

22815

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

RECEIVED
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SC Court of Appeals

The State of South Carolina,..... Respondent

v.

NAKIA KARREIM JOHNSON,

..... Appellant.

RECORD ON APPEAL VOLUME I OF II

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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.

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

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

10 MS. SIMPSON: Nothing from the State.

11 THE COURT: By the Defendant?

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

14 THE COURT: Ladies, opening statement, please.

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

17 THE COURT: Yes, ma'am.

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

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

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

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

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

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

1 she's calling the police.

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

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

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

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

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

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

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

1 with a minor in the first degree.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 THE COURT: Mr. Johnson.

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

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

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

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

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

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

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

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

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

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

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

17 MS. CAVANAUGH: Objection.

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

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

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

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

10 THE COURT: You may call your first witness.

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

13 THE COURT: Deputy Jerry Barnwell.

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

16 THE COURT: Deputy Jerry Barnwell.

17 (Deputy Jerry Barnwell enters the courtroom.)

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

21 JERRY BARNWELL

22 being first duly sworn, testified as follows:

23 THE WITNESS: I do.

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

1 THE WITNESS: Deputy Jerry Barnwell.

2

3

DIRECT EXAMINATION

4

BY MS. CAVANAUGH:

5

Q. Good morning, Deputy Barnwell.

6

A. Good morning.

7

Q. Where are you employed?

8

A. Kershaw County Sheriff's Office.

9

Q. And how long have you been employed with the

10

sheriff's department?

11

A. Four years.

12

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

13

department?

14

A. Deputy sheriff.

15

Q. And as a deputy sheriff, what are some of your

16

roles and duties?

17

A. Respond to calls of service.

18

Q. Back on October 11th, 2011, were you employed

19

with the Kershaw County Sheriff's Department?

20

A. I was.

21

Q. And were you employed in your same capacity?

22

A. Yes, ma'am.

23

Q. And did you have an opportunity to -- or did

24

you respond to Road?

25

A. I did.

1 Q. And is that in Kershaw County?

2 A. It is.

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

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

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

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

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

9 THE COURT: Yes, ma'am.

10 BY MS. CAVANAUGH:

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

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

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

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

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

20 A. Got there at 7:23 PM.

21 THE COURT: 7 what?

22 THE WITNESS: 7:23 PM.

23 BY MS CAVANAUGH:

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

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

1 Q. Okay. And do you remember what her demeanor
2 was like when you spoke to her?

3 A. She was upset and wanted us to do something.

4 Q. And without going into any detail, did she tell
5 you about a phone call that she had overheard?

6 A. Yes.

7 Q. Okay. And after speaking to her, did you speak
8 to anybody else on scene?

9 A. No; just her.

10 Q. Okay. And who is actually the listed victim in
11 this case?

12 A. It's the juvenile, her daughter. I'd have to
13 look on the report.

14 Q. I'll direct your attention to the first page in
15 that middle section.

16 A. Miss Child .

17 Q. Okay. What was her first name?

18 A. Child .

19 Q. Okay. And how old was she on October 11th,
20 2011?

21 A. She was 11.

22 Q. And was she at the house that afternoon?

23 A. She was.

24 Q. But did you actually speak to her?

25 A. No.

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

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

6 Q. And did you do that?

7 A. I did.

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

10 A. No, I did not.

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

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

15 Q. Wasn't freshly committed that night?

16 A. Right.

17 Q. At least at that residence; right?

18 A. Right.

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

21 A. They were.

22 Q. And what did they do?

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

25 Q. Okay. And was it your understanding that they

1 were taken to the hospital?

2 A. They were.

3 MS. CAVANAUGH: Thank you, Deputy Barnwell.

4 Please answer any questions from the Defense.

5 CROSS-EXAMINATION

6 BY MR. JOHNSON:

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

9 A. No.

10 Q. Did you speak to him?

11 A. I did not.

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

14 A. She told us that that night, yes.

15 Q. She told you that?

16 A. Uh-huh.

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

19 A. She said -- yes.

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

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MS. CAVANAUGH:

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

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

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

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

12 Q. From what she heard on the phone call?

13 A. Correct.

14 Q. And she provided that particular information to
15 you?

16 A. She did.

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

18 THE COURT: All right. You may step down.

19 Next witness, please.

20 MS. SIMPSON: State calls Child

21 Child

22 being first duly sworn, testified as follows:

23 THE WITNESS: Yes, ma'am.

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

1 THE WITNESS: Child

2

3

DIRECT EXAMINATION

4

BY MS. SIMPSON:

5

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

7

A. Child

8

9

10

11

12

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?

13

THE WITNESS: Okay.

14

BY MS. SIMPSON:

15

Q. Child , how old are you?

16

A. Fifteen.

17

Q. And what grade are you in?

18

A. I'm a sophomore.

19

Q. In high school?

20

A. Yes, ma'am.

21

THE COURT: Hold on one second.

22

23

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

24

25

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

1 THE WITNESS: I'm a sophomore.

2

3 BY MS. SIMPSON:

4 Q. And where do you go to school?

5 A. Lee Central High.

6 Q. Lee Central High?

7 A. Yes, ma'am.

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

10 A. I like history.

11 Q. You like history?

12 A. Yes, ma'am.

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

15 A. I play basketball.

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

18 A. Yes, ma'am.

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

20 A. , 1999.

21 Q. th --

22 A. 1999.

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

24 A. A little.

25 Q. A little bit.

1 Where did you go to middle school?

2 A. What year?

3 Q. Where?

4 A. Lee Central Middle.

5 Q. And what about elementary school?

6 A. I went to West Lee.

7 Q. And where are you currently living?

8 A. With my step-mom.

9 Q. And is that here in Kershaw?

10 A. Bishopville.

11 Q. And who all lives there with you?

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

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

14 A. Names of Siblings

15

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

17 How long have you been living with them?

18 A. About three years.

19 Q. About three years.

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

22 A. I'm not understanding.

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

25 A. Uh-huh.

1 Q. Okay. And you've actually lived a number of
2 different places; isn't that right?

3 A. Yes, ma'am.

4 Q. Tell the jury about where all you've lived.

5 A. I lived in Fairfax, Fairfield, and then I moved
6 back down here, then I stayed in Camden, then I
7 moved back.

8 Q. Okay. And in Fairfax -- and before we talk
9 about that, actually, let's talk a little bit about
10 your family. Do you have any brothers or sisters?

11 A. Yes.

12 Q. Tell the jury who they are and what their names
13 are.

14 A. I have two brothers; one named and one
15 named . And I have two sisters; one name
16 and one named [phonetic].

17 Q. Okay. And who is your mother?

18 A. Pamela Hall.

19 Q. And your father, what's his name again?

20 A. Shawntel Ford.

21 Q. What about your brothers and sisters; do they
22 have the same father or a different father?

23 A. Me and my youngest brother have the same father
24 and the other three has the same.

25 Q. Okay. And who is the father of your other

1 three siblings?

2 A. Nakia Johnson.

3 Q. And was he actually your stepfather?

4 A. Yes.

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

6 A. .

7 Q. And what are the names of his kids?

8 A. names of children

9 [phonetic].

10 Q. And is a boy or a girl?

11 A. Girl.

12 Q. And then your brother is ?

13 A. Uh-huh.

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

16 A. I am.

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

21 A. Yeah.

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

24 A. I lived with both.

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

1 live with?

2 A. My stepfather and my mother.

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

5 A. Nakia.

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

9 A. She was born.

10 Q. And was she there with you too?

11 A. Yes.

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

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

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

17 A. Me, my mother, and my siblings.

18 Q. And at that time who was born?

19 A. .

20 Q. and . Your little brother wasn't
21 born yet?

22 A. Yeah, he was born too.

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

25 A. We went back to my grandma's.

- 1 Q. And where does she live?
- 2 A. She lives in Kershaw.
- 3 Q. She lives in Kershaw. And has she been living
- 4 here most of her life or --
- 5 A. Uh-huh.
- 6 Q. -- pretty much all of your life?
- 7 A. [Nods head].
- 8 Q. And do you know where she lives?
- 9 A. Yes.
- 10 Q. Where is that?
- 11 A. It's down 341.
- 12 Q. It's down what?
- 13 A. 341.
- 14 Q. And so you stayed with your grandmother a
- 15 little while when you left Fairfax. Is there
- 16 actually -- who's -- what kind of house was it,
- 17 like, as far as was it a house, a trailer?
- 18 A. It was a trailer.
- 19 Q. And on that property, is the trailer the only
- 20 house or is there actually another house that your
- 21 grandmother lived in?
- 22 A. It's actually another house.
- 23 Q. Say that again.
- 24 A. It's two.
- 25 Q. Two houses. Okay. And who did you live with

1 and where?

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

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

8 A. Yes.

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

12 A. Uh-huh.

13 Q. You have to say yes or no.

14 A. Yes.

15 Q. Okay. Where did you live?

16 A. We moved into a trailer.

17 Q. Do you remember where that trailer was?

18 A. It was in the trailer park.

19 Q. Was it here in Kershaw or somewhere else?

20 A. It was in Bishopville.

21 Q. And who lived with you there?

22 A. Just my mom and my brothers and sisters.

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

25 A. --

1 Q. -- Kia's children?

2 A. Uh-huh.

3 Q. Your step-dad's kids?

4 A. Yes.

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

6 A. Well, he would come visit.

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

9 A. Yes.

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

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

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

21 A. Yes.

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

25 A. Yes.

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

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

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

17 A. [Nonverbal response].

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

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

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

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

5 BY MS. SIMPSON:

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

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

11 Q. And why did you say yeah?

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

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

15 A. Yes.

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

18 A. Yes.

19 Q. And this was in Fairfax where it started?

20 A. Yes.

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

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

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

6 Q. Tell you to what?

7 A. To suck it.

8 Q. To suck it?

9 A. [Nods head].

10 Q. What was he telling you to suck?

11 A. His penis.

12 Q. Okay. And did you do it?

13 A. Yes.

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

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

18 Q. Say that last part again.

19 A. He would move my head back and forth.

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

22 A. White stuff.

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

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

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

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

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

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

9 A. Yes.

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

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

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

16 A. Yes.

17 Q. And what type of work did Kia do?

18 A. He's an officer.

19 Q. He was a police officer?

20 A. [Nods head].

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

23 A. I knew he had one.

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

1 you tell anyone?

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

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

8 A. Yes, ma'am.

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

11 A. Any time that he could.

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

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

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

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

23 A. Uh-huh.

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

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

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

5 Q. And did you act pretty normal too?

6 A. I always stayed to myself.

7 Q. Okay. You always stayed to yourself?

8 A. Yes, ma'am.

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

12 A. Yes, ma'am.

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

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

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

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

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

1 actually work too?

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

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

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

10 Q. He said would tell you what?

11 A. Hurry up and come back and sit down.

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

14 A. Yes, ma'am.

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

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

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

23 A. Yes, ma'am.

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

25 A. Stacey Hall and Melissa Hall.

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

3 A. Yes, ma'am.

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

6 A. My Aunt Missy.

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

9 A. Yes, ma'am.

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

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

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

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

18 Q. Got worse than what it was?

19 A. [Nods head].

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

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

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

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

5 A. Yes, ma'am.

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

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

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

11 A. I can't really remember.

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

14 A. Yes. She was working.

15 Q. She was working?

16 A. [Nods head].

17 Q. Do you remember where she was working?

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

19 Q. Okay. And so she would come home?

20 A. Yes, ma'am.

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

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

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

25 A. Not all the time.

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

4 A. Yes, ma'am.

5 Q. Do you remember how long at all?

6 A. I just know it was a good while.

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

9 A. Yes, ma'am.

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

12 A. She lived in her own home.

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

15 A. Yes.

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

18 A. I just know we moved.

19 Q. Where did you go once you moved?

20 A. We went to Aunt Missy house.

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

22 A. Yes, ma'am.

23 Q. And where was she living at the time?

24 A. In Cassatt.

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

1 Missy's house?

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

3 Q. And your siblings?

4 A. [Nods head].

5 Q. Where was your mother?

6 A. She was there.

7 Q. She lived there too?

8 A. Yes, ma'am.

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

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

13 A. Yes.

14 Q. What is it?

15 A. My Aunt Melissa house.

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

18 A. Yes.

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

20 A. Yes.

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

23 A. .

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

1 MR. JOHNSON: No objection.

2 THE COURT: Without objection.

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

5 BY MS. SIMPSON:

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

9 A. Yes.

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

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

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

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

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

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

13 A. Yes, I do.

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

16 A. The computer room.

17 Q. And where is the computer room?

18 A. In the back room.

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

21 A. A little bit.

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

24 A. [Nods head].

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

1 offer State's 6 and 7 into evidence.

2 MR. JOHNSON: Without objection.

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

5 BY MS. SIMPSON:

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

8 A. Yes, ma'am.

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

11 A. We would be sitting in the computer chair.

12 Q. In the computer chair?

13 A. [Nods head].

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

15 A. Yes, ma'am.

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

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

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

24 A. [Nods head].

25 Q. And where did you say your sister or your

1 brother would be?

2 A. In the living room playing games.

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

5 A. Yes, ma'am.

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

8 A. No; she'd be at work.

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

10 A. Yes, ma'am.

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

13 A. Yes.

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

16 A. We went to Disney World.

17 Q. Disney World?

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

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

21 A. Yeah.

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

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

25 Q. And him?

1 A. And Kia.

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

5 A. Yes, ma'am.

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

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

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

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

25 A. They went with her.

1 Q. They went with her?

2 A. [Nods head].

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

5 A. Put his penis in me.

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

8 A. He couldn't because it was hurting.

9 Q. Okay. So he just touched you instead?

10 A. Yes.

11 Q. Is that everything that happened at Disney
12 World?

13 A. Yes, ma'am.

14 Q. What about the beach?

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

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

22 A. Not able to swim.

23 Q. Okay. And what beach was this?

24 A. Myrtle Beach.

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

1 the beach; do you remember?

2 A. We only took a one day -- a one-day thing.

3 Then we came back down to the hotel in Bishopville.

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

6 A. Yes, ma'am.

7 Q. Tell us what happened there.

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

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

19 Q. Okay. And you call it a vajayjay?

20 A. Yes.

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

23 A. Yes, ma'am.

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

25 A. Yes, ma'am.

1 Q. Had you gotten used to it?

2 A. A little. But it was still uncomfortable.

3 Q. Still uncomfortable. And you didn't tell
4 anybody what was going on?

5 A. [Nonverbal response].

6 Q. While you were at your Aunt Missy's house or
7 anywhere else, did he touch you anywhere else or
8 anything else that you can remember?

9 A. We would drive to a dirt yard -- or a dirt
10 road.

11 Q. A dirt road?

12 A. Yes, ma'am.

13 Q. Would it be the same dirt road or were there
14 different dirt roads?

15 A. Well, this one was kind of like the same, but
16 it was different ones.

17 Q. Okay. Different ones. And what do you
18 remember happening -- or tell us about a time that
19 you remember on the dirt road.

20 A. He'll back the truck up so no one else can see,
21 and he'll look out the windows and see if somebody
22 else come. And he'll pull his pants down and I'll
23 take mines off too. And he'll ask me to get on top
24 of him or he'll ask me do I want to ride. And I
25 said, I don't know how. And he said, I'll teach

1 you. And just said, move up and down.

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

4 A. Yes, ma'am.

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

8 A. Just one of the times.

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

11 A. Aunt Missy's.

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

14 A. Multiple times.

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

18 A. He'd just visit.

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

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

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

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

1 MR. JOHNSON: Without objection.

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

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

6 BY MS. SIMPSON:

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

9 A. Yes, I do.

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

11 A. Dirt.

12 Q. Dirt?

13 A. The dirt road.

14 Q. The dirt road?

15 A. Yes, ma'am.

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

18 A. Yes, ma'am.

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

22 A. Yes, ma'am.

23 Q. But you said there were multiple.

24 A. Yes, ma'am.

25 Q. How were you able to remember this one?

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

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

4 A. Yes, ma'am.

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

6 A. Yes, ma'am.

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

9 A. Back with our grandma.

10 Q. Back with your grandma.

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

14 A. When I went back to Fairfax I did.

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

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

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

19 A. For a little while.

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

23 A. Yes.

24 Q. Who all lived with you?

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

1 her daughter.

2 Q. Which auntie?

3 A. Stacey.

4 Q. Aunt Stacey?

5 A. Yes, ma'am.

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

7 A. [phonetic].

8 Q. Speak up.

9 A. .

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

12 A. Yes.

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

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

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

22 A. Yes, ma'am.

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

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

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

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

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

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

8 A. Yes, ma'am.

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

12 A. Oh, no.

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

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

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

21 A. To an off area.

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

24 A. It was kind of far.

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

1 A. Certain times when he comes.

2 Q. Just certain times when he would come?

3 A. [Nods head].

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

8 A. Yes.

9 Q. And do you know why that was?

10 A. He was in the Army, I think.

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

13 A. Yes, ma'am.

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

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

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

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

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

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

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

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

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

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

9 A. Uh-huh.

10 Q. And his pants?

11 A. [Nods head].

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

14 A. Huh?

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

17 A. No. We was still in the graveyard.

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

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

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

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

1 gas or neutral. The phone was just sitting there.

2 Q. Okay. And they were yelling and kind of
3 arguing on the phone?

4 A. Yes.

5 Q. When you got back to the house, tell the jury
6 who was there and what happened.

7 A. He couldn't pull into the driveway, so my mom
8 was already waiting at the mailbox. And she opened
9 the door and she pulled me out the car. And she was
10 like, Child tell me what happened, tell me what
11 happened. So I just cried because I didn't know
12 what to do. She was crying too. So she told me to
13 get into the house and pulled into the driveway. He
14 was yelling outside. And she was like, Child tell me
15 what happened. And I still said, nothing happened,
16 Mama. And she was like, I'm not crazy, because I
17 know what I heard. She was like, Child tell me. And
18 I said nothing happened, Mama. And she said, I'm
19 going to send you to a home, Child tell me what
20 happened now. So I told her what happened.

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

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

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

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

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

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

20 A. [Nods head].

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

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

24 THE COURT: How long?

25 THE WITNESS: A long time.

1 THE COURT: A long time?

2 THE WITNESS: Yes, sir.

3 BY MS. SIMPSON:

4 Q. Would you say years?

5 A. Yes, ma'am.

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

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

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

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

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

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

1 sisters didn't know what was going on at the moment.

2 But just started crying because she knew.

3 Q. was crying?

4 A. Yes, ma'am.

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

7 A. Yes, ma'am.

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

12 A. No, ma'am.

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

14 A. Yes, ma'am.

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

17 A. Yes, ma'am.

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

21 A. Yes, ma'am.

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

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

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

3 A. I was sick.

4 Q. You were sick?

5 A. I was still scared and embarrassed.

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

7 A. Yes, ma'am.

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

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

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

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

16 A. Yes, ma'am.

17 Q. Do you remember her name at all?

18 A. No, ma'am.

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

21 A. Yes, ma'am.

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

25 A. Yes, ma'am.

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

3 A. My Aunt Stacey found out that night.

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

8 A. No.

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

10 BY MS. SIMPSON:

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

16 A. Like, our relationship with each other?

17 Q. Uh-huh.

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

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

25 A. He treated us equally.

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

4 A. Yes.

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

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

8 Q. Blue?

9 A. Blue.

10 Q. Sitting between his attorneys?

11 A. Yes.

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

14 THE COURT: Thank you.

15 MS. SIMPSON: Thank you, Child

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

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

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

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

8 THE WITNESS: Yes, sir.

9 THE COURT: Thank you. You may step down.

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

12 (Brief recess.)

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

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

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

24 THE COURT: Thank you.

25 Anything else?

1 MS. SIMPSON: No.

2 THE COURT: Bring the jury in, please.

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

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

6 THE FOREWOMAN: Yes, sir.

7 THE COURT: Congratulations on your election
8 victory.

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

11 Mr. Johnson.

12 MR. JOHNSON: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. JOHNSON:

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

18 A. Yes, I do.

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

21 A. Yes.

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

25 A. Okay.

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

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

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

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

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

13 A. No. I was tired.

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

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

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

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

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

1 A. What do you mean?

2 Q. When she did a statement -- she gave
3 information to law enforcement. I just want to know
4 did you give her the information to give to law
5 enforcement?

6 A. I don't think I was there when she wrote the
7 statement or I was around. So I don't really
8 actually remember, because it's been so long.

9 Q. Okay. I don't want to be redundant. I'm just
10 asking you -- you might have not been there. I just
11 want to know, did you give her the information to
12 give to them?

13 A. I don't remember.

14 Q. You don't remember. Okay.

15 Now, didn't you talk to about this?

16 A. No.

17 Q. And I think you just said you talked to
18 Mr. Killings [sic] about this.

19 A. Mister who?

20 Q. Mr. Killings.

21 A. You're talking about the man?

22 Q. Yes, ma'am.

23 A. Yes.

24 Q. Okay. And then I think you also said you
25 talked to another lady about this.

1 A. Yes.

2 Q. And when you talked to Mr. Killings, did you
3 tell him the truth?

4 A. Absolutely.

5 Q. And when you talked to the other lady, did you
6 tell her the truth?

7 A. Absolutely.

8 THE COURT: Speak up for me, please.

9 THE WITNESS: Yes, I did.

10 BY MR. JOHNSON:

11 Q. Okay. And you talked to -- did you talk to a
12 nurse at the hospital that night?

13 A. Like, what do you mean talk to?

14 Q. The night they took you to Richland Memorial?

15 A. She asked me a few questions.

16 Q. Did you talk with her?

17 A. Yeah.

18 Q. Did you tell her the truth that night?

19 A. Yes.

20 Q. And I think the next day up to a couple days
21 later, you were taken to a doctor and she asked
22 questions. Did you tell her the truth?

23 A. Yes.

24 Q. Okay. Do you remember -- when you were talking
25 to Mr. Killings, do you remember him asking you how

1 many times this occurred?

2 A. No, I don't remember.

3 Q. So you don't remember what you told him?

4 A. I don't know what I -- I remember some things
5 that I told him. But that particular question, no.

6 Q. Okay. I don't want to be confusing. So you
7 remember some of what you told him, but you don't
8 remember all of it?

9 A. I remember some.

10 Q. You remember some. All right. Do you remember
11 telling him that there were three -- that it was
12 only three times this happened to you?

13 A. No.

14 Q. Do you remember telling him it was the truck
15 and Disney World and the beach?

16 A. I remember telling him something about the
17 truck and Disney World and the beach. But --

18 THE COURT: Speak up for me.

19 A. -- I don't remember the time.

20 Q. Do you remember telling him home -- it happened
21 home?

22 A. I remember that too.

23 Q. Okay. And did you tell him home was
24 Road?

25 A. I don't remember off my hand, but I don't know.

1 Q. Wasn't Road the place you were
2 living at at that time?

3 A. Yes.

4 Q. And did you tell him home was Road?

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

7 Q. Do you remember telling him that the computer
8 room was at Road?

9 A. No, because it wasn't.

10 Q. And the computer room is not at
11 Road, is it?

12 A. No.

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

16 A. Yes.

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

19 A. No; he forced me to go.

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

22 A. No; he was outdoors.

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

24 A. Yes.

25 Q. Wasn't your mom in the house?

1 A. Yes.

2 Q. And wasn't your brothers and sisters in the
3 house?

4 A. Yes.

5 Q. So he didn't force you, you went; correct?

6 A. No. He forced me, sir.

7 Q. He forced you with all of them there watching?

8 A. No. He told me to come on and get to the car,
9 and that's what I did.

10 Q. So you're saying he forced you by --

11 A. A command.

12 Q. He commanded you to get to in the car?

13 A. Yes.

14 Q. Okay. And you wasn't fearful or nothing like
15 that now, were you?

16 A. Was I what?

17 Q. Fearful. Afraid to get in the car.

18 A. I don't have no other choice but do what he say
19 at that point.

20 Q. I understand command. But were you fearful or
21 afraid?

22 A. I'm always afraid.

23 Q. Of him?

24 A. Yes.

25 Q. Okay. And y'all left to go to the store; is

1 that correct?

2 A. Yes.

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

6 A. Yes.

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

8 A. It was the truth, sir.

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

11 A. That is the cemetery.

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

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

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

18 A. Say what?

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

21 A. I never said that.

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

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

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

4 A. Can you repeat yourself?

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

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

7 Q. Okay. Did he drive behind the cemetery.

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

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

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

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

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

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

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

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

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

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

4 THE COURT: Goes back to a what?

5 MR. JOHNSON: Back to a lake.

6 A. I don't know.

7 Q. You don't know? Okay.

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

11 A. When my mother called?

12 Q. When your mother called.

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

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

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

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

22 A. I did.

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

25 A. Oh, yes, you can.

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

3 A. Yes.

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

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

8 Q. You don't know? Okay.

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

13 A. Can you repeat yourself?

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

18 A. I did say that.

19 Q. You did?

20 A. Yes.

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

23 A. Yes.

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

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

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

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

7 A. Yes.

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

11 A. Yes.

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

16 A. I didn't say that.

17 Q. You didn't say that?

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

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

24 A. I don't remember saying that.

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

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

3 A. Would that be different?

4 Q. Right.

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

6 Q. I said Mr. Killings.

7 A. Who?

8 Q. Mr. Killings?

9 A. Repeat your question.

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

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

13 BY MR. JOHNSON:

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

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

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

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

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

1 remember the location?

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

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

10 A. What do you mean?

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

13 A. That she showed me in the picture?

14 Q. Yes.

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

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

19 A. What are you saying?

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

22 A. I didn't tell anyone?

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

25 A. Wait. I'm confused.

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

3 THE COURT: Who is him?

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

6 MR. KNAFELC: Knafelc.

7 THE COURT: All right.

8 BY MR. JOHNSON:

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

11 A. Yes, I remember.

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

14 A. Uh-huh.

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

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

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

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

1 what I could at times.

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

5 A. I didn't say that.

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

7 A. When the phone call came in?

8 Q. Yes.

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

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

12 A. I don't -- I'd say at least about -- I don't
13 know. I know that it had been about -- I could say
14 30 seconds at least, maybe less. I don't know.

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

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

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

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

24 A. [Nods head].

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

1 went in the store?

2 A. He did.

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

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

7 THE COURT: He got what?

8 THE WITNESS: Sunflower seeds.

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

11 A. I can't remember that.

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

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

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

19 A. No. I never told him that.

20 Q. You didn't tell him that?

21 A. No.

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

24 A. I can't remember dates.

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

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

3 A. I don't remember.

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

6 A. What do you mean?

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

10 A. I'm not understanding.

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

13 A. No.

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

16 A. Nope.

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

19 A. Yes, I did.

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

22 A. I said touch.

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

25 A. I can't remember.

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

3 A. I can't remember.

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

6 A. I can't remember.

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

9 A. I don't remember.

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

13 A. I can't remember.

14 Q. Never said anything about licking your stomach?

15 A. To who?

16 Q. Mr. Killings.

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

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

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

3 A. I believe so.

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

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

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

12 A. No.

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

15 A. I can't remember.

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

18 A. Nope.

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

21 A. No, sir.

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

24 A. When?

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

1 A. What you mean by hurting?

2 Q. Well, you said that they -- I tried, but it was
3 hurting, so I said stop. You didn't say anything
4 about that, did you?

5 A. No.

6 Q. You didn't say anything about him rubbing
7 himself at that time, did you?

8 A. I don't remember.

9 Q. Okay. At the beach, you said, he was touching
10 you in the water; is that correct?

11 A. Yes, sir.

12 Q. Okay. You didn't tell anybody before today
13 about him touching you in the water, did you?

14 A. You said before today?

15 Q. You didn't tell anybody that you interviewed
16 before today that he -- this is the first time you
17 told anybody about that; isn't that correct?

18 A. It's not my first time telling anybody about
19 it, but -- no, it's not my first time.

20 Q. Okay. Who did you tell?

21 A. My step-mom --

22 Q. Okay. But you --

23 A. -- and my lawyers. I talked to them about it.

24 Q. Okay. So you did talk to your lawyers about
25 it?

1 A. Yes.

2 Q. Okay. When I asked you just now who did you
3 talk about, you said you didn't.

4 A. No. You asked me another question about
5 something else, and I said, no, I haven't.

6 Q. Okay. Well, forgive me.

7 Who all did you -- now, did you talk to your
8 lawyers about it?

9 A. About what?

10 Q. About what happened.

11 A. As we was going through my videos and she asked
12 me if I remember anything at them times then bring
13 it to her attention, that's what I did.

14 Q. And how many times did you talk with your
15 lawyers? I'm not asking you what you said, I'm
16 asking how many times did you talk with them.

17 A. I can't remember.

18 Q. Was it more than one?

19 A. Absolutely. I mean --

20 Q. So you have talked with more than one person
21 and you've talked about this incident much more than
22 one time?

23 A. What do you mean?

24 Q. You had conversations about this incident with
25 different people more than one time?

1 A. I'm doing it now.

2 Q. I understand that. But I'm talking about
3 before today.

4 A. Yeah.

5 Q. Okay. So why didn't you say that when I asked
6 you upfront?

7 A. Because I asked you what you mean and you asked
8 me one particular question, so I told you.

9 Q. Now, when you were at the beach -- and I want
10 to make sure I ask this question. If it's
11 redundant, I apologize. I said that you didn't tell
12 anybody about him touching you in the water. Is
13 that correct?

14 A. Uh-huh.

15 Q. Okay. And I won't go back to that.

16 Where was your mother while this was going on?

17 A. In the water? She was with my other brothers
18 and sisters playing in the sand. She had to watch
19 out for my little sister because she can't
20 swim and the other two.

21 Q. So was she on the beach or in the water?

22 A. She was halfway in the water, but she was also
23 running around with my little sister.

24 Q. Now --

25 MR. JOHNSON: Your Honor, may I have a second,

1 please?

2 THE COURT: Sure.

3 BY MR. JOHNSON:

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

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

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

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

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

15 A. Did I say what?

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

18 A. I never told anyone that.

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

22 A. I can't actually remember.

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

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

1 all. So...

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

4 A. Oh, I remember.

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

7 THE WITNESS: Do I have to answer that?

8 THE COURT: Ma'am?

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

11 THE COURT: Answer his question one more time.

12 Okay?

13 Re-phrase the question.

14 THE WITNESS: He asked me can --

15 THE COURT: Re-ask the question.

16 BY MR. JOHNSON:

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

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

21 BY MR. JOHNSON:

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

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

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

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

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

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

15 A. Yes, sir.

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

18 A. Okay.

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

21 A. Yes.

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

25 A. Yes.

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

4 A. Yes.

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

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

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

14 A. Yes.

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

17 A. No, no, no.

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

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

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

1 going to take you to the doctor --

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

4 Q. Take you to a home?

5 A. Yes.

6 Q. What kind of home?

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

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

11 A. Yes.

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

14 A. Yes.

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

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

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

23 A. He did do it.

24 Q. Okay. But I'm saying --

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

1 Q. I'm sorry?

2 A. That's what he said.

3 Q. He did say that? Okay. Now I'm confused. He
4 did say, Child tell Pam that I didn't do that; right?

5 A. Yes.

6 Q. All right. And at the time, y'all were in the
7 car, she had his gun; is that correct?

8 A. Uh-huh.

9 Q. And she had put the gun to his head and
10 threatened to kill him; is that correct?

11 A. I mean, it was still in the holster, but she
12 just was pointing it.

13 Q. Okay. And you said -- I think you did say
14 that -- something about that he said that if you
15 told, she would go to jail for life or something
16 like that?

17 A. She would go away or get killed.

18 Q. You did say that; correct?

19 A. Uh-huh.

20 Q. Okay. And after he went to jail, for some
21 reason or another, did she leave and have to go to
22 jail?

23 A. I mean, yes.

24 Q. Okay. Thank you.

25 MR. JOHNSON: That's all, Your Honor. Thank

1 you very much.

2 THE COURT: Redirect, if any.

3 MS. SIMPSON: Yes, Your Honor, briefly.

4 REDIRECT EXAMINATION

5 BY MS. SIMPSON:

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

10 A. In the computer room?

11 Q. Anywhere at any point.

12 A. Yes.

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

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

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

19 A. In his room.

20 Q. In his room?

21 A. Yes, ma'am.

22 Q. Like a bedroom in his house?

23 A. Yes, ma'am.

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

1 A. I seen, like, not -- one night when he went out
2 to go somewhere, I took his phone and looked through
3 them myself.

4 Q. Okay. But he made you pose for those pictures?

5 A. Uh-huh.

6 Q. And you say they didn't happen in the computer
7 room, they happened --

8 A. At the brick house.

9 Q. He also asked you a lot about what you remember
10 telling Mr. Kellin. Was that the interview that you
11 were sick for?

12 A. Yes.

13 Q. And did it actually have to end early?

14 A. Yes. He wanted to.

15 Q. Okay. And then you also talked to another
16 lady, but you had to go to another interview; right?

17 A. Yes, ma'am.

18 Q. And between that one interview -- you were how
19 old when you met with Mr. Kellin?

20 A. Eleven.

21 Q. And did you have a birthday between meeting
22 with Mr. Kellin and meeting this other lady?

23 A. Yes.

24 Q. Okay. So you turned 12 before you met with
25 her?

1 A. Yes.

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

6 A. Yes.

7 MS. SIMPSON: Thank you, Child .

8 I have nothing further, Your Honor.

9 THE COURT: Next witness, please.

10 MS. SIMPSON: State calls Pamela Hall.

11 THE COURT: Ms. Hall.

12 PAMELA HALL

13 being first duly sworn, testified as follows:

14 THE DEFENDANT: Yes, ma'am.

15 MS. SIMPSON: May we approach?

16 THE COURT: Yes, ma'am.

17 (Sidebar conference.)

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

20 THE WITNESS: My name is Pamela Hall.

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

22 THE WITNESS: My name is Pamela Hall.

23 THE COURT: There you go. Thank you.

24 DIRECT EXAMINATION

25 BY MS. SIMPSON:

1 Q. Ms. Hall, how old are you?

2 A. Thirty-four.

3 Q. And where are you from?

4 A. Bethune, South Carolina.

5 Q. Bethune. And tell me a little bit about your
6 family and your children.

7 A. Well, I have four kids; three girls and one
8 boy. I have two sisters; one brother, my mother.
9 My dad passed when I was five, so it's been pretty
10 much just us.

11 Q. And by just us, who do you mean?

12 A. My immediate family, the ones I just named.

13 Q. Okay. And I want to talk specifically about
14 your children. Can you tell the jury their names
15 and ages and who their father is?

16 A. Child is the oldest, she's 15, her dad is
17 Shawntel Ford. Then I have
18 and , and they're -- Nakia
19 Johnson is their dad.

20 Q. Okay. Do they have nicknames that they kind of
21 go by? We've heard --

22 A. states nicknames for child and siblings

23 Q. And where are you currently living now?

24 A. In Bishopville.

25 Q. And are you working?

1 A. No.

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

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

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

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

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

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

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

14 A. Uh-huh.

15 Q. And did you grow up in Bethune?

16 A. Excuse me?

17 Q. Did you grow up in Bethune?

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

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

22 A. Uh-huh.

23 Q. I want to turn your attention to this case.

24 Tell the jury some of the relationships in this
25 case; how you met the defendant Nakia Johnson?

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

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

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

8 Q. Married but separated?

9 A. Yes.

10 Q. And where were you living at the time?

11 A. In Bishopville.

12 Q. In Bishopville. Who was living with you?

13 A. At the time it was just me and Child .

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

16 A. It was around September of 2001.

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

19 A. No.

20 Q. -- you said through a mutual friend?

21 A. That was my first time meeting him.

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

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

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

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

11 A. At Lee County Sheriff's Department.

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

14 A. Yes.

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

16 A. Yes.

17 Q. Did you actually know his wife?

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

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

22 A. Uh-huh.

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

24 A. Still in Bishopville. I still lived -- just
25 me, Child , and

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

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

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

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

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

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

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

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

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

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

17 A. Other women.

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

20 A. They were grown.

21 Q. So there were never any issues regarding --

22 A. No.

23 Q. -- your children?

24 A. No.

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

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

3 A. I -- the divorce wasn't final until 2007.

4 And -- right after I had my last child from him.

5 Q. Okay. And where were you living when you had
6 -- ?

7 A. Nakia, I was living still in Bishopville.

8 Q. And then the little girl, ?

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

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

14 A. I call him Key.

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

17 A. Yes.

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

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

1 a half before I left.

2 Q. Okay. And those were all the places y'all

3 actually lived together --

4 A. Yes.

5 Q. -- with your children?

6 A. Uh-huh.

7 Q. And your children -- we mentioned his

8 biological children. Was Child with you that

9 entire time too?

10 A. When I went to Wisconsin, she wasn't with me.

11 But when I moved to Fairfax, she was with me.

12 Q. Okay. From Fairfax up until, I guess, this

13 point now, living with her stepmother and father --

14 A. Uh-huh.

15 Q. -- has she been with you?

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

17 him.

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

19 A. Yeah. She was with me.

20 Q. Tell me, I guess, essentially, did he -- did

21 the defendant actually provide for you or give you

22 money at times?

23 A. Yes, he did.

24 Q. Tell the jury about that and what all he gave

25 you and did for you.

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

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

10 A. Uh-huh. He --

11 Q. I'm sorry. I interrupted you.

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

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

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

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

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

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

5 Q. And --

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

10 Q. So they stayed in the schools --

11 A. Uh-huh.

12 Q. -- even though you had moved houses?

13 A. Yes.

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

16 A. Yes.

17 Q. And describe that property for the jury.

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

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

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

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

1 A. Yes.

2 Q. Tell the jury a little bit too, while you were
3 staying in places and you weren't living with the
4 defendant, what was your interaction with him and
5 his with your kids during those times?

6 A. We talked almost -- well, every day. He would
7 come -- some days he would come stay or sometimes
8 we'd get a room, or if we was going places, we would
9 go. But he came back and forth. And during the
10 times when the kids were down there with him, I was
11 working in Orangeburg, so I was back and forth
12 between there -- between Fairfax and my mom's house.

13 Q. And you said sometimes you would get a place.
14 Tell the jury what you mean by that.

15 A. I'd get a room for a couple days or if we went
16 somewhere, wherever we went, we'd get a room in that
17 area. We went to the beach in -- we didn't get a
18 room there, but we got a room when we came back to
19 Bishopville. It depends on wherever we went.

20 Q. And when you got a room, would it be just you
21 and the defendant or who all would go?

22 A. Sometimes it would be just me and him and
23 sometimes it would be all of us.

24 Q. And all of us, who do you mean?

25 A. Me, him, and the kids.

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

3 A. Yes.

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

6 A. Yes.

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

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

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

16 A. Day trip.

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

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

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

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

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

7 A. Yes. He was in town.

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

9 A. Yes. Uh-huh.

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

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

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

18 A. Uh-huh.

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

20 A. Yes.

21 Q. -- he got to see the kids?

22 A. Uh-huh.

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

1 at that time.

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

5 Q. Off and on?

6 A. Uh-huh.

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

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

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

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

16 Q. Okay. Cheating with other women and --

17 A. Yes, ma'am.

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

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

20 A. Yes. He did that.

21 Q. -- and his kids?

22 A. Yes, he did.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And first thing his excuse was he reached over

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

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

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

17 A. Child

18 Q. And what did she say?

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

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

1 voice that was that was responding to him?

2 A. No.

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

5 A. It was just him and her.

6 Q. And everybody else was still at the house?

7 A. Everybody else was still at the house.

8 Q. Grandmother, other kids?

9 A. Yes.

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

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

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

16 A. That was personal car.

17 Q. That was a personal car?

18 A. Uh-huh.

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

20 A. Yes.

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

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

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

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

9 A. Yes.

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

13 A. Huh-uh.

14 Q. Describe how --

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

17 Q. He would get mad and --

18 A. And want to argue.

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

20 A. Yes.

21 Q. What was different about this argument?

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

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

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

8 A. Yes.

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

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

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

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

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

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

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

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

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

11 A. Yes.

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

14 A. Yes.

15 Q. A written statement?

16 A. Yes.

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

19 A. Yes.

20 Q. And is that what you did?

21 A. Yes.

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

23 A. They told us to be in Kershaw County for her
24 to -- well, they took us to Kershaw County, I think.

25 And when we got there, they said we had to go to

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

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

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

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

14 Q. What do you remember about the hospital?

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

21 Q. And they told you they had who?

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

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

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

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

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

13 Q. Okay. Just that one gun that day?

14 A. Yes.

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

17 A. Yes.

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

20 A. Yes.

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

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

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

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

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

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

15 A. To the police and to the doctors.

16 Q. But you just told her to stop talking?

17 A. Yes.

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

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

1 just blocked it out.

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

4 A. Yes.

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

7 A. Just me, Child , and Nakia.

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

10 A. Yes.

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

13 A. Yes.

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

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

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

24 A. Yes, he did.

25 Q. And did you voluntarily go to get help?

1 A. Yes.

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

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

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

12 A. Yes.

13 Q. Is that part of the reason that Child went
14 to go live somewhere else?

15 A. Yes; live with her dad.

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

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

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

22 A. Yes.

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

25 A. Yes.

1 Q. And that was a couple different counts; right?

2 A. Yes.

3 Q. So you never actually went to jail or anything
4 for the alcohol?

5 A. No.

6 Q. And as far as the pervasive of your issues, did
7 that ever affect your ability to be in your
8 children's lives other than that one --

9 A. No. And, actually, it came after -- after I
10 got the -- the charges were in 2009, actually. So
11 the drug use came after that.

12 Q. Okay. And how would you describe your issues
13 with it?

14 A. It was battling off and on. And it was mostly
15 because -- like, growing up, I went through the same
16 issues as Child , and I didn't know how to express
17 it. Talking to my mother about it, she didn't do
18 anything about it, and I kind of had to deal with my
19 issues on my own.

20 Q. Okay. And you had your children as well?

21 A. Yes.

22 Q. And to be fair, did the defendant kind of help
23 you out, like, financially, as well as being
24 supportive?

25 A. Yes, he did.

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

3 A. Yes.

4 Q. And y'all actually talked about it?

5 A. Yes.

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

7 A. Yes, very supportive.

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

10 A. Yes.

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

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

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

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

22 Q. Oh, she was still alive.

23 A. Uh-huh.

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

1 A. Yes.

2 Q. And where was that?

3 A. In Cassatt.

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

5 BY MS. SIMPSON:

6 Q. The father of your three children and

7 Child 's stepfather, do you see him here in the
8 courtroom today?

9 A. Yes.

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

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

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

16 THE COURT: Thank you.

17 MS. SIMPSON: Thank you, Your Honor.

18 THE COURT: Mr. Johnson.

19 CROSS-EXAMINATION

20 BY MR. JOHNSON:

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

24 A. Yes.

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

1 know. Okay?

2 A. Okay.

3 Q. I just want to establish, Nakia was a good
4 stepfather to Child ?

5 A. Yes, he was.

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

8 A. Yes, he was.

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

11 A. No, I hadn't.

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

14 A. Yes.

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

18 A. Yes.

19 Q. And then he went overseas?

20 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 A. They were down the hall.

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

16 A. I guess so.

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

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

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

1 A. No, it wouldn't be.

2 Q. Okay. Now, when they went to the store, there
3 were a series of phone calls made, weren't there?

4 A. Yes.

5 Q. Okay. All right. And this whole issue arised
6 when you said you thought you heard him talking to
7 Tea on the phone; is that correct?

8 A. No. I didn't say I thought; I said I heard.

9 Q. Okay. And I think what you were told and the
10 conclusion we come to is that when you heard the
11 phone call, they were somewhere in the cemetery, is
12 that correct, or the graveyard?

13 A. At that time, I didn't know where they were,
14 because the first call I placed to him, I asked him
15 why he didn't take -- why he left us. And he said
16 he was coming back. He didn't come back, so I
17 called him again and he said that he was in the
18 store.

19 Q. Okay.

20 A. And I think I called -- that's when he told
21 me -- asked me what I wanted. I called one time
22 before that, he didn't answer; and second call, he
23 picked up and said they were on the way back. I
24 went and sat back down in the living room and that's
25 when his phone called my phone, and that's when I

1 heard the conversation.

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

4 A. Yes, I did.

5 Q. Okay. And --

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

8 THE COURT: You may.

9

10 BY MR. JOHNSON:

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

13 A. Yes, this is it.

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

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

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

1 A. Yes. That's what she said.

2 Q. Okay. So when you heard the phone call, it
3 would have had to have been while they were at the
4 graveyard; is that correct?

5 A. I'm not sure -- when the phone call -- I don't
6 know where they were. All I know is I heard the
7 conversation.

8 Q. Okay. But Tea told you it was at the
9 graveyard?

10 A. I know she said that after I called him, he
11 came back and he was saying -- telling her not to
12 tell me. I can't tell their exact location because
13 I don't know. All I can tell you is what I heard on
14 the phone.

15 Q. But this is what you wrote in your statement.

16 THE COURT: Refer to what part you're talking
17 about in the statement, Mr. Johnson.

18 MR. JOHNSON: I'm sorry, Your Honor?

19 THE COURT: Refer to what part you're talking
20 about in the statement.

21 MR. JOHNSON: Yes, sir.

22 BY MR. JOHNSON:

23 Q. Did you write in your statement: She said he
24 parked in the graveyard down the street today and
25 her pants were down and he tried to penetrate her.

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

3 Did you say that in the statement?

4 A. Okay. Which part are you on?

5 Q. On page 2, about middle ways down.

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

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

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

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

18 A. Yes.

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

21 A. No.

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

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

1 remember. It was almost four years ago.

2 Q. Okay. I'll ask him.

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

5 A. Yes, I did.

6 Q. And the call log identified the time?

7 A. Yes.

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

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

14 Q. Okay. But --

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

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

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

20 Q. That's my point exactly.

21 A. Yes.

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

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

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

1 and then went to the store?

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

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

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

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

13 A. Yes.

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

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

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

20 A. Yes.

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

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

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

1 indulgence for a second.

2 BY MR. JOHNSON:

3 Q. I think you testified that you went with her to
4 someplace for a test; Palmetto Richland or
5 someplace.

6 A. Yes.

7 Q. Okay. And I'm asking you only what you said.
8 I'm not asking about anybody else. Okay?

9 Did you tell anybody at Palmetto Richland I --
10 it was happening about two or three minutes?

11 A. Two ore three what?

12 Q. Did you tell anyone at Palmetto Richland that I
13 listened to what was happening for two or three
14 minutes?

15 A. Yes.

16 Q. Okay. And did you tell them that he denied it?

17 A. Yes.

18 Q. Okay. And did you also tell them that she
19 said, I got in the back seat of the car and he made
20 her get in the front -- I got into the backseat of
21 the car and made her get into the front -- no, I'm
22 sorry. My mistake.

23 Did you say, he said -- she said he touched her
24 chest?

25 A. Yes.

1 Q. Okay. All right.

2 A. And he said he touched her chest when he
3 reached to fasten the seatbelt.

4 Q. That's correct.

5 A. Yes.

6 Q. You said you were angry and you -- where did
7 you pick his revolver up from?

8 A. He had it in the front -- in the car in the
9 front and stuff. In the floor, there's a hump
10 between the driver 's and passenger's seat. It was
11 on the floor. When I got in the car, that's the
12 first thing I saw.

13 Q. And I think you said had it not been for what
14 Tea said, you probably would have shot him?

15 A. Yes.

16 Q. Okay. And you told all that to law
17 enforcement?

18 A. Yes, I did.

19 Q. And I think he tried to call you several times
20 after he left the house; correct?

21 A. Yes, he did.

22 Q. And then I think you might have -- did you call
23 him back one time?

24 A. I don't remember if I called him back or not.
25 I know he called after -- when I called the police,

1 I know that's when he backed out and he tried to
2 call me several times. After that, I'm not sure
3 whether I called him back or not. I called his
4 mother and I informed her of what happened and let
5 her know that I had called the police. And she said
6 she was going to try to get in touch with him.

7 Q. Okay. So just so I understand, was it 10
8 minutes, 15 minutes, 5 minutes after he left? How
9 many minutes before you called --

10 A. Sir, I can't answer that, because at that time
11 my emotions were hot. I wasn't thinking about the
12 time or anything.

13 Q. And it was storming during that time, wasn't
14 it?

15 A. Actually, at that time -- it didn't start
16 raining until after the -- I want to say when the
17 police got there, it was just drizzling a little
18 bit. But it wasn't storming bad.

19 Q. It wasn't bad weather? Y'all weren't waiting
20 for the storm?

21 A. Not in that area. It was drizzling a little
22 bit, but it wasn't no storm.

23 Q. And you are 100-percent sure that the voice you
24 heard was Chil 's?
d

25 A. I'm 100-percent positive that was my daughter's

1 voice.

2 Q. And you're 100-percent sure that the phone call
3 for two minutes and something was the time all this
4 was going on?

5 A. Yes, because that was the incoming call that I
6 had from him.

7 Q. Okay. I think you said -- when Mr. Johnson and
8 Tea left the house, you said it was strange for him
9 to -- not to take all the kids.

10 A. Yes. If all the kids were in the house, he
11 wouldn't just take one and don't take the others.

12 Q. Okay. And that was probably his general
13 routine, wouldn't it be?

14 A. Yes. He would take all of them, take
15 everybody.

16 Q. Okay. And you got to know him. And it would
17 be strange for him to take her by herself like that?

18 A. Okay. If all the kids are in one room and all
19 of them are there, if he say he's going to the
20 store, all of them are going to ask to go.

21 Q. Okay. My point is, to you it would be strange
22 for him just to take her?

23 A. I'm not saying it's -- there's times -- it was
24 time when it has been just him and her. So, no,
25 it's not strange. But that particular day it was,

1 because I want to say either my son or my baby girl
2 had wanted some candy. That was the purpose of
3 going to the store, because they asked for it.

