

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger L. Couch, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRIAN CHRISTOPHER DAUGHERTY,

APPELLANT

APPELLATE CASE NO 2017-000738

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT NO. 11 (DVD of Forensic Interview)

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON 2015-GS-10-04916
 2015-GS-10-04917
 2015-GS-10-04922
 2015-GS-10-04925
 2015-GS-10-05005
 2015-GS-10-05009
 2015-GS-10-05010
 2017-GS-10-02001

STATE OF SOUTH)
 CAROLINA,)
 PLAINTIFF,) TRANSCRIPT OF RECORD
 VS.)
 MARCH 13-15, 2017
 CHARLESTON, SC
 BRIAN DAUGHERTY,)
 DEFENDANT.)

B E F O R E:

HONORABLE ROGER COUCH, JUDGE, AND A JURY.

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

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 DAN POULOS, ESQUIRE
 Attorneys for the State

CHARLES COCHRAN, ESQUIRE
 JESSICA BIRT, ESQUIRE
 Attorneys for the Defendant

* * * * *

Ruth C. Weese, RDR
 Official Court Reporter
 Ninth Judicial Circuit

1 (The following proceedings were held March
2 13, 2017, Charleston County, South Carolina, @
3 12:06 p.m.)

4 THE COURT: The State may call the
5 cases.

6 MS. HERRING-LASH: Your Honor, the
7 State would call State versus Brian Daugherty and
8 there's a 2017-GS-10-2001 criminal sexual conduct
9 with a minor first. Your Honor, that was the
10 indictment that went --

11 THE COURT: That's just been indicted.

12 MS. HERRING-LASH: Just been indicted
13 this morning, yes, Your Honor.

14 THE COURT: All right. The other
15 indictments were presented looks like 2015, am I
16 correct?

17 MS. HERRING-LASH: Yes, Your Honor.
18 Those are the ones I would need to amend the time
19 frame to narrow the time.

20 THE COURT: Is this the only indictment
21 we are trying?

22 MS. HERRING-LASH: No, we are trying
23 them all.

24 THE COURT: Trying them all, okay.

25 MS. HERRING-LASH: Do you want me to

1 call the others now?

2 THE COURT: If you will, please.

3 MS. HERRING-LASH: 2015-GS-10-04916,
4 criminal sexual conduct with a minor first,
5 2015-GS-10-04917, criminal sexual conduct with a
6 minor first, 2015-GS-10-05005, criminal sexual
7 conduct with a minor first, 2015-GS-10-05009, a
8 lewd act upon a minor. This is the lewd act since
9 it was before the time frame that the statute
10 changed. 2015-GS-10-04922, criminal sexual conduct
11 with a minor second degree, 2015-GS-10-04924,
12 criminal sexual conduct with a minor second degree,
13 2015-GS-10-04925, criminal sexual conduct with a
14 minor second degree, and 2015-GS-10-05010, lewd act
15 upon a minor.

16 THE COURT: With the exception of case
17 number 2017-GS-10-2001, I believe, Mr. Cochran,
18 your client has been arraigned on all of those
19 charges; is that correct?

20 MR. COCHRAN: Yes, Your Honor.

21 THE COURT: And did he plead not guilty
22 to those charges?

23 MR. COCHRAN: Not officially, Your
24 Honor. We didn't do any official arraignments
25 here.

1 THE COURT: Is he, in fact, pleading
2 not guilty to those indictments?

3 MR. COCHRAN: Yes, Your Honor.

4 THE COURT: Does he wish to have formal
5 arraignment on those prior indictments at this
6 time?

7 MR. COCHRAN: No, Your Honor.

8 THE COURT: Is that correct, Mr.
9 Daugherty?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So you are pleading not
12 guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And are you asking for
15 trial by jury?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Now, as to the
18 charge that was indicted today, Mr. Daugherty, if
19 you will please stand. Place Mr. Daugherty under
20 oath at this time.

21 BRIAN DAUGHERTY

22 having been duly sworn, testifies as follows:

23 THE COURT: At this time I'm going
24 to go over with you this indictment. It is a new
25 indictment that was indicted this morning. It's my

1 understanding that your attorney and you have been
2 informed of this, but I am going to go over the
3 charge with you so I'm sure you understand the
4 charge.

5 The charge is criminal sexual conduct
6 with a minor in the first degree. The indictment
7 states that in Charleston County, South Carolina,
8 between June of 2009 and February the 17th of 2010
9 the Defendant, Brian Christopher Daugherty, did
10 comit or assault with the intent to comit a sexual
11 battery, to wit, sexual intercourse and/or digital
12 penetration and/cunnilingus upon a minor, Older
13 [REDACTED] Sister [REDACTED], who was under the age of 11 years of age in
14 violation of Section 16-3-655 (A) (1) and 16-3-656
15 of the South Carolina code of laws 1976 as amended
16 against the peace and dignity of the state and
17 contrary to the statute in such case made and
18 provided.

19 That indictment was issued on today's
20 date by the Charleston County grand jury. Now, did
21 you understand the charge that I just went over?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How do you plead to that
24 charge?

25 THE DEFENDANT: Not guilty.

1 THE COURT: Are you requesting or
2 demanding trial by jury at this time?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I grant you a speedy
5 delivery, sir. You can be seated. Any other
6 matters that we need to consider before we begin
7 jury selection in the case?

8 MS. HERRING-LASH: Your Honor, do you
9 want me to put the amendment to the other
10 indictments on the record?

11 THE COURT: Yes, ma'am, if you would.

12 MS. HERRING-LASH: For the
13 2015-GS-10-04916, the time frame should be April
14 the 8th, 2009 to May the 5th, 2011. So it narrowed
15 it almost a year.

16 THE COURT: Any objection to that
17 amendment, Mr. Cochran?

18 MR. COCHRAN: No, Your Honor.

19 THE COURT: I will make that correction
20 at this time. You said until May.

21 MS. HERRING-LASH: 5th, 2011.

22 THE COURT: I have made that amendment.
23 You may proceed.

24 MS. HERRING-LASH: 2015-GS-10-04917, it
25 reads between April 8th, 2009, and April 7th, 2012.

1 That also should stop May 5th, 2011.

2 THE COURT: Just one second. Let me
3 get that indictment. 4917.

4 MS. HERRING-LASH: Yes, Your Honor.

5 THE COURT: All right. That also will
6 be May 5th of 2011 for a stop date.

7 MS. HERRING-LASH: Yes, Your Honor.

8 THE COURT: Any objection to that
9 amendment?

10 MR. COCHRAN: No, Your Honor.

11 MS. HERRING-LASH: And
12 2015-GS-10-05005, that should be a stop date of
13 May 5th, 2011, also.

14 THE COURT: Any objection to that
15 amendment, Mr. Cochran?

16 MR. COCHRAN: No, Your Honor.

17 MS. HERRING-LASH: For
18 2015-GS-10-05009, that stop date should also be
19 May 5th, 2011.

20 THE COURT: Any objection to that?

21 MR. COCHRAN: No, Your Honor.

22 MS. HERRING-LASH: 2015-GS-10-04922,
23 that stop date should be May 5th, 2011.

24 THE COURT: That's 4922.

25 MS. HERRING-LASH: Yes, Your Honor.

1 THE COURT: Any objection to that
2 change?

3 MR. COCHRAN: No, Your Honor.

4 MS. HERRING-LASH: 2015-GS-10-04924,
5 that stop date should also be May 5th, 2011.

6 THE COURT: Give me that indictment
7 number again, please.

8 MS. HERRING-LASH: 2015-GS-10-04924.

9 THE COURT: Any objection to that
10 amendment?

11 MR. COCHRAN: No, Your Honor.

12 MS. HERRING-LASH: 2015-GS-10-049 --

13 THE COURT: Just one second. I can
14 make the change.

15 MS. HERRING-LASH: I'm sorry.

16 THE COURT: Next number is?

17 MS. HERRING-LASH: 2015-GS-10-04925.

18 THE COURT: Yes, ma'am.

19 HERRING-LASH: That end date should
20 also be May 5th, 2011.

21 THE COURT: Any objection to that
22 change?

23 MR. COCHRAN: No, Your Honor.

24 MS. HERRING-LASH: 2015-GS-10-05010,
25 that stop date should also be May 5th, 2011.

1 THE COURT: Any objection to that
2 change?

3 MR. COCHRAN: No, Your Honor.

4 MS. HERRING-LASH: That's all, Your
5 Honor.

6 THE COURT: Are we ready for jury
7 selection from the State?

8 MS. HERRING-LASH: Yes.

9 THE COURT: For the defense?

10 MR. COCHRAN: Yes, Your Honor.

11 THE COURT: Let's bring the jury panel
12 in. Does the defense have any additional witnesses
13 other than the ones listed in the State's pretrial
14 brief?

15 MR. COCHRAN: Potentially, Your Honor.
16 Obviously the Defendant and then there are -- I
17 believe the other two were in the State's, possibly
18 Ashley.

19 MS. HERRING-LASH: They are.

20 MR. COCHRAN: Any potential witnesses.

21 THE COURT: Are listed in those
22 witnesses. Very good.

23 (Prospective jurors brought to the
24 courtroom at 12:25 p.m.)

25 THE COURT: Good morning, ladies and

1 gentlemen. Let me introduce myself to you. My
2 name is Roger Couch. I am a circuit court judge.
3 My normal place of residence judging would be in
4 the Seventh Judicial Circuit Court. The Seventh
5 Circuit is made up of Spartanburg and Cherokee
6 Counties and I have been assigned by the chief
7 justice to hold court here in Charleston this week
8 so I will be conducting, along with some other
9 judges here, some of whom you may have already met,
10 a one-week term of general sessions court. That is
11 the court in which we handle matters where citizens
12 have been charged with the commission of a crime.
13 I will look forward to working with you on the
14 cases that will be coming before me this week.

15 The cases that have been -- the case
16 that has been presented to me this morning is the
17 case of the State of South Carolina versus Brian
18 Christopher Daugherty. I'm going to go over the
19 indictments that have been presented to me in this
20 matter.

21 Let me explain to you an indictment is
22 a document that brings the case into this court.
23 It informs this Court of the charges to be tried.
24 It informs the Defendant of the charges that are
25 lodged against him. However, an indictment is not

1 evidence in any manner and it can't be considered
2 by a jury in any fashion in reaching a verdict in a
3 case. They are simply informational documents.
4 I'm going to go over them with you briefly this
5 morning so that you will understand the charges
6 that are coming before the Court.

7 I have some questions that I'm going to
8 ask you in a few minutes that apply specifically to
9 this case and so you need to know a little bit
10 about what the cases are about and what the general
11 allegations are that have been made in these cases.
12 There are several indictments, all involving this
13 same Defendant that I'm going to go over with you
14 at this time.

15 The first indictment that I will
16 discuss with you is case number 2017-2001. That
17 indictment is for the charge of criminal sexual
18 conduct with a minor in the first degree. The
19 allegations in that indictment state that in
20 Charleston County, between June of 2009 and
21 February 17th of 2010, it alleges that the
22 Defendant, Brian Christopher Daugherty, did commit
23 or assaulted with intent to commit a sexual
24 battery, to wit, sexual intercourse, digital
25 penetration, cunnilingus upon a minor, Older
Sister

1 Older Sister who was under the age of 11 years in
2 violation of two code sections in this state.

3 The next indictment is case number
4 2015-5010. This is for the offense of committing a
5 lewd act on a minor. This indictment alleges
6 generally that between February 18th of 2009 and
7 May the 5th of 2011 that the Defendant, Brian
8 Christopher Daugherty, who was over 14 years of age
9 did willfully and lewdly comit or attempt to commit
10 a lewd or lascivious act upon the body or parts of
11 Older Sister, a child under 16 years of age, and
12 goes on to allege with the intent of arousing or
13 intending to or gratifying the lust, passion or
14 sexual desires of the Defendant or the child in
15 violation of a code section in the state.

16 The next indictment is number
17 2015-4925. It alleges criminal sexual conduct with
18 a minor in the second degree. And this indictment
19 alleges that between February 18th of 2010 and
20 May 5 of 2011 that the Defendant committed a sexual
21 battery upon again the alleged victim, Older Sister

22 [REDACTED], with a date of birth of [REDACTED]
23 [REDACTED].

24 The next indictment is case number
25 2015-4924. This is a charge of criminal sexual

1 conduct with a minor in the second degree. It
2 alleges that in Charleston County between
3 February 18th of 2010 and May 5th of 2011 that the
4 Defendant committed a sexual battery again on the
5 alleged victim of Older Sister with a date of birth
6 of [REDACTED] again in violation of a
7 code section.

