, this is the item number.

This is the date, this would be the time the calls were made. The originating number will the number that was called from and the terminating number would be the number that is called to.

All right. Now, you will see that beginning at item -- now, this doesn't go back with you, but the bills go back with you. You'll see beginning at item 818, there's a phone call from 3369. I t was determined that the 3369 was Pam's number. That number called 3322, which is Nakia's number. You will see item 19 where (803) 571-578 [sic], which is Nikki's number, that number called Nakia's number. If you'll go to the cross-examination or you will go to the interview you'll hear the officer saying, you didn't have but one call from Nikki at 6:30, why are you lying to us? And kept saying -- he was trying to explain. That's all he could do; explain the best he could. And at one point in the video, he said, but look, if that's the case, the everything I must be saying is wrong. But I know when I was talking, I was in the store.

Well, here's what we do have: We have the call that everybody agrees on, the call at 5:54, which would be 2154. We have no question about that, that that's the only two-minute, three-minute call that

came from Pam's phone. There's no question that the video from the store will show that he was in the store.

And here's what they said about the video from the store: It's not accurate. The phone record is accurate, the telephone is accurate, the network is technologically accurate, forensically accurate, everything is accurate but the video from the store. So how do you be in the store on the phone talking and -- and you got the video, watch the video. Anything that I say different from the video, disregard what I'm saying. Watch the video. He's on the phone talking, has two cans of beer. Tea is walking around the store getting what she wants, brings it to him and shows him, takes it back because they were trying to find what Pam want, that was 5:58.

If the phone call came in at 5:54, it lasted for two minutes, that's 5:56. They said after 5:56, she called back and said bring my child home, so that means they were still at the graveyard. So that means 5:56, 5:57, so how did they get from the graveyard to the store -- on the video -- and if you watch the video, they were already in the store walking around. How did he do it? All he can do is

say, I didn't do it. I don't know about -- he doesn't know about why she said all this other stuff. And how could he prove that to you? He doesn't know why.

Now, can we guesstimate like the State did? Can we guesstimate as to why or can we infer as to why? Yes, we can. And at the end of the day, you're going to make the determination. But the Judge is going to charge you, I believe, that you must be firmly convinced, firmly convinced, beyond a reasonable doubt. And a reasonable doubt would cause one to hesitate to act. So let me ask you something: Is it enough to hesitate -- even if you don't believe it, is it enough to wonder, to hesitate because he was in the store while they said he was in the graveyard?

There's another thing: I don't know why -- and I like how the Solicitor glossed over it. She said, well, when she was on the stand, she couldn't consistently remember anything. I think that's what she told you, the 12 of you: She said, I was not in the store. She has the record. She said, I wasn't in the store. And Mr. Ron Fountain said she was in the store, Deputy Bailey said she was in the store, and the video shows her in the store walking around

with the candy. Why would she come and say I wasn't in the store today?

Well, the State wants you to say, well, she's a child, it's been a long time, and she may have forgotten. But is that enough to hesitate? Does that firmly convince you? No, it don't have to absolutely prove it. But is that enough?

And then again, what happened in Kershaw County? Let's suppose it was true. And it's not, but let's suppose it is. What happened in Kershaw County? Even if it was so, it should be prosecuted somewhere else. Why would Kershaw County be doing it?

The expert that testified about -- she testified on common tendencies of children. At the end of the day, all she said was, this might help you and this might not help you. I want to tell you what children do. Do all of them do the same thing? No. Do some do it? No. All of this is just fluff that helps put nails in the coffin of this defendant.

The forensic interview, you know, it's a big deal, they disclose. Let me tell you what disclosing is. Disclosing is you, someone, telling someone else something. That's a disclosure. All

they wrote down is what they was told. So if they wrote down that which is not true, then all they can tell you is what was told to them that wasn't true.

And the power of the State's case is it's a child. And nobody in your community wants to uphold anybody doing anything wrong to a child. Forget about the principles of the law, forget about innocent until proven guilty, forget about firmly convinced, forget about hesitate to act, beyond a reasonable doubt. Not only do you have the facts -- and I didn't tell you the time in the store; Officer Capps told you the time in the store. The other thing is, you heard me ask Officer Capps, wasn't there two other videos? You heard me ask him, well, where are the other videos? We're just going to give you this one, give you the one I want you to see, because it's their job to convict him.