4 Q. Okay. And he brought the candy back from the
5 store?

6 A. To be honest, I didn't see anything he brought
7 back because after that time, I mean, everything
8 done happened.

9 Q. Okay. And the fact that you got angry and he
10 got angry and the fact that y'all argued has no
11 relevance on him having any relationship with any
12 minors or --

13 A. See, that's -- when? Prior?

14 Q. No. You testified that y'all argued and you
15 might even testified that he got physical one time.
16 But that has nothing to do with these charges;
17 right?

18 A. No.

19 Q. Okay. And that's not an indicator that he did
20 anything; right?

21 A. No.

22 Q. Okay. Would it be possible when you told him
23 that, that he thought it was just so crazy that you
24 would even think that he'd do something like that?

25 MS. SIMPSON: Objection; calls for speculation

1 as to what the defendant is thinking.

2 THE COURT: Rephrase the question.

3 MR. JOHNSON: Okay. Your Honor, I can't
4 rephrase it other than --

5 THE COURT: No, sir. It calls for speculation,
6 so that's why I gave you the chance.

7 MR. JOHNSON: I'm not going to try.

8 THE COURT: Thank you.

9 MR. JOHNSON: All right.

10 THE COURT: Anything else?

11 MR. JOHNSON: Your Honor, I'm just trying to
12 frame one question in my mind.

13 BY MR. JOHNSON:

14 Q. Did he help with her homework that same
15 day?

16 A. I don't recall him helping her with her
17 homework. I remember him helping Child with hers
18 and I was helping my son with his.

19 Q. Okay. And did you ever talk with about
20 this incident?

21 A. Actually, I think me and Child -- I think I
22 took her to -- I think she had a counseling session
23 a couple days after this happened. And when I came
24 back, my mom said, Pam, you need to talk to .
25 And I said, why? And she said, , tell your

1 mama what you just told me. And then when I asked
2 her what happened, she said that she saw some things
3 that happened, and I think they were at the house in
4 Fairfax. She saw some things that he did.

5 And when she told me that, that's when I called
6 Detective Bailey or called someone and let them know
7 what she just told me. And that's when they set up
8 an interview for her to come talk to someone.

9 Q. I thank you for the litany. But I just said,
10 did you tell Nakiah -- did you tell --

11 A. I didn't tell her anything.

12 Q. Did you talk to at any time about this?

13 A. After the fact, I explained what happened to
14 her.

15 Q. Did you talk with her?

16 A. Yes.

17 Q. Okay. Did you talk with her any time before
18 she had the interview?

19 A. No.

20 Q. You did not?

21 A. Before -- when -- after this happened, I
22 explained to them what happened that day. I
23 explained that to them, yes. But I didn't go into
24 no details as far as what -- everything that took
25 place.

1 Q. Did you talk to her before she went to the
2 interview?

3 A. I'm sure I talked to her. That's my daughter.

4 Q. So did you -- you did discuss it?

5 A. I didn't discuss this with her, no.

6 Q. Okay. Let's get it straight, because I don't
7 want to keep yelling.

8 Did you discuss this incident with her? I know
9 you talked with her. Did you discuss this incident
10 with her before she went to her interview?

11 A. Yes, I did.

12 MR. JOHNSON: Thank you. That's all I wanted.

13 THE COURT: Thank you. Is that it?

14 MR. JOHNSON: Yes, Your Honor.

15 MS. SIMPSON: Brief redirect.

16 REDIRECT EXAMINATION

17 BY MS. SIMPSON:

18 Q. One question: That statement where he was
19 focused on the graveyard, as far as your knowledge,
20 you gave a two-page statement to the police;
21 correct?

22 A. Yes.

23 Q. And that was your statement?

24 A. Yes.

25 Q. And just before that, you were actually talking

1 about what she -- who were you referring to?

2 A. To Child .

3 Q. That highlighted portion, what did she tell you
4 before the graveyard?

5 A. She started crying and told me that it has been
6 happening for a long time. I asked what did he do.
7 She said, he made her put her mouth on his private
8 area and he also put his mouth on hers. She said he
9 put his thing in her, and it was going on since '07
10 up until today.

11 Q. And then it goes into the portion about the
12 graveyard. Is that your personal knowledge or is
13 that what she's telling you?

14 A. That's what she's telling me.

15 Q. And you also told police how you pulled the gun
16 on him and everything that happened that night?

17 A. Yes.

18 Q. And as far as your conversations with child's
19 prior to the interview, you stated that child's siblina told
20 who? siblina

21 A. I think she told my mom, because when I came
22 home, she told me I needed to talk to child's
23 siblina

23 Q. Okay. And based on what said, at that
24 point you informed who?

25 A. I'm not sure whether it was Investigator

1 Bailey, but I know I called someone to let them
2 know.

3 Q. And did they decide she was going to be
4 re-interviewed?

5 A. Yes, they decided. Because that was 's
6 first time being interviewed was when I made the
7 call.

8 Q. Okay. Did you discuss with her anything about
9 the details of what she observed; specific details
10 or anything like that?

11 A. No. The only thing I explained to -- well, to
12 all the other three kids was that -- because they
13 saw their dad on the news. They happened to catch
14 the news that came on and they actually saw it. I
15 kind of had to break it down and explain it to them.
16 But I didn't get into detail, I just told them that
17 he did something bad and he was in jail.

18 MS. SIMPSON: Thank you. That's all.

19 THE COURT: Thank you, ma'am.

20 MR. JOHNSON: Your Honor, can I -- one --

21 THE COURT: I don't -- recross is
22 discretionary, and I don't do recross.

23 MR. JOHNSON: Thank you, Your Honor.

24 THE COURT: I do that with both sides in all
25 cases.

1 Next witness, please.

2 MS. SIMPSON: May we approach just for timing
3 and scheduling issues?

4 THE COURT: Well, we're going to go til 1:00
5 and then break for lunch. Do you not have a short
6 witness or one that you can get started on?

7 MS. SIMPSON: Yes, sir. I'll call -- I think
8 she'll be short. We'll try to keep --

9 THE COURT: No, ma'am. You can have all the
10 time you want, I just told them we're going til
11 1:00.

12 MS. SIMPSON: The State calls Stacey Hall.

13 (Stacey Hall enters the courtroom.)

14 THE COURT: Come around, ma'am. Place your
15 left hand on the Bible and raise your right.

16 STACEY HALL

17 being first duly sworn, testified as follows:

18 THE WITNESS: Yes, ma'am.

19 THE CLERK: Be seated and state your full name
20 for the record.

21 THE COURT: Give us your full name for the
22 record, spelling your last.

23 THE WITNESS: Stacey Hall, H-A-L-L.

24 DIRECT EXAMINATION

25 BY MS. SIMPSON:

1 Q. Ms. Hall, how old are you?

2 A. Forty-three.

3 Q. And where do you live?

4 A. I live in Bishopville, South Carolina.

5 Q. And have you lived in Bishopville all of your
6 life or have you moved --

7 A. Moved.

8 Q. You currently live in Bishopville?

9 A. Yes.

10 Q. And where do you work right now?

11 A. I work for Smiles Home Care and Believers Home
12 Care.

13 Q. And how long have you been providing health
14 care and things of that nature?

15 A. Three months.

16 Q. And prior to that, what type of work did you
17 do?

18 A. Manufacturing.

19 Q. And what were your shifts like?

20 A. Twelve hours.

21 Q. Did you do rotating shifts, night --

22 A. Yes, rotating.

23 Q. I want to turn your attention to how you know
24 some of the people in this case. Tell us, how do
25 you know Child ?

1 A. My niece.

2 Q. And who is her mother?

3 A. Pamela Hall.

4 Q. So that's your sister?

5 A. Yes, my sister.

6 Q. Do you have any other sisters?

7 A. Yes; Melissa Hall.

8 Q. I'll talk to you too about how you know some of

9 Pamela's -- I guess your relationship with some of

10 Pamela's other children. Do you have a relationship

11 with them?

12 A. Oh, yes, I do.

13 Q. Tell the jury their names and ages.

14 A. , he is 10, I think, and , she's 11,

15 and , she's 8, I think.

16 Q. And Child is --

17 A. She's 15.

18 Q. Okay. So she's the oldest?

19 A. Yes.

20 Q. Do they spend time with you?

21 A. Yes. The three -- the last three do. Me and

22 Child see each other every ow and then.

23 Q. And they're a little bit younger, so --

24 A. Yes.

25 Q. Okay. Going back to 2011 when all this came

1 about, where exactly were you living at that time?

2 A. At that time, in in Bethune.

3 Q. . Do you remember what road that's

4 on?

5 A. Road.

6 Q. Is that near where your mother was living?

7 A. Yes; same house.

8 Q. Okay. Same house?

9 A. Uh-huh.

10 Q. And did you know the defendant?

11 A. Yes.

12 Q. And how did you know the defendant?

13 A. Through my sister Pamela.

14 Q. And how long had you known him? Have you known

15 him since they started dating or how did that work?

16 A. Since they started dating, yes.

17 Q. Okay. And how would you describe your

18 interactions with him; frequent or --

19 A. It wasn't -- whenever he would come to see the

20 kids, I'd see him. And when he worked in

21 Bishopville as a police officer, I'd see him from

22 time to time.

23 Q. Were y'all close at all?

24 A. No, not really.

25 Q. Not really?

1 A. Huh-uh.

2 Q. And did Pamela talk about him a lot or anything
3 of that nature?

4 A. No, just that he was the kids' father and
5 that's about it. Didn't really talk about nothing.

6 Q. And to your knowledge, did he actually provide
7 for those kids?

8 A. Yes, he did.

9 Q. And was it just his kids or also child ?

10 A. All of them; Child and his.

11 Q. And did he also help out Pam financially?

12 A. As far as I know, yes.

13 Q. At times did she also need your help?

14 A. Sometimes, yeah, maybe to babysit the kids,
15 something like that.

16 Q. And did she even -- or did y'all stay together
17 with your mom for a period of time as well?

18 A. Yes.

19 Q. And when was that, if you remember?

20 A. I know it was in -- maybe 2008 -- 2008, -9.

21 Can't remember if it was 2010.

22 Q. And Pamela and her children, they've kind of
23 moved a lot of different places back and forth
24 during those years?

25 A. Yes.

1 Q. Did you know the defendant's wife at the time?

2 A. Yes, I knew her. We went to school together.

3 Q. You grew up together?

4 A. Uh-huh.

5 Q. And did you ever have any interactions with her
6 about the defendant or anything of that nature?

7 A. No, ma'am.

8 Q. And did you ever have any encounters with the
9 defendant at all?

10 A. Not really, no.

11 Q. So y'all didn't talk much or have any real
12 relationship?

13 A. No.

14 Q. How was he with Child , as far as what you
15 observed?

16 A. He was -- he acted normal, you know,
17 like normal. Yes.

18 Q. And how did Child act around him?

19 A. She acted normal too.

20 Q. So you didn't really have any indication that
21 anything was going on?

22 A. No, ma'am.

23 Q. Tell me about -- were you actually living at
24 the house in when all of this came
25 about?

1 A. Yes, ma'am.

2 Q. How did you find out what happened?

3 A. My sister called me when I got off work that
4 night at 12:00.

5 Q. And do you remember what she said to you?

6 A. She told me that something happened to
7 Child , and I asked her what. And she said
8 that -- my sister got a phone call -- well, the
9 defendant pocket-dialed her phone back and told
10 what -- I can't remember everything that he said. I
11 kind of blocked it out. I can't remember
12 everything. All I know is something happened and
13 they was at the hospital and at the sheriff's
14 office.

15 Q. And what was her, I guess, demeanor? Like, how
16 was she on the phone? How was she acting?

17 A. She was nervous and scared and just couldn't
18 believe it.

19 Q. And what did you do as a result of that? Were
20 you still at work?

21 A. No. I got off at 12:00. And when I was on my
22 way home, she called me.

23 Q. When you got home, who all was there?

24 A. My mom was there, my son, my daughter, and I
25 think the other kids were there too.

1 Q. Okay. And did you actually speak with or talk
2 to Child that night?

3 A. No.

4 Q. Did you ever talk to her after this about kind
5 of what happened?

6 A. No, I didn't.

7 Q. Okay. What did you talk to her about?

8 A. I asked her if she was okay. I gave her a hug
9 and told her everything was going to be all right.

10 Q. All right. And you weren't actually there for
11 anything that happened?

12 A. No.

13 Q. But you did live at Road during that
14 time?

15 A. Yes.

16 Q. And you lived there for a period of years?
17 Would you say a period of years? Months? Weeks?

18 A. A period of years.

19 Q. And that's prior to 2011 you'd been living
20 there?

21 A. No. I moved to Bishopville -- I wasn't living
22 there in 2011. I stayed there maybe six months and
23 then I moved out.

24 Q. All right. So this all came about in October
25 of 2011. When it all came about, how long had you

1 actually been living at Stevens Road?

2 A. Before this came about?

3 Q. Yes. This actually came about in October of
4 2011. How long had you been at the house?

5 A. Maybe two or three years.

6 Q. And the person you know as Nakia Johnson, the,
7 I guess, father of your nieces and nephews and,
8 essentially, father-like, stepfather role to

9 Child , do you see him here in the courtroom?

10 A. Yes.

11 Q. Can you point him out for the jury?

12 A. Sitting right there [indicating].

13 Q. And prior to -- or post-incident, after all
14 this happened, did you have any contact with him at
15 all?

16 A. Oh, no.

17 Q. All right. Thank you.

18 MR. JOHNSON: No questions, Your Honor.

19 THE COURT: No questions.

20 All right, ma'am, you may step down. You're
21 excused.

22 All right. You got a two-minute witness?

23 MS. SIMPSON: No, sir.

24 THE COURT: Madam Forelady, ladies and
25 gentlemen, I don't think your meal is here, but

1 should be here any minute. When it comes, obviously
2 I'll let you eat it back there or, if you want to go
3 outside, you're welcome to go outside and eat it.
4 We'll start back at 2:15. So however y'all want to
5 do it, and if one wants to stay and one wants to go
6 out, that's perfectly fine too.

7 Please don't let anyone discuss the case with
8 you, don't discuss the case with anyone. Please
9 don't start any type of deliberations. Enjoy your
10 lunch. We'll start back at 2:15 and probably go to
11 around 5:00.

12 Everyone else please remain seated.

13 (The jury exits the courtroom at 12:59 PM.)

14 THE COURT: Anything for the record while
15 they're out -- hold on one second, please.

16 Ma'am?

17 MS. SIMPSON: Nothing for the record, really;
18 just scheduling issues for this afternoon as far as
19 the --

20 THE COURT: We'll go in chambers to talk about
21 that.

22 MS. SIMPSON: Perfect.

23 THE COURT: Mr. Johnson, anything for the
24 record?

25 MR. JOHNSON: No, sir.

1 THE COURT: All right. We'll stand at ease
2 until 2:15. Defendant is in custody. Make sure he
3 gets something to eat.

4 (A luncheon recess transpired 1:00 PM - 2:16
5 PM.)

6 THE COURT: Anything for the record before we
7 start back, by the State?

8 MS. SIMPSON: Nothing from the State, Your
9 Honor.

10 THE COURT: From the Defense?

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

13 THE COURT: All right. Bring the jury in,
14 please.

15 (The jury enters the courtroom at 12:17 PM.)

16 THE DEFENDANT: Did you enjoy your lunch?

17 THE JURY: Yes, sir.

18 THE COURT: Okay. You may call your next
19 witness.

20 MS. CAVANAUGH: State calls Temple Hart.

21 THE COURT: Come around, please. Raise your
22 left hand to be sworn in.

23 TEMPLE HART

24 being first duly sworn, testified as follows:

25 THE WITNESS: I do.

1 THE CLERK: Please state your name for the
2 record.

3 THE WITNESS: Temple Hart.

4 THE CLERK: Have a seat, please.

5 DIRECT EXAMINATION

6 BY MS. CAVANAUGH:

7 Q. Good afternoon, Ms. Hart. Where are you
8 employed?

9 A. Palmetto Health Richland in Columbia, South
10 Carolina.

11 Q. And what is your profession?

12 A. I'm a registered nurse.

13 Q. And how long have you -- can you give your
14 educational and employment background for me?

15 A. Yes. I graduated from nursing school in 2003
16 with my Associate's Degree in nursing and began
17 working as a labor and delivery nurse.

18 In 2009, I got my Bachelor's Degree from
19 University of South Carolina, and I worked as a
20 labor and delivery nurse for seven years. And in
21 2010, I started working as a forensic nurse examiner
22 or a sexual assault nurse examiner.

23 Q. And did you have to -- before I get into that,
24 are you actually licensed in the state as a
25 registered nurse as well?

1 A. Yes, ma'am.

2 Q. And you just described your certification as a
3 sexual assault nurse examiner. Can you describe the
4 training that you went through in order to receive
5 that designation.

6 A. Yes. After being a registered nurse, you then
7 go through a 40-hour didactic or classroom training
8 specializing in sexual assault courses and
9 simulations, and from there you will do 40 pelvic
10 exams with a gynecologist in their office, under
11 their supervision, along with supervised sexual
12 assault evaluations and examinations for adolescents
13 and adults; spend time with law enforcement, spend
14 time with a sexual assault response team in the
15 community, in the crime lab, and then, again,
16 additional training for pediatric sexual assault
17 nurse examiner.

18 Q. Okay. And you went through that certification
19 process in 2011?

20 A. 2010 for adults and then later for -- peds was
21 a little bit later in 2010. And my certification
22 was in 2010 and 2011.

23 Q. Okay. And can you approximate about how many
24 times you performed a sexual assault exam?

25 A. Between 250 and 300; right around 260s.

1 Q. And do you know how many of those included
2 examinations of a child?

3 A. I don't have that exact number. It may be
4 about 40 percent. Those are details that are in the
5 database.

6 Q. Okay. And have you testified in court before
7 regarding sexual assault exams?

8 A. Yes, I have.

9 Q. And have you been qualified as an expert in the
10 field of sexual assault examination before?

11 A. Yes, I have.

12 Q. And how many times?

13 A. I believe four times for Richland County and
14 once for Sumter County.

15 MS. CAVANAUGH: Your Honor, at this time I'd
16 ask that Temple Hart be qualified as an expert as a
17 sexual assault nurse examiner expert.

18 THE COURT: Any cross-examination on her
19 qualifications?

20 MR. JOHNSON: None, Your Honor.

21 THE COURT: All right. Madam forelady, ladies
22 and gentlemen, I'm going to qualify her as an
23 expert. And what that simply means is that she'll
24 be allowed to give opinion testimony, if asked,
25 whereas a regular lay witness is not allowed to give

1 opinion testimony. I'll instruct you at the close
2 of the case about the weight to give an expert's
3 testimony.

4 Ma'am.

5 BY MS. CAVANAUGH:

6 Q. Ms. Hart, did you have occasion to perform a
7 sexual assault exam on Child ?

8 A. Yes, I did.

9 Q. And before we get -- well, what date did you
10 perform that exam?

11 A. I believe -- October 11th, 2011.

12 Q. And how old was she on October 11th, 2011?

13 A. She was 11. She would have been 12 on the
14 th, so just a days before her 12th birthday.

15 Q. And what time did she arrive at the hospital?

16 A. 2150.

17 Q. And that's military time?

18 A. Yes.

19 Q. So that would be --

20 A. 9:50 PM.

21 Q. And who did she arrive to the hospital with?

22 A. She arrived in the emergency room with her
23 mother.

24 Q. And did you have any information at all from
25 law enforcement?

1 A. I don't know exactly how I found out when she
2 arrived. The -- either the hospital calls to let me
3 know that there's a patient there to be seen.
4 Sometimes law enforcement does call and let us know
5 ahead of time. I don't recall in this case who told
6 me first. I just came to the hospital upon her
7 arrival.

8 Q. And which particular agency was associated with
9 this exam? Which sheriff's department?

10 A. Kershaw County.

11 Q. And can you describe -- once she comes to the
12 emergency room, can you describe the steps that are
13 taken before the actual exam is performed?

14 A. Yes. When a patient arrives in the emergency
15 room, they come to triage where they're asked what
16 they're there for. And from there they go to either
17 the pediatric side of the emergency room or the
18 adult side, based on their age. And once they get
19 into triage, they're then taken to a room where they
20 are assigned a nurse and a physician.

21 The nurse will do her assessment, the doctor
22 will do his assessment, medical assessment, and do a
23 medical clearance. And from there they're call the
24 nurse examiner on call, which was me, and we come
25 into the room.

1 Q. And once you arrive, do you collect any history
2 from either the victim or the mother?

3 A. Yes, both. And if it's a child and they're
4 there with their parent, we'll talk to the parent
5 first and get a complete history, both medical
6 history and history of the assault, and see whatever
7 they can tell us to help us guide in talking with
8 the child.

9 Q. Okay. And did you do that in this case?

10 A. Yes, I did.

11 Q. And who was actually present during the
12 collection -- during your gathering of her history?

13 A. The sexual trauma services advocate was there
14 during that time.

15 Q. Okay. And was she also there during the exam?

16 A. Yes, she was.

17 Q. And as far as the basic medical history that
18 you obtained from the mother in this case, what --
19 can you describe that?

20 A. We ask about their previous medical history,
21 immunizations, any surgeries, and then we ask any
22 kind of medications they're taking at that time, if
23 they have any injuries at that time, and then
24 demographics, who the child lives with. We ask
25 questions pertaining to -- depending on the age of

1 the child -- you know, what the private parts are
2 called to them so we can try to speak in the same
3 language as the child and ask about the sexual
4 history -- assault history, I'm sorry, anything the
5 mom could offer for that and give me any of those
6 details.

7 Q. Okay. And was there anything as far as in her
8 general medical history -- not -- separated from why
9 she was there -- to get a sexual assault exam? Was
10 there anything in her medical history that stuck out
11 to you as significant?

12 A. No. She had a history of asthma noted and
13 bronchitis, but nothing else.

14 Q. Once you obtained her general medical
15 background, can you explain what you did next?

16 A. Then I talked to Child the patient, with the
17 advocate in the room. And I begin by, you know,
18 asking her why -- we have a series of questions that
19 are all ready that we ask, just open-ended general
20 questions, to ask them what brought them to the
21 emergency room and have them explain to us what
22 happened to them and any details they can offer.

23 Q. Okay. And before you start your exam, do you
24 also ask her questions related to whether she went
25 to the bathroom, whether she ate anything prior to

1 your exam?

2 A. Yes, we do. Everything that happened, what she
3 was doing leading up to the assault, and then what
4 happened immediately afterwards. That helps to
5 guide the exam in collecting any evidence. So
6 anything she had to eat or drink, whether she had
7 gone to the bathroom, whether she changed her
8 clothes, showered, anything that could change which
9 evidence I would try to collect or any testing I
10 would do.

11 Q. Okay. As far as -- you said you did speak to
12 Child before the assault?

13 A. Yes, I did.

14 Q. And did she rely to you that she had been
15 sexually assaulted in the past?

16 A. She told me that she was there because of her
17 step-dad touching her and that he had touched her
18 inappropriately.

19 Q. Specifically about that night, what did she say
20 occurred?

21 A. Do you want me to --

22 Q. Well, let me ask you this: Did she tell you
23 that particular night she had been penetrated?

24 A. No. She said he had put his hand on her
25 private part.

1 Q. Okay. And despite that information, did you
2 still -- as far as what happened that night, did you
3 still perform your exam?

4 A. Yes, I did.

5 Q. Okay. And had she -- did it come to your --
6 did she disclose to you that she had been sexually
7 assaulted for a period of years prior to?

8 A. She described that it had happened before, the
9 month prior, and she named a couple of occasions
10 where that -- what had happened that night was
11 touching and other things that had happened to her
12 with her step-dad.

13 Q. Okay. Including penetration?

14 A. Yes.

15 Q. When you performed -- once you got the
16 information from Child , did you begin your
17 examination?

18 A. I did.

19 Q. And can you describe this particular
20 examination; what you did, what you collected.

21 A. Yes. We have the patient undress on the sheet
22 where any kind of debris that might fall off would
23 fall off and we'd collect that sheet, and it goes
24 into the evidence kit. Child undressed for me and put
25 on a gown. We were in a private room, the advocate

1 was there, and I just did a visual inspection
2 looking for any injuries and -- which included a
3 genitalia assessment.

4 Q. And was her mom present in the room when you
5 performed this exam?

6 A. According to my notes, just the advocate was in
7 there.

8 Q. Okay. And what were your findings from your
9 exam?

10 A. One of the tools that we use is called
11 toluidine dye, and it's just a blue liquid dye kind
12 of like ink that we apply with a soft cotton swab.
13 And that helps us to visualize any injuries that we
14 might not be able to see.

15 I noticed some redness in her genitalia, and
16 that dye was used just to make sure that it wasn't
17 just a change in color. And that dye, which we call
18 positive uptake, if it adheres to the nucleate
19 cells, that dye was present indicating there was
20 some trauma to that area. So I noted redness and
21 then positive uptake of the dye.

22 Q. And that redness that you observed, would that
23 be consist to what she described happened to her
24 that night?

25 A. Yes.

1 Q. Which was the touching?

2 A. The touching, the rubbing.

3 Q. Did you observe any other type of injury in her
4 genital area?

5 A. No, I did not.

6 Q. And was that unusual for you? Did that seem
7 unusual, based on her description?

8 A. No. No.

9 Q. Can you explain that? Why is that?

10 A. Tea has had a period. She was postpubertal.
11 She's had a period for almost two years. And during
12 that puberty cycle, you produce estrogen. Estrogen
13 is one of the hormones that keep that area supple,
14 elastic, stretchy and, therefore, it's not usual
15 that you would see any kind of trauma to that area
16 because it's an area that is able to adapt.

17 Q. And you mentioned that she had started her
18 period. Did she indicate when that actually -- and
19 just to be clear, it wasn't that night that she had
20 a period --

21 A. No, it was not. I believe her last period,
22 according to my notes, was September 26th.

23 Q. Okay. And did she tell you when she started
24 experiencing her periods, at what age?

25 A. When she was ten.

1 Q. And she was 11 this evening --

2 A. Almost 12, yep.

3 Q. And, again, that is significant as it relates
4 to the vagina area?

5 A. Yes. And not having any kind of trauma or, you
6 know, any severe damage or any kind of injuries,
7 because that -- even though she was only 11 or
8 almost 12, she has estrogen and a very mature body.

9 Q. So in other words, that area can heal quickly?

10 A. It does heal quickly, yes.

11 Q. In your experience of conducting the sexual
12 assault exams, do you expect to find evidence of
13 sexual assault as far as injuries or lacerations or
14 anything like that?

15 A. It's not likely. No.

16 Q. And can you expand a little bit on that?

17 A. Again, with the hormones and the -- that area,
18 the hymen that surrounds the vaginal opening, is
19 very elastic, and it's meant to stretch, it's meant
20 to -- with the lubrication and hormones, we rarely
21 see trauma to that area unless it's something very
22 forceful or violent.

23 Q. So in your experience, in cases that there's
24 confirmed penetration, for instance, where the
25 patient might be pregnant, there still might not be

1 evidence of penetration even in the case that you
2 know that there is?

3 A. That is correct. There's not always trauma or
4 injuries, no.

5 Q. About how long did your examination take?

6 A. The physical exam took about 50 minutes.

7 According to my notes, I started at 11:04 with the
8 interview process, and the physical exam began at
9 1:10, and the exam was completed at 2:00 a.m.

10 Q. And you indicated that you took swabs from her
11 vaginal area?

12 A. Yes, I did. Part of the evidence collection is
13 to swab based on the assault history. So I swabbed
14 her mouth based on what she had told me had happened
15 in the past, I swabbed the vaginal area, and the
16 anal area on the outside.

17 Q. Okay. And do you do this in most of your
18 sexual assault exams?

19 A. Based on the assault history, based on the
20 disclosure, so what the patient has told me has
21 happened to them.

22 Q. And what do you do with those swabs once you
23 take those?

24 A. We collect the evidence and it is in a secure
25 area room that nobody else can get into. They're

1 dried in a drier, they're sealed, they're put into a
2 sealed collection evidence kit, and then it's locked
3 up in a refrigerator and held until law enforcement
4 comes and signs it out from our department.

5 Q. And, again, what specifically did Shawntea
6 describe to you happened that particular night?

7 A. You want me to read what she said?

8 Q. As far as the type of touching that she
9 alleged?

10 A. She said he had touched her inappropriately,
11 that he had put his hand on her private part.

12 Q. And, again, your findings were consistent with
13 that statement?

14 A. Yes.

15 Q. Going back to what she told you happened that
16 night, did she say -- I'll point you to your --
17 your -- the part of your report where you documented
18 your conversation with her.

19 A. Okay.

20 Q. Where did she say -- did she say he touched
21 over or under her clothing?

22 A. The question was asked in two separate
23 occasions. At one point there's a place where we
24 specifically ask was it over or under, and at that
25 time she said it was over her clothing. I did not

1 know -- I didn't ask exactly was it over her
2 underwear or over her pants, she just said over.

3 But then during some -- during -- just while
4 talking to her and asking her questions, I asked her
5 specifically about the contacts to her. And she
6 answered that, yes, there had been oral sex while at
7 the beach, but then that night it was touching and
8 that he had -- let me find it.

9 She wasn't aware of the terms that I had used,
10 such as masturbation and ejaculation. So we try to
11 ask them in their own words what they're talking
12 about. And she described that he was playing with
13 his private and that she knew that the white stuff,
14 when he would nut, could get her pregnant.

15 Q. And specifically when you asked her about that
16 night, you did not ask her whether it was over her
17 underwear or over her pants?

18 A. I did not. She replied, he touched my private
19 part with his hand.

20 THE COURT: With his what?

21 THE WITNESS: With his hand.

22 MS. CAVANAUGH: I beg the Court's indulgence.

23 Thank you, Ms. Hart. Please answer any
24 questions from Mr. Johnson.

25 THE COURT: Any questions, Mr. Johnson?

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

2 CROSS-EXAMINATION

3 BY MR. JOHNSON:

4 Q. Ms. Hart, how are you?

5 A. Good, thank you. How are you?

6 Q. Pretty good.

7 I tried to get into contact with you several
8 times. We were never able to talk; is that correct?

9 A. No, sir. We talked on the phone twice.

10 Q. I mean about the medical stuff. You said you
11 couldn't talk about that. We talked on the phone,
12 but not about what happened.

13 A. Well, we did talk. The day I talked to you,
14 you didn't have the report in front of you. But...

15 Q. We never talked about what actually happened in
16 the report.

17 A. I answered your questions that day. I don't
18 remember exactly everything we talked about. But
19 you didn't have the report with you on that day.

20 Q. All right. The -- there is a Palmetto Health
21 FNE Program, Pediatric, Forensic Intake Form. Is
22 that the form that you used to do an intake?

23 A. Yes.

24 Q. And on that form -- do you have a copy of that
25 form with you?

1 A. Yes, I do.

2 Q. I do have mine today, so we could talk about
3 the form, if that's all right.

4 A. All right.

5 Q. And on that form, it asks a lot of questions
6 and you ask the questions from what you found that
7 night, correct -- you answer the questions from what
8 you find that night; is that correct?

9 A. Yes, sir.

10 Q. All right. On page three of 14 -- page 1 and 2
11 just has background and history; would you agree
12 with me?

13 A. Yes, sir.

14 Q. On page 3 of 14, it has pertinent medical
15 history, any previous history of sexual abuse. And
16 how did you check that?

17 A. No.

18 Q. All right. And we keep going and it has pulse
19 or subtle hygiene activities, and you check yes and
20 no to that. And I think you checked yes to
21 urinated, and yes to ate and drank, and no to
22 everything else.

23 A. That's correct.

24 Q. Okay. Then at the top of page 4 of 14, it has
25 the history of assault per the parent caregiver.

1 And that actually means what -- I'm assuming the
2 mother gave you when she came with Tea. Correct?

3 A. Yes, sir. The history was by the mother Pamela
4 Hall.

5 Q. Okay. All right. And on page -- going
6 directly to what Tea said, on page 5 of 14, history
7 of assault per patient. And it got parenthesis,
8 exact words; is that correct?

9 A. Yes, sir.

10 Q. Okay. And here's what it says -- it asks the
11 question: Why do you come did you come to the
12 hospital today. What does she say?

13 A. Cause my step-dad.

14 Q. And did something happen to you? What did she
15 say?

16 A. He touched me inappropriately.

17 Q. Uh-huh.

18 A. He -- keep reading?

19 Q. Yes, ma'am.

20 A. He touched my private part.

21 Q. Read the whole thing.

22 A. Asked Child how he touched her. She replied: He
23 just reached his hand in. Asked Child where they were
24 when this happened. She replied: This happened in
25 the car. Asked Child who was with them. She replied:

1 Just me and him. Asked Chil what he touched her
2 with. She replied: He touched me with his hand.
3 He touched my chest too.

4 Q. All right. Now, where did she say she was
5 touched?

6 A. My private part.

7 Q. Okay. And she put: I was touched. And then
8 the next question was, was the touching over or
9 under the clothes.

10 A. On top of my clothes.

11 Q. Okay. There's another question: How did your
12 private part feel? And you -- and what was your
13 answer to that?

14 A. I did not ask her this question. This is a
15 guideline of questions to ask the patient. And if
16 it doesn't apply or if it's not appropriate, then we
17 don't ask.

18 Q. And since I was asking the question -- it would
19 have been wrong for me to ask just some. Now I want
20 to go to page 6. It has, did any other part of his
21 or her body touch you? What was your answer?

22 A. No.

23 Q. Okay. Did you touch any part of his body?
24 What was your answer?

25 A. Her answer was no.

1 Q. All right. All right. Now, on page 7 at the
2 bottom of the page under the time 5 -- 1550: Were
3 any injuries inflicted upon assailant during the
4 assault? What was your answer?

5 A. No.

6 Q. Okay. All right. Page 8, you have penetration
7 of vagina, and then it has a spot that has penis.
8 It has yes -- no, yes, attempted, unsure. What did
9 you check?

10 A. Unsure was checked.

11 Q. All right. And it had the finger under that.
12 It says: No, yes, attempted, unsure. What did you
13 check?

14 A. Unsure.

15 Q. Okay. And then it went to penetration of anus.
16 What did you check?

17 A. No.

18 Q. And finger?

19 A. No.

20 Q. And object?

21 A. No.

22 Q. All right. And you had oral copulation of
23 genitals of patient. What did you have? What did
24 you check?

25 A. I'm sorry?

1 Q. Under oral copulation of genitals, under that
2 is of patient. What did you put?

3 A. No.

4 Q. And then you have of assailant. What did you
5 check?

6 A. Yes.

7 Q. Okay. And what did you -- why did you check
8 yes? You have the little writing on the side.

9 A. There's an area for description, and I had made
10 a note that said: Reported to law enforcement that
11 she did; however, did not disclose this to me during
12 the interview.

13 Q. Okay. It has a section that has nongenital and,
14 genital acts, and it has under that licking. What
15 did you check?

16 A. No.

17 Q. Kissing, what did you check?

18 A. No.

19 Q. Suction injury, what did you check?

20 A. No.

21 Q. Biting, what did you check?

22 A. No.

23 Q. And you had -- fondling, what did you check?

24 A. Yes.

25 Q. All right. Other acts -- I mean, other acts.

- 1 It has other. What did you check?
- 2 A. No.
- 3 Q. Videotape, what did you check?
- 4 A. No.
- 5 Q. Video showing, what did you check?
- 6 A. No.
- 7 Q. Okay. All right. It has --
- 8 A. Would you like the description on that one?
- 9 Q. Ma'am?
- 10 A. Did you want the description on that?
- 11 Q. Yes, ma'am. Tell it all. Yes, ma'am.
- 12 A. Photos taken with assailant's cell phone on
- 13 different occasions.
- 14 Q. But there no photos brought to the emergency
- 15 room that night; right?
- 16 A. No, sir.
- 17 Q. Okay. It had: Did ejaculation occur? And it
- 18 has a space for the mouth. And it had the no, yes,
- 19 and unsure. What did you check?
- 20 A. No -- I'm sorry. Unsure.
- 21 Q. And pronounce V-A-G-I-N-A.
- 22 A. Vagina.
- 23 Q. Okay. What did you check?
- 24 A. Unsure.
- 25 Q. And anus, what did you check?

1 A. No.

2 Q. Body, what did you check?

3 A. Unsure.

4 Q. And clothes, bedding, and others, what did you
5 check?

6 A. No.

7 Q. Okay. And on page 10, there's a drawing.

8 There was no marks done to the drawing; is that
9 correct?

10 A. That's for physical injuries. That's correct;
11 nothing, no findings.

12 Q. Okay. On page 11 there is an examination of
13 females. And I think you got a drawing with a
14 number one and a two, and it has checked F-O-S-S-A
15 N-A-V-I-C-U-L-A-R-I-S. I'm spelling it because I
16 can't pronounce it.

17 A. Okay. Fossa navicularis.

18 Q. Okay. And what is that?

19 A. That's on the inside of the vagina, the bottom
20 portion.

21 Q. And that's the place that you said had the
22 redness?

23 A. That's correct.

24 Q. Okay. And because of the redness, it
25 doesn't -- you don't know the -- you don't know what

1 would cause -- there are a number of things that
2 would cause the redness; is that correct?

3 A. That is correct.

4 Q. Okay. So as we go through the report from that
5 night -- and if I sum it up wrong, you sum it up
6 correctly for me. Basically, other than some
7 redness that could have been caused by anything,
8 there's nothing to show any kind of sexual act or
9 any kind of penetration.

10 A. I can only base my assessment on what the
11 patient tells me.

12 Q. Oh, yes, ma'am. I understand that. I'm just
13 talking about from your report, you found nothing.

14 A. I found that the redness that I saw and
15 observed with the positive dye uptake was consistent
16 with what the patient told happened me that night.

17 Q. But it could have been consistent with
18 something else too; isn't that true?

19 A. I just know it was consistent with what she
20 told me happened.

21 Q. Okay. I'll say it one more time. It's a yes
22 or no. It could be consistent with something else?

23 A. Yes.

24 Q. Thank you.

25 MR. JOHNSON: That's all I have.

1 THE COURT: Redirect?

2 MS. CAVANAUGH: I beg the Court's indulgence.

3 REDIRECT EXAMINATION

4 BY MS. CAVANAUGH:

5 Q. Ms. Hart, I'll point your attention to page 8
6 at the top. Mr. Johnson was asking you about the
7 boxes you checked regarding penetration of vagina,
8 and specifically referring to the penis, you checked
9 unsure. He didn't ask you to read the description
10 next to that though. Can you do that now, please.

11 A. Yes. I made a note, and it said: Mother
12 reported that Child told her he was rubbing himself on
13 her, and she, the mother, heard him saying he wanted
14 to nut in her.

15 Q. And then just one more to follow up on that.
16 The next question about penetration of the vagina by
17 the finger, and he asked you if you checked unsure.
18 Can you read your description beside that as well?

19 A. I wrote unclear if fondling over clothes or
20 digital penetration.

21 Q. And, again, this information that you're
22 collecting and that you're checking these boxes
23 with, where are you getting that from?

24 A. The database is -- where am I getting -- I'm
25 sorry. I'm getting the information from Mom and the

1 patient.

2 Q. And I'm going to point you to page 6 of your
3 report. The third full paragraph, when you discuss
4 speaking to the victim Tea --

5 A. Yes.

6 Q. -- she did disclose to you, specifically, that
7 she had been penetrated by the stepfather on several
8 occasions?

9 A. Yes.

10 Q. Thank you.

11 MS. CAVANAUGH: No further questions.

12 THE COURT: Ma'am, you may step down.

13 And may she be released from her subpoena?

14 MS. CAVANAUGH: No objection.

15 MR. JOHNSON: No objection.

16 THE COURT: You're released from your subpoena,
17 ma'am.

18 Next witness, please.

19 MS. CAVANAUGH: State calls Jerry Dobbins.

20 (Jerry Dobbins enters the courtroom.)

21 THE COURT: Sir, please come around. Put your
22 left hand on the Bible and please raise your right.

23 JERRY DOBBINS

24 being first duly sworn, testified as follows:

25 THE WITNESS: I do.

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

3 THE WITNESS: My name is James Dobbins
4 D-O-B-B-I-N-S.

5 DIRECT EXAMINATION

6 BY MS. CAVANAUGH:

7 Q. Mr. Dobbins, where are you employed?

8 A. I'm a contractor for AT&T.

9 Q. And what do you do for AT&T?

10 A. I make court appearances to certify and testify
11 as to their records.

12 Q. Okay. And how do you actually -- are you the
13 person who actually receives the subpoena?

14 A. No. That would have been received by our
15 subpoena center.

16 Q. Okay. And once the subpoena center actually
17 receives a subpoena, are records produced?

18 A. Yes.

19 Q. And pursuant to that subpoena?

20 A. Yes.

21 Q. And do you receive those records?

22 A. Yes, I do.

23 Q. And can you explain the process from the time
24 the subpoena center receives the subpoena until they
25 get to you.

1 A. The subpoena center will work with whoever
2 issued the legal command. When an appearance has to
3 be made, they will send records to me via a secure
4 e-mail. I will get them, review them, discuss them
5 if necessary, and then make an appearance on their
6 behalf to certify that they are indeed AT&T's
7 records.

8 Q. And from the time that they're actually
9 retrieved from the database and sent to you, are
10 they altered or tampered in any way?

11 A. No.

12 Q. And are they kept -- we're talking phone
13 records; correct?

14 A. Yes.

15 Q. Are they kept in the normal course of business?

16 A. Yes, they are.

17 Q. Are you considered the records custodian?

18 A. Yes. I'm appearing as the records custodian
19 for those records.

20 Q. Did you in fact receive a subpoena in this
21 case -- or did AT&T receive --

22 A. Yes.

23 (State's Exhibit No. 10 marked for
24 identification.)

25 Q. I'm going to show you what's marked as State's

1 Exhibit 10. (I'll ask you to review these records.

2 Do you recognize them?

3 A. They're a lot of records. Let me look through
4 not all of them. Yes, I recognize these records.
5 These are the records that AT&T sent to me.

6 Q. Okay. For this particular case?

7 A. Yes.

8 Q. Okay. And --

9 MS. CAVANAUGH: Your Honor, at this -- I beg
10 the Court's indulgence.

11 THE COURT: Any objection?

12 MR. JOHNSON: None.

13 THE COURT: Without objection.

14 (State's Exhibit No. 10 admitted in to
15 evidence.)

16 BY MS. CAVANAUGH:

17 Q. Mr. Dobbins, what records are those; what
18 number? The specific number.

19 THE COURT: You mean exhibit number or
20 telephone number?

21 MS. CAVANAUGH: Telephone number.

22 A. These are records for a telephone number
23 (865).

24 Q. And who is the subscriber of that particular
25 number?

1 A. A Nakia Johnson.

2 Q. Okay. And what period do these records cover?

3 A. The records begin October the 1st, 2011; the
4 records end October 16th, 2011.

5 Q. Okay. And what time zone are these records
6 actually produced in?

7 A. The records are shown in UTC, which is
8 universal coordinated time. It really equates to
9 the time that we would probably know as Greenwich
10 Mean Time, absent any Daylight Savings Times. So
11 it's typically four or five hours different than
12 eastern time, depending on whether we're in Daylight
13 Savings Time.

14 Q. Okay. So in October of 2011, how many hours
15 off Eastern Standard Time would we be?

16 A. Four hours' difference. Any record on these
17 would be showing as though it appeared four hours
18 later than the call actually occurred.

19 Q. So if a call is captured on these records at,
20 say, 2154, what time would that be in Eastern
21 Standard Time?

22 A. Well, 2154 would be like 9:54 PM, minus four;
23 nine minus four is five, so 5:54 PM.

24 Q. Okay. And do -- the records that you have in
25 front of you, do they show cell tower locations?

1 A. They do not.

2 Q. Okay. So from these records, we don't know
3 where the phone is actually travelling; is that
4 correct?

5 A. Correct.

6 Q. As far as cell tower locations are, if we're
7 talking about an area that's, say, a mile from one
8 location to the next, could you still -- with cell
9 tower location, could you still pinpoint exactly
10 where someone is anyway?

11 A. They're difficult within a mile. You can tell
12 they're in the same state, same city or region, but
13 sometimes cell -- sometimes a phone call will hit
14 the nearest tower, sometimes that tower is busy,
15 sometimes that tower is down for maintenance. So it
16 would not be unusual for some calls to be within two
17 or three different towers away from the closest one.
18 But, of course, that doesn't mean a person could be
19 thousands of miles away. But for these purposes,
20 there's no location information anyway.

21 Q. Okay. Mr. Dobbins, I'm going to point you --
22 direction your attention to page 53 of these
23 records. And, again, these are records of Nakia
24 Johnson; is that correct?

25 A. Yes, per the 3322 -- the number ending in 3322.

1 Q. Okay. And I'm going to direct you to -- let's
2 just briefly go over certain phone calls in this
3 case.

4 Are there some phone calls that appear twice --
5 that look to appear twice on these records or in
6 duplicate?

7 A. Yes.

8 Q. Can you explain --

9 A. It represents one phone call. What you see is
10 when the times are the same, you can tell there are
11 two AT&T subscribers involved; there's an
12 originating call that would be captured, or a
13 terminating call would be captured if it's another
14 one of our customers. So you'll see two calls;
15 you'll see the call going out, which would be
16 recorded, and you'll see the information from the
17 number that was received if it's an AT&T customer.
18 So it will appear as two calls when, in fact, it's
19 only one.

20 Q. And that's if one of the numbers are also -- if
21 they're both AT&T numbers?

22 A. Yes.

23 Q. Okay. I'm going to direct you to phone call --
24 specifically phone call number 815 and 816. Are
25 those in fact the same phone call on top of page 53?

1 THE COURT: Is that less than four hours or is
2 that 8:00?

3 THE WITNESS: She's talking about a line
4 number. The 815th call and the 816th call of the
5 record are --

6 THE COURT: That's not time?

7 THE WITNESS: No. That's just the quantity --
8 the number of the call -- number on the record
9 chronologically.

10

11 BY MS. CAVANAUGH:

12 Q. Is that, in fact, one call?

13 A. Yes.

14 Q. And was the -- the terminating number, that's
15 the person that actually received the call?

16 A. Yes.

17 Q. Was that the subscriber in this case,
18 Mr. Johnson?

19 A. That call was terminated to the number ending
20 in 3322, the subscriber number.

21 Q. Okay, which comes back to Mr. Johnson?

22 A. Yes.

23 Q. Okay. And what -- that phone call was made
24 what time --

25 THE COURT: On what date? Date and time,

1 please.

2 A. That call shows as October 11th, 2011. The
3 time of connection shows as 2141, which would have
4 been 9:41 PM; but absent the four hours, that's
5 5:41 PM.

6 Q. Okay. And, again, those were incoming calls to
7 Mr. Johnson?

8 A. The terminating number, phone jargon, is the
9 3322, Mr. Johnson.

10 Q. Okay. And approximately --

11 A. Mr. Johnson's phone. I -- the records don't
12 show who is at the end of the phone, but that's --

13 Q. The subscriber's phone.

14 A. -- that instrument. Yes.

15 Q. And approximately how long does that phone call
16 last?

17 A. Fifty seconds.

18 Q. I'm going to direct your attention to line item
19 number, so line number 819. Was that -- what time
20 and date was that particular phone call made?

21 A. Number 819 shows as October 11th, 2011. The
22 UTC, or the time, is 2147, which really would have
23 been 5:47 PM Eastern Time.

24 Q. Okay. And beside -- all the way towards the
25 end -- okay. So that would have been six minutes

1 later than the call I just asked you about; is that
2 correct?

3 A. 41 to 47, yes, about. Uh-huh.

4 Q. Okay. And as far as the -- on that particular
5 call that came in at 5:47, did that call go straight
6 to voicemail?

7 A. Yes. That was a voicemail call.

8 Q. Okay. And that's indicated under the feature
9 column of the phone records?

10 A. Under feature column, and also under the --
11 there's a number underneath that corresponds to the
12 routing number for voicemail.

13 Q. Okay. And I'm going to direct your attention
14 to a call that was made, going further down the
15 records, number 828 and 829.

16 A. Okay.

17 Q. What date and time was that phone call made in
18 Eastern Standard Time?

19 A. October 11th, 2011, at Eastern Time 5:54 PM.

20 Q. Okay. And was that actually a phone call
21 coming from the subscriber's telephone?

22 A. That's from the subscriber number, 3322, the
23 one assigned to Mr. Johnson.

24 Q. And how long did that phone call actually last?

25 A. Two minutes, three seconds.

1 Q. And was that actually a completed call that
2 didn't go to voicemail?

3 A. Yeah. That was a regular outbound call from
4 the 3322 number.

5 Q. Okay. Right after that, phone call terminated.
6 Did the subscriber's phone receive an incoming call?

7 A. Yes.

8 Q. And what date and time was that?

9 A. October 11th, 2011, at 5:56.

10 Q. And approximately how long did that phone call
11 last?

12 A. A minute and 23 to a minute and 25 seconds.

13 Q. Okay.

14 MS. CAVANAUGH: I beg the Court's indulgence.

15 BY MS. CAVANAUGH:

16 Q. Going back to those two phone calls we just
17 discussed, the two-minute outgoing phone call and
18 the incoming call, as far as the first phone call
19 that lasted two minutes at 5:54, the outgoing call,
20 can you read the number that was dialed that
21 5:54 PM?

22 A. The number that was called is (865)

23 Q. And going to the next incoming call that you
24 just described at 5:56, what number called the
25 subscriber's number?

1 A. The number that was dialed on the
2 two-minute-and-three-second call was the number that
3 called back on the minute-and-20-something-second
4 call.