8 The next indictment is 2015-4922. It
9 is also for criminal sexual conduct with a minor in
10 the second degree. Again alleges a time frame of
11 between February 18th and May the 5th of 2011.
12 Alleges the Defendant did commit a sexual battery
13 upon again the alleged victim of Older Sister with
14 the same birth date as stated before against
15 violating a code section.

16 Those indictments all involve
17 allegations in which the alleged victim was a
18 person known as Older Sister.

19 The next indictments involve
20 allegations with an alleged victim of a different
21 name. This is case 2015-GS-10-5009. This is a
22 lewd act upon a minor is the charge. It alleges
23 between April 8th of 2009 and May 5th of 2011 that
24 the Defendant who was over the age of 14 committed
25 -- willfully committed or attempted to commit a

1 lewd or lascivious act upon the body or its parts
2 of Younger Sister [REDACTED], a child under 16 years of
3 age, again in violation of a certain code section.

4 The next indictment is case number
5 2015-05005. It is a CSC with a minor, criminal
6 sexual conduct with a minor, first degree. It
7 again alleges in Charleston County between
8 April 8th of 2009 and May 5th of 2011 that the
9 Defendant, Brian Christopher Daugherty, did commit
10 the sexual battery upon the alleged victim of
11 Younger Sister [REDACTED], a minor who was less than
12 11 years of age.

13 The next case is case number 2015-4917.
14 This a criminal sexual conduct with a minor in the
15 first degree allegation. It alleges that in
16 Charleston County between April 8th of 2009 and
17 May 5th of 2011 that the Defendant, Mr. Daugherty,
18 did commit a sexual battery again with the alleged
19 victim or on the alleged victim of Younger
20 [REDACTED] again in violation of the appropriate
21 code section.

22 The last indictment is case number
23 2015-4916. It is a criminal sexual conduct with a
24 minor in the first degree. It alleges that between
25 April 8th of 2009 and May 5th of 2011 that the

1 Defendant did commit a sexual battery upon the
2 alleged victim Younger Sister, again a minor who
3 is less than 11 years in violation of the
4 applicable code sections. I have gone over those
5 indictments again so that you might more fully be
6 in a position to answer some questions I'm about to
7 ask. Again, these are simply informational
8 documents that inform us of the charges to be
9 tried. It informs the Defendant of the charges
10 lodged against him.

11 Now, before I begin to ask you
12 questions I'm going to provide you with some
13 additional information. First of all, I'm going to
14 ask that the attorneys who are involved in this
15 case introduce themselves to you and in the case of
16 the defense I would ask that you introduce the
17 Defendant to the jury panel. First for the State.

18 MS. HERRING-LASH: I'm Debbie
19 Herring-Lash. I will be representing the State.

20 MR. POULOS: Dan Poulos. I will be
21 representing the State.

22 THE COURT: For the defense.

23 MR. COCHRAN: Good morning. My name is
24 Charles Cochran. This is my co-counsel Jessica
25 Birt. This is our client Brian Daugherty.

1 break. If any of you have had any difficulty in
2 complying with my instructions during your absence
3 from the courthouse please stand.

4 The record will reflect that all jurors
5 have been able to comply with my instructions thus
6 far. As you come and go from the courtroom there
7 are no assigned seats in the jury box. You can sit
8 anywhere you would like except for the two
9 gentlemen on the back row on my right. They are
10 the alternates and they are required to sit in
11 those seats throughout the trial. Other than that
12 feel free to move about in the jury box if you
13 choose to do so.

14 I told you that on your return to the
15 courthouse and in the courtroom you would be taking
16 an oath concerning your responsibilities as jurors
17 in the trial of this case and at this time I'll ask
18 that the clerk administer that oath.

19 (Jury sworn by clerk.)

20 THE CLERK: Let the record reflect all
21 jurors seated.

22 THE COURT: Thank you. Now, ladies and
23 gentlemen, before we begin the actual trial of the
24 case I indicated to you earlier that there were
25 some matters that I wanted to go over with you.

1 The reason that I am going to do that is I suspect
2 that for most of you this is your first experience
3 in actually serving on a jury in the trial of a
4 criminal case and I think it's important that you
5 understand a little bit about the procedure that we
6 are going to follow and the roles and the
7 responsibilities that the various people that you
8 will be seeing and, of course, yourselves have in
9 the trial of this case.

10 Up until this point in time, if you've
11 never served on a jury before, I would suspect that
12 most of what you might know about what juries do
13 and their job in a courtroom you might have
14 gathered from television shows you have watched or
15 movies you have seen or perhaps books that you have
16 read. They don't teach much about jury processes
17 in school these days. I wish they taught a little
18 more civics. I think we would be all better off if
19 they did that. But at any rate, probably most of
20 what you might know you might have gathered from
21 those sources such as television or books or movies
22 and I hope you understand if you ever noticed in
23 the case of television you can have an event occur,
24 that case could be completed and handled in the
25 space of an hour and they still have time during

1 that hour to stop four or five times to try to sell
2 you something. You know, I hope you realize that
3 from that timing that perhaps they take what is
4 called literary license with what goes on in a
5 courtroom. In other words, they make the story
6 line fit the plot so it's entertaining, you will
7 watch it and so more people will be present for
8 those commercials. That's how they are able to
9 make revenue in the television business.

10 That's because those sources of
11 entertainment -- those sources of information are
12 intended for your entertainment. They are designed
13 to keep your attention and keep you watching. I
14 hope you understand that what you are involved in
15 in this trial is intended for anything but your
16 entertainment. What you are involved in is a
17 fundamental part of our democracy or our form of
18 government. If you took the time to look around
19 the world today at most of the governments in this
20 world, you would find that almost none of them
21 allow citizens to directly participate in the
22 decision-making process that goes on in the
23 courtrooms in most of those countries. In those
24 countries the decision making in courtrooms are
25 handled perhaps by government bureaucrats or

1 someone appointed to handle that, someone to whom
2 makes those decisions on a professional basis.

3 We are different. Our right to a trial
4 by jury as I indicated earlier is guaranteed in our
5 Constitution both in this state and in the United
6 States. It goes back to a document known as the
7 Magna Carta. That was signed in the year 1215 in
8 England, the first document that guaranteed
9 citizens the right to be tried by a jury of their
10 fellow citizens, their peers. And I hope you
11 understand that last year that document had its
12 800th anniversary. So it is a long system that we
13 have used that our system is based on. It goes
14 back to that document 800 years ago. And I would
15 challenge you to look around the world today and
16 see how many things that were devised by man have
17 lasted 800 years. There aren't very many things
18 that have.

19 So our system has been around a long
20 time. Some people think it's the best system or
21 the best method of deciding issues such as this. I
22 do believe that our system is one where it seeks
23 justice and that's what we are here about is to
24 provide that trials that are guaranteed by our
25 Constitution in this situation.

1 Now, the attorneys that are here to
2 represent their client's interests, they are here
3 to represent those clients and present their cases
4 to you during this trial. You can expect from them
5 that they will be professional, ethical and
6 reasonable in the presentation of those cases
7 because at some point in time they have appeared
8 before some court because they are officers of this
9 court. And they have taken an oath to assist you
10 in your search in this case and deciding the issues
11 that are before you.

12 I will remind you that you too have
13 come in front of this Court now and you have taken
14 an oath to decide this case based upon the law and
15 the evidence presented during the trial. And
16 you're expected now to act in a reasonable, a
17 professional and an ethical manner in discharging
18 your duties as jurors in this case.

19 What I am telling you now is not
20 intended to be a charge on the law. I will charge
21 you on the law at the close of the trial once all
22 the evidence is in and all the arguments have been
23 made. This is merely an explanation of the
24 procedure that we will follow and the duties that
25 we have. I earlier went over with you the

1 indictments in this case. I am not going to go
2 over those with you specifically at this point in
3 time. I will tell you, however, that the
4 indictments are the documents that bring the cases
5 into this court. They inform us of the charges to
6 be tried. They inform the Defendant of the charges
7 lodged against him, but they are simply that, they
8 are informational documents. The fact that those
9 documents have been presented to me can't be used
10 by a jury in any fashion to determine the guilt or
11 the innocence of a Defendant charged in those
12 indictments.

13 And to those indictments this Defendant
14 has plead not guilty. That plea under our system
15 of justice places the burden of proof in this case
16 solely upon the State. It is the State's
17 obligation to prove the allegations contained in
18 the indictments to you, the jury, by proof beyond a
19 reasonable doubt.

20 It will be your responsibility at the
21 close of the trial to determine whether or not the
22 State has met its burden of proof in this trial. I
23 will go over all of those concepts with you in
24 greater detail when I charge you on the law. But
25 again suffice it to say the only burden of proof in

1 this case is upon the State and that burden is to
2 prove the allegations by proof beyond a reasonable
3 doubt in this case.

4 Your purpose as jurors is to find and
5 determine the facts in this case. And I will tell
6 you that under the cases in this state the jury is
7 always the sole judge of the facts in this case.

8 I will tell you that I will be
9 presiding over the trial. It will be my
10 responsibility to perhaps rule on objections raised
11 by the attorneys either to questions or form of
12 questions or the admissibility of evidence. I will
13 ask you now not to take from anything that I do in
14 the discharge of my duties as the presiding officer
15 in this trial to somehow indicate to you in any
16 fashion whatsoever that I have an opinion as to how
17 you should determine the facts in this case.

18 You see, you're the sole judges in this
19 case so the law doesn't allow me an opinion
20 concerning the facts. I can assure you I have no
21 opinion as to how you should determine the facts in
22 this case. You are the sole judges of the facts
23 and don't take from anything that I say or do to
24 indicate to you otherwise. You are to determine
25 the facts from the testimony that you hear during

1 this trial and other evidence that comes into the
2 record of the trial through that testimony or by
3 the agreement of the lawyers.

4 I will tell you the only evidence that
5 you will hear in this case, that's what you're
6 sworn to decide this case on, is the testimony of
7 the witnesses who will be testifying before you and
8 whatever documents or other evidence goes into the
9 record through the testimony of those witnesses
10 again perhaps by agreement of the attorneys.

11 I will tell you it is very important
12 that you do your duty as determining the facts
13 diligently and conscientiously. Under our system
14 of justice ordinarily there is not a means by which
15 an erroneous determination of facts made by a jury
16 can be corrected.

17 Now, the same law that makes you the
18 sole judges of the facts makes me the sole judge of
19 the law. I will charge you on the law at the close
20 of the case. Under your oath as jurors you are
21 required to take the law exactly how I give it to
22 you and apply that law to the facts as you decide
23 those facts to be. Just as I am not allowed to
24 have an opinion or disagree with you concerning the
25 facts in this case, you are not allowed to disagree

1 with me concerning the law to be applied in this
2 case.

3 So if you came into the courtroom with
4 an idea or notion as to what the law is or maybe
5 what the law ought to be, I will ask you to leave
6 those notions outside the jury room. It is your
7 job to take the law as I give it to you and then
8 apply that law to the facts as you decide the facts
9 to be.

10 That should put you in a position to
11 complete the responsibilities that you have in this
12 case and to render a verdict under the oath that
13 you have taken as jurors in this case.

14 Now, I will tell you that during the
15 trial if there's an objection to something that's
16 being presented as evidence or to questions that
17 are being asked, and it is my belief that my
18 discussion with the lawyers about those objections
19 might lead to a discussion about some matter that I
20 believe is not admissible into the record under the
21 rules that govern the admissibility of evidence, if
22 I think that discussion is going to go into that
23 direction, I may ask you to leave the courtroom
24 while I have that discussion with the lawyers.

25 Again, don't think I am trying to

1 affect your decision as to the facts. It is simply
2 me doing my job and one of my jobs is to serve as
3 what they call a gatekeeper. I decide what goes
4 into the record and what doesn't go into the record
5 under the rules that govern those matters.

6 So again, the fact that I have asked
7 you to step outside the courtroom is just me doing
8 my job to see that you decide the case only based
9 on evidence that has been properly admitted into
10 the record under the rules that govern that.

11 Once I've completed that discussion and
12 made a decision we will bring you back to the
13 courtroom. I'll announce the decision. We will
14 proceed with the trial, but don't take anything
15 from me doing that. Again, it's just me doing my
16 job to try to see to it that you only consider
17 properly admitted evidence in reaching a verdict in
18 this case.