You are supposed to be judges of the facts. And God knows it's hard because either way you go -- you're balancing between two situations, and all you can do is make a decision. And maybe your heart is just floating, well, this is a child. Nakia Johnson cannot explain why. He can tell you where he was, he can tell you what he didn't do, he can tell you he was in the store at 5:58, the video can tell you

he was in the store at 5:58. The phone calls were made at 5:54.

And I heard the Solicitor talking about all the other calls. If somebody drew a gun -- if your girlfriend drew a gun on you, tells you to get out her yard, by their testimony -- his testimony is he told her, if you look at the video -- his testimony is he told her to call the police.

He said, call them while I'm here now, I got to go back, I have to go back, the weather is storming, go ahead and call them. His testimony was she said, get the F out my yard, I'm not -- I'm not going to call the -- that's his testimony. Her testimony is she went right in the house and called the police. Well, the question is, what time did she call? How long after it happened?

Please don't make him prove why if he doesn't know why. Make them prove that he did it. And they're counting on the emotion and the number of allegations, even though the allegations weren't in Kershaw County. So, really, I guess, they will make y'all universal decision makers all across wherever he was charged.

You notice that -- please look at Dr. Killings [sic] video. She told Mr. Killings, I don't know

where the road was. She told them she went down there four times down with him in the white truck. And he said, where is the road? Just listen. She said, I don't know where it is. Three years later, out of the clear blue sky, she calls them and says, I know where the road is. Well, we're coming to court in Kershaw County. If you don't have something in Kershaw County, you've got no case in Kershaw County.

So all of a sudden, we've got a road in Kershaw County where she told Dr. Killings that -- Mr. Killings, well, she told him well, it happened when I was at 346 Stevens Road. Please look at the video. She told y'all it happened at Aunt Missy's house. Is that enough to hesitate to act? Is that enough to make you think? Are you firmly convinced?

The Judge is going to tell you if you have a question and you're not firmly convinced, then it's your job to set him free. You have to be -- before you find him guilty of criminal sexual conduct, the battery, sexual penetration, you have to find that he did it in Kershaw County. Even though he didn't do it, you have to find that he did in Kershaw County. Where is the proof that he did it in Kershaw County?

She also said, well, the computer room was at 346, then she said the computer room was at Aunt Missy's house. The next time she said, he made me sit on him in the computer room, then the next time she said, he only took pictures in the computer room. I mean, is there some accountability for her testimony or does she just get the pass because she's a child? And if she does, then what happens to our system?

You're supposed to take the facts as you find it, whether you like them or not. We don't have to like Mr. Johnson. And, certainly, the thing that amazes me, if you watch the video, he said I'm appalled at this whole idea of this happening, and anybody that would do that to a child, it's appalling. But make sure he did it. Can we blame the mom? I guess we could. But he doesn't know why she did it.

Now, maybe when Nakia saw -- when Shawntea saw her mother draw that gun and threaten to kill him and she could realize what was going to happen to her mama, she said, look, Mama, come on. Whatever she needed to say from there to make sure her mama was safe, I don't know if that happened or not. That's an inference that can be drawn. I don't

know.

And the other thing that amazes me is, they got a warrant before he got back. He wasn't even back yet. They only had the allegations from the mother and they hadn't even talked to the child yet. They had the warrant. Now, Detective Bailey said, well, he had the discretion whether to serve it or not. You don't get a warrant unless you're going to serve a warrant.

And he came in, signed the waiver, answered every question. Nobody told him they had a warrant because they wanted to hear what he had to say. So he told them what he had to say. And after he told them what he had to say, probably one of the most humiliating things for a police officer to do is to stand up, spread his hands, put his hands behind his back, and go to jail. And what can he tell you? How can he prove himself innocent? He couldn't prove himself innocent then, can't prove himself innocent today.

And no -- our law provides -- yes, our law provides you need no collaboration. If somebody said it, you can convict a person based on somebody saying it. Yes, you can do it, that's the law, with criminal sexual conduct first and second. If they

say it, if the jury determines they want to convict, that's enough. The question becomes: Did he do it? Because somebody said somebody did something, does that mean he did it? Because you can't prove that you didn't do it, does that mean you did? And the only other objective fact is the video and your phone bill and the inconsistent testimony that she gave.