5 THE COURT: Same ?

6 THE WITNESS: 3369 called back 3322 immediately
7 afterwards.

8 MS. CAVANAUGH: I beg the Court's indulgence.

9 Thank you, Mr. Dobbins. No further questions.

10 THE COURT: All right.

11 Mr. Johnson, cross?

12 CROSS-EXAMINATION

13 BY MR. JOHNSON:

14 Q. Good morning, Mr. Dobbins. I just have a few
15 questions for you. I think the numbers on the side,
16 like 815, 816, those are item numbers. That's the
17 list -- the item number?

18 A. Yes.

19 Q. Okay. Under item numbers, I want you -- if you
20 look at item 818, and it's on 10/11/11, and the time
21 is 2145 and -- who --

22 (Phone ringing.)

23 A. I'm sorry, Mr. Johnson. Go ahead.

24 Q. That's okay. I'm just glad it wasn't me.

25 THE COURT: Okay. So number 818.

1 BY MR. JOHNSON:

2 Q. Number 818, that phone call is from -- what
3 number is the originating number and what number is
4 the terminating number?

5 A. Call 818 began with a number ending in 3369 and
6 ended with the subscriber's number which ends in
7 3322.

8 Q. Okay. And if we look at Item No. 819, would
9 you tell me what the originating number is and what
10 the terminating number is?

11 A. The originating number is (803) , and
12 the terminating number is also the subscriber
13 number, the one ending in 3322.

14 Q. And I think at the bottom of that -- there is a
15 number at the bottom which shows that it was
16 forwarded or went to voicemail or something like
17 that; correct?

18 A. Yes.

19 Q. Okay. If you look at item 820, 10/11/11, I
20 think the connect time is 2148. Would you tell me
21 the originating number and the terminating number?

22 A. That is a call that originated at
23 (803) and terminated on the subscriber's
24 line ending in 3322.

25 Q. Okay. And item 821 on the same date at 2148,

1 would you tell me the originating number and the
2 terminating number?

3 A. Item 821 originated from (803) and
4 terminated on the subscriber's number ending in
5 3322.

6 Q. Okay. Now I'd like to go back to items 828 and
7 829. And both of those were at the time of 2154,
8 which would be 5:54; is that correct?

9 A. 5:54 PM, yes, sir.

10 Q. And 828 and 829, that's the same call; is that
11 correct?

12 A. Yes. That's two views of the same call.

13 Q. Okay. So it's one AT&T phone number calling to
14 another AT&T phone number --

15 A. Yes.

16 Q. -- so -- it would show up twice, but it's one
17 call?

18 A. Yes.

19 Q. Okay. Okay. And that call lasted two minutes
20 and three seconds. So that's just one call at two
21 minutes and three seconds; is that right?

22 A. Yes.

23 Q. Okay. And would you please give me the
24 originating number and the terminating number?

25 A. The call that was for two minutes and three

1 seconds originated with the subscriber line, the one
2 ending in 3322; it terminated in (865)

3 Q. Okay. And what was the time of that call?

4 A. It was at 5:54 PM.

5 Q. Okay. Thank you. And then Item No. 830 and
6 831, which I think -- what time was -- what was the
7 connect time on that call? 21 what?

8 A. By connect time, do you mean the -- the
9 duration of the call or the time the call occurred?

10 Q. The time the call occurred.

11 THE COURT: Which item number are you talking
12 about?

13 MR. JOHNSON: Item 830 and 831.

14 THE WITNESS: 830 and 831 also represent one
15 call as shown from the point of view of two
16 different AT&T customers. That call occurred at
17 5:56 PM and lasted -- it shows one record as a
18 minute 25 seconds, another record a minute 23
19 seconds, which would have been when the different
20 ends of the phone disconnected.

21 BY MR. JOHNSON:

22 Q. Okay. That's what I want you to explain.
23 That's one dialing and one picking up; is that
24 correct?

25 A. Yes. That's just different actions on

1 different handsets.

2 Q. Okay. Now, Item No. 28 and 29, which is one
3 call, received the call from 3369, and Item No. 31
4 and 32 -- I mean, item 28 -- item 828 and 829 called
5 3369. That was the terminating call?

6 A. That's the call that received --

7 Q. Right.

8 A. The receiving end of the call.

9 Q. Right. And then item 830 and 831 was the
10 number 3369 --

11 A. Calling back --

12 Q. -- calling back --

13 A. -- 3322.

14 Q. Calling back to 3322.

15 Okay. And it was 5:56 when the call came back?

16 A. Yes.

17 MR. JOHNSON: That's all I have, Your Honor.

18 THE COURT: Redirect, if any.

19 MS. CAVANAUGH: I beg the Court's indulgence.

20 No further questions.

21 THE COURT: All right, sir --

22 Any objection to Mr. Dobbins being released
23 from his subpoena?

24 MS. CAVANAUGH: No, Your Honor.

25 MR. JOHNSON: Nothing from the Defense, Your

1 Honor.

2 THE COURT: Next witness, please.

3 MS. SIMPSON: The State calls Melissa Hall.

4 (Melissa Hall enters the courtroom.)

5 MELISSA HALL

6 being first duly sworn, testified as follows:

7 THE WITNESS: Yes, I do.

8 THE CLERK: Be seated in the witness chair and
9 state your full name for the record, please.

10 THE WITNESS: Melissa Hall.

11 DIRECT EXAMINATION

12 BY MS. SIMPSON:

13 Q. Ms. Hall, how old are you?

14 A. Forty-six.

15 Q. Forty-six. And do you live here in Camden?

16 A. No, ma'am.

17 Q. Where do you live?

18 A. In Bishopville.

19 Q. Bishopville. Are you from Bishopville?

20 A. Well, the area, yes. I'm from Lee County.

21 Q. Lee County. And --

22 THE COURT: Hold on one second. Just take a
23 deep breath.

24 Q. Where do you work?

25 A. At Invista.

1 Q. And what do you do there?

2 A. I'm a scales operator.

3 Q. And how long have you been with that company?

4 A. Ten years.

5 Q. What type of shifts do you work?

6 A. Rotating day to night, night to day.

7 Q. And how long are your shifts?

8 A. Twelve hours.

9 Q. You say you work shifts similar to what your
10 sister had back in 2011 too --

11 A. Yes.

12 Q. -- that Stacey had?

13 A. Yes.

14 Q. I want to talk to you a little bit about your
15 family. Who is Pamela Hall to you?

16 A. My sister.

17 Q. And do you have any other sisters?

18 A. Stacey Hall.

19 Q. And who is the oldest?

20 A. I am.

21 Q. You are. Did you live in Kershaw for a period
22 of time?

23 A. Yes.

24 Q. Tell the jury about that and how you ended up
25 there and what time period you stayed there.

1. A. I was at from '97 to 2000, I think it was.

2. Q. Okay. And Road, is that where your
3. mother and grandmother lived?

4. A. Yes.

5. Q. And then you moved to Bishopville?

6. A. Yes.

7. Q. At some point did you also move back to -- I'm
8. sorry, I want to make sure my areas are right --
9. Cassatt?

10. A. First, I think I moved back to , and then
11. to at .

12. Q. Okay. And when did you live at -- or
13. what's the street?

14. A. Road.

15. Q. And when did you live there?

16. A. I think it was 2011 until 2015.

17. Q. So you only recently made a move from that
18. house?

19. A. Yes.

20. Q. I want to show you what's already been
21. introduced as State's Exhibit 5. Is that the home
22. where you lived?

23. A. Yes.

24. Q. And when you lived at on Road, did
25. Pamela and her children come to visit you?

1 A. Yes.

2 Q. And tell us about that and how she came to be
3 with you and who all came.

4 A. She came the end of the school year in May of,
5 I want to say, 2012, and she stayed until August of
6 the next school term of 2012.

7 Q. Okay. And did she actually live with you
8 before all the stuff came out about Shawntea?

9 A. Yes.

10 Q. Okay. Tell us about that time. Because I
11 believe she -- all of this came out in October of
12 2011; correct?

13 A. Yes.

14 Q. And she lived with you prior to that?

15 A. It came out in 2011?

16 Q. Yes. It's okay if you don't remember the dates
17 or the years exactly.

18 A. Okay. Well, when it came out, she was with me
19 from May to August.

20 Q. Okay. May through August, the year of the
21 disclosure?

22 A. Yes.

23 Q. Tell the jury a little bit about the makeup of
24 your house; how many rooms and where everybody was
25 kind of staying.

1 A. It was a three-bedroom. It had a living room,
2 kitchen, two baths.

3 Q. Okay. And did you also have a room that we've
4 kind of referred to as the computer room in your
5 home?

6 A. Yes.

7 Q. Okay. I'll show you what's in as State's
8 Exhibit 7. Is that the room?

9 A. Yes.

10 Q. Now, these are fairly recent photos. Is -- the
11 room, has it recently changed any or did it change
12 any --

13 A. No.

14 Q. -- since 2011?

15 A. No, it didn't.

16 Q. That's generally how it was set up?

17 A. Yes.

18 THE COURT: Everybody with me on the jury?

19 Q. And who all did Pam -- which of her children
20 were there with you?

21 A. I think all of her kids; Child , ,
22 , and -- we call him , but his name is

23 .

24 Q. And do you know the defendant in this case,
25 Nakia Johnson?

1 A. Yes, I do.

2 Q. And tell the jury how you know Nakia.

3 A. Through my sister Pam.

4 Q. Through your sister Pam. And when did y'all

5 actually meet?

6 A. After they started dating.

7 Q. Okay. And did you have much interaction with

8 him at all?

9 A. No.

10 Q. No. So y'all didn't have any type of

11 relationship?

12 A. No.

13 Q. No. Were you aware of whether or not he was

14 supportive of the children? Like, would he provide

15 clothes for them or money to Pam?

16 A. Yes, ma'am.

17 Q. Tell us about that, as far as him helping out.

18 A. I guess whenever she called saying they needed

19 whatever it was, if he could, he'd give her money

20 for whatever it was they needed.

21 Q. And during that time that they were staying

22 with you, did you have any idea that anything had

23 happened with Child ?

24 A. No. You would never know.

25 Q. You'd never know. And, like I said, he didn't

1 have -- well, let me move to the night all this came
2 out. How exactly did you find out?

3 A. I was at work and Pam called me, and she was
4 upset.

5 Q. Okay. And what shift were you working on; the
6 nightshift?

7 A. Yes; the 7:00 PM to 7:00 AM.

8 Q. And she was upset. Did she tell you -- without
9 telling me exactly what she said, did she tell you
10 why she was upset?

11 A. Yes.

12 Q. Did you come home at that point or did you
13 finish your shift?

14 A. I finished my shift.

15 Q. What happened when you went home -- or did you
16 go directly home or did you go --

17 A. I went home.

18 Q. Went home to your home?

19 A. Uh-huh.

20 Q. At some point did you see Child or Pamela
21 afterwards?

22 A. I can't remember exactly -- no, because I think
23 I went to my house. The dates and the times of
24 where they stayed is kind of foggy, so I'm not sure
25 about where I was living and where they were living.

1 Q. Okay. But did you make contact with your
2 sister at some point?

3 A. Yes, I did.

4 Q. Did she tell you about what happened that
5 night?

6 A. Yes.

7 Q. And even her pulling the firearm on him --

8 A. Yes.

9 Q. -- and things of that nature?

10 A. Yes.

11 Q. As far as details about, I guess, the abuse,
12 did Child ever give you any of those details or
13 talk to you about what happened?

14 A. No, she didn't.

15 Q. Tell me how she reacted with you once she found
16 out.

17 A. She didn't react in a negative way. She seemed
18 relieved.

19 Q. That it was --

20 A. She just --

21 Q. She just seemed relieved?

22 A. Yes.

23 Q. And how did you respond to her? Did you
24 question her at all about details of what happened
25 or anything of that nature?

1 A. No, I didn't.

2 Q. What did you do?

3 A. Just -- you know, just -- if there was anything
4 she needed, I did what she needed. But she didn't
5 ask for anything. She didn't seem indifferent. She
6 just seemed like a burden was lifted off her
7 shoulders. We didn't talk about it.

8 Q. So y'all didn't talk any more about what
9 happened. And did you talk to the defendant, Nakia
10 Johnson, about what happened?

11 A. No, I didn't.

12 Q. Thank you, Ms. Hall.

13 THE COURT: Any questions?

14 MR. JOHNSON: No questions.

15 THE COURT: You may step down.

16 Next witness, please.

17 MS. CAVANAUGH: The State calls Child's Sibling

18 (Nakiah Johnson enters the courtroom.)

19 THE COURT: Come around, please, ma'am.

20 Child's Sibling

21 being first duly sworn, testified as follows:

22 THE WITNESS: Yes.

23 THE CLERK: Please be seated in the witness
24 chair and state your full name for the record.

25 THE COURT: Okay. Answer ay questions the lady

1 has for you, ma'am. Speak up loud so all of them on
2 the jury can hear you. Okay? You understand?

3 THE WITNESS: Yes.

4 THE COURT: Speak loud now.

5 DIRECT EXAMINATION

6 BY MS. CAVANAUGH:

7 Q. Child's , how are you?
Sibline

8 A. Good.

9 THE COURT: Speak loud.

10 Q. Speak loud into the microphone. Okay?

11 How old are you?

12 A. I can't --

13 THE COURT: Ma'am, that's not going to work.

14 You just have to relax a little bit and speak loud
15 for me. Okay? She asked how old you are. How old
16 are you?

17 THE WITNESS: Twelve.

18 THE COURT: There you go. That's much better.

19 BY MS. CAVANAUGH:

20 Q. And it's summertime, so are you in school right
21 now?

22 A. No, ma'am.

23 Q. What grade did you just finish?

24 A. 6th.

25 Q. And where did you go to school?

- 1 A. Lee Central Middle school.
- 2 Q. And what are some of your favorite subjects?
- 3 A. Math.
- 4 Q. And do you make pretty good grades?
- 5 A. Yes.
- 6 Q. Do you play any sports?
- 7 A. Basketball.
- 8 Q. Do you play for your middle school team?
- 9 A. No, ma'am.
- 10 Q. Just for fun outside of the school?
- 11 A. Yes.
- 12 Q. And do you like to do other things? Do you
- 13 have any favorite TV shows?
- 14 A. SpongeBob.
- 15 Q. You still like SpongeBob?
- 16 A. Yes.
- 17 Q. Child's Sibling, do you have any brothers and sisters?
- 18 A. Yes.
- 19 Q. Who are they? What are their names?
- 20 A. Names Siblings
- 21 Q. What's your mom's name?
- 22 A. Pamela Hall.
- 23 Q. And do you live with your mom?
- 24 A. Yes.
- 25 Q. And who else is in the house with you and your

1 mom right now?

2 A. My auntie and my sisters and brothers.

3 Q. Okay. And where -- whose house is it?

4 A. My mom's.

5 Q. Okay. And where is that?

6 A. East College Street.

7 Q. Is that here in Kershaw?

8 A. Yes.

9 Q. Have you always lived on East College Street?

10 A. No, ma'am.

11 Q. Can you describe some of the places that --
12 where did you live before you moved to East College
13 Street?

14 A. Road.

15 Q. Okay. And whose house is on Road?

16 A. My grandma's.

17 Q. And which grandma is that? Is that your mom's
18 mom?

19 A. Yes.

20 Q. Do you remember -- who lived with you on
21 Road?

22 A. My mama and my grandma.

23 Q. Did Chil live with you on Road?
d

24 A. No.

25 Q. What about your younger brother and sister?

1 A. Yes.

2 Q. Do you remember when you lived with your
3 grandma on Road?

4 A. Yes.

5 Q. When was that?

6 A. I don't really remember.

7 Q. Okay. Do you know about how long you've lived
8 on Street?

9 A. I don't remember.

10 Q. Were you in 5th grade at Street?
11 Do you know?

12 A. No, ma'am.

13 Q. So you were on Road when you were in
14 5th grade?

15 A. Yes.

16 Q. Where did you live before you lived with your
17 grandma on Road?

18 A. I don't remember.

19 Q. Okay. Did you ever live in Fairfax?

20 A. Yes.

21 Q. Okay. And who did you live in -- who did you
22 live in Fairfax with?

23 A. My mama.

24 Q. And who else?

25 A. And my daddy.

1 Q. And who is your dad?

2 A. Nakia.

3 Q. Did Child live with you in Fairfax?

4 THE COURT: You okay?

5 Q. Nakiah, do you need some water?

6 THE COURT: Are you going to be able to answer
7 these questions? You want to step down and let's
8 come back after while?

9 THE WITNESS: [Nods head].

10 THE COURT: That will make you feel better?

11 THE WITNESS: Yes.

12 THE COURT: I'll let you step down. We'll do
13 this later on. Okay? You want to step out with
14 your mama?

15 THE WITNESS: [Nods head].

16 (Nakiah Johnson exits the courtroom.)

17 THE COURT: All right. Madam Forelady, ladies
18 and gentlemen, let's take our afternoon break. Is
19 ten minutes okay? Please don't discuss the case,
20 don't deliberate and we'll come back and go to about
21 5:00.

22 (The jury exits the courtroom at 3:37 PM.)

23 THE COURT: All right. We'll take about a
24 ten-minute break. Ms. Cavanaugh, why don't you -- I
25 don't know if this child is going to be able to

1 testify or not. She seems very upset. I know her
2 mom is out talking to her, but y'all talk to her and
3 sort of see where we are.

4 MR. JOHNSON: Your Honor, may we approach a
5 second?

6 THE COURT: Yes, sir.

7 MS. SIMPSON: And, Your Honor, our victim
8 advocate is actually going to go. She's been
9 spending time with her and is talking with her right
10 now.

11 (Side bar conference.)

12 THE COURT: All right. We'll stand at ease for
13 a few minutes. Defendant is in custody.

14 (Short break 3:39 PM - 4:07 PM.)

15 THE COURT: All right. Child's , come back up
16 Sibling
 here, young lady.

17 All right. Miss Johnson, we're going to get
18 ready to start back up. We took the opportunity for
19 you to have a little break. You think you'll be
20 okay?

21 THE WITNESS: Yes.

22 THE COURT: You think you'll be able to finish
23 up?

24 THE WITNESS: Yes.

25 THE COURT: It's very important for everybody

1 involved, so take a deep breath and they'll ask you
2 questions. Now, you didn't talk about the case to
3 anybody when we broke, did you?

4 THE WITNESS: No, sir.

5 THE COURT: You didn't talk at all about the
6 case; right?

7 THE WITNESS: No, sir.

8 THE COURT: Mr. Johnson, does that satisfy
9 your --

10 MR. JOHNSON: Yes, sir.

11 THE COURT: All right. Bring the jury in,
12 please.

13 (The jury enters the courtroom at 4:08 PM.)

14 THE COURT: All right. You may proceed, ma'am.

15 MS. CAVANAUGH: Thank you.

16 DIRECT EXAMINATION

17 (Continued)

18 BY MS. CAVANAUGH:

19 Q. Child's , what did you see happen to your sister?
Siblin

20 THE COURT: Speak up loud so we can all hear,
21 please, ma'am. Child's , you have to answer the
Siblin
22 question, please.

23 Q. Did you see something happen to your sister,

24 Child's ?
Siblin

25 A. [Nods head].

1 Q. Can you answer out loud? Did you see something
2 happen to your sister, Child's ? Child's
3 for you? Sibling Sibling

4 THE COURT: You have to answer for me, please,
5 ma'am. Are you going to be able to tell us the
6 story? Ma'am?

7 Q. Child's , can you tell us what happened to your
8 Sibling sister?

9 THE COURT: All right. Madam Forelady, ladies
10 and gentlemen, I hate to ask you to do this, but
11 step back out just one second, please.

12 (The jury exits the courtroom at 4:11 PM.)

13 THE COURT: Child's , can you listen to me? I
14 Sibling know this is difficult. It's important that the
15 whole story come out. And if you're able to do it,
16 we want you to tell us; but if you're not able to do
17 it, I need to know that as well. You don't think
18 you can do that in front of all these people?

19 THE WITNESS: No.

20 THE COURT: I can't hear you, sweetie.

21 THE WITNESS: No.

22 THE COURT: No, you don't think you can?

23 THE WITNESS: [Shakes head.]

24 THE COURT: It's just too much for you?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 All right. I'm not going to -- she's obviously
3 unable to do this. I don't know if -- you want to
4 try it again tomorrow? I don't know.

5 MS. CAVANAUGH: Your Honor, I beg the Court's
6 indulgence.

7 THE COURT: All right, ma'am.

8 MS. CAVANAUGH: Your Honor, if we -- see if we
9 could get away from what she witnessed to see if
10 she's able to answer any other questions in front of
11 the jury and then make her available for
12 cross-examination by the Defense.

13 THE COURT: Well, if she can't answer the
14 questions you're asking her, I'm certain he won't be
15 able to any the questions on cross-examination
16 because she hasn't said anything other than talking
17 about her family; nothing about the case in general.
18 I just -- we tried it twice.

19 Child's , you don't think you'll be able to tell
Siblin
20 this jury your story? Please talk to me. Okay?
21 And it's okay if you can't; I just need to know.

22 MS. CAVANAUGH: Child's , would you be able to
Siblin
23 answer one yes-or-no question?

24 THE WITNESS: [Shakes head.]

25 THE COURT: All right. She's just not going to

1 be able to do it.

2 All right. You may step down. Thank you.

3 And this also -- she had one of the statements,
4 an interview?

5 MS. CAVANAUGH: Yes, Your Honor.

6 THE COURT: Right. She's not subject to
7 cross-examination, so I can't let that come in. Do
8 you have any other witnesses for this afternoon?

9 MS. CAVANAUGH: Yes, Your Honor, we do.

10 THE COURT: All right.

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

12 THE COURT: Y'all go ahead and talk.

13 MS. CAVANAUGH: Your Honor, if she is able to
14 get herself to calm down tonight and to -- without
15 anybody, of course, discussing her testimony, and be
16 recalled for the State tomorrow, we'd ask that we be
17 allowed to do that.

18 THE COURT: Mr. Johnson?

19 MR. JOHNSON: Your Honor, out of an abundance
20 of caution, I think I would say, Your Honor, I think
21 that she can't testify and I'd be very concerned if
22 she came back, after she'd been home with her
23 family, to testify. I know the Court has the
24 decision, but that would cause me grave concern. I
25 would ask that if she can't testify now, to let her

1 go home with her family where we have no idea what's
2 said and she's going to come back and testify, I
3 think that would be a detriment to my client.

4 MS. CAVANAUGH: And, Your Honor, may I reply?
5 This is the first time that she's seen her
6 stepfather since these allegations arose in 2011 --

7 THE COURT: Her father.

8 MS. CAVANAUGH: Her father. I apologize. So I
9 do understand why she's so hesitant.

10 THE COURT: Well, where would she stay tonight?

11 MS. CAVANAUGH: She would stay with her mother
12 where she lives tonight.

13 THE COURT: Where is her -- is her grandmother
14 here?

15 MS. CAVANAUGH: I don't think she's here in the
16 courthouse, but she's on Road which is very
17 close to the courthouse. So if we could -- we'd ask
18 permission to -- even if it's just later on today,
19 that she be subject to cross-examination; if it was
20 tomorrow morning, that she not discuss the case with
21 anyone and that we have the ability to recall her if
22 she is able to calm down and testify.

23 MS. SIMPSON: And, Your Honor, it would be our
24 position that you would have the ability, just as
25 you do overnight with any witness, to ask them

1 whether or not they've discussed their testimony
2 with anyone or anything of that nature. And if
3 there's anything that gives cause for concern at
4 that time, we would see. But it's our position that
5 it would really be no different than --

6 THE COURT: Ms. Pamela Hall, stand for me.
7 You're still under oath. Obviously you've seen how
8 upset your daughter is, and she's sort of frozen up
9 on the stand. I'm going to let her go home with you
10 tonight, but I'll instruct you and order you not to
11 discuss the case at all with her.

12 MS. HALL: Okay.

13 THE COURT: You understand that?

14 MS. HALL: Yes.

15 THE COURT: Obviously, if I find out you did,
16 you'll be contempt of court and subject to being
17 punished. I'm not fussing at you, just telling you
18 what the rules are. And just make sure she gets a
19 good night's sleep and makes sure she's comfortable
20 and rested, and we'll give it a shot in the morning
21 to see if she'll be able to testify. But I instruct
22 you and order you that there is to be absolutely no
23 mention of the trial, her dad.

24 MS. HALL: Yes, sir.

25 THE COURT: Is her stepsister -- or half-sister

1 staying with y'all as well?

2 MS. HALL: No, she's not. She stays with her
3 dad.

4 THE COURT: Okay. So no one can have access to
5 her by telephone or anything else. Okay?

6 MS. HALL: Yes. And I'll make inquiries in the
7 morning when I make the decision as to whether or
8 not I'll allow her to continue her testimony.

9 Yes, sir?

10 MR. JOHNSON: Your Honor, I would just ask that
11 the Court would consider expanding the order not
12 only to her, but to not let anybody talk to her
13 about the case.

14 THE COURT: Ms. Pamela Hall, obviously that not
15 only means you, but anybody in the family or anybody
16 calling or sisters or family or friends or anyone.
17 Just let her have a nice, pleasant evening, watch
18 her TV shows or whatever she wants to do, and we'll
19 try it in the morning. Fair enough?

20 MS. HALL: Yes.

21 THE COURT: All right. Do y'all have another
22 witness for this afternoon?

23 MS. SIMPSON: We do, Your Honor.

24 THE COURT: Bring the jury in, please.

25 (The jury enters the courtroom at 4:19 PM.)

1 THE COURT: Madam Forelady, ladies and
2 gentlemen, we're going to give this young lady over
3 the evening to see if she can perhaps give another
4 shot tomorrow to see if she'll be able to testify.
5 If she is, she is; if she can't, she can't. We'll
6 all understand that. We'll do another witness this
7 afternoon. I've been instructed she'll be staying
8 with her family, but everybody has been instructed
9 that she is not to discuss the case tonight and
10 nobody is to discuss the case with her. I'll make
11 inquiries tomorrow and make sure that order has been
12 complied with. Nobody is to coach her tonight,
13 nobody is to do anything other than just let her
14 have a restful evening. And if she's able to
15 tomorrow, she'll be able to; if she can't, I
16 understand that. So we're going to go at least
17 until 5:00.

18 Ladies?

19 MS. CAVANAUGH: State calls David Kellin.

20 DAVID KELLIN

21 being first duly sworn, testified as follows:

22 THE WITNESS: I do.

23 THE CLERK: Please have a seat in the witness
24 box and state your full name for the record.

25 THE WITNESS: Mahlon David Kellin.

1 DIRECT EXAMINATION

2 BY MS. CAVANAUGH:

3 Q. Good afternoon, Mr. Kellin. Can you state what
4 your profession is.

5 A. Social worker.

6 Q. And how long have you been a social worker?

7 A. Twenty-three years.

8 Q. And are you licensed as a social worker?

9 A. I am.

10 Q. Can you -- where did you go to college? Can
11 you describe your educational background for us.12 A. I have an undergraduate degree in psychology
13 from Lander University and a master's degree in
14 social work from University of South Carolina.

15 Q. And when did you receive your master's degree?

16 A. In 1992.

17 Q. And can you go over your employment history
18 with us since then?19 A. I've been employed various places; most
20 recently with Family Resource Center here in Camden
21 as a counselor and forensic interviewer, and working
22 now at Palmetto Citizens Against Sexual Assault in
23 Lancaster as a counselor.24 Q. And when did you work at the Family Resource
25 Center?

1 A. From 2008 through 2012, I believe.

2 Q. And what exactly is the Family Resource Center?

3 A. It's a child advocacy center. It's a center
4 where children are referred after disclosure of
5 abuse. They're brought there for potential
6 interview, like, you know, if the police request an
7 interview be done, also for counseling. But it all
8 revolves around children and it gives them a safe
9 place to talk and to communicate.

10 Q. And were you one of the interviewers at the
11 Family Resource Center?

12 A. I was.

13 Q. And you were employed in that capacity in 2011?

14 A. Yes.

15 Q. Did you have an occasion to interview Child
16 ?

17 A. I did.

18 Q. And what day did you interview Child ?

19 A. If I can refer to my notes. My interview was
20 conducted October 12th, 2011.

21 Q. Okay. And how old was Child at the time of
22 your interview?

23 A. Eleven years old.

24 Q. And what was her date of birth?

25 A. It was /1999.

1 Q. And who actually referred Child to the
2 Family Resource Center?

3 A. Rick Bailey of the Kershaw County Sheriff's
4 Office.

5 Q. Okay. And is it typical for law enforcement to
6 refer children to the Family Resource Center?

7 A. Yes.

8 Q. Can you describe the interview process for us
9 as far as the type of room and who's in the room
10 with you at the time?

11 A. We have a small room at the Family Resource
12 Center. There's a small room set off to the side
13 with a camera system and a one-way mirror. The
14 camera system records both audio and video of the
15 interview. We have a couch and a chair, a pad of
16 paper on an large board. Myself and the person
17 interviewing would be in the room.

18 On occasion there would be someone observing,
19 but with my interview, there was not. And
20 everything that happens in that room is contained
21 within that audio and video recording for the
22 particular person that's being interviewed.

23 Q. And is the fact that it's being recorded
24 relayed to the child?

25 A. Yes. We do indicate that the camera is there

1 and is recording.

2 Q. And is there anyone else besides you and the
3 child present in the room at the time of the
4 interview?

5 A. No.

6 Q. And what information, if any, did you have
7 before you interviewed Child ?

8 A. Basically I went in with little or no
9 information about her case and just the referral
10 from Investigator Bailey that a forensic interview
11 needed to be done and that the allegations were
12 sexual abuse.

13 Q. Okay. Have you had an opportunity to review
14 your video and interview of Child recently?

15 A. Yes.

16 Q. How did you begin that interview?

17 A. I interviewed by introducing myself, and very
18 briefly in the beginning, we talk about just general
19 topics. We check and see if they're aware that this
20 is being recorded. We provide a couple of
21 semi-instructions just about how to respond if they
22 don't know something so that they're not trying to
23 provide information to us just to try to provide us
24 information or to guess.

25 So we encourage them to -- if they don't know

1 something, to say they don't know; if they don't
2 understand, to say I don't understand and not to
3 guess. We also ask in the beginning if will they
4 tell the truth during the interview process.

5 MR. JOHNSON: Your Honor, may it please the
6 Court. I have a motion, please, sir.

7 THE COURT: Make it. You want to make it
8 outside the presence of the jury?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: All right. Ladies and gentlemen,
11 y'all step out just a second.

12 (The jury exits the courtroom at 4:27 PM.)

13 THE COURT: Mr. Johnson.

14 MR. JOHNSON: May it please the Court.

15 At this time, I move that that comment be
16 struck. And, Your Honor, I move for a mistrial
17 based upon the fact of the words saying he instructs
18 them to tell the truth, knowing one -- at least one
19 of the cases I read, and I'll define it for you,
20 Your Honor, says one of the things that you -- any
21 time you -- the interviewer says they tell the child
22 to tell the truth, that gives the impression the
23 child is being truthful. I'll have to find the
24 case. I don't --

25 THE COURT: That's Kromah.

1 MR. JOHNSON: Yes. And that was one of the
2 things I think they specifically spelled out.

3 THE COURT: Well, it's not grounds for a
4 mistrial. It might be grounds to exclude the
5 playing of the interview.

6 MR. JOHNSON: Your Honor, for the record, I
7 move to strike too.

8 MS. CAVANAUGH: Your Honor, the State v. Kromah
9 deals with him rendering an opinion on whether or
10 not she was truthful. He's not rendering an opinion
11 in any way or bolstering her credibility. We'll be
12 happy to move on from this set of questioning. But
13 he did not render an opinion at all, and that's what
14 State v. Kromah deals with.

15 THE COURT: Well, in the case of State vs.
16 Miama Kromah, that was a case where they talked
17 about forensic interviewing, and that was the case
18 where they were mainly concerned about the
19 interviewer commenting on the credibility or the
20 believability of the person giving the interview.
21 And, obviously, I think in that case it was physical
22 abuse, and that interviewer testified that there was
23 compelling finding of physical abuse.

24 And it went on to discuss the fact that the
25 jury is the ultimate finder of fact and witnesses

1 should not be bolstering credibility or giving
2 opinions about credibility or believability of the
3 children who are being interviewed.

4 And at the conclusion of that case, the Court
5 says this: Because the admissibility of forensic
6 interviews and the testimony based thereon at trial
7 has been the subject of recent appeals, we believe
8 it would be helpful to set forth, by way of exactly
9 the kinds of statements that the forensic
10 interviewer should avoid at trial; one, that the
11 child was told to be truthful, a direct opinion as
12 to a child's veracity or tendency to tell the truth,
13 any statement that indirectly vouches for the
14 child's believability such as stating that the
15 interviewer has made a compelling finding of abuse,
16 any statement indicating to a jury that the
17 interviewer believes the child's allegations in the
18 current matter, or opinion that the child's manner
19 indicated the child is telling the truth.

20 However, the interviewer may testify regarding
21 the following: Time, date, and circumstances of the
22 interview, personal observations regarding the
23 child's behavior or demeanor, or statements as to
24 the events that occurred within the personal
25 knowledge of the interview.

1 Of course yesterday we had a hearing to
2 determine the admissibility of this interview under
3 17-23-175, and I had the opportunity to review the
4 video as well as read the transcript of the video,
5 and, also, Mr. Johnson's questions about that
6 statement that the child was encouraged to tell the
7 truth.

8 Nowhere else in the interview was there any
9 bolstering by the interviewer or any comment on the
10 child or whether or not he thought the child was
11 telling the truth or not telling the truth. And,
12 quite frankly, I think he conducted the interview
13 according to the statute, and that there was no
14 problems dealing with he -- he being the
15 interviewer -- commenting on the believability of
16 the or the credibility of the witness. So I'm going
17 to deny your motion for mistrial.

18 And I think the context in which he has
19 testified about the truthful statement would not
20 taint it so as to make it inadmissible. And I'll
21 let you be protected on the record. Anything else
22 you want to tell me, Mr. Johnson.

23 MR. JOHNSON: Yes, sir, Your Honor. The next
24 logical step is that it could be more prejudicial
25 than probative to follow that. And that statement,

1 at this point, would be more prejudicial than
2 probative.

3 THE COURT: Well, the question was asked: Tell
4 us generally how you conduct the interview. And he
5 started off by telling us a number of things,
6 including encouraging her to tell the truth, is
7 basically what he said. I don't find that to be
8 more prejudicial than probative, so I'm going to
9 allow him to continue on with his testimony.

10 MR. JOHNSON: Thank you.

11 THE COURT: But you're protected on the record.

12 MR. JOHNSON: Thank you, sir.

13 (The jury enters the courtroom at 4:33 PM.)

14 THE COURT: You may continue.

15 BY MS. CAVANAUGH:

16 Q. When you conduct your interview, are open-ended
17 questions utilized?

18 A. As much as possible.

19 Q. And does that to ensure that you don't put
20 words in the child's mouth?

21 A. Yes.

22 Q. When you were interviewing Child , did she
23 appear to understand your questions?

24 A. Yes.

25 Q. And was she able to answer them to the best of

1 her ability?

2 A. As far as I know, yes.

3 Q. Did she disclose to you that she had been
4 sexually assaulted?

5 A. She did.

6 Q. And was she able to tell you when that
7 occurred?

8 A. She told me in some of the disclosure about
9 trips that they had taken, which would define a
10 when. She did not give a date or time.

11 Q. And you can look at your notes as well. Did
12 she disclose that this had happened in several
13 different places?

14 A. Yes.

15 MR. JOHNSON: Objection, Your Honor; leading.

16 THE COURT: Sustained.

17 Rephrase your question.

18 Q. Was she able to tell you where these occurred?

19 A. She described locations, yes, that she had been
20 when the abuse occurred.

21 Q. Did -- was Child sick during this interview?

22 A. She asked to leave the room twice to throw up.

23 Q. Based on that fact, did you make -- did you end
24 the interview?

25 A. After the second time when she asked to leave

1 to throw up, I started to conclude the interview at
2 that point.

3 Q. Going back to where she disclosed to you that
4 these incidents happened -- and you can look at your
5 notes -- where did she disclose that these incidents
6 had occurred?

7 A. She described the location -- one at home, at
8 3046 Stevens Road. She also described at the beach
9 that was north or near one of the side Myrtle
10 Beaches, is what I have here; at Walt Disney World,
11 at a dirt road, and also at a graveyard or cemetery.

12 Q. And I'll direct your attention to the middle
13 paragraph. Did she also say it occurred in a
14 computer room?

15 A. Yes, she did.

16 Q. And, again, she was able -- not -- to give you
17 a timeframe of when these things occurred?

18 A. I think she said at one point it was during the
19 summer or at times when he would come down. He was
20 not -- according to her, he was not living in the
21 home at the time. So it was during times when he
22 would come down, is how she described it.

23 Q. And, again, I'll direct you towards the bottom
24 of page 3 of your notes from this interview.

25 A. Okay. She also described that it started three

1 years ago, from the point of the interview, at his
2 brick home in Fairfax.

3 Q. And, again, this interview with Child was
4 recorded?

5 A. It was.

6 Q. And have you had an opportunity to review the
7 interview recently?

8 A. I have.

9 Q. And I'll show you what's been marked as State's
10 Exhibit 3. Is this a copy of her forensic
11 interview?

12 A. That's a copy of the interview, yes.

13 MS. CAVANAUGH: I beg the Court's indulgence.

14 BY MS. CAVANAUGH:

15 Q. And just to reiterate, you stated -- why did
16 you end the interview?

17 A. After the second time she went to the bathroom
18 to throw up, I felt like at that point we needed to
19 close the interview or to wrap it up. She continued
20 to talk after that, so it was shortly after we
21 finished talking that last bit that we wrapped up
22 the interview.

23 MS. CAVANAUGH: Your Honor, at this time we'd
24 ask that State's Exhibit 3 be introduced into
25 evidence.

1 THE COURT: Any objection?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: Sir?

4 MR. JOHNSON: Yes sir. At this time, I would
5 object to the entrance of it.

6 THE COURT: Same reasons as stated yesterday?

7 MR. JOHNSON: Same reasons. And just out of an
8 abundance of caution, whenever you see fit, I'll put
9 my reasons on the record.

10 THE COURT: We will do that after the jury
11 leaves. Remind me to do that, Mr. Johnson.

12 MR. JOHNSON: Yes, sir..

13 THE COURT: All right. You may publish it.
14 How long is it?

15 MS. CAVANAUGH: This one is approximately 40
16 minutes.

17 THE COURT: All right. We'll listen to 20
18 minutes of it today and the last 20 minutes of it
19 tomorrow morning, unless the jury wants to listen to
20 all of it today. I'll give them that option at
21 5:00.

22 (State's Exhibit No. 3 admitted in to
23 evidence.)

24 (Video played for his Honor and the jury.)

25 THE COURT: Can everybody see it?

1 THE JURY: Yes, sir.

2 THE COURT: We're going to fast-forward it
3 while she's in the bathroom.

4 MS. CAVANAUGH: Your Honor, I apologize, this
5 is a different laptop than we used yesterday.

6 (Video paused.)

7 THE COURT: All right. Madam Forelady, ladies
8 and gentlemen of the jury --

9 How many more minutes of it?

10 MS. CAVANAUGH: About 20 more, maybe a little
11 less.

12 THE COURT: All right. Madam Forelady, I'd
13 like to finish this up this afternoon. That would
14 take us to about 5:20. Is that okay with everybody?

15 THE JURY: Yes, sir.

16 THE COURT: All right. Let's finish this one
17 up.

18 Then we'll cross-examine tomorrow, Mr. Johnson.

19 All right. Move along.

20 (Video resumed.)

21 THE COURT: Let's move it forward while she's
22 in the bathroom the second time.

23 (Video concluded.)

24 THE COURT: All right. Ms. Cavanaugh, I'll let
25 you continue your direct examination of this witness,

1 Mr. Kellin, tomorrow morning, unless you're through.

2 MS. CAVANAUGH: Tomorrow is fine, Your Honor.

3 THE COURT: All right. Mr. Kellin, you're
4 right in the middle of your testimony. Please don't
5 discuss it with anyone tonight, don't let anyone
6 discuss it with you. We'll start back tomorrow
7 morning at 9:15, so please be back and ready to go.

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Ladies and gentlemen,
10 we'll start at 9:15 in the morning. I think we're
11 doing pizza for lunch tomorrow. And I'll talk to
12 the lawyers tonight so I can get some sort of an
13 idea of where we stand for tomorrow. Please don't
14 let anyone discuss the case with you and please
15 don't discuss the case with anyone else. Please
16 don't try to do any type of research, and please
17 don't start any type of deliberations in the jury
18 room.

19 I hope you have a pleasant evening and we'll
20 start bright and early in the morning at 9:15.
21 We'll be here at 8:30 to so some things so we'll be
22 ready by the time you get here. Thank you very
23 much. You've paid very close attention. I look
24 forward to seeing you in the morning.

25 (The jury is excused for the evening at

1 5:22 PM.)

2 THE COURT: All right. Sir, you may step down.

3 Mr. Johnson, I told you I'd let you put that on
4 the record after the jury went out. You made an
5 objection and --

6 MR. JOHNSON: Yes, sir.

7 THE COURT: I think you made an objection to
8 publishing the tape or the DVD.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: And your objection is, please?

11 MR. JOHNSON: Your Honor, the first objection I
12 want to make is, I want to object to the fact that
13 it is not trustworthy. And it's not trustworthy
14 because of the inconsistency of the statement saying
15 something happened one time, saying it happened one
16 place, saying it happened another, saying it
17 happened three times one place, saying it was the
18 first time one place in Kershaw County and then
19 first time one place in Fairfax -- I mean, in
20 Allendale County.

21 I would -- the questions, I think, were
22 suggestive because the questions that were asked
23 were like, where did you do this and where did you
24 do that. And the questions were more directed and
25 pointed at this particular points.

1 And if Your Honor denies that, then I would go
2 to more prejudicial than\probative. And then if
3 Your Honor denies that -- and, Your Honor, to renew
4 my motion for the Kromah motion for the bolstering
5 of the testimony.

6 THE COURT: Thank you, Mr. Johnson. And I
7 appreciate you protecting the record on that. But
8 I'm going to respectfully deny it. I find that -- I
9 made the determination yesterday in-camera, out of
10 the presence of the jury, as to whether or not this
11 would be admissible. And, obviously, I don't see
12 where anything has changed. It will be ultimately
13 for the jury to determine the credibility of the
14 victim -- or the alleged victim. And, obviously,
15 you and I have been doing this a long time, and it's
16 not unusual to have some discrepancies when people
17 try to relate what happened in the past.

18 Obviously, you had the opportunity to
19 cross-examine the victim in the case. You'll be
20 afforded the same opportunity to cross-examine the
21 interviewer, Mr. Kellin, tomorrow when he comes back
22 to complete his.

23 So I stand by my previous ruling that the tape
24 of the interview is admissible, complies with
25 17-23-175, and I find that it is not -- prejudicial

1 value does not outweigh the probative value, and I
2 stand by my ruling on the bolstering that we already
3 discussed.

4 MR. JOHNSON: Thank you, Your Honor. I was
5 reading the case and it says that I have to state
6 the rule. That's 801 (d) -- 801 (c) -- I see ones
7 or -- Your Honor, I was reading those cases and I
8 just want to --

9 THE COURT: You're perfectly protected. If you
10 look tonight and that's not the correct rule, you
11 can correct it in the morning. Fair enough?

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

13 THE COURT: All right. Anything from the State
14 before we break for the evening?

15 MS. SIMPSON: Nothing further from the State.

16 MR. JOHNSON: Nothing from the Defense.

17 THE COURT: All right. You requested in
18 chambers that I lift my requirement that your client
19 be in custody for the evening. Mr. Johnson, I
20 practiced law beside you for 30 years -- well, not
21 beside you, but we had many, many cases, as I've
22 said, over the years and we've had criminal cases
23 together. And I've been on the bench now 11 years,
24 and it's just been my standard practice,
25 particularly in a case of these types of allegations

1 and with the minimum mandatory of 25 years, if he's
2 convicted, I just -- I -- I cannot grant your
3 request. He will be in custody until the conclusion
4 of the trial.

5 MR. JOHNSON: Yes, sir.

6 THE COURT: Anything else by anyone?

7 MS. SIMPSON: No, Your Honor.

8 THE COURT: All right. If y'all don't mind,
9 let me see y'all in chambers so we can discuss a
10 little bit of where we are. We'll stand adjourned.

11 (Court adjourned for the evening at 5:27 PM.)

12 THE COURT: Anything from the State before we
13 proceed?

14 MS. SIMPSON: Yes, Your Honor. Just to put on
15 the record what we discussed in chambers regarding
16 the testimony of Child's Sibling . I spoke with my
17 co-counsel, Ms. Cavanaugh, at length last night.

18 Based on what was presented yesterday and she
19 initially got up there and was able to talk about
20 everything, essentially, but the substance of what
21 we are here for and her observations, Your Honor
22 allowed us a break to calm down. And at that point,
23 the victim advocate spoke with her and she said she
24 would be able to testify and that she could do it.
25 And I think Your Honor even talked to her prior to

1 that. And then once again when the jury was in
2 here, one question was asked and the subject matter
3 and she broke down again.

4 In our trial preparations with her, she
5 reviewed her forensic interview and was able to alk
6 to us and we were capable of thinking that she could
7 take the stand and testify. However, at that time,
8 her mother indicated to us that she may need
9 counseling. We've actually set that up and it's in
10 the process. She will be seeing a counselor.

11 These things together, plus the Defendant's
12 objection about us recalling her this morning if she
13 were able to get up there and testify, his worries
14 and concerns as far as potential pressures or
15 discussions about the case -- and I have no doubt
16 that Ms. Hall followed instructions. But due to the
17 potential trauma of putting her on the stand, and
18 she is not the victim in this case, we're not going
19 to recall her. Additionally, we're not going to put
20 in, of course, her forensic interview as it does not
21 qualify under the statute now since she's not
22 subject to cross-examination.

23 I think in the interest of justice, both on
24 behalf of the Defendant and the State, I think it's
25 best not to go forward with this witness. And

1 whatever curative instruction Your Honor wants to
2 give to the jury or whatever the Defense requests,
3 if the request a curative instruction, the State
4 would not be opposed.

5 THE COURT: Mr. Johnson.

6 MR. JOHNSON: Your Honor, as I previously told
7 you in the back, the curative instruction you told
8 me is satisfactory. The only thing I need is -- I
9 need to make the Court aware, I am going to -- you
10 said you were going to redact the portion about the
11 lie detector. I just want to protect myself on the
12 record for that.

13 THE COURT: That's on your client's statement?

14 MR. JOHNSON: Yes, sir.

15 THE COURT: I assume the State has done that.

16 MS. SIMPSON: It's actually being done now. It
17 just needs to be downloaded to a CD that can be
18 played. So prior to Sergeant Bailey testifying,
19 we'll have to -- and if the Defense wants to review
20 it first, that's fine.

21 THE COURT: Do you have Mr. Kellin here and
22 ready to go?

23 MS. SIMPSON: We do. He's outside.

24 THE COURT: All right.

25 MS. SIMPSON: And we also have Dr. Foster here.

1 But if you want to --

2 THE COURT: Well, I don't want my jury waiting.
3 And somehow or another we got cross-legged with the
4 jail and they're 45 minutes late. So that pretty
5 much put a damper on our attempt of getting an early
6 start.

7 Bring the jury in, please.

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

9 THE COURT: Madam Forelady, ladies and
10 gentlemen, good morning. I hope you enjoyed your
11 snacks and coffee. We were here at 8:30. We were
12 going to try to get 45 minutes' worth of stuff done
13 outside of your presence, but we had a mix-up in
14 communications and -- anyway, we were not able to
15 waste the 45 minutes. But we're not wasting your
16 time, and that's why we're starting right on time.

17 One matter of housekeeping: The young girl who
18 was on the stand yesterday, ^{Child's} ~~Sibline~~, I've made a
19 determination that she's just not able to testify in
20 this case, so her testimony will be stricken from
21 the record. I will instruct you to not consider
22 what she said or how she appeared or anything in
23 your deliberations of the guilt or innocence of the
24 defendant.

25 Obviously, we can't use that portion she

1 testified to because the Defendant didn't have the
2 option or right to cross-examine her. So please,
3 her testimony will be stricken and do not consider
4 that in your deliberations.

5 Okay. You may recall Mr. Kellin to finish up
6 with him.

7 MS. CAVANAUGH: Thank you, Your Honor.

8 THE COURT: Any objection to my curative
9 remarks to the jury?

10 MS. SIMPSON: None from the State, Your Honor.

11 THE COURT: Mr. Johnson?

12 MR. JOHNSON: No, Your Honor.

13 THE COURT: Thank you.

14 (David Kellin enters the courtroom.)

15 THE COURT: Come on up, sir. I remind you,
16 you're still under oath from yesterday.

17 Ms. Cavanaugh.

18 DIRECT EXAMINATION

19 (Continued)

20 BY MS. CAVANAUGH:

21 Q. Good morning, Mr. Kellin.

22 A. Good morning.

23 Q. Outside of the interview that we observed
24 yesterday afternoon before we broke for the day, did
25 you have any other involvement with this case?

1 A. No.

2 MS. CAVANAUGH: I beg the Court's indulgence.

3 No further questions.

4 THE COURT: Mr. Johnson?

5 MR. JOHNSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q. Other than the information you collected in
9 that video, that's all the information you have as
10 it relates to this case; is that right?

11 A. Yes.

12 Q. And the video shows what information you got;
13 is that right?

14 A. Yes.

15 MR. JOHNSON: That's all I have, Your Honor.

16 THE COURT: I assume no redirect.

17 MS. CAVANAUGH: No, Your Honor.

18 THE COURT: You're excused. You're free to go.

19 Next witness, please.

20 MS. CAVANAUGH: State calls Investigator Dave
21 Capps.

22 (Dave Capps enters the courtroom.)