19 I will tell you it will be your solemn
20 responsibility to determine the guilt or the
21 innocence of the Defendant at the close of the
22 trial. Your verdict must be based solely upon the
23 evidence as it is presented to you during the trial
24 and the law as I instruct you at the close of the
25 trial. In just a moment we will start the trial.

1 I'm going to allow the solicitor to begin with an
2 opening statement to you followed by the defense's
3 opening statement. I will tell you that lawyers
4 are only allowed to directly talk to you, the jury,
5 on two occasions during the trial. Once at the
6 beginning at the trial they get to make that
7 opening statement or argument to you, then once all
8 the evidence has been presented they will be
9 allowed to make a closing argument or what
10 sometimes is referred to as a summation.

11 In other words, they will go over the
12 evidence that you have heard, they will urge you to
13 draw certain inferences from that evidence or
14 conclusions from that evidence and the closing
15 arguments. But, again, that's the only two times
16 lawyers are allowed to talk directly to you.

17 I will point out one other thing to
18 you. Statements made by lawyers during a trial,
19 those statements are not evidence. The only
20 evidence is the testimony of the witnesses that
21 comes from the witness stand. While they may serve
22 to present their client's arguments to you, or urge
23 you to draw certain conclusions, attorneys'
24 statements in and of themselves are not evidence
25 and can't be considered directly by you in

1 determining the guilt or the innocence of the
2 Defendant. That has to be decided based on the
3 evidence presented during the case.

4 Now, in being the sole judge of the
5 facts it is going to be necessary that you
6 determine whether or not the testimony that you
7 hear is believable. It will be your responsibility
8 to determine the credibility or the believability
9 of what you hear from the witness stand. And in
10 doing so I'm going to ask you to use your own good
11 common sense. You know, every single day of your
12 life you make decisions as to what you choose to
13 believe and what you choose not to believe based on
14 your own common sense and experiences. Today and
15 the following days will be no different than those
16 other days. Pay attention to what's being said.
17 Listen to what's being said. Observe how it is
18 being presented. Use your good common sense to
19 make a determination as to the credibility or the
20 believability of the testimony that you hear.

21 As the sole judges of the facts you can
22 believe all or part of or none of what any witness
23 might tell you. You have the right to believe one
24 witness against all the others, or all the others
25 against one. You're the sole judges of the facts,

1 therefore, you are the sole judges of the
2 credibility and the believability of the testimony
3 that you hear. You have the right using your good
4 common sense to make a determination as to whether
5 or not a witness has a stake in the outcome of the
6 case, whether or not a witness has a bias or
7 prejudice one way or the other, whether or not the
8 witness actually has the ability to know the facts
9 about which the witness is testifying.

10 I have been in courtrooms a long time,
11 I hate to tell you how many years, it's more than
12 40, and I have never been in a courtroom in this
13 state or any other state where the witness stand
14 wasn't right in front of the jury box. That's so
15 you can directly observe the witnesses as they
16 testify. Watch them. Pay attention to what they
17 say and how they say it. You have the right,
18 again, use good common sense to make a
19 determination as to the believability or the
20 credibility of what you hear from any given
21 witness. You have the right to analyze that
22 evidence. You have the right to determine the
23 effect, the value and the weight of the testimony
24 that you hear. At the close of the trial we will
25 discuss that process of weighing the evidence in

1 making a determination in this case.

2 You as a jury member have the right to
3 consider anything that is in the record of the case
4 that might help you evaluate the testimony that you
5 hear during this trial. So pay close attention.
6 Try not to let your thoughts wander as the trials
7 moves along.

8 Now, I do something a little different
9 than they do on television. I do not appoint a
10 foreperson of the jury until such time as I give
11 you my charge on the law. That's at the end of the
12 trial. I do that for one reason primarily. I want
13 you to understand that when I turn the case over to
14 the jury your verdict has to be unanimous. All of
15 you must agree on a verdict before the jury has
16 reached a verdict. So no one juror is more
17 important than any other juror.

18 I have always had a concern that if I
19 appoint one person as the juror other people on the
20 jury will say well, that must be the smartest
21 juror. I will let them pay attention. I will go
22 along with whatever they say. I don't want that to
23 happen. I want each of you to believe that you
24 might be the foreperson, you might have to lead the
25 discussions in the jury at the close of the trial.

1 And I want you to pay attention as if you are going
2 to be in that position at the close of the trial
3 because one of you will. So I will make that
4 appointment at the close of the trial once all the
5 evidence has been presented in the case and all the
6 arguments have been made.

7 So until that time if there is any
8 problem on the jury, if there is something you
9 think needs to be reported to me, just let the
10 bailiffs know directly. They will get that
11 information to me and I will deal directly with you
12 concerning that. I don't think I have forgotten to
13 appoint a foreperson. I haven't. I have been
14 doing it this way as long as I have been on the
15 bench and I will continue to do it that way. I
16 appoint that person at the close of the trial, not
17 at the beginning of the trial.

18 Now, I want to be sure that I haven't
19 violated anyone's rights in any opening comments to
20 you. Does the State have any objection to my
21 opening statements?

22 MS. HERRING-LASH: No, Your Honor.

23 THE COURT: Any from the defense?

24 MR. COCHRAN: No, Your Honor.

25 THE COURT: All right. Now, ladies and

1 gentlemen, I indicated to you that the State has
2 the only burden of proof in this case. For that
3 reason the State is allowed to go first in its
4 arguments to you, followed by the defense, then the
5 State will go first in the presentation of its
6 evidence and that will be followed by any evidence
7 the defense chooses to put up.

8 Once all the evidence has been
9 presented to you the lawyers will again get a
10 chance to talk directly to you. They will sum up
11 that evidence in their closing arguments. Once
12 those arguments are completed I will charge you on
13 the law. Once I have completed that charge I will
14 turn the case over to you for your deliberations.

15 So we are going to go opening
16 arguments, presentation of evidence, closing
17 argument, charge on the law, then the case is yours
18 for your deliberations and your verdict. That's
19 the process we will go through. So at this time we
20 will begin the case with the opening statement by
21 the State. You may proceed.

22 MR. POULOS: Thank you, Your Honor.
23 Good afternoon. Younger Sister and Older Sister
24 are sisters. Like most sisters they share a bond.
25 Grew up together. They love each other.

1 Tragically they share something else as well.

2 You will hear from April of 2009
3 through May of 2011 the Defendant, Brian Daugherty,
4 continuously and repeatedly sexually abused these
5 girls. Now, you'll hear that Older Sister and Younger Sister
6 spent most of their childhood in a two bedroom
7 apartment. They lived with their mother, Lisa, and
8 grandmother Rhonda, Aunt Ashley, little sister
9 M.H. and some other folks off and on and with
10 the Defendant.

11 You will hear that the mother moved
12 into the apartment back in 2001. Older Sister was two
13 years old. Younger Sister wasn't born yet. So they
14 basically grew up in that home. You will also hear
15 that around 2008 Ashley met the Defendant. Soon
16 after moved into the house. You will hear that he
17 was kind of quiet, spent a lot of time in his room.

18 You will hear that come April 2009
19 everything changed for Younger Sister and Older Sister. That's
20 when the sexual abuse started. Now, Older Sister and
21 Younger Sister will tell you all the ways that the
22 Defendant abused them. And I'm going to let them
23 give you the details of all the instances. It is
24 important that you hear it from them first. You
25 will meet them here in just a few minutes. Folks,

1 this is not a CSI case. It took these girls years
2 to muster the courage to finally come forward. You
3 will not hear about DNA. This is a case about
4 credibility. So please listen to the details,
5 listen to the sincerity in their voice, listen to
6 the way it all finally came out about in 2015.
7 Without planning, without motive.

8 Generally the girls will tell you about
9 a pattern of abuse that included groping, nudity,
10 grinding, fellatio, cunnilingus, digital
11 penetration, and even an attempt at intercourse.
12 As they tell you, again listen closely. Listen to
13 the details. You'll hear how it happened at the
14 house. You'll hear how it happened in the car.
15 And you will hear that the Defendant always wanted
16 one of these two girls to go with him in the car
17 whenever he went. Couldn't go somewhere without
18 **Older Sister** or **Younger Sister**. You will hear how there were
19 times when every adult in the house was either at
20 work, visiting friends, running errands or asleep.
21 There were times that the only people in the house
22 were the Defendant and these girls.

23 Now, the defense will have an
24 opportunity to come up here and talk as well. I
25 expect them to say a few things. They could tell

1 you these girls are making it up, they could tell
2 you there were too many people living in the house
3 for it to happen. As to why it took so long to
4 come forward they could say somebody else did it.
5 True, it was a crowded house. There were times,
6 numerous times, when only the Defendant and the
7 girls were there. It is true, yes, four years
8 passed from the time the abuse stopped until the
9 time they finally came forward. You will hear an
10 expert tell you that's not uncommon. You will hear
11 they were afraid. They felt ashamed. They thought
12 they might get in trouble.

13 You will hear when the defense asks you
14 to consider if they are making it up, again, listen
15 to the way they tell you what happened. Listen to
16 the sincerity in their voice and ask yourself what
17 possible motive could they have to make this up?
18 Why would they make this up? It doesn't make
19 sense.

20 Ask yourself what does make sense. The
21 evidence will show you that the Defendant abused
22 them. The girls will tell you without a shadow of
23 a doubt they know who it was, it was this man
24 sitting right here. Once you have heard all the
25 facts, it is time to apply it to the law. The law

1 in this case which the judge will instruct you on
2 in detail, but we are going to go over it a little
3 bit now. First, criminal sexual conduct with a
4 minor in the first degree. A person is guilty of
5 this offense if they engage in a sexual battery
6 with a victim who is less than 11 years of age.
7 You will hear that Younger Sister was less than
8 11 the entire time the abuse was going on. You
9 will hear that Older Sister was less than 11 when it
10 started.

11 Criminal sexual conduct with a minor in
12 the second degree. A person is guilty of this
13 offense if they engage in a sexual battery with a
14 victim who is less than -- 14 or less, who was at
15 least 11. That applies to Older Sister when she turned
16 11 during the course of this abuse.

17 Both these charges deal with a sexual
18 battery. So what is a sexual battery. In this
19 state could be sexual intercourse, cunnilingus,
20 fellatio, intercourse or any intrusion, however
21 slight, of any part of a person's body or any
22 object into their genital or anal openings of
23 another person's body except for medical diagnosis.
24 Any intrusion, however slight. Lastly, we have a
25 lewd act upon a minor. It is unlawful for a person

1 over the age of 14 to willfully and lewdly comit or
2 attempt a lewd or lascivious act upon the body or
3 its part of a child under the age of 16 with the
4 intent of arousing, appealing to or gratifying the
5 lust or passion or sexual desires of the person or
6 child.

7 The evidence will be clear the sexual
8 abuse was sexually motivated. The victims are well
9 under 16. You will hear the Defendant was in his
10 30s. Once you have the law and you have the facts
11 you have to make your determination, and as I said,
12 this case comes down to credibility.

13 There is also corroboration. It's not
14 a CSI case, but there is corroboration. Younger
Sister and
15 Older Sister will both tell you the abuse happened around
16 the same period of time, same apartment, same car.
17 That's corroboration. You will hear from Z. R.
18 . She will tell you that in middle school
19 Older Sister confided to her that she had been sexually
20 abused. That's corroboration. You will hear from
21 L. B. who will tell you that Younger Sister confided
22 in him, this is years before they both finally came
23 out to their mother. She told him that she had
24 been sexually abused. That's corroboration. The
25 mother Lisa and her fiance Bensen will tell you,

1 yeah, the Defendant always wanted to take these
2 girls in the car. He was always the first to
3 volunteer to walk them to the pool, and that will
4 corroborate the times and the places that the girls
5 talk will about. You will also hear about a laptop
6 computer the Defendant used. You will hear there
7 was pornography on the computer. While that's not
8 a crime, it is corroboration of what the girls tell
9 you that the Defendant would make them watch
10 pornography as if to show them what he wanted them
11 to do. The only way these two girls could know
12 that there was pornography on a computer that their
13 Aunt Ashley shared with Mr. Daugherty is if they
14 saw it with their own two eyes. We have that
15 computer. You will hear about it. If that's true,
16 ladies and gentlemen, that's corroboration.

17 This case is about two girls coming
18 into court to tell a group of complete strangers
19 about what horrible things that happened to them.
20 At the end of this trial I will ask that you hold
21 Mr. Daugherty accountable and find him guilty.