He gets no pass for his inconsistent testimony, but she gets a pass for hers because she's a child. He gets no credit because the phone bill added up with the same time he was in the store in the video because the video got to be inaccurate because the child said it, so the video is inaccurate.

And I am asking you on his behalf, I'm begging you on his behalf, to please -- you have those -- take the time to watch those videos, listen to her testimony on those videos, listen to her testimony on those videos, listen to what went on on this stand, please take the time to look at these phone bills and sum up all of the physical evidence.

And here's the summation of it: SLED says no DNA, Nurse Hart says she found a redness that could be consistent with or not consistent with, and Dr. Luberoff, the doctor, says, it's a normal exam.

And here's the thing: Not only normal for that day, there is no signs of her being touched. Not just that day in time, but from 2007 until now, after all of this penetration, not one mark, not one scrape, not nothing. And the reason is, is because she's a child. And if there's lubricants that's in her body, that will cover that up. That's their reason.

And you heard the Solicitor say, it was a violent crime. And you heard Dr. Luberoff say, the only way it will show up is if it's violent. Well, that big man continually going into that little girl starting at 2007 -- she would have been six, seven, eight years ago. No signs. And they want you to -- not no signs only in Kershaw County, no signs from any county, and they want you to convict him.

The difference between criminal sexual conduct first and criminal sexual conduct second is that one occurs under 11 and one occurs 11 and above. Nobody has told you how old she was when it occurred. Was it 11 and above? Was it under 11? When did it occur? Where did it occur? Was it in Allendale? Was it in Florida? Was it at the beach beside Myrtle Beach? Was it in Kershaw County?

Mr. Johnson has a right to be scared, has a right to be afraid. Anybody sitting in this seat

should be scared, they should be afraid. Whether you did it or didn't do it, you better be afraid, because the 12 of you are going to have to decide. And whatever you decide determines his fate. So, yes, he's fearful. He's fearful then, he's fearful now.

Who presented anything in his past that would make him do this? It's almost like he's Jekyll and Hyde, if you listen to the Solicitor talk. He's Mr. Hyde the daddy and then he's Dr. Jekyll. Is there any trace -- give us any -- was there any trace of penetration, any? Is there any kind of -- and how do you prove touching? You just have to say, I believe her. Is there any trace of penetration, any?

And I submit there's none, not any trace. If the doctors testified to it, how do you convict him of it? Because she's a child. Because you don't want this going on in the community because our voice speaks for the community here. And -- but isn't it the voice for the community that you seek the truth?

I generally have a lot of good phrases. I don't have one today. There's one legal term used the word, veredicto, it means to speak the truth.

We're asking you, begging you, to be objective in evaluating the evidence, to be fair in evaluating the evidence, look at all the -- take the time and look at the facts, listen to the facts, look at the video at the store, look at his video, look at Mr. Killings' video.

And anything that I say that is not on the video, disbelieve me. Anything that is on the video, then take it and do the right thing. What's the right thing in this case? Well, we'll know what that is when y'all come back with a verdict.

But I would suggest to you that from the Defense's prospective, he didn't do it. He didn't touch her when she was under 11, he didn't touch her when she was 11, he didn't penetrate her when she was under 11, he didn't penetrate her when she was 11, and he hadn't touched or penetrated her since she was 11. And he cannot answer your question as to why, he cannot answer Lieutenant Hickmon's question as to why; all he can do is tell you what he did.

You remember when I came up here and I said this case is about who you believe, believability? And that's the truth, it is. And sometimes doing the right thing is hard. Sometimes you have to

wrestle with your own self to follow the law. Because we believe that if you follow the law in this case, if you look at the fact that there's a video where she said she wasn't in the store but she was in the store walking around toting candy, there's a video saying he was in the store at 5:58 when the phone bill and all of the allegations are he was in the cemetery, is that enough to cause you to hesitate to act? Are you firmly convinced?

And you got a right to believe one witness, you got a right to believe all of the witnesses. And here's the other thing: You may believe everybody and just don't know which one. Well, then that's reasonable doubt. That is a doubt that causes you to hesitate to act. And just like baseball, the tie goes to the runner. So if you have anything that causes you to hesitate to act, it's your duty.