23 DAVE CAPPS

24 being first duly sworn, testified as follows:

25 THE WITNESS: Yes, ma'am.

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

3 THE WITNESS: Good morning.

4 DIRECT EXAMINATION

5 BY MS. CAVANAUGH:

6 Q. Investigator Capps, where are you employed?

7 A. Lee County Sheriff's Office.

8 Q. And what is your position at the Lee County
9 Sheriff's Department?

10 A. I am a criminal investigator in the inhouse IT
11 and local agency security officer.

12 Q. And IT, what does that stand for?

13 A. Information technologist. I handle their
14 computers, camera systems, and things like that.

15 Q. Okay. And how long have you been with Lee
16 County Sheriff's Department?

17 A. Since July of 2010.

18 Q. So you were there in October of 2011?

19 A. That's correct.

20 Q. Do you work with Lieutenant Patrick Hickmon?

21 A. I do. He's my supervisor.

22 Q. And back in, I believe it was, October 2011,
23 did he ask you to go to the Fountain Grocery Store?

24 A. He did.

25 Q. And why did he and you to go to the Fountain

1 Grocery Store?

2 A. Mr. Fountain has a security system in his
3 store -- Mr. Ron Fountain's store, he has a security
4 system. And at that time, it was -- the USB port
5 would not allow you to download the video, and if
6 you did, it was in such a format that it could not
7 be viewed otherwise.

8 Q. So did you have your own equipment that you
9 used when you went to the grocery store?

10 A. Yes. It's a very simple technique. I just
11 took a digital camera and made a recording. And
12 that recording is an ABI file which can be viewed on
13 any Windows media player.

14 Q. And did you already have some information about
15 where to go on that particular surveillance?

16 A. Yes. After having been instructed to go there
17 by Lieutenant Hickmon, as a result of our
18 conversation, I was informed that he and
19 Mr. Fountain had already marked the location on the
20 video regarding two individuals he needed me to
21 video.

22 Q. Okay. And just to -- did you meet with
23 Mr. Fountain that afternoon?

24 A. I did. And he -- well, I believe it was the
25 next morning, the morning of the 21st -- I think it

1 was the morning of the 21st.

2 Q. In October?

3 A. Yes. I --

4 Q. Sorry. What?

5 A. I don't recall the exact date to be quite
6 honest with you. But I know it was the 21st of
7 something.

8 Q. I'm going to show you what's marked as -- well,
9 what will be marked as State's Exhibit 11. Do you
10 recognize this recording?

11 A. Yes.

12 Q. And is that a copy of the video that you just
13 described?

14 A. Yes.

15 MR. JOHNSON: No objection.

16 MS. CAVANAUGH: Your Honor, at this time I'd
17 ask that State's Exhibit 11 be entered in to
18 evidence and that we publish it to the jury.

19 MR. JOHNSON: No objection, Your Honor.

20 (State's Exhibit No. 11 marked for
21 identification and entered in to evidence.)

22 (Video played for his Honor and the jury.)

23 BY MS. CAVANAUGH:

24 Q. So, Investigator Capps, you can hear voices in
25 the background. What are those voices?

1 A. That was Mr. Ron Fountain and I having a
2 conversation about the people that I was to video.

3 Q. So that was why you were using your own
4 equipment to record it?

5 A. Yes.

6 Q. So that wasn't necessarily voices from the day
7 of this surveillance video?

8 A. No. That system did not have audio or anything
9 in the store. The background was either he and I
10 talking and/or customers talking on the other side
11 of the wall of the office.

12 Q. Okay. Was that the extent of your involvement
13 in this particular case?

14 A. That was all I did.

15 Q. And you had no other outside information other
16 than to go to the store and get that particular
17 video; correct?

18 A. That is correct.

19 MS. CAVANAUGH: I beg the Court's indulgence.

20 Thank you. Please answer any questions from
21 the Defense.

22 THE COURT: Mr. Johnson.

23 MR. JOHNSON: Thank you, Your Honor. May it
24 please the Court.

25 CROSS-EXAMINATION

1 BY MR. JOHNSON:

2 Q. Investigator Capps, aren't there two other
3 videos, little clips, that go along with that one?

4 A. I believe there were two videos and a still
5 picture.

6 Q. That's right. So that was not the only one
7 that you took down?

8 A. No, sir.

9 Q. Okay. And you were the one that -- did you, by
10 the way, bring a copy of the other still pictures or
11 video with you?

12 A. No, sir. When I downloaded those to the
13 computer system at the office, I burned them
14 straight on a disc. And the computer system they
15 were downloaded subsequently onto was destroyed by a
16 lightning strike a couple years ago. We have new
17 systems now.

18 Q. Okay. If --

19 MR. JOHNSON: Your Honor, can we approach,
20 please?

21 THE COURT: Yes, sir.

22 (Sidebar conference.)

23 MR. JOHNSON: Your Honor --

24 THE COURT: You will need it?

25 MR. JOHNSON: Yes, sir.

1 THE COURT: Okay. No problem.

2 Madam Clerk, may I borrow your --

3 Your Honor, may I approach?

4 THE COURT: Absolutely.

5 Let me have a technician down here to help play
6 the video for Mr. Johnson, please.

7 All right. Mr. Johnson, what do you need?

8 (Video played.)

9 MR. JOHNSON: I want it to go back to the
10 beginning.

11 THE COURT: All right. Ma'am, take it back to
12 the very beginning, please.

13 MR. JOHNSON: Can you stop it right there? And
14 back it up, please.

15 (Video paused.)

16 BY MR. JOHNSON:

17 Q. Investigator Capps, can you see this?

18 A. Yes, sir.

19 Q. At the bottom there, is that like -- gives the
20 time of what's going on?

21 A. That's the system time on that device. Yes,
22 sir.

23 Q. And on the system time right here, it has the
24 number 17 lighted up, and the rest of the numbers
25 are dark; is that correct?

1 A. Yes, sir.

2 Q. And the number 17 is like military time, it
3 indicates the hour; is that correct?

4 A. Yes, sir.

5 Q. And down below this, there was another number
6 that indicates the minutes; is that correct?

7 A. Yes, sir.

8 Q. Okay. And we're unable to see it on this one,
9 but there is a minute section that will show you the
10 minutes at the bottom.

11 A. That is correct.

12 Q. And that would tell the time the person that
13 you saw would have been -- if you look at this and
14 look at where the person was, you would know where
15 they were at that time; is that correct?

16 A. Yes, sir.

17 Q. Okay. And you did make two other short videos
18 along with this one; is that correct?

19 A. A total of two short videos and one still
20 picture.

21 Q. All right. And when you went down there, did
22 anybody not tell you to make sure you showed the
23 time?

24 A. No, sir.

25 Q. So they just told you to -- they already had

1 them identified at what they wanted you to look at?

2 A. Yes.

3 Q. And in their identification, they didn't tell
4 you to identify the time that the person was going
5 to be in the store?

6 A. No, sir.

7 Q. If I was to show you a copy or a photo of the
8 still shot, would you be able to recognize it?

9 A. Yes, sir.

10 MR. JOHNSON: Thank you, Your Honor.

11 Your Honor, she'd like to approach.

12 THE COURT: Mark it for identification.

13 Defendant's 1; is that correct?

14 MR. JOHNSON: Yes, sir.

15 (Defendant's Exhibit No. 1 marked for
16 identification.)

17 BY MR. JOHNSON:

18 Q. I'd like for you to look at it and tell me, can
19 you identify that?

20 A. This is a representation of Ron Fountain's
21 store in front of the video box.

22 Q. Is that the still shot?

23 A. Yes, sir.

24 Q. Can you tell me the time on it?

25 MS. CAVANAUGH: Objection.

1 THE COURT: What's the objection?

2 MS. CAVANAUGH: That that is not in evidence,
3 Your Honor. He can't talk about it. It's not in
4 evidence.

5 THE COURT: He's not introducing it, he's just
6 refreshing his memory with it. Overruled.

7 BY MR. JOHNSON:

8 Q. Can you tell me the time on it?

9 A. I can't tell you the exact time, but I can tell
10 you close to the time would be 1700 and
11 approximately 58 or 59 minutes.

12 Q. Okay. Thank you.

13 A. Okay.

14 MS. CAVANAUGH: Investigator Capps, in your
15 experience as --

16 THE COURT: He's not finished.

17 MS. CAVANAUGH: I apologize.

18 BY MR. JOHNSON:

19 Q. Can you tell me what time 1758 is in Eastern
20 Standard Time?

21 A. A minute before 6:00 [sic].

22 Q. Okay. Would that be 5:58?

23 A. Yes, sir.

24 Q. Okay. Thank you, sir.

25 THE COURT: That's it?

1 MR. JOHNSON: Yes, sir.

2 THE COURT: Ma'am.

3 REDIRECT EXAMINATION

4 BY MS. CAVANAUGH:

5 Q. Investigator Capps, in your experience as an
6 investigator in looking at surveillance videos with
7 the sheriff's department, are the surveillance video
8 times always 100-percent accurate?

9 A. No, they're not.

10 Q. And do you know if Ron Fountain's video was
11 100-percent accurate on this particular night?

12 A. I don't recall that. I don't know whether it
13 was or wasn't. I can't say whether it was or wasn't
14 either way.

15 Q. And your sole purpose with this video was to
16 identify that those two individuals were in the
17 store that particular afternoon?

18 A. That was the purpose of the video, yes.

19 MS. CAVANAUGH: Thank you.

20 THE COURT: All right. You may step down.

21 May he be excused from his subpoena?

22 MS. CAVANAUGH: No objection.

23 MR. JOHNSON: No, sir, Your Honor; I didn't
24 have a subpoena on him.

25 THE COURT: Next witness, please.

1 MS. CAVANAUGH: State calls Ron Fountain.

2 (Ron Fountain enters the courtroom.)

3 RON FOUNTAIN

4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

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

8 THE WITNESS: Ronald H. Fountain.

9 DIRECT EXAMINATION

10 BY MS. CAVANAUGH:

11 Q. Good morning, Mr. Fountain. Are you the owner
12 of Fountain's Grocery Store?

13 A. I am.

14 Q. And where is that located?

15 A. On Highway 341 between Bishopville and Bethune.

16 Q. And is that near Stevens Road?

17 A. Yes, ma'am.

18 Q. Okay. Did you have an opportunity to meet with
19 investigator -- well, first of all, explain the
20 surveillance systems that you have at your store.

21 A. Well, I got a camera system that films
22 everybody in and out the store and --

23 Q. And is it common for investigators with the
24 sheriff's department to come to you and ask to view
25 that surveillance?

1 A. Right. They came out and wanted to see that
2 day's surveillance.

3 Q. And they do that if your store is robbed also?

4 A. Yeah. If it's robbed, they have the film.

5 Q. Or if there's a break-in?

6 A. Right.

7 Q. Or if somebody has taken something from your
8 store. Is this a common occurrence for you?

9 A. Right. It films it at all times.

10 Q. Okay. And have you had -- how long have you
11 owned Fountain Grocery Store?

12 A. Forty-three years.

13 Q. Okay. And since you began having surveillance,
14 have you had multiple systems?

15 A. I think this is the third or fourth system I
16 put in.

17 Q. Okay. And why have you had to put in multiple
18 systems?

19 A. Well, they're fixing to wear out and updates
20 and things like that come up.

21 Q. Okay. And did you have surveillance back in
22 2011?

23 A. I did.

24 Q. And back in the fall of 2011, did an
25 investigator come meet with you to obtain

1 surveillance?

2 A. He did.

3 Q. Did your system at the time have the ability to
4 copy itself?

5 A. No.

6 Q. So the sheriff's department had to use their
7 own recording device to make a copy; is that
8 correct?

9 A. That's correct.

10 Q. Back in 2011, as far as the timing on your
11 surveillance system, could you say that it was
12 100-percent accurate?

13 A. At first I was thinking maybe it was an hour
14 off. But then we got to thinking it was -- I think
15 a break-in, it was an hour off. This was fairly
16 close. And from looking back at it, I can tell from
17 the customers coming in that it was, like, after
18 5:00, going on 6:00 when these customers come in,
19 because they get off work at 5:00 and they show up,
20 you know, about the same time every day.

21 Q. Right. But your system wasn't necessarily
22 100-percent accurate to the minute, was it?

23 A. Oh, no, ma'am.

24 Q. Back in October of 2011, you met with
25 Investigator Capps and provided him -- and allowed

1 him to view your system?

2 A. That's correct.

3 Q. And did he make a copy of that surveillance
4 from that day?

5 A. He did.

6 MS. CAVANAUGH: I beg the Court's indulgence.

7 Thank you, Mr. Fountain.

8 THE COURT: Mr. Johnson.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON:

11 Q. How are you this morning, sir?

12 A. All right.

13 Q. On your system -- I think you just said it, but
14 I want to clear it up. It films everybody coming in
15 and everybody going out?

16 A. Correct.

17 Q. So that means it would show the time a person
18 coming in and show the time a person comes out?

19 A. Right.

20 Q. Okay. And you just testified a minute ago
21 about it's not 100-percent accurate. On the day
22 they're talking about, all you know is the system
23 ran. You don't know if it was accurate or not. All
24 you know is the system was running that day; right?

25 A. Yes.

1 Q. And let me ask you this: I heard your voice on
2 the background. Did you -- on the day we're talking
3 about, on October 11th, did you see a male and a
4 female in the store that y'all were looking at?

5 A. Correct.

6 Q. It was not just a male, it was a male and a
7 female?

8 A. Right. It was a male and a little girl.

9 Q. A male and a little girl?

10 A. Yes.

11 Q. Who were in the store together?

12 A. Right.

13 Q. Thank you, sir.

14 MR. JOHNSON: Thank you.

15 THE COURT: Redirect?

16 MS. CAVANAUGH: No redirect.

17 THE COURT: Thank you, Mr. Fountain. You are
18 released from your subpoena.

19 Next witness, please.

20 MS. CAVANAUGH: The State calls Laurie
21 Caldwell.

22 MS. SIMPSON: Your Honor, actually, we're going
23 to call a different witness.

24 THE COURT: Very well.

25 MS. SIMPSON: The State calls Paul Meah.

1 (Paul Meah enters the courtroom.)

2 (State's Exhibit No. 12 marked for
3 identification.)

4 PAUL MEAH

5 being first duly sworn, testified as follows:

6 THE WITNESS: I do.

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

9 THE WITNESS: My name is Paul Meah.

10 DIRECT EXAMINATION

11 BY MS. SIMPSON:

12 Q. Mr. Meah, where are you employed?

13 A. I'm employed at SLED in Columbia.

14 Q. Okay. What is SLED?

15 A. That's the South Carolina Law Enforcement
16 Division. We provide a forensics laboratory and
17 other services for the State.

18 Q. And what is your position with SLED?

19 A. I'm a DNA scientist. I'm in the forensic DNA
20 section.

21 Q. And how long have you been at SLED?

22 A. Approximately eight years.

23 Q. And how long have you been with the forensics
24 portion involving DNA analysis?

25 A. That entire time.

1 Q. Can you tell the jury about your educational
2 background and training?

3 A. I got my bachelor's degree in 2001 from the
4 University of South Carolina. And then I got my
5 master's degree in 2003, and that was in molecular
6 biology. I did three years of Ph.D. work, but I got
7 hired away by SLED before I finished my Ph.D.

8 Q. And with respect to SLED, tell the jury about
9 your lab. Is it accredited in some way?

10 A. Yes, it is. We're accredited by ISO Standard,
11 which is the highest in the world right now. We do
12 testing every two years -- I mean, twice a year. I
13 have to do proficiency testing in my field, which
14 means that I get a blinded sample or several samples
15 and I have to make sure that I do them correctly.

16 Q. And is your work actually peer-reviewed or your
17 analysis or examinations with respect to any
18 particular case?

19 A. Every single case is technically reviewed,
20 which means that they go back and they go through
21 all of the things that we did to make sure that we
22 did them properly. And it's also administratively
23 reviewed to make sure all of the evidence was
24 handled properly and sorted and the report is
25 correct.

1 Q. Okay. And tell the jury, what is DNA?

2 A. DNA is in every cell of your body. It
3 identifies you and makes you the human that you are.
4 You get half of it from your mother and half of it
5 from your father. It's a blueprint for building a
6 body.

7 And in this example, we use it to identify
8 people. We can use it to identify body fluids or
9 anything like that.

10 Q. And is DNA unique to every individual? Can you
11 explain that?

12 A. It is, except for twins. Twins have close to
13 the same DNA. I mean, there are 3 million base
14 layers in the body, and that's a lot. And some
15 twins may have different little snips, but as far as
16 person to person goes, there's very large
17 differences in DNA that we can see.

18 Q. And with respect to your qualifications, have
19 you ever testified as an expert before in the field
20 of DNA analysis?

21 A. I have.

22 Q. And how many times?

23 A. Approximately 25 or 30 times.

24 MS. SIMPSON: Your Honor, at this time we'd
25 offer Mr. Meah as an expert in DNA analysis.

1 MR. JOHNSON: No objection.

2 THE COURT: All right. He'll be qualified to
3 render opinions in regards to the area of DNA.

4 BY MS. SIMPSON:

5 Q. Explain a little bit about how cases or
6 evidence is referred to you typically.

7 A. We pick up in a couple of different ways. It
8 used to be -- and I'm not sure in this case. But we
9 used to pick up evidence from a room that was beside
10 our laboratory and stored there. And then we --
11 that changed over and we got an evidence storage
12 procedure in place, which is downstairs. So I'm not
13 sure how I received these items.

14 But they come in a heat-sealed pouch so I can
15 tell that no one has tampered with it. It's got the
16 dates and initials of whoever sealed that. So it
17 would come in from an officer. The intaking person
18 heat-seal package that, initial it, and date it, and
19 then put it in the storage somewhere, either in that
20 room or downstairs. And then I would just request
21 those items whenever I'm ready to work the case. I
22 just e-mail down to say I need to come pick them up.

23 Q. And when you receive an item of evidence, do
24 you make sure or are there methods in place to make
25 sure they're not tampered or altered in any way

1 prior to coming to you?

2 A. Yes. The heat-sealed pouch, if it were
3 tampered with in any way, I would not process the
4 evidence, in protection of myself. I check those
5 things very closely. I also check to make sure that
6 the things haven't been opened improperly, have
7 evidence seal tape, I mean, things you probably see
8 on TV commonly. It's just protection for all of us
9 to make sure that it hasn't been tampered with.

10 Q. And with respect to DNA, explain to the jury
11 about what a profile is.

12 A. It's sort of like a locker combination. That's
13 a really good way to look at it, is that each
14 individual is going to have a combination. All we
15 look for -- we size for certain areas of the genome.
16 We don't seek sequence, we don't look for the
17 letters that make up a genome; we just look for the
18 size of the tiny bits in several different
19 locations, like 15 different locations.

20 And everybody just has a different size there.
21 So some people may have a 7 or an 8 or a 9. That's
22 an example of my data. And we just look at 15 of
23 those different locations. And people don't
24 generally match up, and we can estimate how rare
25 that genome type is in a population by modeling and

1 statistical analysis. That's the second part of my
2 job, is to estimate how rare a sample is in the
3 population.

4 Q. So statistical analyses are not always used, it
5 just kind of depends on the evidence that's provided
6 and what's requested?

7 A. Correct. For example, if there was a victim
8 stain on a mattress that was at a house somewhere, I
9 would need to say how sure I was that that belonged
10 to that victim. I mean, that's the important part
11 of DNA. And a lot of times it's to say how sure we
12 are that we can match this sample to that other
13 sample.

14 Q. Okay. And in that same vein, explain what a
15 buccal swab is and the importance of a known
16 profile.

17 A. Sure. So a buccal swab -- buccal is referring
18 to the buccal cells in your mouth that are a type of
19 epithelial cell that's shared very easily. And we
20 often collect those as known standards. We can use
21 blood as a known standard because your white blood
22 cells have your DNA profile in it.

23 But a buccal swab is not intrusive; it's just a
24 cotton swab like you buy at the Revco or CVS or
25 anything that you just swab the inside of your

1 cheeks with. And we use that to generate a known
2 profile. So say, God forbid, you were a victim in a
3 crime, we would need something to compare to that
4 crime.

5 So say you got at a bar or something and blood
6 was on the floor. So we would take your buccal swab
7 and match it to that blood on that floor. So we
8 have a known standard to measure against the
9 unknown.

10 Q. And so without a known standard, you really
11 can't make any determinations with respect to a
12 match or anything of that nature?

13 A. Correct.

14 Q. Are there certain sources, I guess, that are
15 better or -- for collecting DNA, like, such as
16 seminal fluid or things of that nature?

17 A. Sure. So the amount advantage that we have
18 with semen is that spermatozoa are tougher; they
19 don't lyse the same way. That means to break open.
20 They don't break open the same way that other cells
21 do.

22 So the cells on your body that -- from your
23 mouth or your skin or from anywhere, they break up
24 pretty easily. You can just use a little bit of
25 detergent or -- and some Prodene Aseptil, which just

1 breaks down the protein, and you can convert those
2 pretty easily. But sperm cells are really tough and
3 they don't break that way. So we can separate out
4 something like skin from what's inside of a sperm
5 cell by the addition of some extra chemicals. And
6 we didn't have to do that in this case, but...

7 Q. And just kind of a general question with
8 respect to DNA, can you actually date that DNA or
9 determine when that DNA actually got onto an item?

10 A. We cannot, not -- not with our current
11 technology. And I can't imagine a way that you
12 could.

13 Q. So that DNA could have been there for a minute,
14 a year; you just don't know?

15 A. Correct.

16 Q. There's just no way to determine?

17 A. Correct.

18 Q. Tell the jury a little about what comes -- do
19 you actually receive sexual assault kits?

20 A. I do. So in sexual assaults, we have -- it's a
21 pretty standard kit. It's got a bunch of those
22 swabs that I was telling you about, the swabs for
23 different areas. There's a protocol that the nurse
24 is supposed to follow, and she gets us a buccal
25 swab, an oral swab, a rectal swab, a vaginal swab,

1 any probable places for other body fluids we call
2 suspected body fluids. So if there's an ejaculate
3 on a different part of the body that the victim
4 indicates, the nurse would collect that and send it
5 on to me for identification.

6 Q. Okay. And are they often collected just as a
7 matter of course in some cases and submitted to you
8 for testing?

9 A. Definitely, because oftentimes -- well, there's
10 several reasons. Victims can be incapacitated or
11 misremember. I think that's probably the strongest
12 reason that these are collected in a matter of
13 course. Even if a victim was, say, a week or two
14 out from the sexual assault, they still would
15 attempt the sexual assault collection kit.

16 Q. And what exactly -- you said swabs or anything
17 else that's collected from the nurse at the
18 actual -- at the hospital or wherever the evidence
19 is included.

20 A. Yes, everything. There are smears that -- a
21 smear is a microscopic slide that we can look
22 for spermatozoa. That's a really -- it's not an
23 efficient way, it's actually quite slow. And it's a
24 very exacting method to look and see if any
25 spermatozoa could be in a, you know, oral, vaginal

1 and rectal, are usually the smears in most -- in the
2 sexual assault collection kits.

3 We also sometimes collect hairs or hairs are
4 collected for us. I'm trying to think of anything
5 else that -- oh, fingernail scrapings. If a victim
6 says she was trying to defend herself, that's a
7 common way.

8 Q. Okay. Did you actually receive some evidence
9 in the case that we're here for today?

10 A. Yes, I did. I received a sexual assault
11 evidence collection kit from a Child
12 Excuse the pronunciation for Child if it's
13 incorrect.

14 Q. And what was included in that kit?

15 A. Well, first thing I do when I get the sexual
16 assault evidence collection kit is break it down
17 into its components and see what's there. So in
18 this case, we got the smears that I was referring
19 to, the vaginal, oral and rectal smears; we got
20 vaginal swabs, oral swabs, buccal swabs, particle
21 swabs, which is the standard, for Child ; we
22 got a suspected body fluid swab and debris
23 collection.

24 And debris collection means they were looking
25 for hairs or anything that could give indication to

1 the crimes occurred.

2 Q. Okay. I'm going to show you what's been marked
3 as State's Exhibit 12. Do you recognize this?

4 A. It might be inside of this.

5 Q. Would you like a pair of -- I think we have --

6 A. Here we go. These are the heat-sealed pouches
7 I was referring to.

8 THE COURT: Mr. Meah, my court reporter has
9 asked that you slow down just a tad.

10 THE WITNESS: I'm sorry. This is the -- may I
11 move this too?

12 THE COURT: Sure. She has to take everything
13 down. Every now and then we get a witness who is --

14 THE WITNESS: I can only imagine. That's --
15 and it's very technical too. I will try to slow
16 down.

17 THE COURT: Please continue.

18 THE WITNESS: So these are the heat-sealed
19 pouches I was referring to. This is probably a
20 debris collection or -- item 2 -- I'm trying -- I
21 did not analyze this item.

22 This is the sexual assault evidence collection
23 kit. You can see my initials and the date that I
24 worked on it. So this would come to me sealed up
25 and I'd cut it with a scalpel and then initial and

1 date when I closed it back.

2 Those are the smears I was referring to.

3 There's the debris collection. And the envelope in
4 front of that debris collection is what would
5 contain the swabs.

6 BY MS. SIMPSON:

7 Q. Okay. And you said you had a buccal swab of
8 the victim, Child , in this case?

9 A. Correct.

10 Q. So you had a known standard for purposes of
11 your analysis?

12 A. Correct.

13 MS. SIMPSON: Your Honor, at this time we would
14 offer State's Exhibit 12 in to evidence.

15 THE COURT: Any objection?

16 MR. JOHNSON: No objection.

17 THE COURT: 12. Thank you.

18 (State's Exhibit No. 12 admitted in to
19 evidence.)

20 BY MS. SIMPSON:

21 Q. I want to go through what you tested and the
22 examination that you've done. Tell the jury how you
23 conducted your examination and your analysis of the
24 items conducted in this kit.

25 A. Okay. Well, I go through each sample and I

1 test for -- usually for semen. It depends on what's
2 indicated. The nurse indicates on -- sometimes on
3 the envelopes what we're looking for in that
4 example. So given what the victim has told the
5 nurse about the assault, it could be saliva, it
6 could be semen, or it could be blood. So we'll get
7 a request on the envelope.

8 And in this case, it was to test for semen.
9 And I just go through and test each swab. So in
10 this case, I tested -- I looked at the smears, I
11 didn't see any spermatozoa. I tested the vaginal
12 swabs and I didn't find any semen; I tested the oral
13 swabs and no semen was identified; I tested the
14 rectal swabs and no semen was identified.

15 Q. Let me stop you right there. Once you
16 determine spermatozoa -- and how is that different
17 than semen?

18 A. Semen is the fluid that carries spermatozoa.
19 So it's the -- just the liquid portion.

20 Q. And if there isn't any identified or -- on the
21 item, do you stop your examination or what do you
22 do?

23 A. We do. We generally stop there, because that's
24 really where the strength of DNA lies. When we have
25 semen on something, the spermatozoa stronger, as I

1 told you about earlier, the way it differentially
2 lyses, that's where we can really identify a male
3 subject. That's the strength of our analysis.
4 Touch DNA doesn't do very well in these cases. And
5 for a vaginal swab, if you can imagine, if I were to
6 grab your arm and tried to swab your arm to identify
7 myself on your arm, it won't do very well because
8 I'm going to collect many more cells from you than I
9 would from just the few that I left just by touching
10 you.

11 Q. So that creates problems with things like
12 mixtures and things of that nature?

13 A. It does. And just how many -- the contribution
14 to the mixture is the problem. So you can imagine
15 pennies -- let's say we have 100 pennies and we know
16 that one was a 1934 penny. Well, DNA can't tell the
17 difference between a 1976 or a 1934 penny; it just
18 says these are all the pennies. Well, all of the
19 other pennies would outweigh the 1934. We'd never
20 be able to tell which one was the 1934 just by
21 looking at it. That's pretty much what this comes
22 down to.

23 Q. And I believe we were on item 1.5, the buccal
24 swab.

25 A. Yes. So I did take the buccal swab and

1 generate a profile from the victim. That was just
2 for in case we needed future comparisons for, maybe,
3 a blanket or some underwear, which are often
4 submitted later on.

5 Q. And with respect to -- and had any -- I almost
6 forgot an item. Items 1.6 and 1.7, what were your
7 findings and results with respect to those?

8 A. Item 1.6 was a suspected body fluid swab, and
9 there was no semen identified on that. And item 1.7
10 was debris collection, and there weren't any hairs
11 found in the debris collection to test.

12 Q. And outside of the sexual assault kit, did you
13 actually examine any other items of evidence in this
14 case?

15 A. I don't believe so. No.

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

17 Thank you, Mr. Meah.

18 THE COURT: Cross?

19 MR. JOHNSON: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q. Mr. Meah, you said you tested for semen because
23 the nurse indicated semen?

24 A. Yes, sir. That's usually what we test for. It
25 depends on what it says on the front of the envelope

1 and -- yes. The test for semen in this case was
2 negative.

3 Q. That's what was on the front of that envelope?

4 A. I can't recall. I can open the kit and I can
5 look at the front of the envelopes, but --

6 Q. But you just tested for semen?

7 A. Yes, sir.

8 Q. Okay. And one short question: His semen
9 wasn't found in anything you tested; is that
10 correct?

11 A. No, sir.

12 MR. JOHNSON: That's all I have.

13 THE COURT: Redirect?

14 MS. SIMPSON: Brief redirect.

15 REDIRECT EXAMINATION

16 BY MS. SIMPSON:

17 Q. Was there any semen or sperm identified in any
18 of the items that you analyzed?

19 A. No, ma'am.

20 MS. SIMPSON: Nothing further, Your Honor.

21 THE COURT: All right. Thank you. You may
22 step down. You're released from your subpoena.

23 Next witness, please.

24 MS. CAVANAUGH: The State calls Investigator
25 Steve Knafelc.

1

STEVE KNAFELC

2

being first duly sworn, testified as follows:

3

THE WITNESS: So help me God.

4

THE CLERK: Have a seat, please, and state your

5

full name for the record.

6

THE WITNESS: Steve Knafelc.

7

8

9

DIRECT EXAMINATION

10

BY MS. CAVANAUGH:

11

Q. Good morning, Investigator Knafelc.

12

A. Good morning.

13

Q. Are you a captain now?

14

A. Yes, I am.

15

Q. I apologize, Captain.

16

Where are you employed?

17

A. Here at the sheriff's office in Kershaw County.

18

Q. And you just stated you're a captain. How long

19

have you been a captain?

20

A. A little over a year now. Before that I was a

21

lieutenant over criminal investigations.

22

Q. And as a captain, what are some of your duties

23

with the Kershaw County Sheriff's Department?

24

A. I oversee all crime scenes, assign cases, all

25

criminal cases, criminal investigation cases that

1 come through the sheriff's office, assign different
2 points of the job itself, and I also oversee some
3 criminal sexual conduct cases also.

4 Q. So you do oversee --

5 A. Pretty much.

6 Q. -- those type of cases?

7 A. Yes, ma'am.

8 Q. Okay. And did you work -- do you work with
9 Sergeant Rick Bailey --

10 A. I do.

11 Q. -- with the sheriff's department?

12 A. Yes, ma'am.

13 Q. As far as the investigation into the defendant,
14 Nakia Johnson, back in 2011, did you have any
15 involvement with that investigation?

16 A. At that time, no, ma'am. In fact, I was going
17 to a conference during that time. Like I said, I
18 was a lieutenant at that moment in time, but Rick
19 Bailey was the on-call. So dispatch did call me and
20 let me know what was going on, but I was heading to
21 the class itself. So I asked them to just give Rick
22 and a call since he was on call at the time. I
23 didn't have anything, at the time, to do with the
24 case.

25 Q. At that time, did you -- were you part of the

1 special victims unit team?

2 A. Yes, I was.

3 Q. And can you explain what all that encompasses?

4 A. Well, we have certain investigators that mainly
5 deal with these type cases. And at that particular
6 time, I can't remember if we had a unit set aside
7 just for these type cases, but today we do. But
8 again, I was a lieutenant, so I think they called me
9 just because I was dealing with a lot of these type
10 cases at the time. But, like I said, I wasn't in
11 the county to assist.

12 Q. And you have experience in investigating
13 criminal sexual conduct cases?

14 A. Yes.

15 Q. But with this particular investigation, you
16 were not directly involved; correct?

17 A. I was not.

18 Q. Back last October of 2014, so about nine months
19 ago, did you have some involvement with this case?

20 A. Yes, ma'am. I was asked to meet a member of
21 the defendant's staff -- I believe his name is
22 Mr. Dowling -- to meet him and also the victim in
23 this case and the victim's mother to an alleged
24 incident location in Cassatt.

25 THE COURT: Where?

1 THE WITNESS: In Cassatt.

2 THE COURT: Someone from the defendant's side
3 and the mother and who?

4 THE WITNESS: The victim of the case.

5 BY MS. CAVANAUGH:

6 Q. And just to clarify, that particular afternoon,
7 did you -- did the investigator with the defense's
8 staff meet with you?

9 A. He did not. We -- I believe we spoke on the
10 phone. And he said -- he was supposed to meet me at
11 the Cassatt Country Store, obviously in Cassatt, and
12 then from there we were supposed to go to the
13 residence of the aunt, if I'm not mistaken.

14 But he got tied up with some things that was
15 going on, so we didn't meet personally at that
16 particular time.

17 Q. Did you meet the victim and the victim's
18 mother?

19 A. I did. He instructed -- Mr. Dowling instructed
20 to go ahead and do what I was supposed to do as far
21 as going to the alleged incident in Cassatt. But I
22 did meet with the mother and the victim at the
23 residence on Road.

24 Q. And is -- the residence on Road, is
25 that located in Kershaw County?

1 A. Yes, ma'am.

2 Q. Okay. When you arrived at the aunt's home,
3 where did y'all -- where did y'all go after that?

4 A. Obviously, I arrived at the residence. They
5 were waiting on the victim and the victim's mother
6 was waiting in a car. I told them who I was. I
7 believe I gave the mother my business card. The
8 victim got in the front seat of my car and the
9 mother got in the back seat and we went to a
10 location just from here as -- it would be easier for
11 y'all to understand it this way: It's from here to
12 maybe the post office across the street to a
13 location off of Cassatt onto a dirt road.

14 Q. So it was very close?

15 A. Very close.

16 Q. Was it still in Kershaw County?

17 A. Yes, ma'am.

18 Q. Who was actually giving you the directions as
19 far as where to go?

20 A. The victim. She was sitting in the front seat
21 with me, and I asked her to tell me where to go and
22 that's what she did.

23 Q. Is that Child ?

24 A. Yes, ma'am.

25 Q. I'm going to show you what's already been

1 entered in to evidence as State's Exhibit 5. Is
2 this the house that you met Child and her mom at?

3 A. Yes, ma'am.

4 Q. And was that Aunt Missy's house?

5 A. Yes, ma'am, I believe so.

6 Q. I'm also going to show you what's been entered
7 into evidence as State's Exhibits 8 and 9. Does
8 that look familiar?

9 A. Yes, ma'am.

10 Q. And is that the road that you just referred to?

11 A. Yes, ma'am. That's the dirt road off of
12 Road.

13 Q. In Kershaw County?

14 A. Yes, ma'am.

15 Q. Investigator Knafelc, once you -- did you have
16 any information about what occurred at that dirt
17 road?

18 A. Investigator Bailey just -- we talked about it.
19 Obviously when I got back from the conference, he
20 told me what was going on. He just basically told
21 me that there was an alleged incident that happened
22 on that road. And that's where I met up with the
23 victim.

24 Q. And you met with him back in October of 2014?

25 A. Yes; October 6th.

1 Q. When you got to the dirt road, did you take
2 photographs of the dirt road?

3 A. I did. The mother and her daughter stayed in
4 my vehicle. I parked, got out, took several photos,
5 and got back in and went -- took them back to the
6 residence, to their aunt's house.

7 Q. And while you were in the car, did the victim
8 have any trouble directing you to this dirt road's
9 location?

10 A. No, ma'am, not at all. No, ma'am.

11 Q. After you took the pictures, where did you go,
12 Investigator Knafelc?

13 A. I took them back to the residence, to the
14 aunt's house, and dropped them off.

15 MS. CAVANAUGH: I beg the Court's indulgence.

16 BY MS. CAVANAUGH:

17 Q. Later on did you have an opportunity to meet
18 with the investigator from the Defense?

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

20 Q. And did you show him this location as well?

21 A. I did.

22 MS. CAVANAUGH: I beg the Court's indulgence.

23 No further questions at this time.

24 THE COURT: Mr. Johnson?

25 CROSS-EXAMINATION

1 BY MR. JOHNSON:

2 Q. I just want to identify two things. I think
3 you were on the way to a conference or something on
4 10/11/11 when the call first came in, in 2011.

5 A. Yes. I believe it was -- October, I normally
6 go to a hostage negotiation conference at the beach.
7 And I believe that's probably where I was heading
8 to.

9 Q. All right. And the date that you took them to
10 see the scene was two years later; it was 10/6/2014?

11 A. Yes, sir.

12 Q. Thank you, sir.

13 THE COURT: Ma'am, anything else?

14 MS. CAVANAUGH: No, sir, Your Honor.

15 THE COURT: You're excused. You may be
16 released from your subpoena.

17 Next witness.

18 MS. CAVANAUGH: Your Honor, may we approach?

19 (Sidebar conference.)

20 THE COURT: Move along.

21 MS. CAVANAUGH: State calls Laurie Caldwell.

22 (Laurie Caldwell enters the courtroom.)

23 LAURIE CALDWELL

24 being first duly sworn, testified as follows:

25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Thank you. Be seated in the
2 witness chair and state your full name.

3 THE WITNESS: Laurie Varnedoe Caldwell.

4 DIRECT EXAMINATION

5 BY MS. CAVANAUGH:

6 Q. Ms. Caldwell, what is your profession?

7 A. I am, right now, a contract agent with the
8 State Law Enforcement Division. I'm retired law
9 enforcement.

10 Q. What do you -- is that commonly known as SLED?

11 A. Yes.

12 Q. And what is your contract position with SLED
13 right now?

14 A. I'm assigned to the Social Security Disability
15 Fraud Investigative Unit.

16 Q. And prior to contracting with SLED, did you
17 work -- can you describe your employment before.

18 A. Yes. I retired from SLED in February 2011, and
19 there I did criminal investigations primarily
20 focused on crimes against children and vulnerable
21 adults. Upon retirement, I joined the staff at the
22 Dickerson Center For Children, which is a
23 community-based child advocacy center in West
24 Columbia, and I was over their child forensic
25 program and their multidisciplinary team and victim

1 advocacy program.

2 Q. So who -- when --

3 THE COURT: Hold on a second.

4 MR. JOHNSON: Your Honor, may we approach
5 again?

6 THE COURT: Sure.

7 (Sidebar conference.)

8 THE COURT: Mr. Johnson, it might just be best
9 to do it now.

10 Madam Forelady, ladies and gentlemen, step out
11 just for a second, please. It won't take but a
12 second. Don't discuss the case and don't
13 deliberate, please.

14 (The jury exits the courtroom at 10:20 AM.)

15 THE COURT: Mr. Johnson.

16 MR. JOHNSON: Your Honor I'd like to object to
17 any testimony from this witness because they -- I
18 have reviewed the -- I reviewed the interview. I
19 think they're leading questions, I think they're
20 suggestive questions, I think they're inconsistent
21 questions, and I would just object to that -- the
22 testimony on that -- on those grounds.

23 And if his Honor decides to overrule that, then
24 I would object and ask the Court to rule on the
25 issue of is the testimony more prejudicial than

1 probative.

2 THE COURT: It's my understanding this witness
3 conducted an interview of the child.

4 Is that correct?

5 MS. CAVANAUGH: Yes, Your Honor. Our position
6 is that she is part of the investigation. She was
7 asked to interview Miss Child, the victim in this
8 case, because the other interview was ended short
9 because she did get sick.

10 Under 801 -- we're not going into any aspect of
11 the issues that the Court did have, you know, under
12 State v. Kromah and that sort of thing. We're
13 solely going on that Ms. Caldwell is a fact witness,
14 she's part of the investigation, and her testimony
15 as to time and place under 801(d)(1)(d) is --

16 THE COURT: Hold on. I'm not in my courtroom,
17 so I'm not sure where the rules are.

18 What bothers me is, this an out-of-court
19 statement by the child under 12. But we have to do
20 a 17-23-175 analysis?

21 MS. CAVANAUGH: Your Honor, she's actually over
22 12. And I believe that particular statute deals
23 with admitting the video. We're not seeking to
24 introduce the video in this case since she was over
25 the age of 12.

1 THE COURT: I understand that. So -- the
2 victim; right?

3 MS. CAVANAUGH: Yes, Your Honor.

4 THE COURT: So her interview was after she was
5 12?

6 MS. CAVANAUGH: Yes, Your Honor. It was -- her
7 first interview was conducted October 12th, 2011,
8 she was 11 years old. Her birthday is October 16th.
9 So she turned 12, and then Ms. Caldwell interviewed
10 her in November, three weeks later, when she was 12.
11 I believe that -- so we're not putting in the video,
12 just Ms. Caldwell is part of this investigation and
13 we believe that her testimony is admissible under
14 801(d) --

15 THE COURT: 801 what?

16 MS. CAVANAUGH: 801(d), and then under that
17 section, Section D, the very last subsection.

18 THE COURT: D like dog?

19 MS. CAVANAUGH: Yes, sir.

20 THE COURT: What's under that?

21 MS. CAVANAUGH: (D) (1) (d).

22 THE COURT: (D) (1)?

23 MS. CAVANAUGH: (D) (1) (d).

24 THE COURT: So you're going to limit her
25 testimony -- her being Ms. Caldwell -- to time and

1 place of the incident?

2 MS. CAVANAUGH: Time and place, Your Honor,
3 yes. And we also are not asking her to identify the
4 defendant, we're not asking her to say the
5 defendant's name; solely limited to time and place.

6 THE COURT: What the victim says where it took
7 place and when?

8 MS. CAVANAUGH: Yes, Your Honor. And, I mean,
9 I have a highlighted copy of her interview that I
10 can hand up so she can specifically address time and
11 place.

12 THE COURT: And that interview of the victim by
13 this witness, Ms. Caldwell, has been given to
14 Mr. Virgin Johnson?

15 MS. CAVANAUGH: Yes, Your Honor.

16 THE COURT: And the victim has been subject to
17 cross-examination not only on her forensic
18 interview, but this -- well, she was able to be
19 cross-examined on this statement as well?

20 MS. CAVANAUGH: She was, Your Honor.

21 THE COURT: Mr. Virgin Johnson, anything else
22 you want to tell me?

23 MR. JOHNSON: Your Honor, if they're going -- I
24 was looking at the case Kromah. And, Your Honor,
25 maybe the Court can clarify for me time, date and

1 circumstances of the interview. I'm of the opinion
2 that just meant what they observed at the interview.
3 I don't think that -- and I want the Court to
4 clarify that for me. I don't think that means
5 testify to any other events or occurrence that
6 happened in the past.

7 I'm trying to understand time, date, and
8 circumstance of the interview. What are they trying
9 to get? I'm trying to determine, what are they
10 trying to get her to testify to? If they're not
11 going to use his name, is she going to testify to
12 what the child said about other incidents or what?

13 THE COURT: The child is going to testify as to
14 what happened on such-and-such date and where, and
15 that be it; right?

16 MS. CAVANAUGH: Yes, Your Honor. The --

17 THE COURT: Do the proffer. Ask the question
18 on a proffer.

19 EXAMINATION

20 BY MS. CAVANAUGH:

21 Q. Ms. Caldwell, did you make a report in this
22 particular case regarding your interview of Child

23
24 A. Yes.

25 Q. And is this actually a copy of your report?

1 A. Yes.

2 THE COURT: Now, use that to refresh her memory
3 and to focus in on the exact -- the exact evidence
4 that can be elicited under 801(d)(1)(d).

5 Q. Did -- does that report serve to refresh your
6 memory of the interview you conducted on Miss Ford?

7 A. Yes, it does.

8 Q. And did Miss Ford indicate to you that she had
9 been sexually salted?

10 A. Yes, she did.

11 Q. And did she indicate to you when those assaults
12 took place?

13 A. Yes. She provided timeframes, yes.

14 Q. And can you -- did you put those timeframes in
15 your report?

16 A. Yes, I did.

17 Q. And what were those timeframes?

18 A. She said that some of the victimization took
19 place in Fairfax, South Carolina when she was in the
20 1st and 2nd grade. And she described living in a
21 brick house when she was in 1st grade. And she said
22 that some incidents happened at her sister's house
23 in Bishopville.

24 And then she talked about when she was in 3rd
25 and 4th grade, she lived with her grandmother and

1 that some incidents took place there. And she
2 talked about an incident when she was in the 4th
3 grade where they were in a hotel and an incident
4 took place there.

5 She described -- she talked about her family,
6 in 5th grade, moved into a trailer in Bishopville,
7 and the incidents took place in her bedroom, the
8 living room, the bathroom, and her brother's room.

9 She talked about the summer between her 5th and
10 6th grade years when she went to Disney World on
11 vacation, that something happened at that location.
12 And then during the summer when she lived with her
13 aunt in Cassatt, that an incident took place down a
14 dirt road.

15 THE COURT: And that would be the sole
16 testimony you would elicit from her?

17 MS. CAVANAUGH: Yes, Your Honor. And we
18 believe it's admissible under 801(d)(1)(d), as well
19 as the fact that Mr. Johnson has repeatedly put the
20 victim's credibility and the different statements
21 that she's given into question. So we believe that
22 this testimony is appropriate and it is under the
23 rules.

24 THE COURT: All right. Mr. Johnson, why is it
25 not admissible under 801(d)(1)(d)?

1 MR. JOHNSON: Your Honor, may I have a look at
2 801(d) (1) (d)?

3 THE COURT: Absolutely.

4 MR. JOHNSON: I just don't know what it says.

5 THE COURT: It says this: A statement is not
6 hearsay if -- that's D -- 1, prior statement by a
7 witness; D, declarant -- who is the young lady --
8 testifies at the trial and is subject to
9 cross-examination concerning the statement and the
10 statement is, D, consistent with the declarant's --
11 young child -- testimony in a criminal sexual
12 conduct case or attempted CSC where the declarant --
13 the child -- is the alleged victim -- she is -- and
14 the statement is limited to the time and place of
15 the incident. It's dead on.

16 MR. JOHNSON: Your Honor, I understand. My
17 objection would be, number one, she alleged other
18 incidents. They're not consistent. And I just want
19 to put it on the record. The other interviewer that
20 testified, her statements are not consistent with
21 what she said -- this witness -- I know we're not
22 under that 17-1-25, but there were questions of
23 leading or other things.

24 And so I'm assuming -- do I just get the right
25 to cross-examine her about everything?

1 THE COURT: This witness?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: You get to cross-examine her on all
4 relevant issues in the trial of the case.

5 MR. JOHNSON: Your Honor, if you would just
6 note my objections.

7 THE COURT: I do.

8 MS. CAVANAUGH: Your Honor --

9 MR. JOHNSON: And the more probative than
10 prejudicial.

11 THE COURT: Overruled on 403.

12 MS. CAVANAUGH: Just to be clear, Your Honor,
13 if he opens the door to certain issues on his cross,
14 then she's not limited just to testimony under
15 801 --

16 THE COURT: That is correct. He's a seasoned
17 lawyer, he knows.

18 MS. CAVANAUGH: I just wanted to clarify that.

19 THE COURT: All right. Bring the jury back in,
20 please.

21 (The jury enters the courtroom at 10:32 AM.)

22 THE COURT: Okay. Madam Forelady, ladies and
23 gentlemen, we're ready to proceed.

24 You may proceed, ma'am.

25 DIRECT EXAMINATION

1 (Continued)

2 BY MS. CAVANAUGH:

3 Q. I believe you were in the middle of discussing
4 the fact that you did interview Miss Child .

5 A. Yes, I did.

6 Q. And what day did you -- what date did you
7 interview Child ?

8 A. I interviewed her on , 2011.

9 Q. And how old was she at the time that you
10 interviewed her?

11 A. She was 12.

12 Q. And when was her birthday?

13 A. Her birthday was -- or is , 1999.

14 Q. So she had just turned 12 about weeks
15 prior?

16 A. Yes.

17 Q. And when you conduct these interviews, and this
18 one in particular, who is in the room when you do
19 the interview?

20 A. No one is in the room other than myself and the
21 alleged victim.

22 Q. Do other individuals associated with the case
23 or with the Dickerson Center have opportunity to
24 observe outside of the room?

25 A. Yes. They can do that through the camera

1 system in a room located downstairs. The child
2 forensic interview room at the Dickerson Center is
3 upstairs.

4 Q. And are these interviews recorded?

5 A. Yes, they are.

6 Q. When you interviewed Child , did you ask
7 open-ended questions?

8 A. Yes, I did.

9 Q. And did she appear to understand your
10 questions?

11 A. Yes, she did.

12 Q. Did she disclose to you she was sexually
13 assaulted?

14 A. Yes, she did.

15 Q. And did she tell that these had occurred over a
16 period of years?

17 A. Yes; approximately four years.

18 Q. And, specifically, did she tell you when these
19 assaults began?

20 A. Yes.

21 Q. And do you actually have your -- do you make a
22 report of your interview?

23 A. Yes, I do.

24 Q. And do you have those notes up there with you?

25 A. Yes, I do.

1 Q. Do they help refresh your memory?

2 A. Yes.

3 Q. Again going to back to when she said they
4 began, what grade was she in when it began?

5 A. Started when she was in the 1st grade.

6 Q. And did she indicate where she was living at
7 that time?

8 A. She was living in Fairfax, South Carolina.

9 Q. And did these occur in a house?

10 A. She said that it occurred in a brick house
11 and -- when they lived in Fairfax, and then
12 eventually they moved into a trailer and they
13 continued.