22 THE COURT: You may proceed.

23 MS. BIRT: May it please the Court.

24 THE COURT: Yes, ma'am.

25 MS. BIRT: Good afternoon. As all of

1 you can already tell, the subject matter today at
2 trial and the trial over the next couple of days is
3 not an easy one. It is not a topic that we enjoy
4 talking about. That we enjoy listening to. It's
5 not easy to stomach. It's also a topic you can
6 tell from just reading the law itself that makes us
7 -- that invokes emotions in us. All of us. In
8 different ways. Some rage, some disbelief, some
9 sadness. I want you to know that that's okay.
10 That happens. But what's important today is that
11 as uncomfortable as this might be over the next few
12 days to sit here and listen, to sit here and
13 consider the testimony and evidence, that you do
14 that very thing, that you keep an open mind and
15 listen, consider and use your common sense.

16 This is vitally important not just to
17 our justice system, as the judge has talked to you
18 about earlier this afternoon, but it's vitally
19 important to Mr. Brian Daugherty who sits here at
20 counsel table as he will for the next few days
21 accused of these crimes.

22 Now, Mr. Poulos went through the story
23 that you are going to hear today. I won't go
24 through that again. What I do want to do is give
25 you a few lenses to consider when you are looking

1 at the different pieces of evidence and when you
2 are listening to the various individuals come
3 testify. And that is one, the lack of any DNA or
4 physical evidence. Mr. Poulos alluded to that.
5 But I want you to really consider why not? Why
6 won't you see it? Why won't any of that be before
7 you? I want you to consider who saw or heard any
8 of this abuse taking place? We believe the
9 evidence will show that no one saw it or heard it
10 other than the individuals who are claiming that it
11 happened to them. Finally I want you to think
12 about the story that you are going to be asked to
13 believe as well.

14 Where this happened, small apartment,
15 five adults, three kids, the time of the year it
16 happened, people were working, kids were in school,
17 how no one heard about this, no one talked about
18 it, how no one noticed anything was different. For
19 years. Think about that as you listen to the
20 testimony and review the evidence.

21 Now, I'm going to be honest with you.
22 I am not going to stand here and tell you this is
23 why this happened. I don't do that. We believe
24 the evidence after you hear it will indicate that
25 to you and that you will be able to tell.

1 But, ladies and gentlemen, it is not
2 your job to determine why. You may want to, that
3 may be the sense of justice you feel like you need
4 to serve, but that is not the case. Your job is to
5 listen to the facts and evidence, apply it to the
6 law as the judge gives it to you and come to a
7 determination.

8 Now, one thing the judge did discuss
9 with you during jury qualification was the
10 presumption of innocence and I want to briefly
11 touch on this because it's incredibly important,
12 again another lens that I think you need to have
13 before listening to all the testimony today,
14 tomorrow and the next day. That presumption of
15 innocence means that Brian sits here with the
16 assumption fully covered that he is innocent.

17 He does not have to prove anything. He
18 doesn't have to put up any testimony, doesn't have
19 to put up any evidence. He doesn't have to explain
20 why this may or may not have happened. Why he was
21 or was not there. Why he is or is not innocent.
22 He does not have to do any of that. You must give
23 him the presumption that he starts and ends
24 innocent unless the State proves their burden
25 beyond a reasonable doubt by every single element

1 of the crime.

2 So today is not about assigning blame.
3 Today is not about you seeking justice that maybe
4 you feel sorry for. Maybe you feel guilty for
5 something you hear today. Today is about you using
6 your common sense as the judge discussed, listening
7 to the evidence and testimony that comes from this
8 witness stand and applying it to the law as the
9 judge gives it to you. We believe as you do that
10 throughout the next couple of days that you will
11 see through the evidence that Mr. Daugherty is
12 sitting here wrongly accused and that he is not
13 guilty. Thank you.

14 THE COURT: State may call its first
15 witness.

16 MS. HERRING-LASH: State would call
17 Younger Sister

18 Younger Sister
19 having been duly sworn, testifies as follows:

20 THE CLERK: Please state your full
21 name.

22 THE WITNESS: Younger Sister

23 THE COURT: Thank you. Counselor, your
24 witness.

25 DIRECT EXAMINATION

1 BY MS. HERRING-LASH:

2 Q. Younger
Sister what is your date of birth?

3 A. [REDACTED].

4 Q. And where do you live now? Speak up.

5 A. The street or address?

6 Q. Either one. You can just say the city.

7 A. Goose Creek.

8 Q. And where do you go to school?

9 A. I am home schooled.

10 Q. And how long have you been home
11 schooled?

12 A. Just this year.

13 Q. Did you have some issues at school with
14 anger?

15 A. Yes, ma'am.

16 Q. And is that why you had to be home
17 schooled?

18 A. Yes, ma'am.

19 Q. Did you get in fights at school?

20 A. Yes, ma'am.

21 Q. Was there anything that you liked about
22 school when you were going to school?

23 A. Friends.

24 Q. What do you like to do for fun?

25 A. Nothing really, just sit home.

1 Q. What do you do?

2 A. Play on my phone.

3 Q. You like to listen to music?

4 A. Yes.

5 Q. I know you are nervous. Just take some
6 breaths, okay? Now, how long have you lived in
7 Goose Creek?

8 A. For about almost five years.

9 Q. And in your home now do you share a
10 room with anybody?

11 A. Yes.

12 Q. Who?

13 A. My sister M.H. .

14 Q. And how old is M.H.

15 A. Twelve.

16 Q. And what about do you have any other
17 sisters?

18 A. Yes.

19 Q. Whose that?

20 A. Older
Sister .

21 Q. And how old is Older
Sister ?

22 A. Eighteen.

23 Q. And who else lives in the house with
24 you now?

25 A. My mom and my stepdad.

1 Q. And what grade were you in if you
2 remember when you moved to Goose Creek?

3 A. I think third or second grade, second
4 grade.

5 Q. Before that where did you live?

6 A. North Charleston.

7 Q. Do you remember the name of the -- was
8 it an apartment or a home or --

9 A. Apartment.

10 Q. Do you remember the name of the
11 apartment?

12 A. No.

13 Q. When you lived there who lived with
14 you?

15 A. My grandma.

16 Q. What's her name?

17 A. Rhonda and my Aunt Ashley and Brian.

18 Q. And who is Brian?

19 A. The guy over there with the red.

20 MS. HERRING-LASH: Let the record
21 reflect that the witness has identified the
22 Defendant.

23 THE COURT: The record shall so
24 reflect. You may proceed.

25 BY MS. HERRING-LASH:

1 Q. How was it that Brian lived there?
2 What relation did he have to live there?

3 A. He was my aunt or he's my aunt's
4 boyfriend.

5 Q. Who else lived there?

6 A. Nobody.

7 Q. What about you and your mom?

8 A. Oh, yeah, me and my mom and my stepdad
9 occasionally.

10 Q. And do you remember when you first
11 moved in there?

12 A. I was like -- I have always lived there
13 since a baby.

14 Q. You were born when your mom lived
15 there?

16 A. Yes.

17 Q. And in that apartment what were the
18 sleeping arrangements like?

19 A. Me and my sister Older Sister and my grandma
20 would sleep in my grandma's room and Ashley and
21 Brian would sleep in Ashley's room and my little
22 sister M. H. and mom would sleep in the living
23 room.

24 Q. And sometimes would Brian's children
25 visit?

1 A. Yes.

2 Q. How often did they visit?

3 A. Every other weekend.

4 Q. And where would they stay?

5 A. In the living room.

6 Q. And the adults that were there, did

7 they work?

8 A. Yes.

9 Q. And who worked where, if you remember?

10 A. Ashley worked at Cato and my grandma

11 didn't work. My mom --

12 Q. Did your grandmother ever work?

13 A. Yes.

14 Q. Where did she work when she worked?

15 A. The Radisson.

16 Q. The Radisson hotel?

17 A. Hotel, yes.

18 Q. What about your mom?

19 A. She worked in -- she got a job when I

20 was in first grade. She worked at the UPS store.

21 Q. Where was this UPS store?

22 A. In Mt. Pleasant.

23 Q. What about Brian?

24 A. He had a lot of different jobs, like I

25 don't know where.

1 Q. He did work some?

2 A. Yes.

3 Q. And how many bedrooms were in that
4 apartment?

5 A. Two.

6 Q. I don't know if you told us. I'm going
7 to show you what has been marked as State's Exhibit
8 No. 1. Do you recognize this?

9 A. Yes.

10 Q. What is that?

11 A. That's the old apartment.

12 Q. Okay. I think when you touch something
13 to this board it makes a mark so you can erase it.

14 A. (Witness complies with request.)

15 Q. Do you have any objection to this?

16 MS. BIRT: No objection.

17 MS. HERRING-LASH: Your Honor, without
18 objection we will move State's Exhibit No. 1 into
19 evidence.

20 THE COURT: Without objection it will
21 be admitted as the exhibit. You may
22 proceed.

23 (STATE'S EXH. 1 in evidence.)

24 BY MS. HERRING-LASH:

25 Q. Where is your grandmother's room? You

1 can just point.

2 A. (Witness complies with request.)

3 Q. Can you touch it? There. What about
4 Ashley's room?

5 A. (Witness complies with request.)

6 Q. What is that hallway, the one to the
7 left of Ashley's room?

8 A. What do you mean? What is it?

9 Q. The one that's in white with the gray
10 writing, what is that?

11 A. I don't --

12 Q. Is that outside like leaving?

13 A. Yeah, that's outside.

14 Q. Because that door is the outside door;
15 is that right?

16 A. Yeah.

17 Q. And so there are two bathrooms there
18 also, right?

19 A. Yes.

20 Q. And you said you were born there; is
21 that right?

22 A. Yeah.

23 Q. While were you living there, **Younger**
24 did there come a time that something happened to
25 you? **Sister**

1 A. Yes.

2 Q. Can you tell the jury about that, about
3 the first time you remember?

4 A. I was sexually abused by Brian.

5 Q. Tell us about the first time you
6 remember.

7 A. I was at the pool and he called us or
8 he asked if anybody wanted lunch. So I went home
9 and started making food and then he went to his
10 bedroom and he called me in there.

11 Q. Was that the same as Ashley's bedroom?

12 A. Yes. And -- so...

13 Q. Take a deep breath.

14 A. (Crying.) And he was on the computer
15 and he was -- he said that he had show to me
16 something. So he pulled up porn and he asked, he
17 was like do you want to do what they are doing on
18 the video, which was sexual things of course. And
19 I told him no, because I thought that it looked
20 weird. Like I didn't specifically know what it
21 was, but I thought that it looked weird. (Crying.)

22 Q. Did you even call it or know what porn
23 was at that point?

24 A. No.

25 Q. You know that now.

1 A. And he just pretty much told me that I
2 didn't have a choice and that I had to do what was
3 on the video.

4 Q. Where were you?

5 A. As I was doing it? He was standing --
6 well, first he slammed me, like he told me to get
7 on the bed. And then he got on top of me and he
8 started touching my vagina and -- and he tried to
9 put his penis into my vagina. But then he said it
10 was too big and so then he told me to get up. And
11 then he made me put my mouth on his penis.

12 Q. When you were on the bed in the very
13 beginning did you have clothes on or --

14 A. When he started touching my vagina my
15 pants were down, but my shirt was up.

16 Q. Do you remember how your pants got
17 down?

18 A. He pulled them down.

19 Q. Were they off or on or down?

20 A. They were like around my ankles -- I
21 mean ankles.

22 Q. What about his clothes?

23 A. His pants were to his knees.

24 Q. And when he was -- at the beginning you
25 said you were laying?

1 A. Yes.

2 Q. How were you laying?

3 A. I was laying on the bed, just flat
4 laying on the bed.

5 Q. On your back or stomach?

6 A. On my back.

7 Q. What about him?

8 A. He was on top of me.

9 Q. Was he laying?

10 A. No.

11 Q. What was --

12 A. He was like -- he was like on -- like
13 he was like on his knees kind of pushing against
14 me.

15 Q. And then you said something happened
16 after that. How was that?

17 A. He told me to get up. And then he was
18 -- his back was against the room, Ashley's door.
19 And he made me put my mouth on his penis.

20 Q. And where were you when that happened?

21 A. I was in front of him.

22 Q. Were you standing there or what?

23 A. No, I was like on my knees.

24 Q. And what happened after that?

25 A. He told me to get up and get out.

1 Q. Where did you go?

2 A. I got my food and I went back to the
3 pool.

4 Q. And did you tell anybody at the pool?

5 A. No.

6 Q. And why not?

7 A. Because he told me that if I ever told
8 anybody that he would hurt me.

9 Q. And did something like that ever happen
10 again?

11 A. Yes.

12 Q. Tell us about another time that you
13 remember.

14 A. (Crying.) He told me that he was going
15 to go pick up my aunt, my Aunt Ashley. And so I
16 rode in the car and he made me -- we were like
17 halfway there and then he made me watch porn on his
18 phone and he started touching my vagina.