Solicitor told you she took the stand, took an oath. Well, you took an oath. You took an oath that you won't stand for bias, prejudice, I will do the right thing because it's the right thing to do, and I want justice is prevail, even sometimes if I don't like the feeling of the justice that I got to give. But for the system to work right, you have to do -- follow the law which the Judge charges you as

he gives it to you.

And as I go to my seat, I want you to listen to this: Firmly convinced that he's guilty, guilt beyond a reasonable doubt. A reasonable doubt will cause one to hesitate to act. And innocent until proven guilty. And he's not guilty until the 12 of you come back in here and say he's guilty.

There's a song on, I think it was the Temptations, when I was a boy, and the song says too proud to beg. There's a lot on the line today, so I'm not too proud to beg, not because I think Mr. Johnson is guilty, but because it's scary. There's an overwhelming amount of allegations against him that he can't prove himself innocent. And if you follow the law, he doesn't have to.

I've done the very best I can do for Nakia. Kind of like a baby now; he's out of my hands and I'm giving him to the 12 of you. Please do what's right, please be fair to him, please let your decision be without prejudice or passion or emotional feeling. Let it be justice. Thank you.

THE COURT: Madam Forelady, ladies and gentlemen of the jury, we've been going about two hours. Let's take a short break, stretch of the legs. My charge is about 10 or 15 minutes, not very

long. Please don't start any deliberations or discussions of the case. We'll take a break, a bathroom break, and we'll start back in about ten minutes. Okay?

(The jury exits the courtroom at 11:13 AM.)

THE COURT: All right. We'll stand at ease for about ten minutes. Thank you.

(Short break.)

THE COURT: Bring the jury in, please.

(The jury enters the courtroom at 11:27 AM.)

THE COURT: Madam Forelady, ladies and gentlemen of the jury, my charge is sort of two parts. The first part deals with general propositions of law that we charge in all criminal cases. Once we do that, we'll go to the specific charges in these three indictments. And I'll explain those to you.

First of all, let me remind you that the fact that the defendant was arrested, charged, and indicted in this case is not evidence in the case and cannot be considered by you as evidence of guilt in the case, nor does it create any presumption or inference of guilt. These indictments are simply the charging documents by way this case comes into the courtroom. So that's not evidence in the case,

it's just the charging documents. So don't infer anything from the fact that he has been indicted.

In this case, we're dealing with three separate indictments; criminal sexual conduct with a minor in the first degree, criminal sexual conduct with a minor in the second degree, and lewd act upon a child. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decisions as to the other indictments. In other words, you have to look at each one of them separate and apart from the other. You can convict him on one or both or all three or you can find him guilty on one and not guilty on the other or any of those combinations. So you must consider each one separate and apart from the others. There are three indictments and there will be three verdict forms as to each indictment, which I will explain to you at the conclusion of my charge.

Now, as to each of these indictments, the defendant has pled not guilty. And a plea of not guilty puts the burden on the State of South Carolina to prove the defendant guilty to you beyond a reasonable doubt. A person charged with

committing a criminal offense is never required to prove himself innocent. I charge and instruct you that it is an important constitutional rule of law that a defendant in a criminal trial, no matter how serious the charges may be, will always be presumed to be innocent of the crimes for which he's been indicted unless guilt has been proven by evidence satisfying of you of that guilt beyond a reasonable doubt.

The presumption of innocence does not end when you begin your deliberations, but it stays with the defendant throughout the trial unless you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. I further charge you that the presumption of innocence is not just a mere legal phrase or theory; it is a substantial constitutional right to which each defendant has unless you're satisfied from the evidence that the defendant's guilt has been proven to you beyond a reasonable doubt.

Now, what is a reasonable doubt? You've heard the lawyers argue that in their closing arguments, and let me just reiterate it again. Our state Supreme Court defined a reasonable doubt, and they've defined it, actually, in two different ways,

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM KERSHAW COUNTY
Court of General Sessions
Doyet A, Early, III, Circuit Court Judge

Court of Appeals Case No. 2015-001436

The State of South Carolina, ... Respondent

v.

Nakia Johnson, ... Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the Record on Appeal by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

William M. Blitch, Jr., Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

August 8, 2016
Greenwood, South Carolina