14 Q. Okay. Did she indicate what room these
15 occurred in?

16 A. In the brick house she said it started -- that
17 she --

18 Q. Was it in her bedroom?

19 A. His bedroom --

20 Q. His bedroom?

21 A. -- was one of the locations.

22 Q. Okay. Did she --

23 THE COURT: Hold on a second.

24 MR. JOHNSON: Your Honor, could we approach?

25 THE COURT: Sure.

1 (Sidebar conference.)

2 BY MS. CAVANAUGH:

3 Q. Ms. Caldwell, did she indicate they continued
4 into 2nd grade?

5 A. Yes, she did.

6 Q. And what -- where was she living in 2nd grade?

7 A. Apparently they had moved to Bishopville, South
8 Carolina.

9 Q. Did she indicate she had been assaulted in
10 Bishopville in 2nd grade?

11 A. Yes, she did.

12 Q. Did they continue into when she was in 3rd and
13 4th grade?

14 A. Yes.

15 Q. And did she give you locations where they
16 occurred during those grades?

17 A. In 3rd and 4th grade, she said that she was
18 living with her grandmother and that the assaults
19 continued there, as well as a hotel in Bishopville
20 when she was in 4th grade.

21 Q. Okay. Did they -- did she indicate to you that
22 the assaults continued into 5th grade?

23 A. Yes. She said that her family moved into a
24 trailer located in Bishopville and that she was in
25 the 5th grade, and that she was assaulted in her

1 bedroom and the living room, the bathroom --

2 MR. JOHNSON: Your Honor, objection, move to
3 strike.

4 THE COURT: Okay. Disregard where -- just the
5 location, ma'am, time and place, time and location;
6 house and what year.

7 Q. So 5th grade, they occurred in her home?

8 A. Yes.

9 Q. Did she also tell you that they occurred in the
10 summer between 5th and 6th grade?

11 A. Yes, she did.

12 Q. And what -- at that time she was living with
13 her aunt in Cassatt?

14 A. Correct, yes.

15 Q. Other than interviewing Child , is that the
16 extent of your involvement with Miss Child after this
17 interview?

18 A. Yes.

19 MS. CAVANAUGH: Thank you, Ms. Caldwell.

20 Please answer any questions from the Defense.

21 MR. JOHNSON: No questions for Ms. Caldwell.

22 THE COURT: All right. You may step down.

23 Have a pleasant day.

24 Is she released from her subpoena?

25 MS. CAVANAUGH: Yes, Your Honor.

1 MR. JOHNSON: No objection.

2 THE COURT: Please call your next witness.

3 MS. SIMPSON: Your Honor, we have one issue.

4 She should be here --

5 THE COURT: Go check.

6 MS. SIMPSON: -- but if we could just have a
7 couple seconds to check.

8 THE COURT: Absolutely.

9 MS. SIMPSON: Your Honor, may we approach?

10 (Sidebar conference.)

11 THE COURT: All right. Madam Forelady, ladies
12 and gentlemen, the next witness, I have to conduct
13 what's called a proffer, which means I have to
14 listen to her testimony to determine whether or not
15 it's admissible. That's what I planned to do at
16 8:30 this morning. It's not going to take nearly
17 that long. But we had some scheduling mess-ups
18 and -- well, I won't go any further than that.

19 So I'll have to ask you to step out just for a
20 second and let me do this proffer. Don't discuss
21 the case and don't deliberate.

22 (The jury exits the courtroom at 10:42 AM.)

23 THE COURT: All right. Ma'am?

24 MS. CAVANAUGH: State calls Dr. Alison Foster.

25 THE COURT: Come around, please.

1 ALISON FOSTER

2 being first duly sworn, testified as follows:

3 THE WITNESS: I do.

4 THE CLERK: Have a seat and state your full
5 name for the record.

6 EXAMINATION

7 BY MS. CAVANAUGH:

8 Q. Good morning, Dr. Foster.

9 A. Good morning.

10 Q. Can you briefly -- or can you describe your
11 education and training background for the Court?

12 A. Certainly. College, Emory University in
13 Atlanta. And then I worked for a year at a
14 residential treatment facility called the Devroe
15 Center, after which I relocated to Columbia, South
16 Carolina where I attended the Ph.D. program in
17 clinical community psychology at the University of
18 South Carolina.

19 I graduated in the spring of 1996, completed a
20 postdoctoral year of training from '96 to '97 at
21 William S. Hall Psychiatrist Institute -- excuse me.
22 That was from 1994 to 1995, then I graduated in
23 1996, then did a year of postdoctoral supervised
24 practice. And I was already employed as the program
25 director of the Assessment & Resource Center, which

1 became an accredited children's advocacy center in
2 1999.

3 So I've been continuously employed from 1995 to
4 the present at the ARC. My current title is chief
5 psychologist. I'm there part-time now since 2012.
6 And then I also have a private practice of forensic
7 clinical psychology work.

8 Q. And does your education and training and the
9 background that you described, does that include
10 research on child victims of sexual and physical
11 abuse?

12 A. Yes. So I've been training -- specialized
13 training I began in the 1990s. And certainly all of
14 my postdoctoral continuing education is in the area
15 of children, child abuse, forensic evaluations. So
16 I'm constantly attending national, regional and
17 statewide conferences and updating my education and
18 knowledge in those areas.

19 Q. And have you actually -- have you been the
20 author of any publications on this topic?

21 A. I authored a chapter on -- or a monograph, it
22 would be called, on child development for the
23 American Prosecutors Research Institute. And I a
24 book chapter coming out, but that's actually more
25 about child custody evaluations.

1 THE COURT: Well, let me ask you this, ma'am:
2 Does your education and your experience and work
3 history, has that dealt with the common behavioral
4 characteristics of sexual assault victims and the
5 range of responses to sexual assault encountered by
6 children?

7 THE WITNESS: Yes, sir.

8 THE COURT: And the effect of sexual abuse on a
9 victim's subsequent conduct, such as delayed
10 reporting?

11 THE WITNESS: Yes.

12 MS. CAVANAUGH: Your Honor, at this time I ask
13 that Dr. Foster be qualified as an expert in child
14 abuse assessments.

15 THE COURT: All right. Mr. Johnson, do you any
16 cross-examination as to her qualifications?

17 MR. WILLIAMS: No, Your Honor --

18 THE COURT: I'm sorry.

19 MR. WILLIAMS: -- no cross-examination as to
20 her qualifications; just that you rule as far as
21 qualification and reliability under 702.

22 THE COURT: Now, do you have any dispute that
23 this is a subject matter that is beyond the ordinary
24 knowledge of the jury, thus requiring an expert to
25 explain the matter to the jury.

1 MR. WILLIAMS: Yes, Your Honor. We -- since
2 her testimony is only to the behavior or common
3 behavior of the individual in similar circumstances,
4 we would say that a jury would be able to understand
5 on their own without an expert in this particular --

6 THE COURT: Well, in light of the ruling in the
7 State vs. Brown, which went into a long explanation,
8 dissection, of whether or not this is a subject that
9 an expert could testify to, I respectfully overrule
10 your objection as to that.

11 MR. WILLIAMS: Thank you, Your Honor.

12 THE COURT: And it's all set forth in State vs.
13 Brown, and the other cases are cited therein, and
14 from numerous jurisdictions elsewhere that is cited
15 in that case.

16 MS. CAVANAUGH: Thank you, Your Honor.

17 EXAMINATION

18 (Continued)

19 BY MS. CAVANAUGH:

20 Q. And just before we start, did you have any
21 direct involvement in the investigation of the
22 defendant, Nakia Johnson?

23 A. No.

24 Q. Did you interview the victim in this case,

25 Child ?

1 A. No.

2 Q. Did anyone at the Assessment & Resource Center
3 interview Child ?

4 A. No.

5 Q. So you're essentially a blind witness in this
6 case?

7 A. That's correct.

8 THE COURT: And you will not be offering any
9 opinion regarding the credibility or the
10 believability of the victim and/or other witnesses;
11 is that correct, ma'am?

12 THE WITNESS: That is correct, sir.

13 THE COURT: Or commenting on whether or not she
14 was actually assaulted.

15 THE WITNESS: Correct.

16 THE COURT: Just simply an opinion about the
17 effects sexual assault has or responses to sexual
18 assault on children?

19 THE WITNESS: Correct.

20 THE COURT: Anything else you need
21 cross-examination on, on the proffer?

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: All right.

24 I will allow it, as long as it's limited to the
25 scope that we just talked about; that she will not

1 have any opinions concerning the believability or
2 the credibility of any of the witnesses, including
3 the victim in this case.

4 MS. CAVANAUGH: Thank you, Your Honor.

5 THE COURT: Bring the jury in, please.

6 (The jury enters the courtroom at 10:51 AM.)

7 THE COURT: All right. Ma'am, you may call
8 your next witness.

9 MS. CAVANAUGH: Thank you, Your Honor. The
10 State calls Dr. Alison Foster.

11 THE COURT: All right. Ma'am, come around and
12 be sworn by our Clerk, please.

13 ALISON FOSTER

14 being first duly sworn, testified as follows:

15 THE WITNESS: I do.

16 THE CLERK: Be seated and state your full name
17 for the record, please.

18 THE WITNESS: Alison Foster.

19 DIRECT EXAMINATION

20 BY MS. CAVANAUGH:

21 Q. Dr. Foster, where are you employed?

22 A. I'm employed in two places in Columbia, South
23 Carolina. I work for the Assessment & Resource
24 Center, which is a children's advocacy center in
25 Columbia. I was the program director there for 17

1 years and I'm still there part-time as chief
2 psychologist.

3 And then I also have a private practice as a
4 clinical psychologist involved in forensic matters.
5 So that means court ordered evaluations of children
6 and families, including issues in family court and
7 criminal court.

8 Q. And can you describe your -- where did you work
9 prior to having your -- what you just stated?

10 A. Sure. So my employment, I -- before I finished
11 my Ph.D. in clinical psychology, I was already hired
12 at the ARC. So beginning in 1995, I became the
13 program director there. So for 17 years, 1995 to
14 2012, I was full-time at the ARC. And I also had a
15 private practice during the time of 1998 forward.
16 Then beginning in 2012, I split my time now between
17 half time at the ARC and the other half at my
18 private practice.

19 Q. And can you tell us your educational
20 background?

21 A. I went to college at Emory University in
22 Atlanta, graduated in 1988. I worked for a year in
23 a residential treatment facility for emotionally
24 disturbed adolescents. Then I graduated --

25 THE COURT: What was your degree in, ma'am?

1 THE WITNESS: I'm sorry, sir. I graduated with
2 Bachelor's degrees in English and psychology. Then
3 when I came to USC in Columbia, I completed the
4 Ph.D. program there in clinical community
5 psychology. So I have a Ph.D. in clinical community
6 psychology, which leads to a licensure after a year
7 of postdoctoral work that's supervised. And I've
8 been a licensed clinical psychologist since 1997.

9 BY MS. CAVANAUGH:

10 Q. And do you teach any -- at any locations?

11 A. Yes. I have what's called an adjunct
12 appointment with the University of South Carolina
13 School of Medicine, Department of Neuropsychiatry
14 and Behavioral Science. That appointment dates back
15 to 1998, I believe. So I teach medical students and
16 residents who are trained to become family practice
17 physicians, child psychiatrists, and forensic
18 psychiatrists.

19 And then I also train nationally in various
20 academies that focus on child abuse and forensic
21 interviewing of children. So, for example, the
22 National Children's Advocacy Center, the National
23 Child Protection Center, the National District
24 Attorneys Association, and then I conduct here in
25 the state of South Carolina, senior faculty for a

1 five-day forensic interview training course called
2 ChildFirst.

3 Q. And have you been the author of any clinical
4 research in the area of child abuse?

5 A. A little bit. I'm mostly a practitioner. But
6 I did publish a monograph, it's called, for the
7 American Prosecutors Research Institute all about
8 child development and benchmarks of child
9 development from 3 to 18.

10 And then I conduct -- I do a lot of
11 presentations more than publications. So I train at
12 various national child abuse conferences, regional
13 and statewide conferences, every year.

14 Q. And are there certain behaviors of alleged
15 child victims that are different from what the
16 average person might believe?

17 A. I would say so, yes.

18 Q. And does your -- does your education and
19 training and employment and the presentations that
20 you've presented, do those involve that type of
21 behavior?

22 A. Yes, it does.

23 MS. CAVANAUGH: Your Honor, at this time I'd
24 ask that Dr. Foster be admitted as an expert in the
25 field of child abuse assessment.

1 THE COURT: Any cross-examination on her
2 qualifications?

3 MR. WILLIAMS: No Your Honor.

4 THE COURT: All right. Dr. Foster will be
5 allowed to render opinion testimony and I do qualify
6 her. Thank you.

7 BY MS. CAVANAUGH:

8 Q. Dr. Foster, did you have any direct involvement
9 in this particular case as far as interviewing the
10 victim?

11 A. No, I did not.

12 Q. And you stated that you work at the Assessment
13 & Research Center. Was the victim in this case,
14 Child , interviewed at the Assessment &
15 Resource Center?

16 A. No, she was not.

17 Q. So you have no direct involvement in this case?

18 A. Correct.

19 Q. As you just stated, are there behaviors of
20 child victims of sexual assault that are atypical in
21 these cases?

22 A. Well, relative to what parents and others often
23 expect, yes. There are behaviors that sometimes are
24 called counterintuitive or just different than
25 expected. I could provide some examples if you'd

1 like.

2 Q. Right. For example, is it common for a child
3 to immediately disclose whether she's been sexually
4 assaulted?

5 A. Right. No, it is not. In fact, that is the
6 most atypical or uncommon disclosure process. That
7 doesn't mean that there aren't some child victims
8 who do make an immediate outcry, but they're the
9 exception to the rule.

10 Q. And are there statistics regarding the delayed
11 disclosure?

12 A. There are. At this point, there's been about
13 25 or more years of research. So we now have data
14 from a wide range of sources and pretty good
15 agreement that it is probably as much as two-thirds
16 of what we called bona fide victims of child sexual
17 abuse; in other words, there is very good reason to
18 believe that child sexual abuse did occur. And in
19 studying those cases, about two-thirds of those
20 children do not tell anybody in the course of their
21 entire childhood. So it only is revealed in
22 adulthood, in fact, for the majority of victims.

23 We know that a subset of victims will tell at
24 some point in childhood, but we know that that
25 process is typically delayed by months, certainly,

1 but more commonly, years.

2 Q. And do certain dynamics in the family, for
3 instance, if the alleged perpetrator is a stepfather
4 or father figure, does that play a role in the
5 delayed disclosure?

6 A. Yes, it plays a significant role, because the
7 relationship dynamics are so complex and the child
8 is in an ever-present sort of association with that
9 person. So they don't get really much physical
10 distance or psychological distance.

11 And what I mean by so complex is that person
12 plays so many roles; authority figure, provider,
13 might be the biological parent of a sibling,
14 somebody that, you know, the child can look to the
15 mother and say, well, this person is meaningful to
16 my mother's life. So there's so many ramifications
17 or consequences for the child to consider when they
18 consider what it's going to mean to tell.

19 Q. And if threats are made, does that also play a
20 role into the disclosure process or the delayed
21 disclosure?

22 A. Certainly, yes.

23 Q. Is it more likely for a child to believe those
24 threats than, perhaps, an adult?

25 A. Yes. Again, young children don't really --

1 don't critically evaluate what adults tell them. I
2 mean, obviously young children see adults as very
3 powerful and possessing much more knowledge and
4 ability. So they're going to assume that if a
5 parent says they can make something happen, they can
6 make something happen.

7 Obviously as children get older, certainly into
8 the adolescent years, they can start to evaluate
9 threats a little differently, and that can be part
10 of what opens up a victim to feeling like they can
11 take a risk and make a report. But if they've
12 experienced a lot of years of believing in the power
13 of the offender, it takes a substantial amount of
14 courage to switch that dynamic and decide on
15 telling, as opposed to keeping quiet, is the right
16 way to go.

17 Q. What if the child has witnessed altercations
18 between their mother and the alleged perpetrator, if
19 that person is the stepfather?

20 A. So witnesses of domestic violence would do a
21 few things, potentially. And every case is
22 different. I'm speaking generally. But for one, in
23 terms of what's called observational learning, if a
24 child is seeing, for example, an adult, their
25 mother, being physically victimized by a father

1 figure, stepfather, the observational learning is,
2 well, my mother can't, my mother is powerless, my
3 mother is being victimized; it could lead to the
4 child's appraisal that the mother can't protect me,
5 can't protect the child, that there will be
6 retribution for the mother, in other words,
7 consequences or revenge for the mother.

8 So that can seriously underscore both the
9 viability of the threats -- in other words, he's
10 making good on a physical threat, his powerfulness,
11 as well as possibly weakening the child's belief
12 that the mother can protect.

13 Q. And what is meant by the term of accidental
14 disclosure?

15 A. In our field we talk about discovery or
16 disclosure of abuse sometimes being accidental and
17 sometimes being purposeful. So an accidental
18 discovery or an accidental disclosure happens when a
19 child says something, but didn't mean for it to --
20 didn't mean for it to get to the adults or didn't
21 really mean for it to be the telling.

22 So an accidental discovery can happen -- for
23 example, with a young child, it could happen if the
24 child is exhibiting sexual behaviors and it causes a
25 parent to be concerned about abuse. That would be

1 an accidental discovery. Another accidental would
2 be, in some way the offense gets interrupted by an
3 eyewitness walking in or by somebody hearing
4 something or overhearing something that leads to a
5 confrontation that the child wasn't prepared for,
6 didn't expect, but something triggered questioning
7 that may very much catch the victim off guard.

8 Q. When the disclosure does come about, whether
9 it's delayed or accidental, is there a difference in
10 how the child might remember the abuse, if it's
11 chronic versus acute?

12 A. Absolutely. First of all, you said it was
13 accidental. So one thing, if it's accidental and
14 suddenly questions are coming at a victim, they have
15 to do a lot of very quick coping. So they can be
16 emotionally overwhelmed, anxious, you know, denying
17 is often a first stage of response in cases of child
18 sexual abuse, even when there's medical evidence. I
19 mean, the first thing, when children are confronted
20 with questions they weren't expecting, is just to
21 deny.

22 But then, two, in terms of being able to give
23 details about what you said -- you asked about
24 chronic. So chronic sexual abuse is considered
25 abuse that's been ongoing for some period of time as

1 opposed to something that just recently happened for
2 the first time.

3 The challenges there for a child just include
4 the fact that they may be asked to recall details
5 about events where they've spent so much mental
6 energy suppressing, trying not to synthesize those
7 memories; they all blend together. So there are
8 emotional challenges to recall, there's also just
9 time challenges to recalling. And if the child has
10 spent so much time suppressing thinking about those
11 memories, it's a lot to suddenly organize those
12 recollections and then deliver them when being
13 asked. It takes -- it often goes through stages.
14 We know the children will report a certain amount --
15 it's what we call piecemeal, where they might tell
16 us a certain amount, and as they begin to realize,
17 perhaps, that they're safe and protected -- if they
18 realize they're safe, that they're protected, then
19 they may provide more information gradually as they
20 go forward in time.

21 Q. And so not only are there difficulties with the
22 memory, but there are difficulties in speaking about
23 the abuse in general?

24 A. Right. Right. It can be psychologically
25 overwhelming. So depending on their level of

1 anxiety and distress, how much support they have,
2 even just and language skills, I mean, to start
3 talking about something they never wanted to talk
4 about.

5 Q. You mentioned language skills. Do children
6 have a hard time sometimes associating adult anatomy
7 with what they know to be anatomy at the time of 10
8 or 11 years old?

9 A. Yes. You know, some children do use accurate
10 language; other children may have some limited
11 understanding of, you know, their own anatomy,
12 especially little girls, especially before they are
13 menstruating and having to tend to things. They may
14 not have a really good understanding of all of their
15 anatomical features, and they'll use general words
16 like bottom that aren't as specific as what adults
17 would use.

18 Q. And is it difficult for children to relay,
19 victims to rely, to strangers what occurred to them
20 if they're being interviewed by law enforcement or
21 another agency?

22 A. Yes. It is hard enough for adult victims, and
23 it's certainly no easier -- and it's embarrassing.
24 And there's, you know, this sense of making
25 something private public. So there are -- we know

1 there are many barriers, which is why so much
2 training goes into having specialized interviews who
3 can establish a rapport and work through some of
4 those barriers.

5 Q. So you mentioned, in cases of chronic abuse,
6 it's difficult for children to pinpoint exact times
7 and places that the assaults occurred.

8 A. Correct.

9 Q. Do they use maybe -- is it often that they use
10 other things to associate when something happened?

11 A. Right. So children, especially --

12 MR. JOHNSON: Your Honor, may it please the
13 Court. I'm trying not to jump up out of my seat,
14 but I object to leading.

15 THE COURT: Just object. I can't rule unless
16 you object.

17 Please do not ask leading questions. Rephrase
18 your question.

19 BY MS. CAVANAUGH:

20 Q. Are there certain events that help relate with
21 time, timing of the assaults with these cases?

22 A. Yes. With children, time is a developmental
23 challenge for young children. And, of course, as
24 children get older, they get a better and better
25 handle on managing time. But, obviously, what is a

1 long time or a short time or marking seasons or
2 thinking in terms of a calendar, that's not the
3 strength of children, certainly not elementary
4 school children or younger children.

5 So often when we're trying to figure out when
6 something happened, it's important to ask questions
7 that assist the child in making associations to
8 things that are more relevant to the child as
9 opposed to when in a calendar sense. So sometimes
10 they can make associations once they -- or we, as
11 adults, can make associations once we get
12 information from them about what bedroom they were
13 residing in, who their school teacher was, maybe a
14 particular family reunion or birthday party or
15 something like that that's associated with the
16 timing of an event.

17 So children, when asked just when questions,
18 perform very poorly. And, actually, all humans have
19 a hard time thinking back about when things
20 happened. But as adults, we can do things like pull
21 out our calendars and we're more practiced at making
22 associations. So children, they really need help
23 with contextual questions that allow us to then
24 figure out when in time events may have occurred.

25 Q. And in cases of chronic sexual abuse, is it

1 difficult for children to estimate how many times
2 something happened?

3 A. Definitely. Again, a sequence of events with a
4 beginning, a middle, and an end, and that being a
5 unit of one, and then another sequence of events
6 with a beginning, middle, and an end that's somewhat
7 different, somewhat the same, and that being another
8 unit of one, and then being able to count up all of
9 these units over time, especially when it's
10 something that, again, was not -- well, typically, a
11 lot of victims put a lot of energy into suppressing,
12 deflecting, avoiding thinking about these, so they
13 really haven't put a lot of effort into
14 consolidating them into their memory; they're
15 running away from the memory more than they are, you
16 know, calculating them.

17 So when we ask -- now, older children,
18 teenagers, can begin to provide a decent estimate.
19 And I'm talking 15-year-olds. But the research on
20 children's abilities to provide estimations of the
21 number of times that something happened suggests
22 that it's just -- it's developmentally beyond
23 children before their high school years to be very
24 accurate in something like that.

25 Q. And you just mentioned ages. Does the research

1 show that it's different for a child that's 11
2 versus an older child?

3 A. Yes. There's some very good research from the
4 University of Southern California evaluating
5 children of various ages and asking them to estimate
6 the number of foster homes that they've resided in
7 or number of times they appeared in dependency
8 court.

9 And so these are cases -- this is research
10 where the researchers know exactly what number of
11 foster homes a child was in, for example, and what
12 number of times a child presented in dependency
13 court, and they evaluated children from about the
14 age of eight forward. And that's how we know, I
15 mean, that these children's abilities to estimate
16 even something like that, number of changes in
17 houses or number of times they had to go to court,
18 they're just not able to provide reliable
19 estimations until their later teen years.

20 Q. Do some of the memories of certain events
21 overlap with each other?

22 A. Yes. You mean -- so we talk in terms
23 of something called, in our field, script memory
24 versus something called episodic memory. So if
25 you're involved in an activity, whatever it is,

1 driving to work every day, how you brush your teeth,
2 how you make dinner, whatever, and somebody asks
3 you, well, how do you go to work, you're going to
4 have a script, a memory.

5 A script memory allows you to be an efficient
6 thinker and talk about how you usually go to work
7 and what sequence things typically go in or how you
8 get ready for work in the morning. So that's a
9 script memory. We all make script memories for
10 everything that goes on in our life with any
11 repetitiveness. So if I ask questions and learn
12 about the script of memory for abuse, you know, a
13 child may talk about how things usually went or what
14 he would normally do or normally say. And that's
15 important information, but it can gloss over unique
16 details and help us figure out what we would call
17 episodic events.

18 So when we're seeking episodic memory, we're
19 trying to get single episodes. So if I -- for way
20 of example, if I asked you to tell me about a TV
21 show you like, you could give me script memory about
22 how the show generally goes, but then if I said,
23 well, tell me all about the last episode, that would
24 be one unique event and then you would provide specific
25 details about that event.

1 What we know is that children can sometimes
2 tell -- if they're well-anchored, they might be able
3 to provide episodic memory details for maybe the
4 last time or one time that stands out for whatever
5 reason. It might not be the worst time. But,
6 generally speaking, that's just more challenging for
7 them to parse it out and think of specific episodes.

8 And many episodes aren't going to be
9 remembered, maybe a few will stand out but,
10 otherwise, what they will tend to provide is script
11 memory.

12 Q. And are these behaviors common with a lot of
13 child sexual assault cases?

14 A. Yes.

15 MS. CAVANAUGH: I beg the Court's indulgence.

16 BY MS. CAVANAUGH:

17 Q. And, Doctor, even though there are some common
18 behaviors, does each child victim act the same in
19 all cases?

20 A. Definitely not.

21 Q. So it depends on the family dynamics?

22 A. Yes.

23 Q. And how long the abuse has occurred?

24 A. Yes.

25 Q. And who the alleged perpetrator --

1 MR. JOHNSON: Your Honor, again.

2 THE COURT: Again what?

3 MR. JOHNSON: She's leading.

4 THE COURT: She is. You have to object.

5 Rephrase your question.

6 BY MS. CAVANAUGH:

7 Q. Basically, is each child different?

8 A. Yes. Factors that make children and the
9 dynamics in each case different include the age of
10 the child, the sex of the child, the sex of the
11 perpetrator, the relationship between the
12 perpetrator and the victim, the length of time that
13 the events had been going on. So all of those
14 features will create the kind of complex interplay,
15 so some children will present differently than other
16 children.

17 Q. Is it unusual for, perhaps, family members not
18 to notice anything different about the child even
19 after the abuse is occurring?

20 A. Absolutely.

21 MR. JOHNSON: Your Honor, it's a leading
22 question -- it's leading.

23 THE COURT: Sustained.

24 Rephrase the question.

25 BY MS. CAVANAUGH:

1 Q. Is it immediately obvious to other family
2 members that a child might be abused?

3 MR. JOHNSON: Your Honor --

4 THE COURT: Sustained.

5 Madam Forelady, ladies and gentlemen of the
6 jury, the rules are, when you're directly examining
7 a witness, you have to ask direct questions: What
8 day is it? If you're on cross-examination you, can
9 lead them: Isn't today Thursday? It's a fine line,
10 but I have to make them play by the rules.

11 Ask a direct questions, please.

12

13 BY MS. CAVANAUGH:

14 Q. Do family -- is it -- do family members always
15 know what's happening to the child?

16 MR. JOHNSON: Your Honor, leading.

17 MS. CAVANAUGH: I don't --

18 THE COURT: I'll allow her to ask that.

19 A. No, they do not. And one of the more painful
20 dynamics in child sexual abuse cases involving
21 family members is that mothers -- and I'll say
22 mothers because most often it is the mother who is
23 saying, how could I not have seen something was
24 going on? So every week -- and at my job at the
25 ARC, that's a question that --

1 MR. JOHNSON: Your Honor.

2 THE COURT: What's the objection? She's
3 answered the question.

4 MR. JOHNSON: Your Honor, sidebar?

5 THE COURT: Yes, sir.

6 (Sidebar conference.)

7 THE COURT: Disregard that last statement and
8 answer, ladies and gentlemen of the jury.

9 Anything else, ma'am?

10 MS. CAVANAUGH: Thank you, Dr. Foster. Please
11 answer any questions from the Defense.

12 THE COURT: Mr. Johnson -- Mr. Virgin Johnson.
13 Mr. Johnson, was Mr. Williams going to
14 cross-examine this witness?

15 MR. JOHNSON: Your Honor, I understand. I'm
16 trying to get my thoughts together.

17 THE COURT: Well, was he prepared to do it?

18 MR. WILLIAMS: I was prepared, Your Honor.

19 THE COURT: Okay. Either way. I'll let either
20 one of you do it. But y'all know the rules; if you
21 do the objecting, you got to do the questioning.
22 But I'll bend the rules in this particular --

23 MR. WILLIAMS: Thank you very much, Your Honor.

24 THE WITNESS: May I ask for a cup of water?

25 THE COURT: You certainly may.

1 Mr. Williams?

2 MR. WILLIAMS: Briefly, Your Honor. Thank you.

3 CROSS-EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Dr. Foster, I think you testified, you never
6 examined the victim in this case, did you?

7 A. Correct.

8 Q. And, Dr. Foster, you testified about
9 behavioral -- common behaviors in alleged victims;
10 is that right?

11 A. Yes.

12 Q. Dr. Foster, would it be fair to say that
13 there's no set pattern of behavior for victims of
14 sexual abuse?

15 A. Speaking generally, I think that would be fair
16 to say. Yes.

17 Q. Okay. Dr. Foster -- and also, you didn't
18 conduct any tests in this particular case?

19 A. None.

20 Q. Okay.

21 MR. WILLIAMS: I beg the Court's indulgence,
22 Your Honor.

23 THE COURT: Absolutely.

24 BY MR. WILLIAMS:

25 Q. Dr. Foster, would it be fair to say that your

1 entire testimony was just a general statement about
2 how some victims may act in these particular
3 situations? Is that correct?

4 A. It would be fair to say my testimony pertained
5 to -- I responded to questions that pertained to
6 chronic sexual abuse cases. And I provided a wide
7 range of information to relate to children of
8 various ages. But there were some specifics
9 provided to me in the questions pertaining to parent
10 figure and that sort of thing. So we weren't
11 discussing every single type of child sexual assault
12 cases.

13 Q. Dr. Foster, let me back up just a moment. You
14 said you published a book, Child Development for
15 American Prosecutors; is that correct?

16 A. A monograph, yes.

17 Q. Would it be fair to say that most of your work
18 has been the prosecution side? Is that correct?

19 A. For the criminal -- in the criminal part of my
20 practice, that would be fair to say, yes.

21 Q. And, Dr. Foster, isn't it true that in this
22 particular case you interviewed no witnesses?

23 A. Correct.

24 Q. Not the victim?

25 A. Right.

1 Q. Made no reports?

2 A. Right.

3 Q. And you're speaking just to, what, your general
4 observances?

5 A. General expert knowledge.

6 Q. Thank you.

7 MR. WILLIAMS: One moment, Your Honor.

8 THE COURT: Sure.

9 MR. WILLIAMS: Thank you. No further
10 questions, Your Honor.

11 THE COURT: Ma'am, anything on redirect?

12 MS. CAVANAUGH: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. CAVANAUGH:

15 Q. Mr. Williams just asked you about your
16 participation for the prosecution. Do a number of
17 agencies actually refer children to your -- to the
18 Assessment & Resource Center?

19 A. Yes.

20 Q. What are those agencies?

21 A. Law enforcement agencies from about 17 counties
22 every year, child protective services, DSS,
23 sometimes family court judges, sometimes guardians
24 ad litem. So those are the usual referrals.

25 Q. So not just criminal cases?

1 A. No.

2 THE COURT: Thank you. You may step down.

3 May she be released from her subpoena?

4 MS. CAVANAUGH: No objection.

5 MR. JOHNSON: No objection.

6 THE COURT: You are excused.

7 Madam Forelady, ladies and gentlemen, I know
8 you have been out a couple times, but my court
9 personnel has not, so they need a little break.
10 Let's do about ten minutes and come back and go till
11 about 1:00.

12 (The jury exits the courtroom at 11:25 AM.)

13 THE COURT: Mr. Johnson, you got a motion you
14 wanted to make at the sidebar?

15 MR. JOHNSON: Your Honor, yes. And, quite
16 frankly, I don't remember the particular statement,
17 but --

18 THE COURT: You said you wanted to make a move
19 for a mistrial when the lady was talking --
20 Dr. Foster was talking about, I think, Mom and --
21 Mom blaming herself for not noticing and, perhaps,
22 believing the child or something like that.

23 MR. JOHNSON: Yes, sir, Your Honor. I think
24 that goes directly in this case to bolstering the
25 credibility of the -- of what was said by the mom

1 and the daughter. And that testimony elicited is so
2 prejudicial and would impact the jury that I think
3 that -- it's prejudicial, would impact the jury, and
4 I think the proper remedy would be a mistrial.

5 In this case, Your Honor, right up as of yet,
6 we have no physical evidence. And everything now is
7 hearsay --

8 THE COURT: Everything is credibility.

9 MR. JOHNSON: I mean, everything is
10 credibility. And testimony like that already, the
11 fact that she testified as an expert, bolsters it.
12 But when her testimony becomes more specific to this
13 particular case, it bolsters it more. And I think
14 once you ring that bell, you can't un-ring that bell
15 with the jury. And I would move, in the interest of
16 justice and fairness, because of the prejudicial
17 effect, that we be granted for mistrial.

18 THE COURT: Well, I didn't quite perceive it in
19 the manner that you have. I think Dr. Foster was
20 warned or advised to stay away from any testimony
21 dealing with her opinion as to the credibility of
22 any witnesses in this case. I think she replied in
23 that one question, which I told the jury to
24 disregard; it wasn't talking about credibility of
25 anybody in this case, it was talking about mom s

1 feeling guilty about not being able to recognize
2 what was going on under their own noses, so to
3 speak. I think I gave a curative instruction. And
4 I respectfully deny your motion for mistrial.

5 MR. JOHNSON: Thank you, Your Honor. And if I
6 could add to that, just for purposes of the record,
7 the number of leading questions that went before
8 that enhanced it more. So I just add that --

9 THE COURT: Well, with all due respect to you,
10 Mr. Johnson, I can't make the objections.

11 MR. JOHNSON: I understand.

12 THE COURT: Once you made it, I made her
13 rephrase the questions. And, really and truly, I
14 didn't think they were that prejudicial, they were
15 just a tad leading.

16 Anything else?

17 MR. JOHNSON: That's all. Thank you, sir.

18 THE COURT: Thank you.

19 What you got left?

20 MS. SIMPSON: Your Honor, we have Dr. Susan
21 Luberoff, and then Sergeant Rick Bailey will be
22 our --

23 THE COURT: Doctor who?

24 MS. SIMPSON: Dr. Susan Luberoff with the
25 Assessment & Resource Center. She did a forensic

1 medical exam on Shawntea Ford.

2 THE COURT: All right. We'll take about a
3 ten-minute stretch-your-legs break.

4 (Short break.)

5 THE COURT: Ms. Simpson, anything for the
6 record before we start back?

7 MS. SIMPSON: Nothing from the State.

8 THE COURT: Mr. Johnson?

9 MR. JOHNSON: Nothing from the Defense.

10 THE COURT: All right. Bring the jury in,
11 please.

12 (The jury enters the courtroom at 11:46 AM.)

13 THE COURT: Okay. You may call your next
14 witness.

15 MS. SIMPSON: The State calls Dr. Susan
16 Luberoff.

17 (Susan Luberoff enters the courtroom.)

18 SUSAN LUBEROFF

19 being first duly sworn, testified as follows:

20 THE WITNESS: Yes.

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

23 THE WITNESS: I'm Susan Breland Luberoff.

24 THE COURT: Speak loud enough so the very back
25 row can hear, as well as me.

1 DIRECT EXAMINATION

2 BY MS. SIMPSON:

3 Q. Dr. Luberoff, where are you employed?

4 A. I work for the USC School of Medicine
5 Department of Pediatrics. And I'm stationed at the
6 Assessment & Resource Center which is a clinic that
7 sees children with concerns of abuse or neglect.

8 Q. What is your position?

9 A. I'm the medical director there, clinical
10 associate professor of pediatrics at the medical
11 school, and I'm division director for the Division
12 of Forensic Pediatrics at the Department of
13 Pediatrics.

14 Q. And can you tell the jury a little bit about
15 your educational background and training with
16 respect to pediatrics?

17 A. Sure. I graduated from the USC School of
18 Medicine in Columbia in the third class to graduate
19 in 1983, and completed a three-year residency in
20 pediatrics at Children's Hospital at Richland
21 Memorial.

22 And since then I've practiced pediatrics. My
23 concentration has been in the subspecialty field of
24 child abuse pediatrics. That's where I've spent the
25 majority of my professional time. I've had specific

1 training in that field including a six-week
2 fellowship at the Kemp National Center of Child
3 Abuse in Denver. I'm board certified in general
4 pediatrics and also board certified in the
5 subspecialty of child abuse pediatrics.

6 Q. Okay. So in addition to maintaining your board
7 certification, do you also attend certain classes
8 and courses of that nature to keep your training and
9 your license up to date?

10 A. Yes. In South Carolina, actually, we have a
11 system for all of us, all of the medical providers
12 who work in this field; a system that requires that
13 we have a certain amount of ongoing continuing
14 medical education each year. We meet together three
15 times a year and undergo peer review and have
16 educational sessions at those meetings.

17 Q. And with respect to your actual position, tell
18 the jury a little bit about what you actually do as
19 far as your role with the Assessment & Resource
20 Center.

21 A. I have two main roles; when children come in to
22 that clinic for a worry about abuse or neglect, I do
23 the medical part of the evaluation. So if the child
24 needs to have a medical exam for part of the
25 evaluation, that's the part that I do. I do a

1 complete physical examination, I decide whether any
2 laboratory testing needs to be done or X-rays and
3 that kind of thing, and I'll order those as
4 necessary.

5 I'll also respond to the hospital if there's a
6 child admitted to the hospital with an injury, or
7 where there is worry about abuse, then the hospital
8 staff will consult me to come over and help with
9 that part of the evaluation.

10 Q. Okay. And with respect to physical or medical
11 examinations of children, do you deal -- you said
12 allegations of abuse. Does that involve all types
13 of abuse?

14 A. Yes.

15 Q. And tell the jury a little about the different
16 types that you see.

17 A. We see children for worries about sexual abuse,
18 physical abuse, neglect; we will sometimes have
19 children come through our clinic who have been
20 witnesses to a homicide or some kind of traumatic
21 event that they need to be interviewed about that.

22 Q. And how many medical examinations of children,
23 with particular emphasis on sexual assault
24 examinations, would you say you performed during the
25 course of your career?

1 A. Thousands.

2 Q. And have you ever testified as an expert in the
3 field of sexual assault examinations?

4 A. Yes.

5 Q. About how many times?

6 A. They call it something different just about
7 every time I go to court. So if you include child
8 abuse pediatrics, sexual assault examinations,
9 sexual abuse evaluations and so on, it's been well
10 over a hundred times. I stopped counting years ago.

11 MS. SIMPSON: Your Honor, at this time I'd like
12 to qualify Dr. Susan Luberoff as an expert in the
13 field of child sexual assault examinations.

14 THE COURT: Any cross-examination of her
15 qualifications?

16 MR. JOHNSON: No cross-examination. I agree
17 she is an expert.

18 THE COURT: All right. This doctor will be
19 allowed to give opinion testimony in the field of
20 sexual assault examinations and pediatrics in
21 general.

22 BY MS. SIMPSON:

23 Q. Dr. Luberoff, did you actually examine a child
24 involved in this case?

25 A. I did.

1 Q. Tell the jury who that was and when she came to
2 you.

3 A. I examined Child on October 14th, 2011,
4 Child .

5 Q. Okay. And tell the jury -- well, first of all,
6 when a patient is presented to you, do you have any
7 kind of background information that's provided to
8 you, if there's any available?

9 A. Different amounts of background information.
10 Whoever calls to set the child up for an evaluation
11 through the resource center gives enough information
12 to us to know whether the child is appropriate for
13 us to see. And sometimes we have a wealth of
14 information and sometimes we don't have a lot of
15 information.

16 Q. So it's just kind of dependant on the case and
17 timing of the actual exam as to what you receive?

18 A. Yes.

19 Q. And what is Child -- her last name is Child .
20 How did she present to you? What were the
21 allegations or the nature of them?

22 A. It was for a sexual abuse concern.

23 Q. And so in this instance, tell the jury about
24 the examination you actually performed on her and
25 how you conducted that exam.

1 A. First, she was oriented to the room. One of
2 our employees called a child life specialist spent
3 some time with the child in advance, explaining the
4 whole exam to the child and answering any concerns
5 or worries they might have about the exam, explains
6 every position that I might need the child to be in
7 so the child can comfortable and cooperative with
8 the exam, because I do need a good, cooperative, and
9 comfortable child for me to see everything that I
10 need to see in detail.

11 And then the exam itself of Child included a
12 careful examination of all of her skin, a careful
13 examination of her genitalia. And we used a
14 colposcope, which is an instrument that's like a set
15 of binoculars with a bright light just so I can see
16 things with some magnification and with a good,
17 bright light to look at the genital area, and a lot
18 of things that are general physical exam parts, like
19 listening to her heart, looking in her ears, looking
20 at her teeth, examining her abdomen.

21 When a child comes to the Assessment & Resource
22 Center for an evaluation, we don't limit our
23 examination just to whatever type of abuse or
24 neglect is the concern; we actually examine for any
25 type of abuse or neglect. So it's a very thorough

1 physical examination with some extra attention to
2 the genitalia.

3 Q. So you're also looking to see if there's any
4 visible signs of, like, bruising or scarring or any
5 potential physical abuses as well; right?

6 A. Correct.

7 Q. I want to go back to what you said about the
8 orientation and the positioning of the child. Is
9 the nature of this exam similar to what, I guess, an
10 adolescent or adult female would have when she goes
11 to the gynecologist?

12 A. It is, with the exception that -- ordinarily
13 when a woman goes to the gynecologist, a pap smear
14 is done, and that involves placing the speculum
15 inside the vagina. We rarely have to do that as
16 part of our evaluation of children. So it's an
17 examination similar to that at a GYN, but we don't
18 do the speculum exam.

19 Q. So with younger children, have they typically
20 been through this type exam when they come to you?

21 A. Well, typically, if a younger child is being
22 followed by a pediatrician for regular checkups,
23 that pediatrician should be looking at the genitalia
24 at every regular checkup. The pediatrician is not
25 going to use a special light for it and probably

1 isn't going to do the time of traction of moving the
2 labia or the apart to see up inside to the degree
3 that we do. But a child should be accustomed to a
4 physician looking at his or her genitalia when they
5 go for a regular exam.

6 Q. Okay. And do you actually document your
7 findings in the form of a report?

8 A. I do.

9 Q. With respect to your examination of Child
10 , tell the jury what you found as far as your
11 physical examination.

12 A. She had two old burns on her body; one, she
13 didn't remember what it was from, and I believe the
14 other was from a curling iron or something like
15 that. They were accidental burns.

16 And then the rest of her exam was essentially
17 normal. Her genital examination in particular was
18 normal. She had reached puberty several years
19 earlier. She listed her date or her age of her
20 first period as having been eight years old, and she
21 was now 11 when I saw her. And so she was well into
22 the advanced stages of puberty; she had breast
23 development and her hymen had grown in the way that
24 hymens grow, she had hair distribution and so on,
25 consistent with her pubertal history.

1 Q. Okay. And tell the jury -- you said her --
2 your examination of the genitalia area, you didn't
3 notice anything abnormal.

4 A. Right.

5 Q. What exactly is included in the genitalia are
6 as far as a female genitalia?

7 A. Parts, body parts?

8 Q. Yes?

9 A. That would be the labia or lips of the vagina,
10 the hymen, the more distal or more closer to the
11 external part of the actual vagina itself, the anal
12 area, the perianal area, and the perineum.

13 Q. Okay. And what exactly is the hymen?

14 A. The hymen is a piece of tissue that is part of
15 the vagina. It's near the beginning of the vagina.
16 It -- it goes through a big change when puberty
17 happens. When a child is born and in the first few
18 years of life, the hymen tends to look fairly thin
19 and looks fragile. It's actually not particularly
20 fragile, it's normal living human tissue which is
21 mucus membrane kind of tissue, which means that it
22 is bathed in moisture all the time; it's always
23 moist because of the secretions in the vagina.
24 It, before puberty, as I said, looks kind of thin.
25 If you were trying to look through it from front to

1 back, sometimes you can see light through it.

2 At puberty, when so many other changes are
3 happening in the body of a girl, the breasts are
4 growing, the hips are spreading, hair is starting to
5 sprout in the vaginal area and armpits, the vagina
6 and the hymen undergo a dramatic change through the
7 course of puberty.

8 And at the hymen level, what happens is, it
9 thickens. It thickens to such a degree that where
10 before puberty it was in the enough that I might be
11 able to see light through it, by the end of puberty,
12 it's thick, almost like as thick as my thumb. And
13 in addition to growing thicker during that course of
14 puberty, it grows on its surface area, so that
15 before puberty, the opening -- and there's an
16 opening in the hymen from before birth. The opening
17 in the hymen might be a circular opening where the
18 hymen sort of just surrounds that opening.

19 The hymen grows so much during the course of
20 puberty, that it ends up folding around the edges so
21 that at the end of puberty, when the body is now
22 prepared for reproduction, an object can be
23 introduce into that opening and it's got enough
24 surface area that it will simply spread out of the
25 way and allow entrance of a normal penis size object

1 without destroying the hymen or -- and, actually,
2 without usually injuring the hymen at all.

3 Q. So it essentially develops to where penetration
4 is possible and almost easier, in a sense?

5 A. Correct.

6 Q. With respect to a normal exam -- and you said
7 her findings were normal?

8 A. Yes.

9 Q. Is that uncommon or typical?

10 A. It's quite typical. The vast majority of girls
11 who have been through puberty who have had vaginal
12 penetration with an object or a penis have
13 completely normal exams when we see them at the
14 Assessment & Resource Center, even children that we
15 see that are pregnant. Their exams are usually
16 completely normal. And when they're pregnant, we
17 know for sure a penis has been in there. Those
18 hymens are usually completely normal. And this is,
19 you know, a little different than what I grew up
20 believing and what I was told by my mama, but it's a
21 fact, it's the way the body actually is.

22 Q. And if penetration has occurred over a period
23 of time -- you used the example about pregnancy.
24 But over the course of years, would you still expect
25 to still have a normal exam?

1 A. Yes, unless something extraordinary has
2 happened to that hymen. And sex is not
3 extraordinary; sex is the part of what the hymen is
4 there for. And by extraordinary, I mean something
5 like -- like if there's some type of brutal assault
6 where there is a bad injury. It can be injured,
7 it's not very easily injured. Or if there's been
8 surgery involving the hymen, for example, if someone
9 has had cancer of the hymen and had a piece removed,
10 that's not going to normal on exam anymore.

11 But, ordinarily, the hymen looks normal without
12 injury, even after repeated penetration of the
13 vagina.

14 Q. And as a medical doctor, as far as your purpose
15 and your goals in performing the medical exam, what
16 are those, particularly in children?

17 A. The main purpose of doing the exam is to see if
18 there are any injuries. If there are, then we need
19 to know that and the child needs to know and the
20 parents need and the system needs to know that.
21 But, mainly, we're examining the child for any signs
22 of abuse and to make sure -- to ensure that the
23 child is healthy.

24 If the child has experienced sexual abuse, for
25 example, then part of the evaluation would be to

1 determine what kind of testing needs to be done for
2 sexually transmitted infections to ensure that the
3 child didn't contract an illness from what happened.

4 So the overarching purpose of the exam is to
5 ensure that the child is healthy, and that all of
6 the steps to evaluate that health related to that
7 concern are done.

8 Q. All right. And would that be your -- as far as
9 your examination of Child , the extent of your
10 involvement with this case?

11 A. Yes. I only saw her the one time.

12 MS. SIMPSON: Thank you, Dr. Luberoff.

13 THE COURT: Mr. Johnson, any questions?

14 MR. JOHNSON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. JOHNSON:

17 Q. Dr. Luberoff, how are you doing?

18 A. Good. Thank you. How are you?

19 Q. Fine. Fine. I just want to clear up one
20 thing: The -- as you sit there right now, you
21 couldn't testify whether she had sex or didn't have
22 sex; all you could do is testify that the exam you
23 did, you found it normal; correct?

24 A. Correct.

25 Q. And I looked at -- do you have your intake

1 report with you, the one -- the child maltreatment
2 protocol?

3 A. I do.

4 Q. Okay. If you would, turn to page 9.

5 A. Yes.

6 Q. Will you read that -- I can't pronounce those
7 words, so I wanted to point you to the page.

8 A. I'll help you.

9 Q. Okay. Under the subject no injuries
10 identified, what's that next word?

11 A. Anogenital. That means injuries in the region
12 of the anus or the genital area.

13 Q. Okay. And on your report, you found no
14 abrasions, no bruises, nothing?

15 A. Correct.

16 Q. No scars, no tears, no lacerations, nothing?

17 A. Correct.

18 Q. So in other words, all you're testifying today
19 is that a report was done, and it can't say whether
20 something happened or whether it didn't?

21 A. That's correct.

22 MR. JOHNSON: Thank you.

23 MS. SIMPSON: No redirect, Your Honor.

24 THE COURT: Thank you. Thank you, Doctor.

25 Thank you for coming.

1 Next witness, please.

2 MS. SIMPSON: The State calls Sergeant Rick
3 Bailey.

4 RICK BAILEY

5 being first duly sworn, testified as follows:

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

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

9 THE WITNESS: Rick Bailey, B-A-I-L-E-Y.

10 DIRECT EXAMINATION

11 BY MS. SIMPSON:

12 Q. Sergeant Bailey, where are you employed?

13 A. Currently employed with the Kershaw County
14 Sheriff's Office.

15 Q. And how long have you been with Kershaw County?

16 A. Been with Kershaw County since the year of
17 1998, but I had four years of previous law
18 enforcement before that.