19 Q. Were your clothes on or off?

20 A. They were on. His hand was in my
21 pants.

22 Q. Was that in the car?

23 A. In the car. I was in the front seat.

24 Q. And did you pick up your aunt?

25 A. We did. And then but like right before

1 we got there he took his phone away and he stopped.

2 Q. And did something happen another time?

3 A. We were -- he told me that he was going
4 to take me to the flea market and so my grandmother
5 gave me some money and we went. And we went to the
6 flea market at first and then we went to the mall
7 and on the way home in the car like how he did on
8 the way to my aunt he made me watch porn on his
9 phone and he touched my vagina with his hands in my
10 pants.

11 Q. What did you do at the mall before
12 going to the flea market, do you remember?

13 A. We went to the flea market and then the
14 mall and we got food.

15 Q. And where was it that he touched you?
16 Where were you?

17 A. I was in the front seat of the car.

18 Q. Do you know where y'all were?

19 A. Like on the road where we -- we were
20 like almost home.

21 Q. Were you driving?

22 A. Yeah.

23 Q. Okay. And do you know what kind of car
24 he had?

25 A. At that time they had --

1 Q. You may not remember.

2 A. I don't remember.

3 Q. Was it a car or SUV or do you remember?

4 A. A car.

5 Q. And did anything else happen?

6 A. Like another time?

7 Q. Another time, um-hmm.

8 A. There was multiple, but I don't
9 remember specifically.

10 Q. Let me ask you about when you said he
11 touched you. Can you explain what you mean by
12 touching?

13 A. He was putting his finger inside my
14 vagina.

15 Q. And where were you when that happened?

16 A. There were multiple times.

17 Q. Where are some of the places that you
18 were?

19 A. Like those times in the car, and the
20 first time he done something to me. It would
21 usually be in Ashley's room.

22 Q. When that happened where would the
23 other people in your family be?

24 A. My grandmother would be either at the
25 pool if it was during summertime or next door with

1 my neighbor Ms. Helen.

2 Q. I'm going to show her this.

3 MS. HERRING-LASH: Your Honor, may I
4 approach the witness?

5 THE COURT: You may.

6 BY MS. HERRING-LASH:

7 Q. I'm going to show you what has been
8 previously marked as State's Exhibits No. 2, 3, and
9 4. Do you remember or recognize what these
10 pictures are?

11 A. This is the old apartment where the
12 stuff happened to me.

13 Q. Okay.

14 MS. HERRING-LASH: At this time I would
15 move into evidence State's Exhibit 2, 3 and 4.

16 THE COURT: Any objection?

17 MS. BIRT: No objection.

18 THE COURT: Without objection they will
19 be admitted as they have been marked. You may
20 proceed.

21 (STATE'S EXH. 2-4 in evidence.)

22 BY MS. HERRING-LASH:

23 Q. Where is your apartment in this
24 picture? It is there?

25 A. Was right there.

1 Q. And you said you sometimes would be at
2 the pool?

3 A. Yes.

4 Q. Let me show you -- that was State's
5 Exhibit No. 2. Let me show you State's Exhibit
6 No. 3. If that's taken like from your apartment
7 what can you see there?

8 A. That is the gate to the pool and that's
9 the tennis court.

10 Q. The tennis court at the pool?

11 A. Um-hmm.

12 Q. I will show you what has been admitted
13 as State's Exhibit No. 4. What is that?

14 A. That's the gate to the pool. That's
15 just all -- that's the pool.

16 Q. So let's go back to State's Exhibit
17 No. 3, **Younger Sister**, and you see this truck in that
18 picture?

19 A. Yes.

20 Q. And is that the same truck that is
21 shown in State's Exhibit No. 2 right here?

22 A. The truck?

23 Q. Um-hmm. Is that the truck right there
24 that's in this picture? I just want the jury to
25 understand where the pool is in relation to your

1 apartment.

2 A. Yes.

3 Q. So y'all lived really close to the
4 pool, didn't you?

5 A. Yes.

6 Q. Did y'all there stay there a lot?

7 A. Yes.

8 Q. Now, you said that on some occasions
9 your family would be at the pool. Where would they
10 be other times?

11 A. May grandma she -- when this stuff
12 happened she would either be sleeping or next door
13 and my mom would be with -- she would be at work.

14 Q. Would anybody else ever be home besides
15 you if your grandmother was sleeping?

16 A. No.

17 Q. What about your sisters? Would they
18 ever be there?

19 A. They would be in the backyard if they
20 were weren't at the pool.

21 Q. Was there ever a time when you were
22 touched any other place or with any part of his
23 body?

24 A. He would touch my breasts and just my
25 breasts and my vagina.

1 Q. Did he ever kiss you on your mouth?

2 A. Yes.

3 Q. Or kiss you anywhere?

4 A. Yes.

5 Q. Tell the jury about that.

6 A. He -- he would put his mouth on my

7 vagina.

8 Q. Tell us about that.

9 A. What do you mean?

10 Q. Where were you and what happened.

11 A. It would usually be in Ashley's room

12 and I would be on the bed.

13 Q. Where on the bed would you be?

14 A. I would be on the -- I would be on my

15 back near the end of the bed.

16 Q. And where would he be?

17 A. Near the end of the bed on like his

18 knees on the floor.

19 Q. What about your legs?

20 A. They would be either just spread open

21 or over his shoulders.

22 Q. Over what?

23 A. His shoulders.

24 Q. Did that happen one time or more than

25 one time?

1 A. More than one time.

2 Q. Do you have an idea about how many
3 times these things happened?

4 A. It happened from when I was six to when
5 I was eight years old so I don't know specifically
6 how many times.

7 Q. Was it every day, or not?

8 A. No.

9 Q. Was it every couple of months or so or
10 do you know?

11 A. Just -- it would be like just whenever
12 he felt like it.

13 Q. And how many times did you see
14 pornography?

15 A. Every time he would do it.

16 Q. Can you tell the jury what do you
17 remember any specific things that you saw?

18 A. It was -- it would be there was this
19 one where it was a girl that was acting like a
20 teenager.

21 Q. Like what?

22 A. A teenager. And it was two boys that
23 were supposed to be acting like teenagers too and
24 it was a man that was acting like a teacher because
25 they were supposed to be in school.

1 Q. Where?

2 A. At school.

3 Q. And what did they do?

4 A. The girl was -- the girl was putting
5 her mouth on the guy's penis and they were putting
6 their penis into her vagina.

7 Q. And was that what most of the things
8 you saw were about?

9 A. Yes.

10 Q. And you said that that went on when you
11 were -- what time period?

12 A. I was -- it was -- I was six years old
13 to when I was eight years old.

14 Q. Okay. I'm going to show you what has
15 been previously marked as State's Exhibit No. 8, 9
16 and 10. May I approach the witness?

17 THE COURT: You may..

18 BY MS. HERRING-LASH:

19 Q. Can you look at these pictures and just
20 see if you recognize -- is that you?

21 A. Yes.

22 Q. Where are you?

23 A. I was in the living room.

24 Q. Of the apartment?

25 A. Yes.

1 Q. And what about the next one?

2 A. I was outside of the apartment.

3 Q. Can you look at the back of that one
4 you are talking about and see what the number is?

5 A. Nine.

6 Q. Okay. And what's the next one?

7 A. My aunt.

8 Q. Was that at the apartment?

9 A. Yes.

10 MS. HERRING-LASH: Your Honor, at this
11 time I would offer into evidence State's
12 Exhibits 8, 9 and 10.

13 MS. BIRT: Your Honor, we object to
14 relevance and 403. Your Honor, if I may be heard.
15 I think the photographs would corroborate facts
16 that have already been established through
17 testimony. It would be duplicative as well.

18 THE COURT: Ma'am?

19 MS. HERRING-LASH: Your Honor, I think
20 those are pictures of the victim during the time
21 frame that she has alleged and in the place where
22 she has alleged and it would be more corroborative
23 than cumulative.

24 THE COURT: All right. I will overrule
25 the objection. I will allow them in. You may

1 publish.

2 (STATE'S EXH. 8-10 in evidence.)

3 BY MS. HERRING-LASH:

4 Q. First I will show you what is State's
5 Exhibit No. 9. You said that was where?

6 A. The outside of the apartment.

7 Q. What are you dressed up for?

8 A. Halloween.

9 Q. That was Halloween of 2010?

10 A. Yes.

11 Q. I'm going to show you what is State's
12 Exhibit No. 8. Where are you there?

13 A. I was in the living room of the
14 apartment.

15 Q. State's Exhibit No. 10? Who was that
16 with you?

17 A. My Aunt Ashley.

18 Q. Where was that taken?

19 A. The living room of the apartment.

20 Q. Before you told -- who did you tell
21 that caused the case to come to court?

22 A. My stepdad Ben.

23 Q. Before you told Ben had you ever told
24 anyone else?

25 A. I told my friend L.B. .

1 Q. When did you tell -- pardon me?

2 A. I said it was my friend L.B. .

3 Q. And when did you tell L.B. ?

4 A. In fifth going to sixth grade, like the
5 summer.

6 Q. Where were you living when you told
7 L.B. ?

8 A. Goose Creek.

9 Q. Is Goose Creek different than the
10 apartment where this happened?

11 A. Yes.

12 Q. And when you moved out of the apartment
13 where this happened, did you continue to go back?

14 A. Yes.

15 Q. And what were some of the reasons you
16 went back?

17 A. Because my aunt was like a mother
18 figure to me.

19 Q. Were you close to her?

20 A. Yes.

21 Q. Did your grandmother also babysit for
22 you after school there?

23 A. Yes.

24 Q. And so you would go there after school?

25 A. Yes.

1 Q. Would you go there on weekends too?

2 A. Yes.

3 Q. And you told the jury this happened,
4 but then you continued to go places with Brian.
5 Why did you continue to go off with him?

6 A. Like after we moved out?

7 Q. No. When you were still living there.

8 A. Because he would tell me that he was
9 going to give me stuff if I went with him and I was
10 really -- I was scared and I wanted to get, you
11 know, like food and stuff, toys and stuff.

12 Q. And he would tell you that?

13 A. Yes.

14 Q. What were you scared of?

15 A. Him.

16 Q. And when you told L.B. were you scared
17 of Brian then?

18 A. Yes.

19 Q. Did L.B. tell anybody?

20 A. He said that he would have to tell his
21 parents, but then I told him I was just kidding.

22 Q. So you didn't want him to tell?

23 A. No.

24 Q. Now, tell how this came out. How did
25 you end up talking about this?

1 A. We were in my backyard and we were
2 telling other each secrets and stuff and he told me
3 something and so I felt that I needed to tell him
4 something secret.

5 Q. And what about when it came out and the
6 police were called? What happened then?

7 A. The police were called about two times.

8 Q. What about with you? Was it 2015 when
9 you first told your mother?

10 A. Yes.

11 Q. And Ben?

12 A. Yes.

13 Q. And tell us about that.

14 A. I told -- Ben was talking to us about
15 how we need to be more open to each other, not
16 open, but we need to act like sisters and not
17 enemies. So I told -- I went into my room after he
18 was done talking to us and my sister's room and I
19 told her what Brian had done to me. And she
20 started crying and she said we had to tell someone.
21 So we -- Ben heard us crying and so we just called
22 him into the room and we told him. And he left the
23 room and he called my mom into the room next and he
24 told her.

25 Q. And you said a moment ago the police

1 had been called twice. When was the first time
2 about?

3 A. My sister Older Sister was texting her friend
4 and she told her friend that it happened to her.

5 Q. Now, back when the police came that
6 time did you know about that back then when it
7 happened?

8 A. No.

9 Q. When did you find out about that?

10 A. I wasn't -- I think it was like on the
11 weekend one day. So I wasn't at home. I was at my
12 grandma's house and I found out about that way
13 later on when we told.

14 Q. Told the law enforcement?

15 A. Yes.

16 Q. So you didn't know about that until
17 2015?

18 A. Yes.

19 Q. And in 2015 after you told your mom who
20 did you have to tell after that?

21 A. I had to go to Dorchester Childrens
22 Center.

23 Q. Did they do an interview at that point
24 in time?

25 A. Yes.

1 Q. And that time when they did that
2 interview was the first time you had ever talked
3 about the details to anybody?

4 A. Yes.

5 MS. HERRING-LASH: Court's indulgence
6 for one moment.

7 (Off-the-record conference.)