19 Q. And what was your previous law enforcement
20 background?

21 A. I worked, I believe it was, about three and a
22 half years or close to it with Camden City Police
23 Department. And then I worked a year with the
24 Bishopville Police Department; that's where I
25 started out.

1 Q. And what is your current position with Kershaw
2 County Sheriff's Office?

3 A. I'm a sergeant in the criminal investigations
4 unit.

5 Q. And as a sergeant in that division, what do
6 your duties include?

7 A. I receive orders from the captain and the
8 lieutenant, I'm assigned cases for investigation,
9 take up special tasks they assign me to do and
10 delegate those tasks accordingly to other
11 investigators in that division.

12 Q. Okay. And do you work, I guess, with all types
13 of investigations?

14 A. Yes, ma'am. I've done all types of
15 investigations.

16 Q. And tell the jury just a little bit about your
17 experience in law enforcement and your background as
18 far as types of cases you've responded to and your
19 investigations?

20 A. I'm assigned to the criminal investigations
21 division. I've worked everything from somebody
22 writing a bad check, assault and batteries of people
23 hitting each other, property crimes like break-ins
24 to homes, theft to personal items, homicide
25 investigations, what is commonly considered

1 white-collar crimes like embezzlement, and juvenile
2 investigations.

3 Q. So pretty much everything?

4 A. Yes, ma'am.

5 Q. And turning your attention back to 2011, did
6 you actually become involved in criminal sexual
7 conduct cases involving minors too?

8 A. Yes, ma'am.

9 Q. Specifically the one we're here for today?

10 A. Specifically, yes, ma'am.

11 Q. Tell the jury how you were notified and how you
12 became involved.

13 A. With the sheriff's office, we have a certain
14 number of investigators and each of us getting a
15 week of on-call. That means we're subject to recall
16 24/7 for seven days straight.

17 On the date in question, which was October
18 11th, road deputies were called to respond to a
19 scene on Road. It's really -- it's an
20 oddity, Road; you got Kershaw County, Lee
21 County, but it kind of bounces back and forth. Some
22 people call it Bethune, some people call it Cassatt,
23 some people call it Bishopville, because there's
24 that many, you know, different lines on that road.

25 But deputies were called to the scene at

1 Road where they made contact with Ms. Hall
2 and, I think, the victim in the case. Because of
3 the nature of the case, I was notified to respond to
4 the scene by, I believe it's Corporal West. I
5 believe he's a sergeant now. So I responded to the
6 scene and met with the deputy.

7 Q. Okay. So you actually went to the location at
8 Road that night?

9 A. Yes, ma'am.

10 Q. And you spoke with the responding officer -- or
11 at least who was present on the scene?

12 A. I believe one that's already testified, Deputy
13 Barnwell, and his immediate supervisor Mr. West, and
14 also Ms. Pamela Hall.

15 Q. So you made contact with the mother as well?

16 A. That's correct.

17 Q. And were you able to gather information as to
18 what had occurred and what was going on?

19 A. Yes, ma'am. It was reported to me first by
20 responding officers that there was allegations of
21 attempted or actual sexual assault by the suspect in
22 the case, a Mr. Nakia Johnson.

23 As soon as I heard the name, I recognized who
24 it was because of past experience. And they relayed
25 the events of what was relayed to them.

1 Q. I want to back up just for a minute. You said
2 you recognized the name. Tell the jury how you were
3 able to recognize Mr. Johnson's name.

4 A. Me and Mr. Johnson worked on the same shift
5 when I was a road supervisor.

6 Q. So y'all were familiar and actually worked
7 together?

8 A. Yes, ma'am.

9 Q. And during that time of working together, did
10 you actually establish kind of a working
11 relationship or a friendship, so to speak?

12 A. In small departments like this, most of the
13 time you spend during the day is actually with
14 people on your shift, so you actually build a
15 rapport with the people that you work with because
16 they've got your back and you've got theirs. So you
17 get pretty close. At that time I think we had four-
18 or five-man shifts to cover the whole county.

19 Q. Okay. At that time though, was he actually
20 still working with Kershaw County?

21 A. On October 11th?

22 Q. Yes.

23 A. No, ma'am, he was not.

24 Q. And backing up just a little bit, who was the
25 victim that you -- or who was the alleged victim?

1 A. The alleged victim reported to me was Miss
2 Child

3 Q. And what was her relationship with Mr. Nakia
4 Johnson, the defendant?

5 A. I've heard it mentioned a lot the past few days
6 that he was the stepfather. But I don't think they
7 were actually married, but he was playing the role
8 as a father or a stepfather.

9 Q. So he was in a relationship with Ms. Hall, the
10 victim's mother?

11 A. Yes, ma'am.

12 Q. To your understanding, was he actually living
13 at the location at Road?

14 A. To my understanding, he was not there -- or
15 residing at the Road address.

16 Q. Okay. And was the victim actually living there
17 with her mother at that time?

18 A. To my knowledge, at the time.

19 Q. And with respect to -- and you said you learned
20 of an attempted sexual assault or something of that
21 nature. Were you aware of where that had possibly
22 occurred; like, was the home that you responded to
23 the actual location?

24 A. The alleged incident location was not at the
25 home, but at a church within close proximity to the

1 home.

2 Q. And after you arrived on scene and spoke to the
3 individuals you mentioned, what was your next course
4 of action? What did you do?

5 A. Of course I needed to get in touch with my
6 victim's advocate. We don't, as a practice, speak
7 with juvenile victims. So I notified them and had
8 Ms. Hall and Miss Child escorted down to the Kershaw
9 County Medical Center.

10 Q. And what was the reason for having them sent to
11 the medical center?

12 A. Any time there's an allegation of an alleged
13 sexual assault, we do request that the hospital
14 perform the protocol kit for us.

15 Q. Okay. So while you were conducting your
16 investigation, the advocate actually went with the
17 victim and her mother to the hospital?

18 A. Yes, ma'am. I did actually -- before they left
19 Kershaw County Medical, I had cleared what I was
20 doing at that scene and actually met them down there
21 for a few minutes.

22 Q. Okay. So you actually followed them down to
23 the hospital and spoke with them there?

24 A. A short time after. I was there within minutes
25 of them arriving there.

1 Q. And as the lead investigator in these types of
2 cases, did you feel it necessary to process any kind
3 of scene at Road?

4 A. There was no scene to be processed at
5 Road.

6 Q. Okay. And at this point you had the individual
7 identified as the possible suspect; correct?

8 A. Yes, ma'am.

9 Q. So what did you do with that information,
10 especially having a previous relationship with him?

11 A. At some point during leaving the hospital and
12 heading back to the sheriff's office, Mr. Johnson
13 was notified and requested to come back to the
14 sheriff's office.

15 Q. And, again, let me back up a little bit. Did
16 you actually contact another investigator
17 essentially to assist you; Lieutenant Patrick
18 Hickmon?

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

20 Q. And when you spoke were you able to make
21 contact with the defendant yourself or did someone
22 else contact him?

23 A. If I'm not mistaken, either the captain at the
24 time, Captain Chris Phillips, or my chief deputy
25 made contact with Mr. Johnson and his chief of

1 police.

2 Q. And was Mr. Johnson willing to come speak with
3 you-all?

4 A. Yes, ma'am.

5 Q. Tell us how that occurred and how he came and
6 where he went as far as when you encountered and
7 made contact with him.

8 A. He was requested to come to the Kershaw County
9 Sheriff's Office. It took several hours for him to
10 return from Allendale-Fairfax where -- in the Low
11 Country, from my understanding, back to the
12 sheriff's office. That's where he was met at.

13 Q. And when he arrived and -- was he, at the time,
14 still a police officer or in law enforcement, to
15 your knowledge, or do you know?

16 A. To my understanding he was, because my chief
17 notified his chief of police. So I'm assuming he
18 was still employed.

19 Q. Okay. Did he agree to speak with y'all
20 voluntarily?

21 A. Yes, ma'am.

22 Q. And did you apprise him of the nature of why he
23 was being called out there?

24 A. It was my understanding -- I felt like he had
25 an idea of why we were asking to question him. But

1 he did acknowledge that he knew that there were some
2 allegations that we were asking him about.

3 Q. But he appeared to have some knowledge of it
4 prior to coming to you-all?

5 A. Yes, ma'am.

6 Q. And when he arrived, what did you do? When he
7 arrived to headquarters and you began speaking with
8 him, where did y'all go?

9 A. We actually went to -- we have a room at the
10 sheriff's office that's video recorded that we
11 conduct our interviews. He was taken to that room
12 with myself and Investigator Hickmon in the room.
13 He was Mirandized and then we started the interview
14 process.

15 Q. And when yu say Mirandized, tell the jury -- I
16 know we've all seen TV shows, but exactly how you go
17 about performing that process.

18 A. I have the form I can refer to. I think y'all
19 have entered it as number 1.

20 Q. I'll show you what's been marked as State's
21 Exhibit 1 for ID. Do you recognize that?

22 A. Yes.

23 Q. And what is that?

24 A. That is a Statement of Miranda Rights form that
25 we commonly use at the sheriff's office.

1 MS. SIMPSON: Your Honor, at this time I'd
2 offer State's Exhibit 1 into evidence.

3 THE COURT: Mr. Johnson?

4 MR. JOHNSON: No objection.

5 (State's Exhibit No. 1 admitted in to
6 evidence.)

7 BY MS. SIMPSON:

8 Q. And is this the statement from which you
9 advised him?

10 A. Yes, ma'am, it is.

11 Q. And he -- did you ask him a couple questions?
12 I mean, with him being in law enforcement, was he
13 pretty familiar with the Mirandizing process?

14 A. From my understanding, he had been in law
15 enforcement for numerous years, so I would assume he
16 did know about the Miranda process. I would hope he
17 did.

18 Q. And tell the jury how you went about
19 Mirandizing him. And is this your standard
20 procedure and practice?

21 A. It should be everybody's standard procedure.
22 But my procedure since I've been an investigator is
23 I actually read each portion of the Miranda out loud
24 to make sure that they understand it. And once I've
25 read that, I check that sentence off before I move

1 on to the next one. And I did that in this case.

2 Q. And can you read for the jury what's contained
3 in State's Exhibit 1?

4 A. Absolutely. The Miranda is followed -- there's
5 five parts. The first sentence is, you have the
6 right to remain silent. After I read that, I
7 checked it off and asked if it was understood.
8 Anything you say can and will be used against you in
9 a court of law. That was also checked off. You
10 have the right to talk to a lawyer and have him or
11 her present with you while you're being questioned.
12 It was in turn checked off. If you cannot afford to
13 hire a lawyer, one will be appointed to represent
14 you before any questioning if you wish. That was
15 also checked off. You can decide at any time to
16 exercise these rights and not answer any questions
17 or make any statements. That was checked off. And
18 once understood, it was signed by me as the officer
19 that actually read it to him.

20 Q. Okay. And the portion of the advisement, was
21 anyone present with you when you did that?

22 A. Lieutenant Hickmon was present with me.

23 Q. Okay. And did he appear -- and by he I mean,
24 at this point, the defendant. Did he appear to
25 understand those rights as you read them?

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

2 Q. And was he under the influence of anything when
3 he arrived, to your knowledge?

4 A. Not to my knowledge.

5 Q. Okay. And tell us about the next portion of
6 that advisement.

7 A. The next portion of the advisement is what they
8 call a waiver of rights. Would you like me to read
9 them?

10 Q. Yes, please.

11 A. Okay. The waiver of rights says: This is to
12 certify that I have read or have had read to me the
13 above statement of rights.

14 Understanding each of these rights and having
15 these rights in mind, I waive them and willingly
16 make a statement. No promises or threats have been
17 made to me, and no pressure or coercion of any kind
18 has been used against me.

19 Q. Okay. And did he, in fact, waive his rights?

20 A. Yes, ma'am, he signed the waiver.

21 Q. He actually signed the waiver acknowledging?

22 A. Yes, ma'am.

23 Q. And did he also tell you that he agreed to
24 speak with you?

25 A. Yes, ma'am.

1 Q. And at all times during the course of this, did
2 you make it known to him that he could stop at any
3 point if he wanted to?

4 A. From the beginning when he signed the waiver.
5 But I made that verbally clear.

6 Q. Did y'all threaten or coerce him in any way to
7 make this statement?

8 A. No, ma'am.

9 Q. And if he had asked for a lawyer at any
10 portion, would he have been given that opportunity?

11 A. Yes, ma'am.

12 Q. So was the statement to you and other
13 investigators made freely and voluntarily?

14 A. Yes, ma'am. That's the way I perceived it.

15 Q. In addition, you said he was transported to the
16 interview room. At Kershaw County, is that
17 interview preserved or documented in any way?

18 A. Audiovisually, yes, ma'am.

19 Q. And I'm going show you what's been marked as
20 State's Exhibit 2 for identification purposes. Do
21 you recognize this?

22 A. Yes, ma'am.

23 Q. Have you had a chance to review it?-

24 A. Yes, ma'am.

25 Q. What is it?

1 A. It's the audiovisual recording of the interview
2 with Mr. Nakia Johnson.

3 Q. And does it fairly and accurately depict what
4 occurred on that day?

5 A. Yes, ma'am.

6 Q. And the portion of the advisement -- and you've
7 reviewed this video; correct?

8 A. Yes.

9 Q. Is there a portion of the advisement where the
10 video is not, I guess, recording or this copy that
11 we have didn't show it?

12 A. Yes, ma'am.

13 Q. What portion is that?

14 A. The first part of the advisement where you go
15 through Miranda. It was read and checked off, but
16 for some reason, whichever investigator burned that
17 copy for me, for some reason cut off the first
18 minute or so of it, which does not show that
19 advisement.

20 Q. But the whole portion where he's waiving his
21 rights and agreeing to speak with you freely and
22 voluntarily is contained?

23 A. Yes, ma'am.

24 Q. As well as his entire statement?

25 A. Yes, ma'am.

1 MS. SIMPSON: Your Honor, at this time I would
2 offer State's Exhibit 2 into evidence.

3 MR. JOHNSON: Your Honor, at this time I have
4 no objection.

5 MS. CAVANAUGH: Your Honor, may we approach
6 briefly?

7 (Sidebar conference.)

8 MS. SIMPSON: Your Honor, at this time,
9 permission to publish the interview, as well as we
10 do have transcripts for the jury to follow along.

11 THE COURT: All right. What we're going to do
12 now is show the interview with the defendant
13 conducted by this witness. I had to make some
14 pretrial rulings on it, so I suggested that you be
15 given a transcript of it. I think you saw me
16 yesterday reading along with a transcript. I got
17 one for you on this one. Sometimes it got a little
18 mumbled for me to hear -- not mumbled, but talking
19 down like this. So we got transcripts for you to
20 follow along with. It makes it a little clearer.
21 Everybody got one?

22 THE JURY: Yes, sir.

23 MS. SIMPSON: Beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 (Video played for his Honor and the jury.)

1 (Video paused.)

2 THE COURT: All right. Madam Forelady, ladies
3 and gentlemen, we've probably got another 30 minutes
4 or so. Your food is here. I'm going to let y'all
5 break now for your lunch. It's 1:00 now. Can we
6 start back at 2:00?

7 Please don't discuss the case, please don't
8 start any deliberations. Once you finish your
9 lunch, you're welcome to go downstairs and get some
10 fresh air, but please be back at 2:00. Leave your
11 transcript in your chair, please.

12 (The jury exits the courtroom at 1:02 PM.)

13 THE COURT: Investigator Bailey, you're right
14 in the middle of your testimony. Please don't
15 discuss it with anybody during the lunch break.

16 THE WITNESS: Yes, sir.

17 THE COURT: Anything for the record before we
18 break?

19 MS. SIMPSON: Nothing from the State.

20 THE COURT: Mr. Johnson?

21 MR. JOHNSON: Your Honor, nothing from the
22 Defense. I think we did mention about putting
23 something on the record -- Your Honor, let me think
24 about it. It wasn't nothing major, but --

25 MS. SIMPSON: You did tell us to remind you

1 about the Lee County issue.

2 MR. JOHNSON: Right.

3 THE COURT: But y'all -- nobody has mentioned
4 that.

5 MS. SIMPSON: Right.

6 MR. JOHNSON: No.

7 THE COURT: All right. I'm going to make him
8 available during lunchtime for his lawyers.

9 May I see the lawyers in chambers for a quick
10 second?

11 MR. JOHNSON: Yes, sir.

12 (A luncheon recess transpired 1:03 PM - 2:05
13 PM.)

14 THE COURT: Ms. Simpson, anything for the
15 record before we start back?

16 MS. SIMPSON: Briefly. I think we remembered,
17 and I spoke with Mr. Johnson, what we wanted to put
18 on the record. The redacted version of the video
19 was switched out from what was actually used for
20 pretrial purposes.

21 Also, Your Honor, we would let Mr. Johnson know
22 that it's actually formatted and it does say
23 formatted. Not only written on the CD does it say
24 redacted, which was scratched out, but on the file
25 itself it says redacted. So we're just doing one

1 that is renamed so that they don't know it was
2 redacted.

3 THE COURT: What that was, was actually
4 redacted in reference to the polygraph?

5 MS. SIMPSON: Yes, sir.

6 THE COURT: We all agreed in chambers that it
7 would come out. And we just substituted the one
8 that we used for the Jackson v. Denno with a
9 redacted copy for today.

10 MS. SIMPSON: Correct.

11 THE COURT: Mr. Johnson, any problem with that?

12 MR. JOHNSON: No, sir.

13 THE COURT: Thank you.

14 All right. Everybody ready?

15 MS. SIMPSON: State is ready, Your Honor.

16 MR. JOHNSON: Defense is ready.

17 THE COURT: Bring the jury in, please.

18 (The jury enters the courtroom at 2:07 PM.)

19 THE COURT: We're going to continue on with the
20 playing of the tape. Everybody find their places in
21 the transcript? I'll say this is for you as well as
22 for me: I know it's dark in here, I know you just
23 had pizza, but everybody pay attention, please.

24 All right. Y'all ready to start back?

25 THE JURY: Yes, sir.

1 THE COURT: All right.

2 (Video resumed for his Honor and the jury.)

3 (Video concluded.)

4 THE COURT: Madam Forelady, ladies and
5 gentlemen, y'all step back into the jury room just a
6 second. We need to take a quick little break.
7 Don't discuss the case and don't deliberate.

8 (The jury exits the courtroom at 2:55 PM.)

9 THE COURT: All right. We'll take about a
10 five-minute break. Thank you.

11 (Short break.)

12 THE COURT: Bring the jury in, please.

13 (The jury enters the courtroom at 3:02 PM.)

14 DIRECT EXAMINATION ,

15 (Continued)

16 BY MS. SIMPSON:

17 Q. Sergeant Bailey, at the close of that
18 interview, what was the defendant taken into custody
19 and arrested for?

20 A. A warrant I swore out. Judge Todd was --

21 THE COURT: Speak up, please.

22 THE WITNESS: I'm sorry, sir.

23 A. The warrant was for criminal sexual conduct or
24 attempt, victim under 11 years of age, first degree.

25 Q. Okay. I'm going to go to just a couple things

1 that were in the interview. Specifically with
2 respect to your portion or the other investigator's
3 portion where they're talking about DNA and we have
4 DNA results and things of that nature.

5 A. Uh-huh.

6 Q. Would you have gotten test results back this
7 quickly from any kind of processing?

8 A. Absolutely not.

9 Q. Okay. So what is the purpose of trying to
10 confront a potential subject with DNA and things of
11 that nature?

12 A. I've seen in the past where officers will bring
13 that up to try to elicit a response to there
14 possibly being DNA on a victim. So this is a line
15 of questioning they'd use to try to get a response
16 to determine if there was DNA or not.

17 Q. So, essentially, a tactic of sorts --

18 A. That's the word for it, tactic.

19 Q. -- investigative tactic.

20 And with respect to this case, the defendant
21 responded, I know about DNA.

22 A. Correct.

23 Q. And he was with law enforcement; isn't that
24 right?

25 A. Correct; for 12 years, is what he told us.

1 Q. So he was pretty familiar with police officers
2 and their forms of questions and things of that
3 nature?

4 A. I would think so.

5 Q. In the course of your investigation, did you
6 actually learn whether the night of this disclosure
7 Child was actually -- the sexual assault was
8 completed that night? Did you learn whether or not
9 it was completed?

10 A. No, it was not completed. It was attempted,
11 but it was not completed.

12 Q. So really no evidence of any semen or
13 ejaculation or anything of that nature?

14 A. Based on her testimony, there should not have
15 been, because it was not completed.

16 Q. And the interview with the defendant, that was
17 the same day of the disclosure, or evening?

18 A. I believe because it was in the late night
19 hours, the switching, everything supposedly happened
20 on the 11th, but I think by the time Mr. Johnson
21 appeared back at Kershaw County, it was right around
22 12:00 or maybe just a little bit after. So what I'd
23 consider the same workday, it was actually two
24 different dates, the 11th and 12th.

25 Q. But he was interviewed, essentially, close in

1 time to the actual disclosure?

2 A. Oh, yes, ma'am.

3 Q. And the victim was also taken to the hospital
4 that day as well?

5 A. Yes, ma'am.

6 Q. Did you schedule a forensic interview on behalf
7 of the victim?

8 A. We tried to get them done as quickly as
9 possible. We were fortunate at the time to be using
10 the Kershaw Center next door, so it was actually
11 done -- the first interview was done within close
12 proximity within the day.

13 Q. The next day it was done?

14 A. I think that's correct. Yes, ma'am.

15 Q. And that was her initial interview with
16 Mr. Kellin, I believe?

17 A. Yes, ma'am.

18 Q. During the course of this investigation, did
19 you actually -- did SLED become involved?

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

21 Q. What is SLED and why would they become involved
22 in a case such as this?

23 A. There was, I believe, two members of SLED here
24 during this week. SLED is the South Carolina Law
25 Enforcement Division. We rely on them a good bit

1 for their labs and other resources that they have
2 that we don't have on a local level. So they were
3 asked to come in because there was what I would
4 consider two reasons: We had a jurisdictional issue
5 between Kershaw County, Lee County, and Allendale, I
6 believe it is, and Fairfax. And, also, Mr. Johnson,
7 at the time, was a law enforcement officer. Usually
8 we like to have a State agency come in to be an
9 unbiased outside agency to help with the
10 investigation.

11 Q. So they act as an assisting agency to Kershaw?

12 A. Yes, ma'am.

13 Q. And respect to their lab and forensics, does
14 Kershaw County actually have their own forensics lab
15 like Richland County?

16 A. I wish. But the answer is no.

17 Q. No. And in this case, after scheduling the
18 forensic interview with Child , the victim,
19 did SLED become involved fairly quickly?

20 A. Yes, ma'am, I think so; within the next day or
21 so.

22 Q. And once they become involved, whose
23 responsibility is it with respect to interviewing
24 witnesses and things of that nature or other
25 scheduling of other interviews?

1 A. If they became involved and they had a
2 different aspect of the case or a different part of
3 the case, they'd schedule the interviews and then do
4 the interviews themselves.

5 Q. Okay. So as being the lead investigator with
6 the Kershaw case and everything that was happening
7 here, were you privy to that information and
8 eventually everything came to you?

9 A. Yes, ma'am.

10 Q. With respect to Pamela Hall, was she -- without
11 going into detail as to what she said, was she
12 interviewed early in this case as well?

13 A. By me?

14 Q. By law enforcement.

15 A. Yes, ma'am. She did a -- she gave statements
16 to the responding deputy that night. She also spoke
17 with me several times during that night and into the
18 next morning.

19 Q. And did she also give some written statements?

20 A. She did give written sworn statements, yes,
21 ma'am.

22 Q. Regarding the incidents that occurred?

23 A. Yes, ma'am.

24 Q. Additionally, I want to get out -- during the
25 course of your interview, a name came up with the

1 defendant, a Nikki Chisolm.

2 A. That's correct.

3 Q. Do you recall Ms. Chisolm being contacted
4 during that interview from the defendant's phone?

5 A. From the defendant's phone?

6 Q. Or a call being made to Nikki?

7 A. I do recall a call being made to her.

8 Q. And do you recall the phone number that was
9 given for Ms. Chisolm?

10 A. Give me just one second. (803)

11 Q. Okay. And during that, did the name Louise
12 Pinkney also come up?

13 A. Yes.

14 Q. And what was the number for her?

15 A. The number I have for Ms. Pinkney is
16 (803)

17 Q. During the course of your investigation, did
18 these names become significant to you with respect
19 to the defendant's statement?

20 A. They were relayed to me by him through the
21 interview that those were people who had been either
22 incoming or outgoing calls to him that night -- that
23 afternoon.

24 Q. And during the course of that interview, did he
25 actually confirm that there was a call on his phone

1 at, I believe, 5:54 or whatever with Pamela Hall, an
2 outgoing call?

3 A. He did confirm it. He didn't understand it,
4 but he did confirm it.

5 Q. Do you recall whether he actually had his
6 service weapon in the car or on him when he was
7 placed into custody?

8 A. He didn't have it on him at -- from the
9 interview. I think -- I didn't go look in the car,
10 someone else did. But I think there was a .22
11 rifle.

12 Q. But not his actual service weapon --

13 A. No, ma'am.

14 Q. -- that you're aware of?

15 A. That I'm aware of, no, ma'am.

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

17 BY MS. SIMPSON:

18 Q. I want to talk to you about a couple locations
19 brought up in this case. With respect to Stevens
20 Road and the, I believe, Fountain Grocery Store --

21 A. Yes, ma'am.

22 Q. -- is that in pretty close proximity?

23 A. Several miles. It's not far.

24 Q. Okay. So one could drive there fairly quickly?

25 A. Yes, ma'am.

1 Q. And in the course of your investigation, I know
2 a graveyard's been mentioned. Tell the jury a
3 little bit about your initial understanding about
4 the graveyard and what you subsequently learned
5 about which graveyard was being referred to.

6 A. My initial thought when they mentioned a church
7 right down the road from the home and graveyard, not
8 too far from the home on Stevens Road there's a
9 church on the right-hand-side of the road with a
10 small graveyard. That was my initial thought, that
11 that was the incident location. It was later
12 determined that it was actually another church
13 probably a mile or so past that into Lee County. So
14 there was a difference at first before we -- I
15 actually thought where the incident location was. I
16 though it was one church, but it ended up being
17 another church a little bit further up the road.

18 Q. And having worked in Kershaw County and around
19 this area, are you pretty familiar with the
20 St. Matthews and Bethany Cemetery and Stevens Road,
21 all the places that had been --

22 A. Down in the Turkey Creek area, yes, ma'am, I'm
23 familiar.

24 Q. Did you say Turkey Creek?

25 A. That's what the locals call it, Turkey Creek.

1 (State's Exhibit Nos. 13, 14, and 15 marked for
2 identification.)

3 Q. I'm going to show you what's been marked as
4 State's 13, 14 and 15. Do you recognize these?

5 A. Not so close, please.

6 Q. Sorry.

7 A. I do recognize them.

8 Q. And do they fairly and accurately depict the
9 location in the picture?

10 A. Of Bethany Cemetery, yes, ma'am.

11 MS. SIMPSON: Your Honor. At this time, I
12 would offer State's 13, 14 and 15 in to evidence.

13 MR. JOHNSON: No objection.

14 THE COURT: Thank you.

15 (State's Exhibit Nos. 13, 14 and 15 admitted in
16 to evidence.)

17 Q. So the Bethany Cemetery in State's 13 and 14
18 and 15, was that actually the cemetery or graveyard
19 area --

20 A. It was later determined to be that location
21 instead of the first one I went to.

22 Q. And with respect to close proximity, just so we
23 can sort of orient ourselves, Road, is that
24 fairly close to this?

25 A. It's fairly close. It's not on , but

1 it's very close.

2 Q. And what about relationship with the
3 Road location, Bethany Cemetery, and Fountain
4 Grocery?

5 A. They're all within several miles of each other.

6 Q. So one could drive it in a matter of minutes?

7 A. Yes, ma'am.

8 Q. And was -- Child , was she interviewed a
9 second time in this case as well?

10 A. As far as a forensic?

11 Q. Yes.

12 A. Yes. She was actually interviewed a second
13 time at the request of a SLED agent that was
14 involved in the case.

15 Q. And did you learn that her first interview had
16 actually ended due to her being sick?

17 A. I actually watched the forensic interview where
18 she got sick and it was ended early.

19 Q. Okay. So you were present and observing?

20 A. No, ma'am. I watched the video after it was --

21 Q. Oh, watched it.

22 A. Yes, ma'am.

23 Q. The person you spoke with on the date of
24 October 11th, 2011, and ultimately charged with
25 criminal sexual conduct charges, do you see him in

1 the courtroom today?

2 A. Yes.

3 Q. Can you point him out?

4 A. Mr. Nakia Johnson, he's between his two
5 co-counsels, wearing what appears to be a
6 bluish-black suit.

7 MS. SIMPSON: Your Honor, let the record
8 reflect he's identified the defendant.

9 THE COURT: Yes, ma'am.

10 MS. SIMPSON: Thank you, Sergeant Bailey.
11 Please answer any questions from the Defense.

12 THE COURT: Mr. Johnson?

13 MR. JOHNSON: May it please the Court.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. JOHNSON:

17 Q. Let's start with that night. Someone from your
18 department called to Fairfax, to Allendale, and he
19 came right back up, didn't he?

20 A. Yes, sir.

21 Q. Okay. And I think that you read him his rights
22 and he signed the waiver, didn't he?

23 A. That's correct, sir.

24 Q. Okay. And he talked with you freely, didn't
25 he?

1 A. Yes, sir.

2 Q. Okay. So he really did not hold back from
3 saying what he thought was going on, did he? Did he
4 hold back anything from you --

5 MS. SIMPSON: Objection; calls for speculation
6 as far as what the defendant held back or didn't.

7 THE COURT: Sustained.

8 BY MR. JOHNSON:

9 Q. When he got back, before you started
10 questioning him, you had the warrant already, didn't
11 you?

12 A. Yes, sir. The warrant was in-hand.

13 Q. So all of the questioning that was done, it
14 wasn't done to get information; he was already
15 charged, wasn't he?

16 A. No, sir. There was an arrest warrant for him.
17 But it was up to my discretion whether he was
18 actually processed on the warrant.

19 Q. So -- and the arrest warrant was done just
20 solely based upon the allegations that were given to
21 you and nothing else?

22 A. Based on the statements made by the mother and
23 the victim in the case and the records we had from
24 the mother's phone.

25 Q. Okay. And I just want to be sure, you had

1 nothing else, other than the allegation from the
2 mother -- which you said you didn't talk to the
3 girl, so allegation from the mother and the mother's
4 phone records?

5 A. That's correct, sir.

6 Q. All right. In the video, I saw y'all were
7 looking at the phone records. I'd like to ask you
8 something. I think the State has some marked up
9 there if you want to -- if we could look at the
10 phone records.

11 THE COURT: That's exhibit 10; is that correct?

12 MS. SIMPSON: Yes, sir.

13 BY MR. JOHNSON:

14 Q. I'd like for you to turn to Item No. 828, 829.

15 THE COURT: 828 and 829.

16 THE WITNESS: I'm not sure how to find that on
17 this report, Your Honor.

18 THE COURT: Mr. Johnson, you know how to find
19 it?

20 MR. JOHNSON: Yes, sir.

21 THE COURT: Come show him how to find it,
22 please.

23 MR. JOHNSON: It's an item number.

24 THE COURT: It's an item number, not a
25 telephone number.

1 BY MR. JOHNSON:

2 Q. Did you locate the 828 and 829?

3 A. Yes, sir, I have.

4 Q. Were you in yesterday when the gentleman from
5 the phone company was testifying?

6 A. When he was trying to explain the Greenwich
7 Mean Time? I never understood it, but I followed
8 what he was saying.

9 Q. Well, let me try to explain it.

10 A. What I meant by that, Mr. Johnson, is I don't
11 understand Greenwich Mean Time. I understand the
12 four-hour conversion, I just never understood why
13 there's such a thing as the Greenwich Mean Time.

14 Q. All right. Well, anyhow, I'll start you with
15 828 and 829. Let's walk down to it.

16 A. Yes, sir.

17 Q. We understand, I think, from his testimony that
18 2145 would be 1745 because of the four-hour
19 deduction difference between the Universal Time and
20 the Eastern Standard Time. Would you agree with
21 that?

22 A. Yes, sir, I would.

23 Q. All right. At 819, 10/11/11, at 2147, there
24 was a call that went to voicemail from (803)

25 to -- and the one that's calling it is the

1 originating number, and the one that's terminating
2 is the one the call goes to; do you understand that?

3 A. Yes, sir.

4 Q. Okay. So the calling number in that was -- and
5 I think you gave -- just a few minutes ago, you gave
6 the name for the number . I think that was
7 Ms. --

8 A. Ms. Nikki Chisolm.

9 Q. Yes, sir. So Ms. Nikki Chisolm called him at
10 2145?

11 A. Yes, sir. I see that.

12 Q. And that was Nakia Johnson's number she called
13 to?

14 A. 3322, the last four digits, yes, sir.

15 Q. Right. And then at Item No. 20, there was --

16 THE COURT: At 8:20?

17 MR. JOHNSON: Item No. 820.

18 BY MR. JOHNSON:

19 Q. There was another call right behind Nikki
20 Chisolm at two minutes -and 33 seconds from the
21 number (803) , and the terminating number
22 was Nakia Johnson's number; is that correct?

23 A. Yes.

24 Q. Okay. And then Item No. 821, which would be
25 2148, which would be 5:48, there was another call

1 from 571-5158 to Nakia Johnson's number; is that
2 correct?

3 A. Yes, sir.

4 Q. Okay. All right. So if you watch the video,
5 one of the questions y'all had for him was -- y'all
6 said he didn't get a phone call from Nikki until
7 6:30-something. So isn't that two phone calls
8 before 6:00?

9 A. I lost my place. 821, okay. I'm not
10 understanding what the number below that one is
11 that's got the F out beside it.

12 Q. I think that's call forwarding. That's my
13 understanding from the little training I had.

14 THE COURT: Well, ask your question again. He
15 can either answer it or he can't.

16 BY MR. JOHNSON:

17 Q. Okay. There's no question that there was a
18 call at item 819 from Nikki Chisolm to Mr. Johnson,
19 then there was a call out of 820 from Louise Pinkney
20 to Nakia Johnson, and then at 821 there was another
21 call from Nikki Chisolm to Nakia Johnson?

22 THE COURT: When you say 821, you mean the item
23 not the time?

24 MR. JOHNSON: Item No. 821.

25 THE COURT: All right. Let's keep the record

1 straight.

2 Is that a question?

3 BY MR. JOHNSON:

4 Q. The question was, were there calls placed from
5 those numbers to Nakia Johnson?

6 A. It says in the originating number -- I'm
7 assuming that's a call. I'm not sure. Like I said,
8 the forwarding thing, I think, is throwing me off a
9 little bit.

10 Q. Okay. If you remember the testimony of the man
11 from AT&T, he said the number that's the calling
12 number is the originating number; is that correct?

13 A. I think that's right.

14 Q. Okay. And the terminating number would be the
15 number that was called; is that correct?

16 A. Correct.

17 Q. Okay. All right. So go right back to those
18 items again. Those numbers called Nakia Johnson's
19 number, correct, based upon the phone bill?

20 A. Based on this bill, yes, sir.

21 Q. And this is from AT&T?

22 A. I have to take your word for it.

23 Q. Well, you'd have to take his word for it,
24 correct --

25 A. Right.

1 Q. -- the guy that testified, because he testified
2 these were the correct bills. So this is from AT&T;
3 is that correct?

4 A. Yes, sir, I guess so.

5 Q. All right. Then there's a phone call, Item No.
6 8- -- 822 and 823 got ones by it. But Item No. 824,
7 there's a phone call from the number that is Nakia
8 Johnson, the 3322, and it called 3369, which is
9 Ms. Pamela Hall's number; is that correct?

10 A. I believe that's her number, yes, sir.

11 Q. Is that correct?

12 A. I think so, yes, sir.

13 Q. Okay. And then Item No. 826 at 2152, there was
14 another call from 3322 and that call went to
15 Ms. Pamela Hall's number; is that correct?

16 A. Yes, sir.

17 Q. Okay. Now let's go to item 828. Item No. 828,
18 829, same phone call at 2154. And 2154 would be
19 5:54; is that correct?

20 A. Yes, sir.

21 Q. All right. At 2154 a phone call came from
22 Nakia Johnson's number to Ms. Pamela Hall's number;
23 is that correct?

24 A. Yes, sir.

25 Q. All right. And that was the number that y'all

1 were talking about in the station that that was the
2 time -- whatever was going on with Nakia and
3 Shawntea, that's the time they're supposed to be in
4 the cemetery or wherever they're supposed to be;
5 right?

6 A. That's supposed to be, like, a two-minute call,
7 so I'm guessing.

8 Q. Well, that's the only two-minute call between
9 the numbers on here, correct; the only two-minute
10 call from his phone number and her phone number;
11 correct?

12 A. Yes.

13 Q. Okay. So this was the call that y'all were
14 talking about?

15 A. Yes. I'd have to assume that.

16 Q. Okay. And to verify this was the call y'all
17 were talking about, immediately after that, on 830,
18 there was a call from Ms. Pamela Hall's number back
19 to Nakia's number for a minute and 25 seconds?

20 A. Yes, sir.

21 Q. Okay. And that was the time that -- I think
22 y'all was saying on the video that that was the time
23 she called him back and said bring the child home;
24 is that correct?

25 A. Yes.

1 Q. All right. Now, as the investigating officer,
2 did you have an opportunity to watch the video from
3 Mr. Ron Fountain's store?

4 A. Yes, sir, I did.

5 Q. You watched the whole video?

6 A. Yes, sir.

7 Q. Did you hear the testimony from Mr. Capps about
8 what time Mr. Johnson was in the store?

9 A. Yes, sir.

10 Q. Okay. Mr. Capps said Mr. Johnson was in the
11 store at 5:58; is that correct?

12 A. That's what he said.

13 Q. Okay. And the call originated at 5:54,
14 correct, the one from Mr. Johnson to Ms. Hall?

15 A. Yes, sir. Was it Item No. 828?

16 Q. Yes, sir.

17 A. Yes, sir.

18 Q. And it was at 5:54, and the call last two
19 minutes; correct?

20 A. Correct.

21 Q. Were you in here when Ms. Pamela Hall
22 testified?

23 A. Yes, sir.

24 Q. Okay. And she testified -- and I think --

25 MS. SIMPSON: Objection, Your Honor, with

1 respect to pitting witnesses.

2 MR. JOHNSON: I'm not -- I'm just asking --

3 THE COURT: Ask the question and then I'll --

4 MR. JOHNSON: Okay.

5 BY MR. JOHNSON:

6 Q. Did you hear Ms. Hall's testimony?

7 A. I did.

8 Q. Okay. And she testified and answered yes to my
9 question that it was -- 5:54 was the call that she
10 was talking about; is that correct?

11 A. If I'm not mistaken, I believe that's right.

12 Q. Okay. And she also testified that she called
13 back at --

14 MS. SIMPSON: Objection, Your Honor.

15 MR. JOHNSON: Your Honor, I'm just -- I'm not
16 pitting --

17 MS. SIMPSON: Pamela Hall's testimony --

18 THE COURT: He's not pitting, he's just saying
19 that's what she said --

20 MR. JOHNSON: Yeah.

21 THE COURT: -- and did he hear it.

22 Overruled.

23 MR. JOHNSON: Thank you.

24 BY MR. JOHNSON:

25 Q. So if the call was at 5:54 and the call lasted

1 two minutes, that would be 5:56; would that be
2 correct?

3 THE COURT: If that's --

4 A. Plus two minutes would be --

5 Q. If the call was at 5:54 and allegedly lasted
6 two minutes, then that -- 2 plus 4 is 6, it would be
7 so 5:56; would that be correct?

8 A. That makes sense, yes, sir.

9 Q. All right. And then there was another call for
10 a minute and 25 seconds, so that would be 5:56 and
11 another minute would be 5:57; is that correct?

12 A. I'm assuming you're speaking of item 830.

13 Q. Yes, sir.

14 A. Okay. That's what's on the record, 5:57.

15 Q. That was on the record. So we know -- based
16 upon the testimony that was presented and the
17 records, we know at 5:58, he was in Mr. Ron
18 Fountain's store; is that correct?

19 A. 5:50-something and some change.

20 Q. 5:58 on the -- from the testimony that
21 Mr. Capps said, 5:58, he was in the store.

22 A. I'm not sure if it's 5:57 and some change or
23 5:58, but just rounding off, that sounds about
24 right.

25 Q. Okay. Wherever you want to round it off at.

1 But now -- and you said the cemetery was more than a
2 mile or so from the store; is that correct?

3 A. A few miles. It's not far.

4 Q. Okay. So if you're in the cemetery -- I'm just
5 asking you, do you think that you can get from
6 that cemetery --

7 MS. SIMPSON: Objection, Your Honor.

8 THE COURT: He can't give an opinion. He's not
9 qualified to give an opinion.

10

11 BY MR. JOHNSON:

12 Q. On the video at 5:58, he was walking around in
13 the store. We don't have -- okay. Could someone be
14 in the cemetery and the store at the same time?

15 MS. SIMPSON: Objection -- well, I take that
16 back. I withdraw my objection.

17 A. I would think not. It would be a pretty nice
18 trick.

19 Q. All right. That's good. Let me go on to
20 another question. So Nakia was a police officer.
21 And I think the other officer in there that was
22 asking the questions about the DNA, that was Officer
23 Chris Phillips; is that correct?

24 A. Yes, sir.

25 Q. Okay. And at that time y'all had not even had

1 the DNA results?

2 A. No, sir. I know they were trying to take DNA
3 samples, but to have the DNA results back, no, sir.

4 Q. All right. So in other words, you were trying
5 to entice him -- using police tactics and trying to
6 entice him to admit something?

7 A. I wasn't.

8 Q. Not you, but that's what was going on?

9 A. It was a tactic that he was using.

10 Q. Okay. Okay. And he -- and if you watch the
11 video, he continued to say, I didn't do it; is that
12 correct?

13 A. Yes, sir.

14 Q. So we're talking the difference in the phone
15 call at the cemetery at 5:57 and being in the store
16 at 5:58; is that correct?

17 A. Going by your records here, yes.

18 Q. Okay. And the video we saw showed Nakia and
19 Child in the store; is that correct?

20 A. That appeared to be Shawntea with him, yes.

21 Q. Okay. And the video showed her going -- matter
22 of fact, to pick up candy and show him which one --
23 did you watch the video?

24 A. Yes.

25 Q. Okay. Candy or something, showing him about

1 the candy?

2 A. I think both hands had something in them, yes.

3 Q. Okay. And, matter of fact, when you started
4 watching the video, he was in the back of the store
5 already and she was walking around in the store; is
6 that correct?

7 A. Seemed like -- if I remember right, it seemed
8 like he was coming in from the side. But he walked
9 into the shop where the camera was at.

10 Q. Okay. Wasn't he coming from the back aisles in
11 the video?

12 A. I'm not sure how the cameras are situation in
13 the store.

14 Q. Would you like to see the video?

15 A. It doesn't matter. I agree that he came from
16 somewhere in the store.

17 Q. Okay. Well, you agree he came from somewhere
18 in the store?

19 A. Yes.

20 Q. Which would say he was already in the store at
21 5:58; isn't that correct? If he had come from
22 somewhere, he had to be in the store.

23 A. By the time on Mr. Fountain's video, yes.

24 Q. Okay. You remember Officer Phillips taking the
25 telephone and saying the network doesn't lie?

1 A. I'm sorry?

2 Q. Do you remember Officer Phillips at the time
3 taking Mr. Johnson's telephone and saying the
4 network doesn't lie?

5 A. I remember that.

6 Q. He said, forensically, it doesn't lie.

7 A. Uh-huh.

8 Q. Mechanically, it don't lie?

9 A. I think it was electronically.

10 Q. Okay. Okay. I'm assuming it applied to the
11 phone, but it doesn't apply to the video?

12 A. I don't understand the question.

13 Q. Wouldn't -- you're saying you're not sure
14 whether the video is giving the proper time. You
15 don't know whether the time is proper or not, but
16 it's the time that is on the video?

17 A. It's the time that is on the --

18 Q. And it's the time that shows him in the store?

19 A. That's what it shows on the video.

20 Q. And he was in the store at 5:58?

21 A. According to the video.

22 Q. Okay. And Child was in the store with him?

23 A. Yes, sir.

24 Q. Okay. What was the weather like that day?

25 A. I'm sorry?

1 Q. What was the weather like that day?

2 A. They said it had rained earlier that day. When
3 I was called to the scene, the rain had slowed down
4 to a light drizzle, if I remember correctly, when I
5 got there.

6 Q. Okay. Was there some forecast -- and it might
7 have been just rain. But was there some forecast --
8 if you remember, fine; and if you don't --

9 A. I don't.

10 Q. Was there some forecast about a storm coming?

11 A. Honestly, I couldn't tell you.

12 Q. Okay. Was the questioning about the telephone
13 network a strategy to make him -- entice him to say
14 something just like the testimony about the -- about
15 the DNA? Was the testimony about --

16 A. No, sir. I was honestly trying to understand
17 why -- what was coming from Ms. Hall's phone and
18 what the allegations were to match up to his phone.
19 I was really trying to understand and get, I guess,
20 his side of the story to try to poke holes in his
21 story or get to the bottom of what was going on. It
22 wasn't used as a tactic to elicit any kind of a
23 response; I was looking for information.

24 Q. But if you would have followed with that phone
25 bill, wouldn't what he told you mirror the phone

1 records?

2 A. No, sir. He stated he was on the phone with
3 Nikki Chisolm. And even with your records, he
4 wasn't on the phone with Nikki Chisolm when the
5 butt-dial went to Ms. Hall.

6 Q. He said he wouldn't. But that's the whole
7 thing: Weren't you the one who said it was a
8 butt-dial? He never said he did a butt-dial, did
9 he?

10 A. And that was for lack of a better term. I
11 don't know what the correct terminology --

12 Q. But you were the one who brought up butt-dial.
13 He never said he did a butt-dial, did he?

14 A. He said he never called her, but we showed that
15 it was an outgoing call.

16 Q. He said -- if you look at the video -- the good
17 thing about this, the video is going to go with the
18 jury. If you look at the video -- if you look at
19 the video, didn't he repeatedly tell you she called
20 him to -- and then the records says she called him
21 two or three times and then he called her back?
22 Doesn't the record -- didn't he say that?

23 A. I think the record -- and I think that's what
24 Ms. Hall was telling me, that she called several
25 times. I guess -- and he even confirmed about pop

1 oil skins [phonetic]. I don't even know what that
2 is.

3 But she called him back after she had heard the
4 conversation at 5:54, I think it was. So there were
5 phone calls back and forth, yes, sir, to answer your
6 question.

7 Q. I want to make sure your reasoning for
8 arresting this police officer was because there were
9 discrepancies in the phone call in your mind; that's
10 one of the reasons?

11 A. The allegations --

12 Q. The allegations --

13 A. -- and the phone call.

14 Q. Okay. And there was no proof in the
15 allegations other than the allegations?

16 A. The allegations and what I had on the phones at
17 the time.

18 Q. And when you said you had some other evidence
19 he didn't have, there was really no other evidence,
20 was there?

21 A. Just the sworn statements by Ms. Hall.

22 Q. Okay. Do you remember how long he stayed in
23 jail after he was arrested?

24 MS. SIMPSON: Objection, Your Honor; relevance.

25 THE COURT: Sustained.

1 BY MR. JOHNSON:

2 Q. You do understand that the time of the phone
3 call, the technology, the electronics, all of that
4 says he was in the store?

5 A. At which time? And I'm not being aloof, I'm
6 just -- if you'll refer to a number.

7 Q. The 5:50, he was in the store.

8 A. The 5:54, that's the phone call, I think. We
9 said the time on the phone call was --

10 Q. Okay. But he was walking around in the store
11 at 5:58. He couldn't get in there to walk around
12 without already being in the store.

13 A. I guess. I don't know.

14 Q. And the other thing too: I think y'all were
15 using information from Ms. Hall's phone to ask him
16 questions and using information from his phone and
17 asking questions; is that correct?

18 A. Yes, sir.

19 Q. And when his answers didn't equate with
20 Ms. Hall's phone, that was when y'all said there
21 was a problem; is that correct?

22 A. His statements in the interview were that he
23 never called her; that it was an incoming call from
24 her, when it's actually showing an outgoing call to
25 her. That was the discrepancy.

1 Q. Okay. But the phone records show the
2 two-minute call came from her -- to his phone from
3 her, didn't it?

4 A. No, sir.

5 Q. That 5:54, it didn't --

6 A. The phone call shows an outgoing call from his
7 phone to her phone.

8 Q. At 5:54?

9 A. And that's when she heard what she heard and
10 she put it in her statement. It wasn't an incoming
11 call, it was an outgoing call from Mr. Johnson's
12 phone to Ms. Hall's phone.

13 Q. But didn't he tell you over and over he wasn't
14 sure, he was just guessing at the time? Didn't he
15 tell you that?

16 A. He gave us several times.

17 Q. Okay. But didn't he tell you that? Didn't he
18 tell you over and over, I don't know why, I don't
19 understand, you know, what's on the phone is on the
20 phone, but I knew I talked to these people? Didn't
21 he tell you that?

22 A. Yeah, he said he didn't know.

23 Q. Okay.

24 A. He said he couldn't explain why it showed him
25 having an outgoing call when he said it was an

1 incoming call.