8 BY MS. HERRING-LASH:

9 Q. When you were saying that night that
10 you started crying and told Older Sister, did Older Sister
11 tell you?

12 A. Yes.

13 Q. Had you known about that before Older Sister
14 told you that?

15 A. No.

16 Q. How do you feel that you talked about
17 this, Younger Sister?

18 A. I don't -- I feel -- relief, but
19 scared.

20 Q. What is scary?

21 A. Having to do this.

22 Q. And it's a relief. What is relief?

23 A. Like letting people know that -- what
24 was going on.

25 MS. HERRING-LASH: I don't have any

1 other questions, Younger
Sister . If you would answer any
2 that the defense has.

3 THE COURT: Your witness, counselor.

4 CROSS-EXAMINATION

5 BY MS. BIRT:

6 Q. Thank you, Your Honor. Hi, Younger
Sister . My
7 name is Jessica. As you know I represent Brian. I
8 am going to ask you a few questions today. I don't
9 want to make this any harder than it has to be. I
10 know you said you are scared so if you're curious
11 or don't know what I am trying to ask you please
12 let me know. Okay. All right. Younger
Sister , before
13 coming here today you met with a few people, right?

14 A. Yes.

15 Q. You met with Ms. Herring-Lash?

16 A. Yes.

17 Q. Did you also meet with someone in her
18 office who was an investigator?

19 A. Yes.

20 Q. And when you met with those people you
21 had your mom there?

22 A. Yes.

23 Q. You also said you met with some
24 therapists, right?

25 A. Yes.

1 Q. Before today you have never met me,
2 have you?

3 A. No.

4 Q. You have never met Mr. Cochran sitting
5 here with the red tie?

6 A. No.

7 Q. That was a no?

8 A. No.

9 Q. I want to ask you just a few questions
10 about the apartment. This is State's Exhibit 1
11 that Ms. Herring-Lash showed you a minute ago. You
12 know from before when you touch the screen you can
13 draw on it so I'm going to ask you to draw a few
14 places on purpose this time, okay?

15 A. Okay.

16 Q. Now, in that pink box that says
17 Ashley's room, who stayed in that room with you or
18 who stayed in that room in that apartment?

19 A. Ashley and Brian.

20 Q. Okay. You remember what that room
21 looked like, right?

22 A. Yes.

23 Q. All right. With just a square can you
24 draw in the little pink box where the bed was with
25 a square.

1 A. (Witness complies with request.)

2 Q. You have drawn that box just next to
3 the door to the room, right?

4 A. Yes.

5 Q. What other furniture was in the room?

6 A. There was a -- there was a shelf right
7 here.

8 Q. That's toward the back window of the
9 room?

10 A. Yes.

11 Q. Okay.

12 A. And this was a computer and a desk
13 right here.

14 Q. That circle you have drawn is kind of
15 on the side left wall next to that open hall you
16 said was outside, right?

17 A. It is next to the closet.

18 Q. So when you walked in that door the
19 first thing you saw straight ahead of you would
20 have been the desk, right?

21 A. Yes.

22 Q. And when you walked through the door
23 the first thing on the left would have been the
24 bed?

25 A. Yes.

1 Q. How far would you say the bed is from
2 that door, do you remember?

3 A. A couple of inches from the door.

4 Q. Younger Sister in that photo you indicated
5 that you and your sister Older Sister and your grandma
6 always stayed in the same room?

7 A. Yes.

8 Q. And that was in that blue box at the
9 bottom of the layout?

10 A. Yes.

11 Q. That's where all your things were
12 stored, right? That's where you and Older Sister
13 things were stored?

14 A. Yes.

15 Q. So in order for either of you to go get
16 things out of your room you would have to walk down
17 that hallway to get to that room, right?

18 A. From the living room down the hallway,
19 yes.

20 Q. From the living room you would have to
21 walk down the hallway. And to do that you have to
22 walk past the door to Ashley and Brian's room?

23 A. Yes.

24 Q. I want to make sure I have this right
25 too. You said that when you used to live at this

1 apartment your grandma -- I am going to list the
2 people and tell me if I get this list wrong, okay?
3 So you have your grandma?

4 A. Yes.

5 Q. Your mom?

6 A. Yes.

7 Q. Her name is Lisa?

8 A. Yes.

9 Q. And you had Ashley your aunt?

10 A. Yes.

11 Q. Ashley's boyfriend Brian?

12 A. Yes.

13 Q. You were there?

14 A. Yes.

15 Q. Your sister Older Sister

16 A. Yes.

17 Q. And your sister M.H. ?

18 A. Yes.

19 Q. So that's seven of you?

20 A. Yes.

21 Q. And you said off and on your stepdad
22 Ben would live there as well?

23 A. Yes.

24 Q. And then every other weekend Brian's
25 kids would come as well?

1 A. Yes.

2 Q. I wanted to ask you about do you
3 remember when you gave an interview to the lady at
4 DCC, Dorchester Childrens Center?

5 A. Yes.

6 Q. You remember telling her that these
7 incidents that you experienced happened during the
8 summer, right?

9 A. It would be -- well, it would be during
10 the summers and on the weekends if school was in,
11 yes.

12 Q. So during the school year you're saying
13 now that it was also during the weekend time?

14 A. Yes.

15 Q. You said this happened when you were
16 six and eight years old?

17 A. Yes.

18 Q. Now, when this would happen -- I am
19 sorry, let me go back. When you were speaking with
20 Ms. Herring-Lash and you said that the first
21 incident occurred when you described what happened
22 in the bedroom that first time; do you remember
23 what month that occurred in?

24 A. All I know it was sometime during the
25 summer.

1 Q. So that first incident happened during
2 the summertime?

3 A. Yes.

4 Q. So you weren't in school during that
5 time?

6 A. No.

7 Q. And your sisters weren't in school?

8 A. No.

9 Q. And your grandma was not working at
10 that time?

11 A. No.

12 Q. You also said that Brian was around the
13 apartment at that time as well?

14 A. Yes.

15 Q. So he wasn't working at that time?

16 A. He was, but he got off early during
17 that time.

18 Q. Okay. When you say during the summer
19 do you remember if it was in June or July during
20 the summer?

21 A. I don't remember.

22 Q. You do remember that you were swimming
23 during that period of time, right?

24 A. Yes.

25 Q. And that you were at the pool with your

1 sisters, I think you said your grandma was at the
2 pool with you as well that day?

3 A. Yes.

4 Q. You went home early?

5 A. To get food.

6 Q. To get food. And you said that you
7 said -- you said here today that you went home by
8 yourself?

9 A. No, I said I went home with Brian.

10 Q. You and Brian went back and your
11 sisters stayed at the pool?

12 A. Yes.

13 Q. And your grandma stayed at the pool?

14 A. Yes.

15 Q. Now, when this first incident happened,
16 if you can remember, was the door at the time to
17 the bedroom open or closed?

18 A. Closed.

19 Q. Was the door usually open or was it
20 usually closed?

21 A. Closed.

22 Q. Was it always closed?

23 A. Yes.

24 Q. So Brian called you into the room when
25 the door was closed or was it open at that time?

1 A. Was open at that time.

2 Q. And when you walked in then the door
3 closed?

4 A. Yes.

5 Q. About how long would you say you were
6 there watching the video on his laptop?

7 A. The video was five to ten minutes.

8 Q. And then everything else that happened
9 after that until the time you actually left the
10 room, how long would you say that took?

11 A. Twenty minutes, maybe.

12 Q. So fair to say total it was about
13 25 minutes?

14 A. Yes.

15 Q. And during that time to your knowledge
16 no one came back to the apartment?

17 A. No.

18 Q. I want to run through a few things. I
19 promise I am not trying to be difficult. I want to
20 make sure I fully understand what your story is.
21 You said when this happened you first would watch a
22 video with Brian?

23 A. Yes.

24 Q. And that he would ask you if you wanted
25 to participate and do those things with him?

1 A. That only happened one time. The other
2 times he would make me watch it and he would tell
3 me to get up and do whatever he wanted.

4 Q. Okay. Let's focus on that first time.
5 Did he ask you if you wanted to participate that
6 time?

7 A. Yes.

8 Q. You said no?

9 A. Yes, I said no.

10 Q. Now, do you remember discussing how he
11 treated you that day?

12 A. What do you mean?

13 Q. Do you remember how you told the
14 interviewer he slammed you on the bed?

15 A. Yes.

16 Q. Do you remember how you indicated that
17 he had choked you?

18 A. Yes.

19 Q. Do you remember how you said that you
20 tried to scream?

21 A. I don't remember saying that -- oh,
22 yeah. Yes, I do. I tried to call for help. He
23 covered my mouth and he was choke -- well, he was
24 choking me.

25 Q. Do you remember about how long he was

1 choking you?

2 A. He did it when I was trying to call out
3 and then he put his hands over my mouth.

4 Q. To your knowledge no one heard you,
5 right?

6 A. No.

7 Q. Now, after this was all done, you said
8 that after you were able to eventually leave the
9 room, you went back to the pool?

10 A. Yes.

11 Q. Did you continue swimming that day?

12 A. Yes.

13 Q. Were you upset when you went back to
14 the pool that day?

15 A. Yes.

16 Q. How would -- were you crying? How
17 would anyone know you were upset or could anyone
18 tell?

19 A. Nobody could tell.

20 Q. Just kind of hid it?

21 A. Yes.

22 Q. You don't remember there being any
23 marks on your neck?

24 A. No.

25 Q. Any marks on your face?

1 A. No.

2 Q. And you said your grandma was at the
3 pool? At the time you didn't tell her about it?

4 A. No.

5 Q. Now, I want to ask you a few questions
6 about the other two incidents you just discussed
7 were in the car?

8 A. Yes.

9 Q. So let's go to the first time that this
10 happened in the car. Were you sitting in the front
11 seat?

12 A. Yes.

13 Q. And you were sitting down, right?

14 A. Yes.

15 Q. You weren't standing up or laying down?

16 A. No, I was sitting up.

17 Q. And while you were watching this video
18 on Brian's phone he was driving the car?

19 A. Yes.

20 Q. So the car was actually moving when
21 this happened?

22 A. Yes.

23 Q. And when you say his hand came over and
24 touched you, that was also while the car was
25 moving?

1 A. Yes.

2 Q. And that all of this stopped when the
3 car stopped to go pick up your aunt from your work?

4 A. Yes.

5 Q. That's the same thing that second time
6 you discussed this happening in the car that you
7 were also at that time sitting in the front seat?

8 A. Yes.

9 Q. And again just to clarify, you were
10 sitting, not standing?

11 A. I was sitting.

12 Q. And again the car was moving while this
13 all happened to you?

14 A. Yes.

15 Q. And everything stopped when the car
16 stopped?

17 A. Yes.

18 Q. Younger Sister you also indicated to the
19 therapist you spoke with at the Dorchester
20 Childrens Center that you believe this might have
21 happened to other people as well, right?

22 A. Yes.

23 Q. And you told them the name of those
24 individuals?

25 A. Yes.

1 Q. And one of them was Brian's daughter,
2 Jasmine?

3 A. No.

4 Q. It was not Jasmine?

5 A. No.

6 Q. Another one was Promise, right?

7 A. Yes.

8 Q. She was a friend of yours?

9 A. Yes.

10 Q. I don't want you to tell me anything
11 about what either of those girls said to you. I
12 want to ask you did you ever see them being abused?

13 A. No.

14 Q. Did you ever see Brian touch them in
15 any way?

16 A. No.

17 Q. One thing I wanted to ask about was you
18 indicated you had talked to L.B. about this?

19 A. Yes.

20 Q. And L.B. was one of your friends?

21 A. Yes.

22 Q. Was he not one of your friends? You
23 looked like you were hesitating a little bit there.

24 A. He was, but now he's not.

25 Q. At the time when you talked to him he

1 was your friend?

2 A. Yes.

3 Q. And you said that you told him what
4 happened?

5 A. Yes.

6 Q. And he said that he was going to have
7 to tell his parents, right?

8 A. Yes.

9 Q. And you didn't want him to tell his
10 parents?

11 A. No.

12 Q. You didn't want your parents to find
13 out at that time, right?

14 A. No.

15 Q. So you told him you were just kidding?

16 A. Yes.

17 Q. And when you said you were just kidding
18 you meant that you were just joking, right?

19 A. Yes.

20 Q. The police were not called during that
21 incident, were they?

22 A. No.

23 Q. The police were called when your sister
24 told one of her friends about this?

25 A. Yes.

1 Q. You said that you weren't there when
2 the police came?

3 A. No.

4 Q. So you never talked to the police?

5 A. No.

6 Q. You never even knew this happened at
7 that time, right?

8 A. No.

9 MS. BIRT: Beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 (Off-the-record conference.)

12 BY MS. BIRT:

13 Q. I want to go back in time a little bit.
14 Do you remember when you first talked to the
15 interviewer at Dorchester Childrens Center about
16 first incident, right?