2 Q. Okay.

3 A. He couldn't explain it.

4 Q. Okay. The officers in the room said it was an
5 incoming call. Didn't he say it was an outgoing
6 call?

7 A. No, sir.

8 Q. Doesn't the phone records say it was an
9 outgoing call?

10 A. From him to Ms. Hall.

11 Q. Correct.

12 A. Yes, sir.

13 Q. And you'll agree that at 5:58 he was in the
14 store?

15 A. According to your phone records and what's on
16 the video.

17 Q. According to my records or AT&T's records?

18 A. The same.

19 MR. JOHNSON: That's all.

20 THE COURT: Redirect?

21 MS. SIMPSON: Brief, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. SIMPSON:

24 Q. I'll actually start with the phone. At the
25 time of the interview -- and let's be clear. He was

1 arrested the day of the disclosure; correct?

2 A. Within hours. The dates were different, but
3 within that day.

4 Q. And the phone -- you're not actually utilizing
5 the records at that point; correct?

6 A. Correct.

7 Q. What do you have to do in order -- or were
8 you -- what phone were you looking at? Was it
9 records or a physical phone?

10 A. A physical phone.

11 Q. Whose phone was it?

12 A. Mr. Johnson's.

13 Q. Okay. So y'all didn't actually have the
14 records at that time?

15 A. Like this here?

16 Q. The phone records.

17 A. No, ma'am.

18 Q. In order to get the phone records, what did you
19 do have to do?

20 A. Send off a search warrant.

21 Q. Okay. So after he was arrested, did your the
22 investigation, along with SLED's, continue in this
23 case?

24 A. Yes, ma'am.

25 Q. And in order to get an arrest warrant, tell the

1 jury the process you have to go through as an
2 officer. Do you get to just write up something and
3 say, hey, I'm going to arrest him based on what I
4 write down?

5 A. It's not that easy.

6 Q. Tell the jury what you have to do.

7 A. We have to establish what they call probable
8 cause. Probable cause is a little bit less than
9 what you would call reasonable doubt, which is
10 required here today for a conviction. Probable
11 cause means you have to prove that because of the
12 circumstances surrounding the affidavit you fill
13 out, this alleged crime probably happened.

14 Q. And who do you -- before we get into too much
15 of a legal discussion, who do you present it to? Is
16 information presented to someone who actually --

17 MR. JOHNSON: Your Honor, I object to
18 relevancy.

19 THE COURT: Well, you opened the door on didn't
20 he have an arrest warrant at that time, so she can
21 ask how he gets the warrant.

22 Who did you go before to get the warrant,
23 that's the question.

24 THE WITNESS: I went in front of a county
25 magistrate here in Kershaw County.

1 BY MS. SIMPSON:

2 Q. Okay. So at that time, after you presented the
3 information to the Magistrate, were you actually
4 issued the warrant?

5 A. I was actually issued the warrant.

6 Q. Did you actually serve it at that time?

7 A. At the time that --

8 Q. As soon as you got it, before he walked in?

9 A. No.

10 Q. And I believe you stated on direct that it's
11 your discretion whether you actually serve it.

12 A. My affidavit is -- like you said, it's my
13 discretion whether someone is actually processed on
14 a warrant that I obtain.

15 Q. And as I said, your investigation -- she -- had
16 the victim even been forensically interviewed yet?

17 A. No, ma'am. That was not until the next day.

18 Q. So that was after the arrest. And with respect
19 to the testing in this case, the forensics that were
20 presented to SLED, when was that done? Was that
21 subsequent to his arrest as well?

22 A. It was after his arrest.

23 Q. Going to the whole can you be in two places at
24 once and the timing on the records and the Fountain
25 Grocery Store, I want to focus on what counsel was

1 talking to you about on cross.

2 With respect to surveillance systems and
3 locations, have you had some experience in dealing
4 with surveillance equipment from wherever?

5 MR. JOHNSON: Objection, Your Honor. I don't
6 know that he's qualified to talk about surveillance.

7 MS. SIMPSON: I'm asking about --

8 THE COURT: He can testify about his
9 experience; he can't give opinions.

10 THE WITNESS: Can she repeat the question,
11 please?

12 BY MS. SIMPSON:

13 Q. In your experience as an investigator, have you
14 dealt with different surveillance systems?

15 A. Yes, ma'am.

16 Q. And what types of cases have you dealt with
17 them?

18 A. Bank robberies, homicides, armed robberies,
19 petty thefts, things of that nature.

20 Q. Okay. And are surveillance systems always
21 accurate in your experience?

22 MR. JOHNSON: Objection; that asks for an
23 opinion.

24 MS. SIMPSON: I think he --

25 THE COURT: The ones that you've dealt with,

1 not an opinion. The ones that you've had first-hand
2 knowledge with.

3 BY MS. SIMPSON:

4 Q. With respect to the ones you actually dealt
5 with, are they always accurate with respect to the
6 timestamps on it and what time the incident actually
7 occurred?

8 A. Most of the ones I deal with, the time and
9 dates are set by the actual owner-operator, so that
10 could differ. My wristwatch may say something
11 different than your wristwatch. But I have noticed
12 from time to time the information on a video that I
13 retrieve does not match the information I have on my
14 watch or my cell phone or something of that nature.

15 Q. And going to the video from the store, are we
16 within the timeframe of the incident, whether it's a
17 matter of minutes or seconds off, per Pamela Hall,
18 as to when this occurred, the phone call and
19 disclosure?

20 A. Within the same amount of time or timeframe,
21 but I'm not sure about exact time.

22 Q. So we're not exact. But who is in the store on
23 the video?

24 A. Mr. Johnson and Miss Child

25 Q. Okay. Is anybody else with them?

1 A. I didn't see anybody --

2 Q. Okay. And --

3 A. -- that I could relate.

4 Q. And was that consistent -- them being in the
5 store consistent with what you learned in the course
6 of your investigation?

7 A. As far as he usually took them to buy candy and
8 things of that nature. I mean -- and her being the
9 sole person with him at that time is consistent.

10 Q. Okay. And based on your investigation for how
11 this came about that night, where was he going when
12 he left the house with the victim?

13 A. He told us and, I think, Ms. Hall that he was
14 going to the store to buy the kids candy.

15 Q. And that's actually confirmed in the video --

16 A. Yes, ma'am.

17 Q. -- that they're in the store on that day?

18 A. Yes, ma'am.

19 Q. Going to the phone call that counsel
20 addressed -- and we'll just stick with the one at
21 5:54, the main call at issue here. I don't know
22 what item number it is --

23 A. 828.

24 Q. 828. That is an outgoing call; correct?

25 A. Yes, ma'am.

1 Q. And with respect to Mr. Johnson's statement and
2 his interview, who did he indicate he was actually
3 talking to during this call, or did he indicate?

4 A. He stated that he thought he was talking to
5 Nikki Chisolm. But that number wasn't on the phone
6 log. It was an outgoing call from his phone to
7 Pamela Hall's.

8 Q. Okay. And with respect to what he says in the
9 interview about Nikki Chisolm and that conversation,
10 what was the nature of that conversation that he was
11 having with Ms. Chisolm?

12 A. Sexual in nature.

13 Q. Sexual in nature?

14 A. Yes, ma'am.

15 Q. And --

16 MS. SIMPSON: Beg the Court's indulgence.

17 I believe that's all I have for you, sir.

18 THE COURT: Thank you. You may step down.

19 Next witness.

20 MR. JOHNSON: Your Honor, may it please the
21 Court. I know the rule, but just for the purpose of
22 the record, she went into new items that I didn't
23 get to ask.

24 THE COURT: All right.

25 Answer any questions Mr. Johnson may have.

1 RECROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. Two questions.

4 A. Yes, sir.

5 Q. At 2147 item 819, that was a call from Nikki
6 Chisolm to him; is that correct?

7 THE COURT: Ask that again.

8 Q. At item 819 and the time of 2147, there was a
9 phone call from Nikki Chisolm to Mr. Johnson; is
10 that correct?

11 A. That's what it shows on here, yes.

12 Q. Okay. And item 821 at 2148, there was another
13 call from Nikki Chisolm to Mr. Johnson; is that
14 correct?

15 A. Yes.

16 Q. And that was before 2154?

17 A. I'm sorry?

18 Q. That was -- 2148 is before 2154?

19 A. Yes, sir.

20 MR. JOHNSON: Thank you, Your Honor.

21 THE COURT: You may step down.

22 Next witness, please.

23 MS. SIMPSON: Beg the Court's indulgence one
24 moment.

25 Your Honor at this time, the State rests.

1 THE COURT: Madam Forelady, ladies and
2 gentlemen of the jury, that concludes the evidence
3 on behalf of the State. I need to spend 10 or 15
4 minutes with the lawyers. We'll come back out and
5 I'll tell you where we are. Please leave your
6 transcript in the chair. Do not discuss the case
7 and do not deliberate.

8 (The jury exits the courtroom at 3:52 PM.)

9 THE COURT: All right. Let's take five.
10 Mr. Johnson, I'll be discussing with your client his
11 right to testify when we come back out after you
12 make any motions that you may have.

13 MR. JOHNSON: Yes, sir.

14 THE COURT: Go ahead and prepare him for that.
15 We'll take a real short break and be right back.

16 (Short break.)

17 THE COURT: Mr. Johnson -- well, first of all,
18 any motions by the State?

19 MS. SIMPSON: No, Your Honor.

20 THE COURT: By the Defendant?

21 MR. JOHNSON: Your Honor, looking at all of the
22 evidence in the light most favorable to the State, I
23 move at this time, Your Honor, on the charge of
24 criminal sexual conduct first degree, that there was
25 no evidence put in the record in Kershaw County

1 that -- there was no evidence in the record that he
2 had any contact, sexual penetration, physical
3 contact --

4 THE COURT: How about in the computer room?
5 Wasn't that house in Kershaw County?

6 MR. JOHNSON: That wasn't -- my understanding,
7 that wasn't before 11. When I read the transcript,
8 she said everything started at 11.

9 THE COURT: She said it started three years
10 ago.

11 MR. JOHNSON: No. That was Fairfax stuff,
12 which is another county.

13 THE COURT: Go ahead. What else?

14 MR. JOHNSON: Just the standard motion on the
15 other two charges. I mean, honestly, looking at the
16 evidence, I guess it is evidence that would go to
17 the jury. But on that one, I was paying close
18 attention to that one all through the trial just to
19 make sure.

20 THE COURT: All right. Ms. Simpson, what
21 evidence do we have in the record that it happened
22 in Kershaw County?

23 MS. SIMPSON: With respect to the Kershaw
24 County incidents themselves, we do have the computer
25 room. And Defense counsel's motion relies only on

1 the forensic interview where Mr. Kellin was
2 interviewing and the victim initially said, yeah, it
3 started when I was 11. But, in reality, we have the
4 timeframe dating back to 2007 --

5 THE COURT: On a number of occasions. There
6 was a good bit of testimony saying -- about going
7 back several years.

8 MS. SIMPSON: Yes, Your Honor. And during that
9 time -- and part of the reason we put up both
10 Melissa Hall and Stacey Hall, which you have that
11 information on the record, the computer room was
12 actually at Melissa Hall's residence, and that's the

13 Road in Cassatt. You also have her living
14 with Aunt Stacey at Road, which is in
15 Kershaw County. And while it didn't happen at the
16 house, what he would do is when he would visit, he'd
17 take her to a dirt road, which is also located in
18 Kershaw, one that she was actually able to remember
19 that we didn't put on the record.

20 As far as timeframes, we have them prior to --
21 her date of birth is October 16th, 1999. During the
22 time of this disclosure, she was actually 11;
23 however, even with the defendant's statement, he was
24 present, she would have been in Kershaw County at
25 times or at least enough to go to jury prior to ten

1 in which penetration was occurring, sexual batteries
2 were occurring, be it oral or vaginal, because she
3 stated that while, yes, it began in Fairfax, that is
4 also where the sexual batteries, beyond just
5 touching and fondling and things of that nature,
6 began. And once it began, it continued.

7 This is a case of chronic abuse, so of course
8 dates and times. I think there's clearly enough on
9 the record from the testimony of all these witnesses
10 in their totality to include Ms. Hall that would
11 present enough evidence for the CSC first to be
12 presented to the jury, and that point they can give
13 it any weight that they so need.

14 THE COURT: Mr. Johnson?

15 MR. JOHNSON: Your Honor, suppose they did -- I
16 went through the interview and I listened to the
17 testimony. And there was -- both of her forensic
18 interviews said it happened at 11, and on her
19 testimony in the trial, she never said it happened
20 before 11. Now, I think we can make the assumption
21 that maybe it happened, what time it happened at the
22 aunt's house. But we don't know when it happened.
23 But none of the testimony in the record says it
24 happened before 11.

25 And, Your Honor, it's so jumbled because of the

1 charges from 2007 to now. But if you look
2 specifically at Kershaw County, there's no testimony
3 that it happened in Kershaw County. There may be
4 testimony it happened in some of the other counties,
5 but none in Kershaw.

6 MS. SIMPSON: Your Honor, I believe Mr. Johnson
7 actually just kind of made the point. He said that
8 there had been no testimony. But with respect to
9 the victim's actual direct testimony, she said that
10 while it started in Fairfax, at some point they
11 moved back to her grandmother's property. And,
12 again, she actually said it had been going on for a
13 period of years. It's when she would have been back
14 at her grandmother's property, which is Road
15 here in Kershaw County. And the -- he was
16 clearly -- the testimony has always been that he
17 always visited, of course from the children and the
18 aunt, and when he did, that would be on occasions
19 that he would either send her mom to the store or
20 take her down the dirt road. And so -- and that is
21 based on her direct testimony.

22 The second forensic interview and transcript
23 he's relying on, of course, is not in evidence. So
24 we're left with her testimony that was presented on
25 the stand which is before the jury. And I believe

1 there is more than enough to go to the jury as the
2 rule requires the existence.

3 THE COURT: All right. Mr. Johnson, I'm going
4 to respectfully deny your motion. I think there's
5 sufficient evidence in the record that, if the jury
6 believes it and they believe it's been proven to
7 them beyond a reasonable doubt, would support a
8 verdict for criminal sexual conduct both in the
9 first and in the second degree and/or lewd act. So
10 I'm going to respectfully deny your motion.

11 MR. JOHNSON: Thank you, sir.

12 THE COURT: Any other motions by anyone?

13 MS. SIMPSON: Nothing from the State.

14 THE COURT: All right.

15 Mr. Johnson -- Mr. Nakia Johnson, if you would
16 please stand. Please raise your right hand. Do you
17 swear or affirm the testimony you're about to give
18 will be the truth?

19 THE DEFENDANT: I don't plan to give any
20 testimony, Your Honor.

21 THE COURT: Do you swear or affirm the
22 testimony you're about to give me will be the truth?

23 THE DEFENDANT: Yes.

24 THE COURT: I'm not going to ask you for any
25 testimony, I'm just going to ask you some questions

1 and make sure you understand. You may be seated.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I'm not going to elicit any
4 testimony from you. I want to make sure you
5 understand your right to remain silent. Fair
6 enough?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. We've reached the stage
9 in the trial where you can tell your side of the
10 story; in other words, you can present your defense.
11 And, obviously, you don't have anything to prove.
12 The burden of proof is on the State to prove your
13 guilt beyond a reasonable doubt. So you have no
14 requirement to prove anything.

15 But if you choose to do so, you obviously can
16 put up your defense. And what that consists of is
17 you can call witnesses to testify on your behalf,
18 you can introduce relevant exhibits, and you can get
19 on the witness stand and testify and tell your side
20 of the story. So listen to me. I'll give you a
21 chance to respond.

22 If you do that, obviously you'll be subjected
23 to the same cross-examination as anyone else who
24 testifies in a trial.

25 Does he have a record that would --

1 MS. SIMPSON: No, Your Honor, not that I'm
2 aware of. No.

3 THE COURT: So you'd be subject to
4 cross-examination. Now, under the Constitution of
5 the United States the state of South Carolina, you
6 have the right to remain silent. A person who is
7 accused of a crime in our state or in the United
8 States is never, ever required to testify in a
9 trial. You have the absolute constitutional right
10 to remain silent. And if you exercise that right,
11 part of my instructions will be that you have no
12 obligation to prove anything; you have the absolute
13 right to remain silent. And I will tell the jury
14 the fact that you do not testify in this case cannot
15 be used against you in any manner whatsoever, no
16 inferences can be drawn from the fact that you did
17 not testify, and they can't hold that against you in
18 any manner whatsoever.

19 I will further instruct them that they can't
20 even talk about the fact that you didn't testify,
21 and they can't even consider it when they deliberate
22 your guilt or innocence. You have the absolute
23 right to remain silent. And if you exercise that
24 right, it is your constitutional right, and they
25 can't hold it against you.

1 Now, do you understand your right to remain
2 silent?

3 THE DEFENDANT: Your Honor, yes, I do.

4 THE COURT: And, obviously, you can get the
5 advice of your lawyers, anyone else, but when it
6 comes down to the bottom line, it's obviously your
7 choice. And if you need any additional time to talk
8 to Mr. Johnson, I'll be glad to give it to you, or
9 you can tell me now because, obviously, we got
10 another hour. If you're going to testify, we have
11 to do it this afternoon.

12 THE DEFENDANT: Your Honor, my testimony has
13 already been made that night when I turned myself in
14 to the Kershaw County Sheriff's Department. And
15 that's the only statement I wish to make at this
16 time.

17 THE COURT: So you do not wish to testify?

18 THE DEFENDANT: No, sir.

19 THE COURT: Thank you.

20 Mr. Johnson, do you have any other witnesses?

21 MR. JOHNSON: No other witnesses. And the
22 Defense rests.

23 THE COURT: All right. Anything else we need
24 to inquire?

25 MS. SIMPSON: No, Your Honor.

1 THE COURT: All right. I'm going to bring the
2 jury in and tell them that that concludes all the
3 testimony in the case and what is left are the final
4 arguments and my charge, and that we'll start court
5 in the morning at 9:15.

6 (The jury enters the courtroom at 4:11 PM.)

7 THE COURT: Madam Forelady, ladies and
8 gentlemen, first order of business, please give us
9 the transcripts you were provided. The transcript
10 itself is not evidence in the case. You will have
11 the disc to play if you need to. So please pass
12 those down and give it to the bailiff.

13 Madam Forelady, ladies and gentlemen, as you
14 heard when we took this last break, the State has
15 rested, which means they've completed all of their
16 testimony. The Defense, likewise, has rested;
17 they're not going to present any testimony. So that
18 concludes all of the testimony that we'll hear in
19 the trial of the case. I've still got about an
20 hour's worth of work to do with the lawyers. I have
21 to go over my instructions with them, make sure that
22 I have everything included that deals with all of
23 the subjects. That will take us to 5:00 or 5:30.
24 So what I think I'll do is have all of that out of
25 the way and start at 9:15 in the morning. I don't

1 have to wait on anybody in the morning. We'll start
2 at 9:15.

3 And what will happen in the morning is, first
4 thing out of the gate, the State will make their
5 final arguments, followed by Mr. Johnson. Once
6 those two arguments are made, I'll instruct or
7 charge you on the law. And my instructions are
8 probably 15 minutes, and then you'll be in a
9 position to receive the case and start your
10 deliberations. And when you do that, you'll receive
11 all of the evidence that's been admitted into the
12 trial of the case. And we'll go over the protocol
13 of that.

14 I want you to go home and have a wonderful
15 evening, get some rest. Y'all have been wonderful.
16 Y'all have paid great attention, I really appreciate
17 it. You're great to work with. Don't discuss the
18 case with anyone, don't let anyone discuss it with
19 you. Don't do any kind of research and do not
20 deliberate amongst yourselves. You'll do that
21 tomorrow. Please everyone be here by 9:15 in the
22 morning.

23 (The jury excused for the evening at 4:14 PM.)

24 THE COURT: All right. Ladies and gentlemen,
25 my normal charge is this: Start off by, the fact

1 that he's been indicted and arrested and charged is
2 not evidence in the case; presumption of innocence,
3 multiple indictments, you have to consider each one
4 of them separate and apart from the other;
5 reasonable doubt is the kind of doubt to cause a
6 reasonable person to hesitate to act, and also
7 firmly convinced charge; credibility of witnesses,
8 duties of the judge and the jury, not to infer
9 anything from what I've done up here, prior
10 conviction of a witness for credibility purposes,
11 failure of the defendant to testify, right to remain
12 silent in other words. I think that's all the
13 general charge.

14 Then I'll charge the criminal sexual conduct
15 first and second, lewd act. I'll charge that
16 statute about corroboration, unanimous verdict,
17 formal verdict, guilty or not guilty, three separate
18 verdict forms.

19 Ms. Simpson, anything else you would like?

20 MS. SIMPSON: Your Honor, just a question. I
21 understand your reasonable doubt will include the
22 hesitate to act. Is the firmly convinced language
23 from Darby? I just want to know for purposes of --
24 is it proof that leaves you firmly convinced? Can I
25 know what it is?

1 THE COURT: It's the standard charge we give
2 all over the state. It's the very few things in
3 this world that you can know with absolute
4 certainty, but the law doesn't require that; if
5 you're firmly convinced, however -- you know what
6 I'm talking about. I'll read it to you right now.

7 MS. SIMPSON: Thank you.

8 THE COURT: All right. Proof beyond a
9 reasonable doubt is proof that leaves you firmly
10 convinced of the defendant's guilt. There are very
11 few things in this world that we know with absolute
12 certainty, and in criminal cases the law does not
13 require proof that overcomes every possible doubt.
14 If, based on your consideration of the evidence, you
15 are firmly convinced that the defendant is guilty of
16 the crime charged, you must find him guilty.

17 If, on the other hand, you think there's a real
18 possibility that he's not guilty, you must give him
19 the benefit of the doubt and find him not guilty.

20 MS. SIMPSON: Thank you.

21 THE COURT: Is that from Darby?

22 MS. SIMPSON: It is.

23 THE COURT: It says it's from State v. Mchoney
24 or State v. Needs. Maybe I should update that.

25 MS. SIMPSON: This may be old too, Your Honor.

1. This case may actually be older; it's from '96.

2. THE COURT: 1998.

3. All right. Anything else about the general
4. charge from the State?

5. MS. SIMPSON: No, Your Honor.

6. THE COURT: Mr. Johnson?

7. MR. JOHNSON: Your Honor, I just want to ask
8. about the collaboration charge, particularly with
9. this lewd act. This case -- the statute changed, I
10. think, in 2012. In 2011 when this happened, I'm
11. asking the Court, I thought you had to have the
12. collaboration evidence in 2012 -- I mean 2011, but
13. they changed the statute in 2012. And I know you
14. don't need it now. But -- and also, there's the
15. thought out there that even if you can charge it,
16. it's not necessarily a thing that you have to
17. charge.

18. So I would propose that the charge about
19. collaboration [sic] that needs to -- do not need to
20. collaborate [sic] the testimony. I would ask the
21. Court to consider not charging that.

22. THE COURT: What's that statute, ladies?

23. MS. SIMPSON: 16-3-657.

24. THE COURT: All right. Mr. Johnson, it says:
25. The testimony of the victim need not be corroborated

1 in prosecutions under 16-3-652, which is criminal
2 sexual conduct in the first degree, as well as
3 criminal sexual conduct in the second degree with
4 minors.

5 Ladies, why should I not charge it?

6 MS. SIMPSON: Your Honor, I think the case law
7 is directly on point that if it is the appropriate
8 law in the case, which here it clearly is, our
9 legislature intended it, and as long as it's
10 charged, I think, within the context of credibility
11 of witnesses, like somewhere in line with your
12 charge, that it is appropriate and needs to be
13 charged.

14 THE COURT: Why not charge it, Mr. Johnson?

15 MR. JOHNSON: Your Honor, I think the recent
16 case law says it's up to the Court's discretion
17 whether to charge it.

18 THE COURT: Well, hand -- you got that case?

19 MR. JOHNSON: No, sir. But I guess I'll try to
20 find it.

21 And the other things is, this case occurred in
22 2011, Your Honor. And I could be wrong, but I don't
23 think I'm wrong. On the lewd act --

24 THE COURT: I'm not going to charge it on the
25 lewd act.

1 MR. JOHNSON: Oh, okay.

2 THE COURT: It just -- I don't think it covers
3 lewd act. Does it?

4 MS. SIMPSON: No, Your Honor, I don't think it
5 does.

6 THE COURT: 652 and 658.

7 MR. JOHNSON: Okay. Well then, Your Honor, the
8 only thing is it's in the Court's discretion. If
9 you charge it, I don't have anything, Your Honor.

10 THE COURT: What is lewd act?

11 MS. SIMPSON: 16-15-0140.

12 THE COURT: 16-15 what?

13 MS. SIMPSON: 140.

14 THE COURT: So that's not included in those --
15 that section? So you're right on the lewd act.

16 MS. SIMPSON: And, Your Honor --

17 MR. JOHNSON: Your Honor, once you've given
18 your charge though -- once you give that, you got
19 your lewd act and your criminal first and your
20 criminal second. I guess, unless you go specify
21 lewd act --

22 THE COURT: I stated that the prosecution for
23 criminal sexual conduct with a minor in the first
24 degree and the second degree, no corroboration is
25 necessary, or I'll read the statute.

1 MR. JOHNSON: Okay.

2 THE COURT: And I won't mention lewd act.

3 MR. JOHNSON: All right, sir.

4 MS. SIMPSON: And along those same lines -- in
5 that same vein, as far as criminal intent and the
6 lewd acts, of course, the intent for that charge
7 versus the strict liability defenses of criminal
8 sexual conduct with a minor. Just as far as what
9 order the charge is going to be read.

10 THE COURT: The charge will be read criminal
11 sexual conduct in the first, criminal sexual conduct
12 in the second, and lewd act.

13 MS. SIMPSON: Okay.

14 THE COURT: The defense has been indicted and
15 charged with the offense of lewd act. In order to
16 prove lewd act, the State must prove beyond a
17 reasonable doubt whatever the elements are --

18 MS. SIMPSON: All right. Thank you.

19 THE COURT: -- which are that the defendant was
20 over the age of 14, that the defendant willfully and
21 lewdly committed or attempted to commit a lewd or
22 lascivious act upon the -- on or on the body or its
23 parts of the child under the age of 16 with the
24 intent to arouse. And I'll define what lewd means
25 and lascivious means, and that's it. Very simple

1 charge. Where did you come in with strict
2 liability?

3 MS. SIMPSON: No. I mean, as far as, like,
4 mistake of age is not a defense, consent is not a
5 defense, with respect to the criminal sexual conduct
6 with a minor in the first degree and the second
7 degree; however, with lewd act, it differs in that
8 respect.

9 THE COURT: I'm just going to charge the
10 statute.

11 MS. SIMPSON: Okay. Thank you.

12 THE COURT: Anything else?

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

15 THE COURT: We find the defendant not guilty,
16 we find the defendant guilty on each separate
17 verdict form. There will be three verdict forms.

18 All right. Thank y'all. Anything else for the
19 record before we break for the evening? We need to
20 delete from the exhibits the disc of the young girl
21 who did not testify.

22 MS. SIMPSON: It was never actually entered, it
23 was just marked for identification. So --

24 THE COURT: But we'll probably need to leave
25 that as a Court's exhibit in case anybody -- but

1 we'll certainly not let it go back to the jury.

2 Anything else?

3 MS. SIMPSON: Nothing from the State.

4 MR. JOHNSON: Nothing from the Defense.

5 (Court's Exhibit No. 1 marked for
6 identification.)

7 (Court in recess for the evening.)

8 THE COURT: Anything for the record by the
9 State before we have final arguments?

10 MS. SIMPSON: No, Your Honor, nothing from the
11 State.

12 THE COURT: And Mr. Johnson?

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

15 THE COURT: Okay. Bring the jury in, please.

16 (The jury enters the courtroom at 9:20 AM.)

17 THE COURT: Good morning.

18 THE JURY: Good morning.

19 THE COURT: Okay. As I said yesterday, we're
20 down to the final arguments. The State will go
21 first, followed by the Defendant. At the conclusion
22 of that, I'll charge you or instruct you on the law,
23 and then you'll be in a position to begin your
24 deliberation.

25 Please pay close attention to the lawyers. As

1 I've said, you've now heard all of the evidence that
2 you're going to hear, and that's where you'll make
3 your decision. The final arguments are like opening
4 statements: It is not evidence in the case.
5 Obviously they are adversaries for each particular
6 side and they'll be arguing the evidence in the
7 light most favorable to their position. But you've
8 heard the evidence and that's where you make your
9 decision.

10 So, having said that, the State may proceed.

11 MS. SIMPSON: Thank you, Your Honor. May it
12 please the Court.

13 The face of a predator, what exactly does it
14 look like? Well, for the victim in this case,
15 Shawntea Ford, it wasn't some stranger in the street
16 wearing a mask and carrying a gun and hiding under
17 the cover of darkness; no, it was someone she knew,
18 someone she loved. And he didn't need a gun or a
19 mask because he had the most powerful weapon of all:
20 A veil of trust, together with a position of
21 authority and control that only an adult can have
22 over a child, especially one who is in a
23 father-figure type role.

24 No, the face of her predator was that of the
25 defendant, Nakia Johnson. Nakia Johnson, like her

1 father, and was the father to her three siblings; he
2 was trusted, a police officer; her mother trusted
3 him, loved him. And over the course of a period of
4 years, he not only betrayed that trust, but he stole
5 the most precious gift that is given, and that is
6 Child 's childhood and her innocence. And,
7 members of the jury, make no mistake about it, as we
8 go through the facts in this case, there's only one
9 victim, and that is Shawntea Ford.

10 Now, this is contrary and completely
11 contradictory to what the defendant and the Defense
12 would have you believe, because they would have you
13 believe that Nakia Johnson is the victim in this
14 case. As he said in opening statements, this is his
15 nightmare, he's a victim of Child , he's a victim
16 of the police, people he worked with, his friends,
17 his colleagues; he's a victim of Pamela Hall, he's a
18 victim of the State, this is his nightmare. Poor,
19 poor Nakia Johnson.

20 Well, let's be clear, Nakia Johnson is no
21 victim. He is smart, manipulative and, I submit,
22 perhaps even charming at times because he was
23 trusted and he was loved, but, most importantly for
24 this case, he was feared.

25 Good morning, members of the jury. As you've

1 learned during the course of this trial, my name is
2 Nicole Simpson and I, together with my co-counsel
3 Kathryn Cavanaugh, together we represent the State
4 of South Carolina, the citizens of Richland and
5 Kershaw Counties, and the victim, Child
6 And as solicitors, it's our job to prosecute all
7 crimes that occur here. And as a result of his
8 actions from a period of time from 2007 until the
9 day this finally came out in 2011, the defendant has
10 been charged with three separate offenses; criminal
11 sexual conduct with a minor in the first degree,
12 criminal sexual conduct with a minor in the second
13 degree, and lewd act. And we'll get to those.

14 But first, I want to thank you. I want to
15 thank you for your time, your patience, and your
16 service in this case. It's often said that jury
17 service is perhaps the greatest service that a man
18 or woman can render his or her country during times
19 of peace. Well, that couldn't be more true than it
20 is here today, because this is a very important
21 case. It is important to the State, it is important
22 to the defendant, and it is important to the victim
23 and her family. And while our system of justice
24 could do without the lawyers, it could do without
25 the judges, it cannot do without you. And so I

1 thank you.

2 Now, this is my only opportunity to address you
3 directly, and I'm going to talk to you about the
4 evidence in this case, some of it, as well as the
5 law as it applies to the facts in this case, because
6 as the State, we bear the burden of proof.

7 Now, the roles in this courtroom are very
8 defined. As the State, we serve as ministers of
9 justice, and it's our job to bring forth to you the
10 relevant admissible evidence to prove our case.
11 Defense counsel's job is to represent his client or
12 their client to the best of their ability and ensure
13 his rights to a fair trial. Now, the Honorable
14 Judge Early is the sole judge of the law in this
15 case. And at the end, he's going to instruct you on
16 the law as you're to apply it to the facts. And
17 with that said, ladies and gentlemen of the jury, no
18 one is going to stand up here and say you don't have
19 the most important job in this courtroom, because
20 you're the sole judges and finders of fact. And
21 what that means is, each one of you here today is
22 wearing a black robe and individually and
23 collectively, you must decide, and only you can
24 decide, if the defendant is guilty. How will you do
25 that? Well, you must consider the evidence and

1 testimony presented in this case.

2 Now, criminal cases are somewhat unique because
3 I, don't know if any of you have ever sat on a civil
4 trial or something of that nature, but in a criminal
5 case, the defendant has the absolute constitutional
6 right to confront each and every witness against
7 him. And what that means is that as the State, we
8 must bring to you live testimony from the witness
9 stand. You've heard reference to certain reports
10 and videos and things of that nature, statements,
11 written statements. Well, we can't just put in a
12 video or just put in a report, because that witness
13 needs take the witness stand and be subject to
14 cross-examination. Now, there are a couple
15 exceptions, because you did have a video and, and as
16 my co-counsel told you in her opening, that was
17 because it met the requirements for you to see. But
18 we couldn't just put in that video. No, Child
19 had to get up there, take this witness stand, and
20 talk to you about what happened to her and then be
21 subject to cross-examination. The real only
22 exception in this case to that, is the defendant's
23 statement. Now, I would say that we brought you all
24 the credible evidence that we can. But we put in
25 his statement. And we'll get back to his

1 credibility.

2 Now, in every criminal case, the defendant is
3 presumed innocent until proven guilty. And what
4 that means is that as the State, we must prove to
5 you each element of the crime for which the
6 defendant has been charged beyond a reasonable
7 doubt. And we bear the burden of proof in this
8 case, just as we do in the prosecution of every
9 criminal case. And I remind you that while our
10 burden is high, as it should be, it is not
11 insurmountable. And I submit to you that after your
12 deliberations, you will see that we've met our
13 burden here today. And I also remind you that every
14 defendant who is ever convicted at a jury trial,
15 started his trial or her trial until she was
16 ultimately or he was ultimately found guilty beyond
17 a reasonable doubt. And as I said, in this case, on
18 these facts, we welcomed our burden.

19 So what exactly is it that we're referring to
20 when we say proof beyond a reasonable doubt? Well,
21 the Judge will instruct you that proof beyond a
22 reasonable doubt is essentially proof that leaves
23 you firmly convinced of the defendant's guilt.
24 There are very things that we know in this world
25 with absolute certainty, and the law does not

1 require the State to produce proof that overcomes
2 all doubt or every possible doubt, but only that
3 doubt which is reasonable.

4 Now, there are three offenses -- and before I
5 get to the facts, I'm going to talk to you about
6 what the defendant has been charged with, because
7 you will consider each of these separately and
8 individually. One of the first charges is criminal
9 sexual conduct with a minor in the first degree.

10 And a person is guilty of this offense if he engages
11 in a sexual battery of a minor less than 11 years of
12 age; that means up until the age of 10 and that
13 means up until the age of 10. You've heard the
14 testimony, Child was age seven when these events
15 started, up through until she was almost 12. And
16 we're going to get back to the time period in this
17 case.

18 A sexual battery, as you saw on the board, is
19 any intrusion however slight of any part of a
20 person's body or of an object into the genital or
21 anal openings of another person's body, except when
22 such intrusion is accomplished for medically
23 recognized reasons. There's also sexual
24 intercourse, cunnilingus, fellatio, or anal
25 intercourse.

1 When the defendant made Child perform anal
2 sex on him, that is a sexual battery; when he rubbed
3 her in her vaginal area, that is a sexual battery;
4 when he performed oral sex on her, that is a sexual
5 battery; when he was in that truck with her and put
6 his private, his penis, in hers and told her to ride
7 and moved her up and down, that is a sexual battery;
8 while they were in that computer room and he made
9 her take off her clothes and get on top of him while
10 he sat in the chair and made her move up and down,
11 that is a sexual battery. And she suffered a sexual
12 battery time and time again. We'll get to that.

13 He's also charged with criminal sexual conduct
14 with a minor second degree. This is essentially
15 very similar to the first: A person is guilty of
16 criminal sexual conduct with a minor in the second
17 degree if the actor engages in the sexual batteries
18 we just discussed with a victim who is at least 14
19 years of age or less, but is at least 11. So from
20 the time period that she was 10 to 11, criminal
21 sexual conduct with a minor second degree applies.
22 So that year before, that lucky accidental -- and
23 that's what it was, thank goodness. As counsel
24 referred to it, that fatal mistake, that phone call,
25 butt-dial, accidental, whatever, disclosure, until

1 that day, that is where this applies.

2 And then finally, he's charged with lewd act.

3 Essentially, it is unlawful for a person over the

4 age of 14, which the defendant clearly is, to

5 willfully and lewdly commit or attempt a lewd or

6 lascivious act upon or with the body or its parts of

7 a child under the age of 16 -- so ages 7 to 11 --

8 with the intent of arousing, appealing to or

9 gratifying the lusts or passions or sexual desires

10 of the person of the child.

11 I'm going to make you mines, he said. And even

12 when he would rub himself as she was naked -- and

13 she didn't know the technical terms, and we'll get

14 to that. And as he touched her breasts in the

15 beginning and then went down to her stomach and

16 private areas on top of the clothing, underneath the

17 clothing, kissing on those areas, those things are

18 lewd acts. Rubbing, touching. And it doesn't

19 matter her age. We'll come back to this one again.

20 But the Judge is going to instruct you that the

21 testimony of the victim need not be corroborated in

22 a criminal sexual conduct case. Now the reason for

23 this, I submit, is that the Legislature has

24 recognized the unique nature of criminal sexual

25 conduct cases over versus, say, a murder or armed

1 robbery where you might have forensic evidence such
2 as blood or shell casings at the scene, a bunch of
3 DNA, things of that nature, a lot eyewitnesses. No.
4 Rape, and that's what this is, is a crime of
5 secrecy. It occurs behind closed doors and most
6 often over a period of time, be it a matter of
7 weeks, months or, as in this case, years. And so
8 what that essentially means, bottom line, is if you
9 believe Child , that is enough to find the
10 defendant guilty.

11 But you don't have to just believe her, because
12 we've brought you more than that. But before we get
13 to the State's case, I want to address a few things,
14 because in every case that we prepare for, we have
15 to kind of anticipate what a defense may be.
16 Sometimes in cases such as murder or burglary or
17 whatever it may be, it's I did it but I had a good
18 reason to do it, I was justified in what I did. I
19 acted in self defense, some of it is I wasn't there,
20 I was somewhere else, there's no way this could have
21 happened. And sometimes, as here, it kind of has a
22 theory of evolution. Because it didn't happen, I
23 didn't do it, but they can't point the finger to
24 anybody else because there is no one else. So in
25 his statement, which I beg you to listen to as you

1 consider the evidence, he knows he's got to explain
2 away certain things. And I think their opening and
3 questioning of the witnesses in this case kind of
4 led us to the defense, where I believe they may be
5 going.

6 He initially said and brought up to you a
7 quarter: There are two sides to every story. Well,
8 yes, that's true. But there is only one truth. And
9 that is your job, your duty in this courtroom, to
10 find the truth. He also told you the defendant and
11 the victim's mother had sex that day. He raised
12 Child , took care of her like her father; we
13 agree. That phone call wasn't made in the
14 graveyard, but in the store. The implication of
15 this and everything else that he said during the
16 course of this trial is that if you don't believe
17 that phone call, that butt-dial, then just
18 completely disregard everything that Child said
19 on this witness stand because she just got up there
20 and lied. You can't believe a word she says because
21 if it didn't happen within a matter of exact
22 minutes, and we'll get back to that, this way, then
23 you can't believe it. But there's one -- and,
24 look -- timestamp on the video and phone call.

25 I believe one of the questions yesterday was

1 you can't be in two places at once. I agree you
2 can't. But what that does is it ignores the
3 testimony, because he said Investigator Capps, I
4 believe, 5:58, he's in the store. And as much as he
5 tried to get Sergeant Bailey to say, yes, 5:58,
6 meaning, yes, it had to be real time 5:58 he was in
7 the store, he told you, the investigator and
8 Mr. Fountain, it's not necessarily accurate, it may
9 be within a matter of minutes. Sometimes the
10 systems are off within a matter of hours. The
11 timestamp in this case doesn't really matter, and
12 I'll get to why in a few minutes.

13 Additionally, the defendant's own statement
14 validates that a sexual phone call was made and that
15 Pamela heard the conversation. He can't get around
16 that. And listen to his extensive evolving,
17 changing reasons for that call. Look at the video.
18 I'm going to tell you to look at it. Because what
19 does it do? It corroborates both Pamela and
20 Shawntea. What did they all tell you? He came into
21 town that day going to the store. Where did they
22 end up? The store.

23 Now, I submit to you, and Child got on the
24 stand and told you, I believe I went to the store or
25 I don't know, or I believe I stayed in the truck. I

1 believe that's what it was. He's like, you stayed
2 in the truck? I believe so, I don't know. Well, I
3 submit, members of the jury, that this was kind of
4 an everyday thing; that perhaps they went in the
5 store first before the graveyard. The reality is it
6 doesn't matter what came first, what came second.
7 And Pamela said, I can't tell you whether they were
8 in the graveyard or the store, all I can tell you is
9 what I heard. I heard my baby's voice on that
10 phone.

11 He also said a lot of allegations and no proof,
12 no proof. Again, ignore Child 's testimony. He
13 saved all his questions for the end. Well, the real
14 question here is, why would Child lie? His
15 response: Mother put it up to her. But even that
16 one doesn't make sense. And we'll get to it. No
17 injuries.

18 The medical testimony. And we'll get to that,
19 because as much as the Defense wants you to believe
20 that there has to be scarring, lacerations, things
21 of that nature, the fact of the matter is -- and we
22 know that Child already had her period, she's
23 very mature for her age, and the vaginal area is
24 made for penetration. So chronic abuse over time,
25 there's not going to be any injuries unless some

1 object was used. And she didn't claim that he was
2 sticking tools in her or that he beat her. There
3 was no force. By this point, she followed his
4 commands. She was in a state of submission. Pamela
5 put Child up to it, mad because of other women.
6 Really? That was their problem from day one, day
7 one.

8 Let's talk about the State's case and the
9 evidence that we brought to you. You heard from
10 Officer Jerry Barnwell who responded to the scene
11 that night. And what did he tell you? Because this
12 is key: Because for once, which is rare, I would
13 submit Pam Pamela Hall acted exactly the way a
14 mother should when she finds out or even thinks that
15 her daughter is being sexually assaulted by a grown
16 man, the father of her children.

17 And Officer Barnwell described her demeanor on
18 the scene. And, yes, she admitted to him, I pulled
19 his gun on him, I threatened to kill him, I was
20 going to shoot him, because I know what I heard.
21 And the defendant said, oh, I told her call police,
22 call police. But was he there when they got there?
23 No. He left. And remember, she gave him his gun
24 back. If he wanted to wait around for police, he
25 could have. But you heard him, and he described the

1 demeanor of Child too; upset, crying.

2 You heard from Child , Pamela Hall,
3 Temple Hart, Melissa Hall; we brought to you the
4 custodian of records -- and we're going to get to
5 that phone call -- David Kellin who interviewed
6 Child the day after this happened. She didn't
7 even get out of the hospital until 1:00 in the
8 morning, and then the next day she has to go and
9 talk to him. And watch that interview. Does she
10 know -- and I believe defense counsel questioned her
11 time and time again. Well, do you remember telling
12 Mr. Kellin this, do you remember telling him that,
13 you didn't tell him this, you told him that, you
14 didn't tell him this. No, I didn't tell him.
15 Everything was happening so fast. And remember,
16 she's sick to her stomach. That interview has to
17 end. And when did she get sick? The day all this
18 came out. So judge her demeanor, watch that video,
19 and judge her demeanor on this witness stand.

20 Laurie Caldwell. Now, that taped interview
21 didn't come in. But it didn't need to because
22 Child told you about what happened to her. You
23 also heard from Investigator Capps who got the video
24 from the store as well as Ron Fountain, the owner of
25 the store, which clearly the defendant knew because

1 he even said in his statement, Mr. Fountain was
2 coming in and out of the store.

3 And Mr. Fountain knows when people get there
4 because he knows that customers get off at 5:00.
5 He's not looking at a clock or a timestamp. He told
6 you, no, it's not accurate, we get robbed all the
7 time, police are here all the time, it's not always
8 accurate.

9 Captain Steve Knafelc. What did he tell you?
10 He wasn't directly involved in this case, but then
11 sometime last year he took the victim who remembered
12 the dirt road and they went to that dirt road. She
13 was directing him. Now, she said, and let's be
14 clear, this isn't the only dirt road it happened on.
15 She said, there were a lot more, but I can't
16 remember which ones, but this one stood out to me.
17 Why? Because of the power lines and the lights from
18 the road. So she didn't try to say it happened on
19 this dirt road, this one, this one, this one. And
20 if you're going to make it up, make it good, make it
21 as bad as you possibly can.

22 Paul Meah, the DNA analyst. And I'll address
23 this a little later, but the reality is, the night
24 this happened, he didn't get to do what he was
25 trying to do. There's no semen because he didn't

1 get to have sex with her because that phone call and
2 that call he got back from Pamela interrupted him.
3 So there isn't going to be any DNA. And he told
4 you, even if DNA is there, you can't really time it,
5 things of that nature. And the reality is, if it
6 was something other than semen, it would have to be
7 blood, there are no signs that he physically
8 assaulted her because he didn't have to. The
9 threats that he made over the course of time -- I
10 mean, this was her way of life. He didn't have to
11 threaten her. And remember too, it's his truck, his
12 DNA is going to be all over the place. And like I
13 said, no semen, and he knows it. And we'll get to
14 it. That's why he just kind of laughs it off. DNA?
15 My DNA ain't on her. Of course he knows. He's a
16 police officer, he's conducted investigations.

17 Dr. Susan Luberoff. Again, she testified
18 normal exams are normal, they are a common, typical
19 thing, we expect to find nothing. The reason we do
20 this is because children, we can ensure their safety
21 and make sure nothing else is going on, be it
22 diseases or physical abuse. It's a matter of
23 course. The reality of it is, we expect to find a
24 normal exam.

25 Dr. Alison Foster. Now, she got up there and

1 testified about some of the dynamics of child abuse
2 and things that are contrary to what adults may
3 think or what you may believe about what a person
4 would do in a certain situation. And then you heard
5 from Sergeant Rick Bailey who testified about the
6 investigation in this case.

7 Now, I want to go to, perhaps, the most
8 important witness in this case, and that is Child

9 . And she had a lot of testimony. And I'm not
10 going to go through it all, but this is testimony
11 that the Defense wants you to just simply ignore.
12 Well, I submit you can't. And judge her
13 credibility. What did she say? It started when she
14 was living in Fairfax. That would have been back in
15 2007 -- or they left in 2007 with her mother, which
16 is corroborated. And why did they leave? She said
17 we left because of abuse and cheating, and they
18 moved back to Kershaw with Grandma down 341. That's
19 that Stevens Road trailer on that property here in
20 Kershaw.

21 Now, when they moved back in 2007, the
22 defendant was still a part of their life, he still
23 visiting, was born, the other children were
24 her. And there's no doubt, no one is questioning
25 that she was supportive, that he was a father,

1 because that is the facade. That's the trusted man,
2 that's the one that takes care of everybody. So
3 who's going to believe Shawntea over him?

4 She told you, we moved to a trailer in
5 Bishopville; yes, a trailer that the defendant
6 bought. He would come visit and act normal, and
7 then he would tell me to go to a place or take me
8 someplace by myself. These are crimes of
9 opportunity. She said he would send her mama to the
10 store and get something then hurry up let's go. I
11 mean, he was watching, looking to see if anybody was
12 coming. And the other kids, remember, they're just
13 too young, they're not going to know what's going
14 on. Stick them in the bathroom, send them in the
15 other room, send them outside. And if you think it
16 takes a very long time to get something done, it
17 doesn't. And what did she tell you? He didn't
18 straight jump in to having sexual intercourse with
19 her. It started with questions: Do you have pubic
20 hair growing down there? And then the touching,
21 grooming, touching my breasts, after he asked, are
22 you going to tell? Are you going to tell? I would
23 say no.

24 And then he'd pull my pants down and pull his
25 pants down, kiss me on the lips. She said, he

1 rubbed my arms, my breasts, and put his private in
2 my private. Sometimes he'd ask if I liked it and
3 I'd say yes so it would be over fast.

4 Now, once the grooming is done, this happens
5 every chance he gets. He would pull his pants down
6 and tell me the suck it. When questioned, suck
7 what? His penis. What was he doing? Well, he'd
8 move my head back and forth. When ejaculating --
9 and she didn't know the term. Let's be clear,
10 masturbation, ejaculation, she's not familiar with
11 all these sexual terms. She just calls it white
12 stuff or whatever a child would call it, what they
13 see. He would get a towel or a rag, kiss my thighs,
14 put his penis in my private and he would rub it.
15 And what did he tell her? He said, all our lives
16 will be over if you tell. He was a police officer,
17 she knew he had a gun, and said he'd kill her mama
18 if she told. It happened any time he could.

19 And at some point, if you remember, they
20 actually moved back with him to Fairfax while Pamela
21 is in rehab for a short period of time. Always
22 stayed to myself and acted like nothing happened,
23 but when he moved back, it got worse. Hours after
24 hours, in the bathroom, in the laundry room, his
25 room. And even when her mom was there in Fairfax,

1 she would be sleeping or somewhere.

2 Aunt Missy's house, the computer room, here in
3 Cassatt. And this is huge because this is --
4 Dr. Foster talked about episodic memories. So she
5 kind of remembered the way it happened. But it
6 definitely happened in the computer room at Aunt
7 Missy's. He would come down to visit and then he
8 would put a towel under the door so no one could
9 see. He would tell me to sit on his lap, talking to
10 me or moaning as he did it, kissing and rubbing,
11 moving up and down constantly; you know I'm going to
12 make you mine, right there, don't move, does it feel
13 good?