17 A. Yes.

18 Q. And that first incident just to clarify
19 being what happened in Brian and Ashley's room?

20 A. Yes.

21 Q. Do you remember telling the interviewer
22 at that time that you and your sisters all came
23 home from the pool at the same time that day?

24 A. Yes, but I -- that didn't -- I mean I
25 made a mistake. I was really nervous and stuff.

1 Q. And just to clarify, you said they all
2 came home, in fact while this was happening to you
3 that they were sitting in the living room, right?

4 A. Yes, but that didn't -- they weren't
5 there. They were at the pool.

6 Q. Okay. Your testimony today is they
7 were actually -- they all stayed at the pool with
8 your grandma?

9 A. Yes.

10 Q. And Ben is your stepdad? Your real
11 dad's name is James?

12 A. Yes.

13 Q. James used to live with you at your
14 grandma's apartment, right?

15 A. Yes.

16 Q. While James lived with you, there were
17 some tough times there with him, right?

18 A. Yes.

19 Q. Do you remember telling the interviewer
20 that he was abusive?

21 A. Yes.

22 Q. That he enjoyed hitting?

23 A. My mom, yes.

24 Q. Hitting your mom?

25 A. Yes.

1 Q. There were incidents that you watched
2 him hit your mom, right?

3 A. Yes.

4 Q. And there was sometimes you didn't see
5 it?

6 A. Yes.

7 Q. But that you could still hear what was
8 happening?

9 A. Yes.

10 Q. You remember the police being called
11 multiple times on your dad, right?

12 A. Yes.

13 Q. Did the police ask you questions when
14 they would come over to the house?

15 A. No.

16 Q. Do you remember ever speaking with
17 anyone from the Department of Social Services or
18 DSS about your dad?

19 A. Once.

20 Q. Do you remember telling the interviewer
21 that he had hit you and your sisters a few times,
22 right?

23 A. No.

24 Q. And, Younger Sister, I want to make sure I have
25 this clear. Ben is your stepdad, right?

1 A. Yes.

2 Q. And Brian was dating your Aunt Ashley?

3 A. Yes.

4 Q. And as you told Ms. Herring-Lash,
5 Ashley was like a mother to you, right?

6 A. Yes.

7 Q. You loved her a lot?

8 A. Yes.

9 MS. BIRT: I have no further questions.

10 THE COURT: Redirect?

11 MS. HERRING-LASH: Just a few, Your
12 Honor.

13 REDIRECT EXAMINATION

14 BY MS. HERRING-LASH:

15 Q. Younger Sister, where was the laptop? Was it
16 on that desk?

17 A. Yes.

18 Q. And did the furniture get moved around
19 in that room some?

20 A. It did.

21 Q. Where else was the bed? Do you remember
22 other places?

23 A. Yes.

24 Q. Let me put this back up and show you
25 again what is State's Exhibit No. 1. Do you

1 remember any other places that the bed and the desk
2 were at different times?

3 A. The shelf was always right there. And
4 the bed got moved right here and the computer that
5 was right there got moved I think right here.

6 Q. Right there. Do you remember were
7 there any other setups?

8 A. Not that I remember.

9 Q. Do you remember whether the room
10 changed or --

11 A. When my --

12 Q. When she changed the room around?
13 Which one was first? Do you remember any of that?

14 A. This one was after the first and with
15 my baby cousin when he was born his crib was right
16 there.

17 Q. That's -- how old is he now?

18 A. I don't remember.

19 Q. He was a baby?

20 A. Yes.

21 Q. Now, were there times that you came
22 home from the pool and your sisters did come with
23 you?

24 A. Yes.

25 Q. Did y'all go back and forth a lot?

1 A. Yes.

2 Q. And when you went back that day why
3 didn't you act upset?

4 A. I didn't want anyone to know I was
5 upset.

6 Q. And how old were you at this time?

7 A. Six.

8 Q. And you said you also didn't want your
9 parents to find out when you told L.B. Why not?

10 A. Because I was scared.

11 Q. Now, you said that the car was moving
12 when this happened when he touched you? I am
13 sorry?

14 A. Yes.

15 Q. And so how did he do it? Show us how
16 he was driving, which hand he used or how that
17 happened?

18 A. He would be driving with his left hand
19 and then he would move his right hand, and he would
20 move his right hand. If someone were to look over
21 they wouldn't see it.

22 Q. And you said it stopped when you
23 stopped. Where were you when it stopped? Like
24 where had you arrived to?

25 A. We were pulling into the parking lot of

1 my aunt's work.

2 Q. That was Cato? What about the other
3 time when you were coming from the flea market?

4 A. It stopped when we entered the
5 apartments.

6 Q. Now, you had I guess talked in detail
7 today about four times maybe. Did it happen more
8 than that?

9 A. Yes.

10 Q. And did anybody else ever come in and
11 try to get in the room while it was going on?

12 A. One time he was -- he was standing in
13 front of the door and I was in front of him.

14 Q. How were you in front of him?

15 A. On my knees. And somebody was knocking
16 on the front door and trying to open the door and
17 so he pretty much -- he opened the door, pretty
18 much threw me on the ground.

19 Q. And then what happened?

20 A. Nothing. It was my sister and she came
21 in and when that happened my -- it was -- this was
22 also during the summertime. My bathing suit
23 bottoms were down. I was pulling them up and I
24 started walking out from the hallway and she asked
25 me what I was doing and I said that I was getting

1 something from my grandma's room where I was
2 staying, sleeping and stuff.

3 Q. Did she see that your bathing suit
4 bottom was down that time?

5 A. No, I had them pulled up.

6 MS. HERRING-LASH: Court's indulgence
7 for a moment.

8 (Off-the-record conference.)

9 BY MS. HERRING-LASH:

10 Q. Do you know when James moved out?

11 A. He moved out when I was really young.
12 I was like five.

13 Q. So had he moved out before this
14 started?

15 A. Yes.

16 Q. And you said he was abusive to who?

17 A. My mom.

18 Q. What kind of abuse was that?

19 A. He would hit her, some physical.

20 MS. HERRING-LASH: That's all the
21 questions I have.

22 THE COURT: Recross?

23 MS. BIRT: Yes, Your Honor.

24 RECROSS-EXAMINATION

25 BY MS. BIRT:

1 Q. Younger Sister, when you just spoke with Ms.
2 Herring-Lash about your sister coming into the
3 apartment, I want to talk about that really
4 briefly. When you talked to the interviewer at
5 Dorchester Childrens Center you didn't tell her
6 that there was a knock on the door during this
7 first incident, right?

8 A. No. It wasn't the first -- that wasn't
9 the first incident.

10 Q. So there was a second time in the
11 bedroom that you were speaking about?

12 A. Yes.

13 Q. And you remember that time in detail?

14 A. Yes.

15 Q. And was it roughly the exact same thing
16 that happened the other time in the bedroom?

17 A. Yes.

18 Q. You never told the interviewer that
19 your sister came in and saw you in the hallway?

20 A. No, I only told her about the first
21 time it happened. That wasn't the first time.

22 Q. This was the second time it happened?

23 A. Yeah.

24 Q. Okay. Thank you.

25 MS. BIRT: No further questions, Your

1 Honor.

2 THE COURT: You may step down.

3 Ladies and gentlemen of the jury, we
4 will take a very short break, give you a chance to
5 move around in the jury room, stretch your legs.
6 Give you about five minutes. As you go back to the
7 jury room and every time you leave the courtroom I
8 instruct you not to discuss anything about the case
9 until after your deliberations.

10 You may retire to the jury room.

11 (Thereupon, the jury exited the
12 courtroom at 4:16 p.m.)

13 THE COURT: We will take a short
14 recess.

15 (A recess transpired.)

16 THE COURT: Is the State ready?

17 MS. HERRING-LASH: Yes, Your Honor.

18 THE COURT: Defense ready?

19 MR. COCHRAN: Yes, Your Honor.

20 THE COURT: Bring the jury in.

21 (Off-the-record conference.)

22 (Thereupon the jury entered the
23 courtroom at 4:30 p.m.)

24 THE BAILIFF: All the jurors are
25 present, Your Honor.

1 THE COURT: State may call its next
2 witness.

3 MS. HERRING-LASH: The State would call
4 Older Sister .

5 Older Sister
6 having been duly sworn, testifies as follows:

7 THE COURT: State your full name
8 please, ma'am.

9 THE WITNESS: My name is Older Sister .

10 THE COURT: Thank you. Madam
11 solicitor, we are going to take testimony from this
12 witness until about 5:00 and we will break at that
13 time. I realize she may be a longer witness than
14 that. You may proceed.

15 DIRECT EXAMINATION

16 BY MS. HERRING-LASH:

17 Q. Older Sister , what is your date of birth?

18 A. .

19 Q. So does that mean you just turned 18?

20 A. Yes.

21 Q. Pretty recently?

22 A. Yes.

23 Q. And are you in school now, Older Sister ?

24 A. Yes.

25 Q. Where is that?

1 A. I do on line schooling at home.

2 Q. What is that?

3 A. Basically you just use a program and
4 you take tests on line.

5 Q. And how long have you been doing that?

6 A. Since my mom pulled me out of 10th
7 grade.

8 Q. And what grade are you in now?

9 A. Well --

10 Q. You may not have grades?

11 A. Yeah. I would be in 12th grade right
12 now.

13 Q. And who do you live with now?

14 A. I live with my mother, my stepdad and
15 my two sisters.

16 Q. And where do y'all live?

17 A. We live in Goose Creek, South Carolina.

18 Q. And what do you do for fun, Older Sister ?

19 A. I draw, I sing, I usually browse the
20 internet. I don't really do much.

21 Q. Are you a good drawer?

22 A. I think I'm okay at drawing.

23 Q. And before you lived in Goose Creek
24 where did you live?

25 A. I lived in -- I forget the exact

1 address, but lived in North Charleston.

2 Q. Was it an apartment or a home or a
3 mobile home?

4 A. It was like a condo, like, yeah.

5 Q. And where did you go to middle school?

6 A. I went to Lang.

7 Q. And Lang is in Mt. Pleasant, right?

8 A. Yes.

9 Q. And how did you end up going to middle
10 school in Mt. Pleasant?

11 A. I had to because my mom works in Mt.
12 Pleasant and she didn't want me going to the school
13 in North Charleston.

14 Q. So would you just go to her work?

15 A. Yeah, after school every day I would go
16 to her work.

17 Q. How long did y'all stay there?

18 A. Until she got off work about 6:30.

19 Q. So you and your mom were gone long days
20 during --

21 A. Yes, while I was going to middle school
22 we would be gone for a long amount of time.

23 Q. And who all lived in the apartment that
24 you are talking about?

25 A. It was myself, my mom, my grandmother,

1 my Aunt Ashley, my sisters and the Defendant.

2 Q. And what is his name?

3 A. Brian Daugherty.

4 Q. Can you point him out?

5 A. Right there.

6 Q. What does he have on?

7 A. He's wearing a red shirt and a red and
8 white tie.

9 MS. HERRING-LASH: Let the record
10 reflect that the victim has pointed out Mr.
11 Daugherty.

12 THE COURT: It will so reflect. You
13 may proceed.

14 BY MS. HERRING-LASH:

15 Q. Now, were there other people that would
16 also come? Like did he have children that would
17 visit?

18 A. Yes. He had two children that would
19 visit every once in a while.

20 Q. And would your stepfather, he would
21 spend the night there occasionally?

22 A. Yes, once my mother and stepfather
23 started dating he would come and he would spend the
24 night sometimes.

25 Q. Do you know about when they started

1 dating, Older
Sister ?

2 A. I don't remember for sure.

3 Q. Was it years before y'all moved out?

4 A. I would have to say at least a year.

5 Q. Before you moved out. Do you know when
6 you moved out?

7 A. I'd say we moved out at about -- I
8 forget.

9 Q. If you don't know that's fine. Someone
10 else will know.

11 A. Yes.

12 Q. Now, when you lived there you listed
13 several adults. What did they do for work?

14 A. My mom would work at the UPS store.

15 Q. That was in Mt. Pleasant?

16 A. Yes, and stepdad works at
17 Sherwin-Williams which is also -- well, at the time
18 he would work at the one in Mt. Pleasant as well.