14 Also during this time, she mentioned a truck
15 which is consistent with what she said from day one.
16 He would pull off so no one could see, pull pants
17 down. Remember what she told you about one of the
18 times when it first happened? He told me to ride.
19 I said, I don't know how. Well, I will teach you.
20 And then it happened again and, I submit, over and
21 over again.

22 Now, she also told you about a couple other
23 things. She said it happened at Disney World, the
24 beach, and whenever visiting on Road or Aunt
25 Missy's, which we've kind of talked about. I'm

1 going to start at the bottom here. He'd been doing
2 it a while, so she didn't tell anyone, still
3 uncomfortable. Drove down dirt roads, which we've
4 addressed, different ones, but could only remember
5 one. Like I said, if she remembered them all, just
6 point them out, or if you're making it up, it's that
7 one, it's that one, it's all the dirt roads at
8 times, multiple times, moved back with Grandma.

9 And all this moving around, she's back and
10 forth, back and forth over the course of the years.
11 But guess who's always there, even when he's
12 overseas there for the civilian law enforcement? He
13 comes back. You heard the testimony, he comes back
14 and visits because he bought them a trailer in March
15 of that year. So he's always, whenever he's in
16 town, he's visiting. And he's either visiting Aunt
17 Missy's house or Road, because that's where
18 Pamela had to go when he wasn't able to support her
19 or they weren't in Fairfax with him.

20 Now, you may wonder too why Melissa Hall and
21 Stacey Hall took the witness stand. Because they're
22 like, hey, I didn't see anything, there were no
23 signs, I had no idea this was going on. Well, you
24 heard about their shifts, 12 hours at a time,
25 12-hour shifts. And he would send Pamela to the

1 store. The reality is, they were put up because he
2 is the one who had the children. Other people, and
3 there have been a lot of people's names being
4 referred to in the house, they weren't there. He
5 had the opportunity, corroboration, evidence, proof.
6 That's why we brought them to the stand. And
7 Stacey, she testified about the Road and
8 them living there. And they knew the defendant
9 would come visit, but didn't have a relationship
10 with him. And if Pamela is putting them up to it,
11 why not get your sisters to help you lie and say,
12 hey, I saw it when I walked in? No, get a grown-up
13 on your side.

14 Disney World, what did she tell you? They went
15 one time, which he says and Pamela says. And at
16 that point, what she remembers is he moved the
17 covers up and down so that she could see his penis,
18 at one point told him to stop because it hurt,
19 rubbed himself. Now, in one of her interviews, she
20 says something to the effect of, it didn't really go
21 all the way through, he was maybe touching himself.
22 And then she was questioned about it, but you didn't
23 say 'cuz it hurt. But it makes perfect sense.
24 We'll get to what Child says about her
25 disclosures over time, because, I submit, no one

1 said it better than she could.

2 Corroboration. Beach day trip, in the ocean,
3 touching me under the water, my mom was with my baby
4 sister in the water watching her. The hotel in the
5 Bishopville, sent mom to the store, laying in the
6 bed. Now, I submit here, and probably with several
7 other things, defense counsel is probably going to
8 get up here and say, why on earth would he do this
9 in the ocean with people around swimming, it's
10 impossible. Why Disney World? Why when he only had
11 a matter of minutes? The people around, the why, I
12 submit, for the thrill of it. There's kind of a
13 rush in that I might get caught, but I'm just so
14 arrogant, I'm just so good, for the thrill of it.

15 And in that same vein, a lot of times, it's
16 argued, that positions, and I submit defense counsel
17 may get up here and do this too because Child was
18 questioned on the stand about, oh, you can't go down
19 the road pulling your pants down or whatever. And
20 she said, oh, yeah, you can. Well, that computer
21 chair, oh, the way she said, the position she said,
22 it's impossible to happen. The time periods, there
23 wasn't enough time. Nobody said it takes a lot of
24 time to have sex. And this isn't intimate
25 lovemaking, this is the rape of a child.

1 Child , her final thing, the day her mom
2 found out -- and remember, Child doesn't say,
3 he's been touching on me or anything like that. The
4 day -- she told you what she remembers: We were in
5 the graveyard, I think I stayed in the car, I don't
6 know. Again, I submit she doesn't know because it
7 happened all the time. And what was she focused on?
8 Probably the fact that her mama almost killed him
9 that night and that she finally had to tell somebody
10 what was happening.

11 Pulled her pants down. Didn't say he got her
12 panties off, didn't say that he was able to rape her
13 in the car or anything of that nature. She tells
14 you about the argument on the phone, the defendant
15 was speeding, driving crazy. Mom asked her, what
16 happened? What happened? She denies. Nothing,
17 nothing. It's not until she's confronted with, I'm
18 going to take you to a home, per her testimony, that
19 she finally gets scared and says, yeah, he's been
20 touching on me. Not details, just, yeah, he's been
21 touching on me.

22 Confrontation in the car. Now remember -- and
23 this is key, because it's going to be the thing
24 throughout this case. He didn't say, hey, I didn't
25 do it. He said, Pam you're stupid, why would I do

1 something like this? And ask Child . Tell her I
2 didn't do it. Child says, yeah, you did. And
3 you judge her demeanor on the stand when she was
4 telling you these things. She sat in that car, her
5 mom, gun to the defendant's head, and begged, Mama,
6 don't do this, you've got four of us, who is going
7 to take care of us?

8 On cross, what did you hear from her? Well,
9 she told me -- or he told me to get in the car. I
10 believe defense counsel said, you're saying he
11 forced you? Yeah, he forced me to go. So he
12 dragged you by the arm? No, he told me to, he
13 commanded me to. A police officer commanded her to
14 do something. Her father -- and, yes, he was like a
15 father -- who raised her, told her to do something.
16 And by year four, yeah, she's going to do it. Pants
17 down, we talked about that and possibility.

18 What she told or didn't tell Mr. Kellin.
19 Again, watch her demeanor in the interview. She
20 said and told you on the stand, I can't point to
21 everything, I can only point to a few. What is 30
22 day s or the next day to four years? Child is
23 not that little 11-year-old girl anymore; she's a
24 teenager who took the stand. But she told you about
25 what happened to her. And she said, I still can't

1 go to therapy because I'm not ready. She said -- so
2 were you really afraid of him? I'm always afraid.

3 Again, when questioned on her memory, why you
4 didn't you tell this, why didn't you tell that, all
5 these little details, this that and the same, I
6 always remember. And she said, I knew I had to get
7 up here today. And I submit that had she had this
8 same story -- and if you're going to lie, keep it
9 simple -- then it would have been the same to
10 Mr. Kellin, it would have been the same to her mama,
11 it would have been the same to all of the
12 interviewers, exactly the same; no changes, no extra
13 details, no nothing, and the same on this witness
14 stand. I submit to you, her disclosures make her
15 more credible.

16 Then we get to Mama, which is who the
17 defendant, and let's be clear, is really blaming
18 because it's who he has to blame. But what reason
19 does Pamela Hall have to put her daughter up to this
20 now? What did she tell you? Father of her three
21 children. She met the defendant going through a
22 roadblock back in 2001. Both married at the time,
23 she was separated, but they were having an affair.
24 She got pregnant, had , moved to Fairfax, and
25 then she left in 2007 and moved back in with Mom on

1 Road where this was going on.

2 Reasons they moved: Cheating, other woman; he
3 was abusive, but she eventually started to fight
4 back too. She told you, oh, yeah, we got into it,
5 there were always other woman. So why now is she
6 going to come up with this story involving
7 allegations to her daughter? He provided for her,
8 paid her bills, took care of her children, would
9 always visit with them, even when she moved to
10 Stevens Road, bought the trailer in Bishopville.
11 She told you he visited them at Aunt Missy's house.
12 Now, mind you, Pamela, who was not always working,
13 was having to go back to Aunt Missy's house, she was
14 having to stay with her mom when he's not providing.
15 And when this all comes about, let's be clear, she's
16 not living with him, he hasn't threatened to kick
17 her out of the house or take all the money away.
18 That day they had sex, they were doing pretty good.
19 There were no arguments. There's no testimony, even
20 in his own statement, that they were arguing. And
21 she told you, we argued all the time, we got into
22 it, he disrespect ed me or whatever the case, and it
23 was always about other woman. I had no clue about
24 Shawntea.

25 He left for a while but would come back and

1 visit during that year, that's the year he's
2 deployed. Rehab, she told you, yeah, I had to go, I
3 had my own issues, I had to deal with what I was
4 going through. But at no point throughout this --
5 and Melissa Hall, Stacey, everyone you heard from,
6 she's still around. Minus that short period, she's
7 still with her kids.

8 On the day of the disclosure, came to get
9 youngest daughter, which defendant says, ns spend
10 the day. Going to the store, all the kids wanted to
11 go, including her. So it was strange that he left
12 on that day without the other children. But
13 remember, he hadn't seen Shawntea in a little bit.
14 This was that opportunity that we talked about.
15 But, and she told you, it wasn't unusual for him to
16 take just Child . And again, we know that they
17 went to the store because they're in that store.
18 That's why you have that video.

19 Now, she called because she knew the kids
20 wanted to go. And he says, no, I'm coming back to
21 get them. But he doesn't come back. And this store
22 isn't miles and miles away; we're talking a matter
23 of minutes. House, cemetery store, dirt roads all
24 in between.

25 Phone call, couldn't hear anything at first,

1 saying hello, hello, hello, and he's talking to her.
2 What does she tell you she heard? Do you want to
3 get on top or do you want me to get on top? I want
4 to nut inside you, but you know why I can't. No
5 response. Do you know? And then she heard her
6 baby's voice, because I will get pregnant. Her
7 baby's voice. It wasn't some other woman. She was
8 used to that, she always dealt with that.

9 And remember what she said about the
10 defendant's demeanor? And we'll get to that. Hangs
11 up, calls back, bring my baby home now. Now, in the
12 statement, which I ask you to watch and listen to,
13 he says, yeah, she was arguing, kind of plays it
14 off, I don't know what she was yelling at. I assume
15 she heard some conversation from another woman. He
16 knows what she heard. And he takes her baby back,
17 pulled in, and she can see that Child was scared.
18 Told her to get out. She was angry, yelling,
19 cursing at the defendant, asking Child, what
20 happened, what happened? She said Shawntea denied
21 several times, and finally she confronts her with
22 what Pam remembers. Now, this isn't the exact same
23 story that Child has, and I submit that makes it
24 more credible because otherwise they're going to
25 think that it fits, it's exact. What does she say?

1 I know what I heard, tell me now or I'm taking you
2 to a doctor and they will be able to tell me.
3 Finally she says, he's been touching on me.

4 And then what does the mother do? She pulls
5 his service weapon and threatens to kill him. And
6 she told you that, she told police when she called
7 them. And the only thing that saved his life that
8 day is the person, the child, like a daughter, that
9 he'd been victimizing year after year after year.
10 That is the only thing that saved his life. Please,
11 Mama, don't do it.

12 I would imagine defense counsel's probably
13 going to argue a lot of the things that -- the
14 reason we put the expert up here. Well, we did it
15 for a reason and that's because chronic abuse in
16 children is a widely studied area because the
17 behaviors are not necessarily exactly what you would
18 expect. And she discussed specifically delayed
19 disclosures, tentative disclosures, how things come
20 about over time. That's consistent with what
21 Shawntea said. And things that affect an ability
22 for a child to tell? The family dynamic, authority
23 figure, Nakia Johnson, a father, a police officer, a
24 provider, which he was, the biological parent to
25 other children, her mom's trust in him. While she

1 might not have trusted him with other women, she
2 certainly trusted him with her kids. Threats, and
3 she believed them.

4 Bottom line, that little girl, from age 7 to
5 11, believed him. And even he said in his own
6 interview, I ain't scared to die. If he said that
7 in an interview, imagine his demeanor when he
8 threatened Child . I will kill your mother, I
9 will send her back to jail, I will kill her, because
10 she would tell and I would go down, and I'm not
11 going down like that.

12 Accidental disclosures, what did she tell you
13 about those? Quick coping skills, the child will
14 initially deny. That's usually the first stage.
15 Adults do it too, to be quite frank. Nope, didn't
16 happen. But then you get tentative disclosures over
17 time.

18 Chronic abuse. And what chronic means is just
19 ongoing. And that's somewhat different than acute
20 which would be freshly committed right then, maybe a
21 one-time incident. It affects the ability's child
22 [sic] to recall details because they're spending
23 most of their mental energy suppressing the abuse,
24 avoidance, and coping.

25 Episodes blend together over time. And listen

1 to what she says, it usually happened, the same
2 thing happened, what usually happened always did,
3 what happened next was just like it did. She was
4 hesitant to go into details on that first interview,
5 just that it happened, because this was her way of
6 life. He developed, he created, a way of life that
7 no child should have to endure.

8 Developmental challenges as compared to adults.
9 When questioned about times and dates -- and I
10 submit adults do pretty poorly too when asked to
11 recall certain times and dates. Children perform
12 particularly poorly. So you attempt to relate it to
13 things they can understand, like I was in 5th grade
14 at the time or I lived here or I was doing this,
15 something they can relate to. And sequencing of
16 events is very difficult too. You know, it's
17 difficult for adults, but especially for children.
18 First, second, third, fourth, fifth. If she could
19 recall all that, yeah, that would give pause and
20 cause for a lot of questions if she remembered
21 exactly what happened every day and could tell you
22 it happened at 10:00 that day on -- back in 2008 on
23 February 2nd. If she could spout that out, yeah,
24 you question her. But she didn't try to. She told
25 you what she could remember. She told you about her

1 life.

2 Script memory. It allows you to be efficient
3 in explaining repetitive events or behaviors.
4 That's what I just said; the way it usually
5 happened, normally does. That's the way we describe
6 it in chronic abuse.

7 Episodic events can describe times that stand
8 out in a child's mind. May not be the worst or the
9 worst time. The beach, Disney World, times they
10 went somewhere. I knew it was in the truck, in the
11 car, the computer room at Aunt Missy's, those are
12 things she could tell you..

13 And they're going to be like, why didn't she
14 tell? Why didn't she tell? Why didn't she tell?
15 Well, a number of reasons: With Child , the abuse
16 started and progressed. I submit he kind of
17 developed her personality, which already was kind of
18 a quiet, she said, a kind of keep-to-myself kind of
19 personality. She held all this in. She is the
20 target child. There are no allegations here that he
21 was touching on or or , any of his
22 biological children. No. It was Child , the
23 oldest. And she loved her brothers and sisters.

24 And look, the reality of the family unit, it
25 wasn't perfect. They were back and forth, her mom,

1 she saw some of the abuse. But home is supposed to
2 be the safest place. And a child can't just get up
3 and leave. So what do they try to do? They try to
4 keep the family dynamic intact. Her little sister
5 was the Daddy's girl closest to her. And her little
6 brother and sister, she loved them. She was the
7 oldest. And her mother, even with all their
8 problems, loved him, cared about him. He was
9 trusted by other the adults. Who is going to
10 believe me?

11 He's a police officer. And a police officer,
12 in the eyes of a child, is even on a higher level
13 than that of an adult. They wear a uniform, they
14 carry a gun, they handle the law. And a man, again,
15 that word, powerful. It was the only life she knew.
16 It always happened, he would do it whenever he
17 could. Child 's testimony is enough. If there
18 were no other witnesses in this case, if you believe
19 what she said, it's enough.

20 Now, as I said, the Defense wants you to
21 believe pretty much that if the phone call didn't
22 happen exactly the way that they said it happened
23 and the times were off, then you can't believe
24 anything that she said. Well, the phone records in
25 this case, which we put in, essentially -- and I

1 kind of highlighted them a little poorly. But 5:54,
2 that's the time of the call that's been at question
3 here today. 203, no doubt that call was made.
4 Pamela's phone shows it, Nakia Johnson's phone shows
5 it, and that's the call -- he doesn't even in his
6 statement -- well, now they want to kind of gloss
7 over that? That's that call he knows he's got to
8 start explaining away early. And listen to that
9 conversation, that long explanation, which is all
10 over the place. Because he knows he's got to
11 explain it away.

12 Then immediately after, 125, Pamela Hall, bring
13 my baby home now. And he does. He tries to act
14 like, oh, I just assumed she was mad because of
15 other women and that's why I went home and then I
16 just started yelling. And then look, we have
17 numerous phone calls from Nakia to Pam, and he also
18 calls Nikki because he needs Nikki, Nakia to Pam,
19 Nakia to Pam, Nakia to Pam. Finally, Pam to Nakia,
20 but nothing happens, no real conversation. But just
21 look at the amount of calls outgoing Nakia to Pam,
22 Nakia to Pam, Nakia to Pam, forwarded to voicemail,
23 outgoing, outgoing, outgoing. Please don't call the
24 police, he's trying to get to Pam, calm down, you
25 know this is ridiculous. But this time, he's not

1 going to be able to talk his way out of it, because
2 this isn't a grown woman, it's her baby.

3 And finally they talk, which is consistent with
4 what she says. And he also talks to Nikki, no
5 doubt. But those calls -- and I'll go back for just
6 a second -- where he says, I thought I was on the
7 phone with Nikki, I know I talked to Nikki in the
8 store, I was talking to her on the phone, that is
9 not what the records show. At no point does he have
10 a connected call with Nikki. Yes, Nikki is calling
11 him, but it's forwarded to voicemail. The only
12 person he talked to for a period of time prior to
13 the call to Pam is Louise Pinkney. But this Nikki
14 Chisolm call, forwarded to voicemail. He never
15 heard Nikki, he wasn't talking to Nakia. They
16 weren't planning to get up that day when he was
17 picking up his child. And we'll get to that. But
18 basically, they want you to narrow it down, 5:54,
19 the video, it said 5:58 or 6:00, whatever; he can't
20 be here and be there when this phone call happened.

21 Well, he tell s you the phone call happened, he
22 admits it. And I don't care whether the store came
23 first. I submit that's most likely thing. Child
24 doesn't necessarily remember. But I submit that he
25 went to the store -- and you watch that video, you

1 watch Child 's behavior. Yes, she's getting
2 stuff, but they're distant. Her demeanor, she's
3 kind of leaning over twirling her hair. Hadn't seen
4 him in a while, but I guarantee you she knows what's
5 coming. And it's in the relevant timeframe.

6 I'm almost to the end. Bottom line is this:
7 Why should you believe Child ? Because if you
8 accept that the victim's testimony need not be
9 corroborated, then the only question left is, why
10 should you believe her? Well, she took an oath on
11 that stand. And she's talked to people, yes.
12 Defense said, have you talked to this person, have
13 you talked to that person, did you talk to this
14 person? Well, she told you, I didn't tell them
15 details, I didn't tell them details, I told some of
16 the details to the interviewers. And then finally,
17 what did she do? She took an oath, she got on this
18 witness stand and talked to you about what happened
19 to her.

20 And do you really think that this was fun for
21 her? Years later -- and she did all that to
22 victimize this poor man? Got up here and told you
23 things that adults don't even like to talk about.
24 She has absolutely no incentive to lie. What does
25 she have to gain or lose? Absolutely nothing.

1 Nothing. Her family is broken up, everything she
2 was trying to keep intact is apart; nothing to gain
3 or lose by taking this witness stand here today.

4 And a child who is mad, which even he didn't
5 say she was ever mad at him or angry; well, they get
6 over it. Okay, I got my way, he's never around
7 anymore, I'm done. But even he says, I had no
8 problems out of her, she was perfectly fine. So why
9 would she lie?

10 And her testimony, as I said earlier, it's
11 corroborated by the medical evidence.. Look at her
12 behaviors, judge her demeanor on the stand.
13 Shawntea told you what she could. She told you the
14 truth about what happened. She got up there and she
15 was questioned, did you tell the truth, did you tell
16 the truth? Yes, I told the truth, yes, I told the
17 truth. Testimony corroborated by the defendant's
18 own statements. And we'll get to that.

19 And finally -- well, not finally. But then is
20 Child really sophisticated enough to pull off
21 this lie? Because, like I said, we're years down
22 the road, she's already lied to her mama, who ut her
23 up to it -- and we'll get to Pam's reasons to lie,
24 because she has done -- then she lied to law
25 enforcement, went through uncomfortable medical

1 exams, and she just decided, rather than keep it
2 simple, say he was touching on me or he raped me,
3 she comes up with all these details, details that
4 the Defense wants you to ignore. Well, don't be
5 distracted, don't be fooled. And if lying why not
6 exaggerate the lie?

7 She was questioned, did it happen in the police
8 car? No, it didn't happened there; it only happened
9 in the truck and the car. And why not say, oh, he
10 hit me, there were times he would push me, he shoved
11 me down, he forcefully made it happen? And when it
12 didn't happen, she told you it didn't happen. Her
13 grandmother's house, which was next door, it didn't
14 happen in the house when she was there, it happened
15 in that truck, in that car, on those dirt roads.
16 She told you where it happened, she told you what
17 she could remember.

18 Defense reasons for Shawntea to lie make no
19 sense. Well, basically, they kind of do because she
20 has none. She has no reason to lie, except for the
21 fact that Pam put her up to it because all these
22 other women.

23 Basis is knowledge for sexual acts. And what
24 you haven't heard is there's all these men in the
25 house or anything. She's not shown a ton of stuff

1 that she sees all the time. She doesn't know the
2 exact words, as an adult would as if they had
3 coached her, such as say he masturbated, say he did
4 this, that, adult terminology. She describes what
5 happened. And where else does she get this
6 information?

7 Her demeanor on the stand -- and the Judge is
8 going to instruct you on the credibility of
9 witnesses. And credibility is essentially this:
10 Believability. And that's what this case comes down
11 to, believability. And you can believe some of what
12 a witness says, you can believe all of what a
13 witness says, or you don't have to believe anything
14 that a witness says. That is up to you and you
15 alone. But we do ask that you judge certain things;
16 importantly, the demeanor on the stand or in the
17 videos of the evidence that you will have back there
18 with you.

19 Also consider whether that witness was hesitant
20 or forthright in testifying. Was the testimony
21 consistent, corroborated by other evidence? Even
22 though Child 's doesn't have to be corroborated,
23 it is. And most importantly, did that witness have
24 any reason to be biased or prejudiced in this case?

25 Finally, members of the jury, defendant's

1 statements and defenses. Some of this is from the
2 video and some of this was just from the
3 questionings that were elicited in what I anticipate
4 that Defense counsel will get up here and stand
5 before you and try to say. But in his statement, he
6 said, I raised her like a dad. Yes, we agree. And
7 then, funny, he starts saying Pam wanted to go
8 through his phone records that day. Hmm, how
9 convenient. But they had sex and everything was
10 fine. He was going to get the little girl and go.
11 No arguments.

12 And what did he say? And you can listen to it
13 because this is exactly from his statement: Pam
14 told him, get down here right now, this, that and
15 the third, I was already around the corner and she
16 pulled my service weapon; bring the child out,
17 talking about Kimari, and let me go so you can
18 stop -- you, Pam, can stop all this foolishness.

19 It's always something to some nature that she
20 starts going on about. And I'm thinking that, you
21 know, you know she heard me on the phone with a
22 girl, and that's what our problem has been the whole
23 time, me and other women. He starts explaining away
24 the phone call because he knows what Pam heard and
25 he knows what he said. And in this interview -- and

1 here's the key, because here today they're trying to
2 distance themselves from that phone call -- confirms
3 that the phone call occurred. Just says it was a
4 sexual call in nature to Nikki Chisolm. Something
5 to the effect of, you want me to tap that ass?
6 Police called Nikki and she says she didn't talk to
7 him until closer to 7:00. His phone records,
8 corroboration.

9 Attorney to Sergeant Bailey -- oh, and let me
10 back up. And he says Pam wanted a Nutty Buddy
11 instead of pork rinds. Terminology, language. And,
12 as I said, the defendant is smart. And pay
13 attention to what he says. Attorney to Sergeant
14 Bailey: Told you he didn't do it the whole time.
15 Listen carefully. What is he really saying: Why am
16 I going to lie about that? DNA: I don't have to
17 lie about that. I promise you, DNA, come on, man.
18 Basically, he knows his DNA isn't there. When the
19 officer says, we've got the test results, he knows
20 good and well they don't have the test results back,
21 and he knows his DNA is not there because his semen
22 isn't on there because he didn't get away with it
23 that day.

24 Couple months, couple weeks since he's been
25 around, no arguments or problems with Child .

1 They question him: Why is she making this up? All
2 I can think is Pam put her up to this. She just
3 doesn't care; Pam. I've been trying to set her
4 straight. And then they ask her [sic] again, kind
5 of goes on. He said, here's the deal, she still
6 loves me, man. Because he's so awesome. This is
7 his arrogance: She still loves me, that's the
8 problem. Well, if she loves you, why would she want
9 to see you go down? Because she knows for a fact
10 that she's just not going to be that woman to take
11 me there, and she knows it.

12 Why this day, they ask him. And that's a good
13 question: Why this day? They were already
14 separated, he was providing for her children, they
15 had sex, no arguments, no threats, and there really
16 weren't any issues about women that day; yeah, in
17 the past, but not that day. And again, listen,
18 doesn't say he didn't do it. He continues to say,
19 why would I lie about that? Pay attention to what
20 he says.

21 Members of the jury, there are two important
22 witnesses who did not take this witness stand and
23 testify in this courtroom. And that is common sense
24 and human nature. And I'm going to ask that you use
25 your common sense and what you know about human



1 nature when you decide this case. And when you do,
2 I submit, there will be only one just verdict.

3 Now, as I prepared for this case, I was
4 reminded of a quote by President Theodore Roosevelt.
5 He said that no man is above the law, no man is
6 below it, and we ask no man's permission when we
7 require him to obey it; said that truth is the
8 mother of justice. And it is your job, your duty
9 here today, to find the truth and to seek justice.

10 Now, Child has done all that she could do.
11 And I'm going to ask that when you go back in your
12 jury room, you consider the evidence, and you hold
13 the defendant, Nakia Johnson, accountable for his
14 actions in sexually assaulting Child for a period
15 of years. Find him guilty of criminal sexual
16 conduct with a minor in the first degree, find him
17 guilty of criminal sexual conduct with a minor in
18 the second degree, and you find him guilty of lewd
19 act. Thank you.

20 THE COURT: Madam Forelady, members of the
21 jury, y'all okay? Bathroom anyone?

22 One second, Mr. Johnson. One second, please.

23 Go ahead. Let him go use the restroom.

24 Everybody sit tight for just a second.

25 (Brief pause in the proceedings.)

1 THE COURT: Okay. Mr. Johnson.

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

4 THE COURT: Yes, sir.

5 MR. JOHNSON: Two questions came to my mind
6 about this case: Why and what? And I watched this
7 courtroom the whole week, and my question is, why
8 can't Nakia explain why Child said this? Because
9 fear; you feel it hovering over the courtroom. Why?
10 Well, he can't. All he can do is tell what he
11 knows. All he can do is tell his position.

12 Here is what we know: He was up here, the
13 phone calls matched the call that come from his
14 phone. Now, there are different stories about why
15 he went back home. In his video -- and I want y'all
16 to watch the video because the video -- when he made
17 that video or when they were questioning him, it
18 wasn't made for the -- he didn't know that video was
19 coming in, he didn't know, so he wasn't putting no
20 one -- or pretending. He came to answer questions.
21 He didn't even know he had a warrant. They asked
22 him to come back and talk with them.

23 He came back, he signed the waiver, he talked
24 with them and he answered the questions the best he
25 could. I mean, what can he say? All he can say is

1 what you know. It seems like if he doesn't say he
2 did it, then it's a problem. He just needs to go
3 ahead and fess up because a child said it, and if
4 the child said it, that's it.

5 And that's the fear of this case. That's the
6 fear of these kinds of cases, because everybody in
7 their minds are concerned about, why would the child
8 say this? But why does he have to give you an
9 explanation? Because he has the same question: Why
10 would she say it?

11 Yes he was a good father, yes he took care, yes
12 he did all of those things. Why would she say it?
13 So because he can't explain why she said it, does
14 that make him guilty? No, it doesn't.

15 And that's why our courts have what we call the
16 presumption of innocence. A person is presumed
17 innocent until proven guilty, because there's times
18 like this that -- what do you say other than what
19 you know? I didn't do it. I mean, what else can
20 you say? And everybody wants an explanation. I
21 can't give it to you, all I can tell you is I came
22 back and I told the truth. Okay.

23 Let's look at the facts some. There is no DNA.
24 Okay. There is that big man, that from 2007 until
25 2011, who was supposed to be having sex with who was

1 much littler then, having sex with her. From 2007
2 until 2011 with somebody sitting on you, somebody
3 going up and down on you, somebody sticking their
4 penis in you, over and over again. Is there not
5 over some kind of sign? Is there not one scratch,
6 one scrape, one anything? And all he can say is, I
7 didn't do it. How do you prove you didn't do it?
8 Only thing they can do is show what they got. No
9 signs -- both medical experts, no signs of
10 penetration; the SLED man, no DNA. All he can say,
11 I don't know.

12 And they cross-examined him or questioned him
13 pretty hard at that police station or at the
14 sheriff's department. Yes, they did. They tried
15 every trick or every strategy. And I think the
16 assumption is because he's a police officer, he
17 knows their techniques, so he was ready for them.
18 How would he know they were going to take the
19 phone -- take his phone, look at the network and
20 come back and say, the only call you had to Pam -- I
21 mean to Nikki was 6:39, when there were other calls
22 on the phone? How would they know that?

23 They came back and said, why is your DNA on
24 this girl? My DNA is not on this girl. Why would
25 your DNA be on this girl? They were, like, rough

1 with it. And the other man, Lieutenant Hickmon, he
2 was in there. And he kept saying, explain to me why
3 she would do that. I don't know, I don't know, I
4 don't know. Were there any other previous history
5 of him doing this? No. She even said that he said
6 he didn't do it to nobody else. Why just her?

7 And what amazes me, this jury is drawn for
8 Kershaw County. They have to prove the acts. The
9 solicitor has to prove the acts that were done in
10 Kershaw County. They put in acts from Florida, they
11 put in acts from Allendale. No proof that any of it
12 is true, they're putting it in. And they're saying,
13 throw them all together because he has so many
14 accusations, just find him guilty. You can't have
15 this many accusations and not be guilty of this.
16 Well, if you didn't do it, all you can say is I
17 didn't do it. And I'm telling you, on that film he
18 said, I didn't do it, I didn't do it, I didn't do
19 it.

20 Now, there were six minutes -- and I want y'all
21 to look at those videos. There was a six-minute
22 time period -- and let me explain this is little
23 bit. And you're going to have this, the phone
24 records, in the back with you. Because we started
25 talking about the items, this is the item number.

1 This is the date, this would be the time the calls
2 were made. The originating number will the number
3 that was called from and the terminating number
4 would be the number that is called to.

5 All right. Now, you will see that beginning at
6 item -- now, this doesn't go back with you, but the
7 bills go back with you. You'll see beginning at
8 item 818, there's a phone call from 3369. I t was
9 determined that the 3369 was Pam's number. That
10 number called 3322, which is Nakia's number. You
11 will see item 19 where (803) [sic], which is
12 Nikki's number, that number called Nakia's number.
13 If you'll go to the cross-examination or you will go
14 to the interview you'll hear the officer saying, you
15 didn't have but one call from Nikki at 6:30, why are
16 you lying to us? And kept saying -- he was trying
17 to explain. That's all he could do; explain the
18 best he could. And at one point in the video, he
19 said, but look, if that's the case, the everything I
20 must be saying is wrong. But I know when I was
21 talking, I was in the store.

22 Well, here's what we do have: We have the call
23 that everybody agrees on, the call at 5:54, which
24 would be 2154. We have no question about that, that
25 that's the only two-minute, three-minute call that

1 came from Pam's phone. There's no question that the
2 video from the store will show that he was in the
3 store.

4 And here's what they said about the video from
5 the store: It's not accurate. The phone record is
6 accurate, the telephone is accurate, the network is
7 technologically accurate, forensically accurate,
8 everything is accurate but the video from the store.
9 So how do you be in the store on the phone talking
10 and -- and you got the video, watch the video.
11 Anything that I say different from the video,
12 disregard what I'm saying. Watch the video. He's
13 on the phone talking, has two cans of beer. Tea is
14 walking around the store getting what she wants,
15 brings it to him and shows him, takes it back
16 because they were trying to find what Pam want, that
17 was 5:58.

18 If the phone call came in at 5:54, it lasted
19 for two minutes, that's 5:56. They said after 5:56,
20 she called back and said bring my child home, so
21 that means they were still at the graveyard. So
22 that means 5:56, 5:57, so how did they get from the
23 graveyard to the store -- on the video -- and if you
24 watch the video, they were already in the store
25 walking around. How did he do it? All he can do is

1 say, I didn't do it. I don't know about -- he
2 doesn't know about why she said all this other
3 stuff. And how could he prove that to you? He
4 doesn't know why.

5 Now, can we guesstimate like the State did?
6 Can we guesstimate as to why or can we infer as to
7 why? Yes, we can. And at the end of the day,
8 you're going to make the determination. But the
9 Judge is going to charge you, I believe, that you
10 must be firmly convinced, firmly convinced, beyond a
11 reasonable doubt. And a reasonable doubt would
12 cause one to hesitate to act. So let me ask you
13 something: Is it enough to hesitate -- even if you
14 don't believe it, is it enough to wonder, to
15 hesitate because he was in the store while they said
16 he was in the graveyard?

17 There's another thing: I don't know why -- and
18 I like how the Solicitor glossed over it. She said,
19 well, when she was on the stand, she couldn't
20 consistently remember anything. I think that's what
21 she told you, the 12 of you: She said, I was not in
22 the store. She has the record. She said, I wasn't
23 in the store. And Mr. Ron Fountain said she was in
24 the store, Deputy Bailey said she was in the store,
25 and the video shows her in the store walking around

1 with the candy. Why would she come and say I wasn't
2 in the store today?

3 Well, the State wants you to say, well, she's a
4 child, it's been a long time, and she may have
5 forgotten. But is that enough to hesitate? Does
6 that firmly convince you? No, it don't have to
7 absolutely prove it. But is that enough?

8 And then again, what happened in Kershaw
9 County? Let's suppose it was true. And it's not,
10 but let's suppose it is. What happened in Kershaw
11 County? Even if it was so, it should be prosecuted
12 somewhere else. Why would Kershaw County be doing
13 it?

14 The expert that testified about -- she
15 testified on common tendencies of children. At the
16 end of the day, all she said was, this might help
17 you and this might not help you. I want to tell you
18 what children do. Do all of them do the same thing?
19 No. Do some do it? No. All of this is just fluff
20 that helps put nails in the coffin of this
21 defendant.

22 The forensic interview, you know, it's a big
23 deal, they disclose. Let me tell you what
24 disclosing is. Disclosing is you, someone, telling
25 someone else something. That's a disclosure. All

1 they wrote down is what they was told. So if they
2 wrote down that which is not true, then all they can
3 tell you is what was told to them that wasn't true.

4 And the power of the State's case is it's a
5 child. And nobody in your community wants to uphold
6 anybody doing anything wrong to a child. Forget
7 about the principles of the law, forget about
8 innocent until proven guilty, forget about firmly
9 convinced, forget about hesitate to act, beyond a
10 reasonable doubt. Not only do you have the facts --
11 and I didn't tell you the time in the store; Officer
12 Capps told you the time in the store. The other
13 thing is, you heard me ask Officer Capps, wasn't
14 there two other videos? You heard me ask him, well,
15 where are the other videos? We're just going to
16 give you this one, give you the one I want you to
17 see, because it's their job to convict him.

18 You are supposed to be judges of the facts.
19 And God knows it's hard because either way you go --
20 you're balancing between two situations, and all you
21 can do is make a decision. And maybe your heart is
22 just floating, well, this is a child. Nakia Johnson
23 cannot explain why. He can tell you where he was,
24 he can tell you what he didn't do, he can tell you
25 he was in the store at 5:58, the video can tell you

1 he was in the store at 5:58. The phone calls were
2 made at 5:54.

3 And I heard the Solicitor talking about all the
4 other calls. If somebody drew a gun -- if your
5 girlfriend drew a gun on you, tells you to get out
6 her yard, by their testimony -- his testimony is he
7 told her, if you look at the video -- his testimony
8 is he told her to call the police.

9 He said, call them while I'm here now, I got to
10 go back, I have to go back, the weather is storming,
11 go ahead and call them. His testimony was she said,
12 get the F out my yard, I'm not -- I'm not going to
13 call the -- that's his testimony. Her testimony is
14 she went right in the house and called the police.
15 Well, the question is, what time did she call? How
16 long after it happened?

17 Please don't make him prove why if he doesn't
18 know why. Make them prove that he did it. And
19 they're counting on the emotion and the number of
20 allegations, even though the allegations weren't in
21 Kershaw County. So, really, I guess, they will make
22 y'all universal decision makers all across wherever
23 he was charged.

24 You notice that -- please look at Dr. Killings
25 [sic] video. She told Mr. Killings, I don't know

1 where the road was. She told them she went down
2 there four times down with him in the white truck.
3 And he said, where is the road? Just listen. She
4 said, I don't know where it is. Three years later,
5 out of the clear blue sky, she calls them and says,
6 I know where the road is. Well, we're coming to
7 court in Kershaw County. If you don't have
8 something in Kershaw County, you've got no case in
9 Kershaw County.

10 So all of a sudden, we've got a road in Kershaw
11 County where she told Dr. Killings that --
12 Mr. Killings, well, she told him well, it happened
13 when I was at Road. Please look at the
14 video. She told y'all it happened at Aunt Missy's
15 house. Is that enough to hesitate to act? Is that
16 enough to make you think?. Are you firmly convinced?

17 The Judge is going to tell you if you have a
18 question and you're not firmly convinced, then it's
19 your job to set him free. You have to be -- before
20 you find him guilty of criminal sexual conduct, the
21 battery, sexual penetration, you have to find that
22 he did it in Kershaw County. Even though he didn't
23 do it, you have to find that he did in Kershaw
24 County. Where is the proof that he did it in
25 Kershaw County?

1 She also said, well, the computer room was at
2 346, then she said the computer room was at Aunt
3 Missy's house. The next time she said, he made me
4 sit on him in the computer room, then the next time
5 she said, he only took pictures in the computer
6 room. I mean, is there some accountability for her
7 testimony or does she just get the pass because
8 she's a child? And if she does, then what happens
9 to our system?

10 You're supposed to take the facts as you find
11 it, whether you like them or not. We don't have to
12 like Mr. Johnson. And, certainly, the thing that
13 amazes me, if you watch the video, he said I'm
14 appalled at this whole idea of this happening, and
15 anybody that would do that to a child, it's
16 appalling. But make sure he did it. Can we blame
17 the mom? I guess we could. But he doesn't know why
18 she did it.

19 Now, maybe when Nakia saw -- when Child saw
20 her mother draw that gun and threaten to kill him
21 and she could realize what was going to happen to
22 her mama, she said, look, Mama, come on. Whatever
23 she needed to say from there to make sure her mama
24 was safe, I don't know if that happened or not.
25 That's an inference that can be drawn. I don't

1 know.

2 And the other thing that amazes me is, they got
3 a warrant before he got back. He wasn't even back
4 yet. They only had the allegations from the mother
5 and they hadn't even talked to the child yet. They
6 had the warrant. Now, Detective Bailey said, well,
7 he had the discretion whether to serve it or not.
8 You don't get a warrant unless you're going to serve
9 a warrant.

10 And he came in, signed the waiver, answered
11 every question. Nobody told him they had a warrant
12 because they wanted to hear what he had to say. So
13 he told them what he had to say. And after he told
14 them what he had to say, probably one of the most
15 humiliating things for a police officer to do is to
16 stand up, spread his hands, put his hands behind his
17 back, and go to jail. And what can he tell you?
18 How can he prove himself innocent? He couldn't
19 prove himself innocent then, can't prove himself
20 innocent today.

21 And no -- our law provides -- yes, our law
22 provides you need no collaboration. If somebody
23 said it, you can convict a person based on somebody
24 saying it. Yes, you can do it, that's the law, with
25 criminal sexual conduct first and second. If they

1 say it, if the jury determines they want to convict,
2 that's enough. The question becomes: Did he do it?
3 Because somebody said somebody did something, does
4 that mean he did it? Because you can't prove that
5 you didn't do it, does that mean you did? And the
6 only other objective fact is the video and your
7 phone bill and the inconsistent testimony that she
8 gave.

9 He gets no pass for his inconsistent testimony,
10 but she gets a pass for hers because she's a child.
11 He gets no credit because the phone bill added up
12 with the same time he was in the store in the video
13 because the video got to be inaccurate because the
14 child said it, so the video is inaccurate.

15 And I am asking you on his behalf, I'm begging
16 you on his behalf, to please -- you have those --
17 take the time to watch those videos, listen to her
18 testimony on those videos, listen to her testimony
19 on those videos, listen to what went on on this
20 stand, please take the time to look at these phone
21 bills and sum up all of the physical evidence.

22 And here's the summation of it: SLED says no
23 DNA, Nurse Hart says she found a redness that could
24 be consistent with or not consistent with, and
25 Dr. Luberoff, the doctor, says, it's a normal exam.

1 And here's the thing: Not only normal for that day,
2 there is no signs of her being touched. Not just
3 that day in time, but from 2007 until now, after all
4 of this penetration, not one mark, not one scrape,
5 not nothing. And the reason is, is because she's a
6 child. And if there's lubricants that's in her
7 body, that will cover that up. That's their reason.

8 And you heard the Solicitor say, it was a
9 violent crime. And you heard Dr. Luberoff say, the
10 only way it will show up is if it's violent. Well,
11 that big man continually going into that little girl
12 starting at 2007 -- she would have been six, seven,
13 eight years ago. No signs. And they want you to --
14 not no signs only in Kershaw County, no signs from
15 any county, and they want you to convict him.

16 The difference between criminal sexual conduct
17 first and criminal sexual conduct second is that one
18 occurs under 11 and one occurs 11 and above. Nobody
19 has told you how old she was when it occurred. Was
20 it 11 and above? Was it under 11? When did it
21 occur? Where did it occur? Was it in Allendale?
22 Was it in Florida? Was it at the beach beside
23 Myrtle Beach? Was it in Kershaw County?

24 Mr. Johnson has a right to be scared, has a
25 right to be afraid. Anybody sitting in this seat

1 should be scared, they should be afraid. Whether
2 you did it or didn't do it, you better be afraid,
3 because the 12 of you are going to have to decide.
4 And whatever you decide determines his fate. So,
5 yes, he's fearful. He's fearful then, he's fearful
6 now.

7 Who presented anything in his past that would
8 make him do this? It's almost like he's Jekyll and
9 Hyde, if you listen to the Solicitor talk. He's
10 Mr. Hyde the daddy and then he's Dr. Jekyll. Is
11 there any trace -- give us any -- was there any
12 trace of penetration, any? Is there any kind of --
13 and how do you prove touching? You just have to
14 say, I believe her. Is there any trace of
15 penetration, any?

16 And I submit there's none, not any trace. If
17 the doctors testified to it, how do you convict him
18 of it? Because she's a child. Because you don't
19 want this going on in the community because our
20 voice speaks for the community here. And -- but
21 isn't it the voice for the community that you seek
22 the truth?

23 I generally have a lot of good phrases. I
24 don't have one today. There's one legal term used
25 the word, veredicto, it means to speak the truth.

1 We're asking you, begging you, to be objective in
2 evaluating the evidence, to be fair in evaluating
3 the evidence, look at all the -- take the time and
4 look at the facts, listen to the facts, look at the
5 video at the store, look at his video, look at
6 Mr. Killings' video.

7 And anything that I say that is not on the
8 video, disbelieve me. Anything that is on the
9 video, then take it and do the right thing. What's
10 the right thing in this case? Well, we'll know what
11 that is when y'all come back with a verdict.

12 But I would suggest to you that from the
13 Defense's prospective, he didn't do it. He didn't
14 touch her when she was under 11, he didn't touch her
15 when she was 11, he didn't penetrate her when she
16 was under 11, he didn't penetrate her when she was
17 11, and he hadn't touched or penetrated her since
18 she was 11. And he cannot answer your question as
19 to why, he cannot answer Lieutenant Hickmon's
20 question as to why; all he can do is tell you what
21 he did.

22 You remember when I came up here and I said
23 this case is about who you believe, believability?
24 And that's the truth, it is. And sometimes doing
25 the right thing is hard. Sometimes you have to

1 wrestle with your own self to follow the law.
2 Because we believe that if you follow the law in
3 this case, if you look at the fact that there's a
4 video where she said she wasn't in the store but she
5 was in the store walking around toting candy,
6 there's a video saying he was in the store at 5:58
7 when the phone bill and all of the allegations are
8 he was in the cemetery, is that enough to cause you
9 to hesitate to act? Are you firmly convinced?

10 And you got a right to believe one witness, you
11 got a right to believe all of the witnesses. And
12 here's the other thing: You may believe everybody
13 and just don't know which one. Well, then that's
14 reasonable doubt. That is a doubt that causes you
15 to hesitate to act. And just like baseball, the tie
16 goes to the runner. So if you have anything that
17 causes you to hesitate to act, it's your duty.

18 Solicitor told you she took the stand, took an
19 oath. Well, you took an oath. You took an oath
20 that you won't stand for bias, prejudice, I will do
21 the right thing because it's the right thing to do,
22 and I want justice is prevail, even sometimes if I
23 don't like the feeling of the justice that I got to
24 give. But for the system to work right, you have to
25 do -- follow the law which the Judge charges you as

1 he gives it to you.

2 And as I go to my seat, I want you to listen to
3 this: Firmly convinced that he's guilty, guilt
4 beyond a reasonable doubt. A reasonable doubt will
5 cause one to hesitate to act. And innocent until
6 proven guilty. And he's not guilty until the 12 of
7 you come back in here and say he's guilty.

8 There's a song on, I think it was the
9 Temptations, when I was a boy, and the song says too
10 proud to beg. There's a lot on the line today, so
11 I'm not too proud to beg, not because I think
12 Mr. Johnson is guilty, but because it's scary.
13 There's an overwhelming amount of allegations
14 against him that he can't prove himself innocent.
15 And if you follow the law, he doesn't have to.

16 I've done the very best I can do for Nakia.
17 Kind of like a baby now; he's out of my hands and
18 I'm giving him to the 12 of you. Please do what's
19 right, please be fair to him, please let your
20 decision be without prejudice or passion or
21 emotional feeling. Let it be justice. Thank you.

22 THE COURT: Madam Forelady, ladies and
23 gentlemen of the jury, we've been going about two
24 hours. Let's take a short break, stretch of the
25 legs. My charge is about 10 or 15 minutes, not very

1 long. Please don't start any deliberations or
2 discussions of the case. We'll take a break, a
3 bathroom break, and we'll start back in about ten
4 minutes. Okay?

5 (The jury exits the courtroom at 11:13 AM.)

6 THE COURT: All right. We'll stand at ease for
7 about ten minutes. Thank you.

8 (Short break.)

9 THE COURT: Bring the jury in, please.

10 (The jury enters the courtroom at 11:27 AM.)

11 THE COURT: Madam Forelady, ladies and
12 gentlemen of the jury, my charge is sort of two
13 parts. The first part deals with general
14 propositions of law that we charge in all criminal
15 cases. Once we do that, we'll go to the specific
16 charges in these three indictments. And I'll
17 explain those to you.

18 First of all, let me remind you that the fact
19 that the defendant was arrested, charged, and
20 indicted in this case is not evidence in the case
21 and cannot be considered by you as evidence of guilt
22 in the case, nor does it create any presumption or
23 inference of guilt. These indictments are simply
24 the charging documents by way this case comes into
25 the courtroom. So that's not evidence in the case,

1 it's just the charging documents. So don't infer
2 anything from the fact that he has been indicted.

3 In this case, we're dealing with three separate
4 indictments; criminal sexual conduct with a minor in
5 the first degree, criminal sexual conduct with a
6 minor in the second degree, and lewd act upon a
7 child. Each indictment charges a separate and
8 distinct offense. You must decide each indictment
9 separately on the evidence and the law applicable to
10 it uninfluenced by your decisions as to the other
11 indictments. In other words, you have to look at
12 each one of them separate and apart from the other.
13 You can convict him on one or both or all three or
14 you can find him guilty on one and not guilty on the
15 other or any of those combinations. So you must
16 consider each one separate and apart from the
17 others. There are three indictments and there will
18 be three verdict forms as to each indictment, which
19 I will explain to you at the conclusion of my
20 charge.

21 Now, as to each of these indictments, the
22 defendant has pled not guilty. And a plea of not
23 guilty puts the burden on the State of South
24 Carolina to prove the defendant guilty to you beyond
25 a reasonable doubt. A person charged with

1 committing a criminal offense is never required to
2 prove himself innocent. I charge and instruct you
3 that it is an important constitutional rule of law
4 that a defendant in a criminal trial, no matter how
5 serious the charges may be, will always be presumed
6 to be innocent of the crimes for which he's been
7 indicted unless guilt has been proven by evidence
8 satisfying of you of that guilt beyond a reasonable
9 doubt.

10 The presumption of innocence does not end when
11 you begin your deliberations, but it stays with the
12 defendant throughout the trial unless you reach a
13 verdict of guilt based on evidence satisfying you of
14 that guilt beyond a reasonable doubt. I further
15 charge you that the presumption of innocence is not
16 just a mere legal phrase or theory; it is a
17 substantial constitutional right to which each
18 defendant has unless you're satisfied from the
19 evidence that the defendant's guilt has been proven
20 to you beyond a reasonable doubt.

21 Now, what is a reasonable doubt? You've heard
22 the lawyers argue that in their closing arguments,
23 and let me just reiterate it again. Our state
24 Supreme Court defined a reasonable doubt, and
25 they've defined it, actually, in two different ways,