19 Q. What about your Aunt Ashley?

20 A. She worked at Cato.

21 Q. And what about Brian?

22 A. I forgot where he worked.

23 Q. What about your grandmother?

24 A. For a while she did work at a hotel
25 until she got in an accident at work.

1 Q. What did she do?

2 A. She fell on a kitchen knife.

3 Q. Was she food and beverage?

4 A. Yes.

5 Q. And who all worked on weekends?

6 A. I know my mom and my stepdad would

7 sometimes work on Saturdays.

8 Q. What about Ashley?

9 A. I don't remember for sure if she worked
10 on Saturdays.

11 Q. She worked at Cato?

12 A. Yes.

13 Q. And what about Brian?

14 A. I don't remember for sure either.

15 Q. Okay. Now, during the time that you
16 lived there, you had all these other people were
17 living there. So what were the sleeping
18 arrangements like?

19 A. Most everyone would sleep in the living
20 room and I would sleep in the back with my
21 grandmother.

22 Q. And what about Brian and Ashley?

23 A. They shared a room.

24 Q. And while you were living in that
25 apartment did something happen to you?

1 A. Yes.

2 Q. What was that?

3 A. I was -- I was sexually abused.

4 Q. And by who?

5 A. By the Defendant.

6 Q. Is that Brian?

7 A. Yes.

8 Q. And do you remember about how old you
9 were the first time?

10 A. I was around 9 or 10.

11 Q. And tell us about the first time that
12 you remember.

13 A. It was at night and I was sitting in
14 the kitchen and --

15 Q. Let me show you what has been marked as
16 State's Exhibit -- entered into evidence as State's
17 Exhibit No. 1. Is the kitchen in that picture?

18 A. Yes, right.

19 Q. Explain to us where you were.

20 A. Okay. I was sitting in a chair right
21 around here and he came in the kitchen. He sat
22 right here (indicating) and it was late at night.
23 It was dark.

24 Q. Where were the other people?

25 A. I don't remember. I mean they were

1 there, they -- if anyone was there they were
2 probably asleep. And I was fine at first. I
3 didn't think anything of it and he was writing on a
4 piece of paper. And he passed it to me. And --
5 sorry.

6 Q. That's okay. There is some water there
7 if you need it. Do you want some?

8 A. No.

9 Q. Okay.

10 A. And I don't remember word for word what
11 was on the note so I am just going to --
12 paraphrase. He wrote a compliment on the sheet
13 saying that I looked pretty and I wrote on the note
14 back to him and thanked him.

15 Q. How would you get the note?

16 A. He passed it to me.

17 Q. Like to your hand?

18 A. Yeah. He passed it in front of me and
19 I looked at it.

20 Q. Like sliding it?

21 A. Yes, he slid it to me.

22 Q. Go ahead.

23 A. And I wrote back on it and passed it to
24 him, just said thank you. And then he wrote on it
25 again and passed it back to me and it was a

1 question asking whether he could touch my chest,
2 and keep in mind I was 9 or 10 at the time. And I
3 mean I didn't really know what to do so I just
4 nodded. And so then we got up and he walked into
5 the kitchen and stood around here.

6 Q. What is that? I can't read it.

7 A. It's by the sink. We were facing away
8 from the stove and I stood about right here. And
9 he started, you know, grabbing on my chest grabbing
10 me through my shirt. And after a while he stopped
11 and I don't remember if anything was said after
12 that, but he went back to his and Ashley's room.

13 Q. What did you do?

14 A. I sat there for a bit and then I
15 probably went to bed after that.

16 Q. Did you tell anybody about that?

17 A. No.

18 Q. Why not, Older Sister ?

19 A. I didn't -- I didn't know. I was
20 scared.

21 Q. Did anything else happen on another day
22 or time?

23 A. Yes.

24 Q. Can you tell the jury about the next
25 time that you remember here today?

1 A. I remember one time when we were home
2 alone and he invited me into his and Ashley's room
3 and we watched TV for a while. And then he closed
4 the door and he locked it. And he had me take my
5 clothes off.

6 Q. How do you know that's what he wanted
7 you to do?

8 A. He told me to.

9 Q. And did you?

10 A. I did.

11 Q. Then what happened?

12 A. And then he told me to lay down on the
13 bed and I don't remember for sure if he fondled me
14 first, but I do remember him rubbing my private
15 areas and then he took off his pants and took out
16 his penis and he tried to put it inside me.

17 Q. Where were y'all? You can draw a bed
18 or a chair or a couch or whatever.

19 A. So the bed was approximately right
20 here. Approximately. And so we went in here and I
21 was laying on the bed like this.

22 Q. Where would your head be?

23 A. It would be here.

24 Q. Okay. Where are your legs?

25 A. It would be off the bed.

1 Q. Where was he?

2 A. He was in front of me.

3 Q. And how was he?

4 A. Since he is tall he had to kneel down.

5 (Crying.)

6 Q. Then what happened?

7 A. So he tried to put his penis inside me
8 and it really hurt and it didn't go all the way in.

9 Q. Did it go in some?

10 A. Enough to where I felt pressure.

11 Q. Then what happened?

12 A. Well, clearly it wasn't going anywhere
13 so he told me to get dressed and I did. And I went
14 to the living room and he pointed at the bed
15 because there was a wet spot and he sort of laughed
16 and I just left the room.

17 Q. Where did you go?

18 A. I went to the living room so I went
19 down the hall onto the couch.

20 Q. And did he come out of the room or stay
21 in there?

22 A. He didn't come out. To my memory, he
23 didn't come out until anyone came home, but I don't
24 remember for sure.

25 Q. Now, was there another time that he did

1 something?

2 A. Yes.

3 Q. Can you tell us what you remember about
4 another time?

5 A. This one was at night and prior to this
6 he had only touched me in the house, but he always
7 used to invite me to go places with him. So this
8 night he invited me to go with him to like the gas
9 station or something to like get doughnuts or
10 whatever. But so I went with him and we did go to
11 get the doughnuts and then I don't remember exactly
12 where we drove. All I remember is that it was
13 remote and was dark outside. And when he stopped
14 the car he told me to get in the back seat with
15 him. And when he got in I got in with him and he
16 told me to take my pants and underwear off. And he
17 took his off and then I took mine off and he told
18 me to sort of straddle him.

19 Q. Do you know what that was?

20 A. No, but well, I had an idea of what he
21 wanted me to do because he would always watch porn
22 around me.

23 Q. So had you seen porn?

24 A. Yes.

25 Q. Where were you when you saw porn?

1 A. I was normally with him in that --
2 would be right next to him when he would watch it
3 on the laptop or on a smart phone or rare cases if
4 he watched it on his TV.

5 Q. So had you seen straddling on porn?

6 A. Yes.

7 Q. So what happened?

8 A. I did what he told me to do and he
9 wanted me to sort of grind against his penis and I
10 tried to. And I seemed to be having a hard time so
11 he grabbed my hips and he sort of moved them and I
12 don't remember for sure how long that went on, but
13 it couldn't have been for very long because after a
14 while he said that we need to go and so I sat -- I
15 put my pants on and he put his on and got back in
16 the front seat and he got back in the driver's seat
17 and we headed home.

18 Q. And during that time or the other times
19 that you told us about, did he touch you on your
20 vaginal area?

21 A. During that time he did with his penis.

22 Q. What about the other time?

23 A. He would touch my vagina with his hand.

24 Q. What would he do with his hands?

25 A. He would rub it. Sometimes he would

1 only do it through my pants. And sometimes he
2 would then put his hand down my pants.

3 Q. What would he do then?

4 A. He would rub it, then he would put his
5 fingers inside.

6 Q. So when you are talking about other
7 times there were more than the two times you have
8 already told us about or not?

9 A. I don't remember every single time, but
10 yes, there were.

11 Q. Do you remember the details of another
12 time?

13 A. I am sorry.

14 Q. That's okay.

15 A. There was another time.

16 Q. That you remember the details?

17 A. It was similar to the last time that he
18 took me into the bedroom except he didn't try to
19 put his penis inside of me. We were in the room
20 and he had me take --

21 Q. Take your time.

22 A. He -- we were in the room. We were on
23 the bed.

24 Q. You can erase -- do you know how to
25 erase that? I think clear. Okay. Was the bed in

1 the same place?

2 A. Yes. To my memory it was still in this
3 place. We were on the bed. I don't remember what
4 we were doing beforehand. But he rubbed me through
5 my pants. He would fondle my breasts and then he
6 put his hand down my pants and he would rub and he
7 would put his finger inside and then he had me take
8 my pants off and so I was laying on the bed this
9 way this time.

10 Q. Where was your head?

11 A. Was right here.

12 Q. Okay.

13 A. (Indicating.) So then he -- then went
14 down and he used his mouth.

15 Q. Where did he use his mouth?

16 A. On my private parts.

17 Q. What position was he in if you
18 remember?

19 A. He was probably kneeling or sitting on
20 the bed, probably kneeling and he would lick.

21 Q. Do you know if the door was opened or
22 closed?

23 A. I don't remember it being open.

24 Q. Was the door normally opened or closed?

25 A. It was normally closed from what I

1 remember.

2 Q. And what happened after that?

3 A. He would lick and he would put his
4 fingers in a little while. He would do that and
5 then I don't know how long this went on.

6 Q. Do you know where other people were?

7 A. I think the house was mostly if not
8 completely empty at the time.

9 Q. What happened when that time was over?

10 A. I think at this time it was a little
11 bit before I put my clothes on people started
12 coming home so I had to quickly put on my clothes
13 and leave the room.

14 Q. When people would come home how would
15 they come? Which door would they normally use?

16 A. They would walk up the steps and then
17 not the steps here, I don't think, but then come
18 down this hallway and into the door.

19 Q. So that hallway is actually an outside
20 wall?

21 A. Yes.

22 Q. But it's right by that bedroom?

23 A. Yes.

24 Q. And so did you hear the people?

25 A. Yes.

1 Q. And is that -- what did you do after
2 you heard the people?

3 A. I put on my clothes and I left the
4 room.

5 Q. Where did you go?

6 A. I don't remember for sure where I went.

7 Q. Okay.

8 A. My memory is very hazy when it comes to
9 the incidents that happened because I tried to
10 forget about it. I didn't want to talk about it.

11 Q. Did you try for a long time to forget?

12 A. I tried for quite a long time.

13 Q. Your Honor, this may be a spot.

14 THE COURT: I think we are at a place
15 where we should break at this time. Ladies and
16 gentlemen of the jury, I'm going to allow you to go
17 home for the evening. I will ask you as I did at
18 lunch when we broke for lunch don't discuss the
19 case with anyone, don't allow anyone to discuss it
20 with you. Don't attempt to gather any information
21 about this matter on your own. Don't listen to,
22 watch, read reports concerning the case. Should
23 anyone attempt to contact you about this case,
24 please report that to me upon your return. I will
25 ask you to be back in the jury room by 9:30 in the

1 (Whereupon, the proceedings continue on
2 March 14, 2017.)

3 (Whereupon, court opened at 9:37 a.m.)

4 (The following proceedings were held
5 outside the presence of the jury.)

6 THE COURT: When we broke yesterday I
7 had received from the prosecution State's Exhibit
8 No. 11 which was marked for identification
9 purposes. It is a recording of a forensic
10 interview of Ms. Hutchinson that was taken at the
11 Dorchester Childrens Center. I have had an
12 opportunity to watch and listen to that interview
13 and at this time does the State wish to introduce
14 that exhibit?

15 MS. HERRING-LASH: Yes, Your Honor. We
16 will introduce it through the person who did the
17 interview. She will not be testifying about
18 anything except that she did that interview. And
19 in camera I think I will have her testify to meet
20 the requirements of the statute that she has been
21 through forensic interview training. I won't do
22 that in front of the jury.

23 THE COURT: I see.

24 MS. HERRING-LASH: And I will just ask
25 her where she works, if she interviewed the child.

1 She has initialled and dated that copy and so she
2 reviewed it to make sure it was accurate and had
3 not been altered. And then I will just admit it in
4 through her. I think she will be testifying
5 depending on the timing either late today or
6 tomorrow.

7 THE COURT: Why don't I conduct that
8 hearing at that point in time. Because I do have
9 to make a determination that she is dully qualified
10 to conduct such an interview and was trained. So
11 that information will be important at that time.
12 So we will take that up at that time. I have
13 reviewed it. I am prepared to go forward with that
14 hearing once she is available.

15 MS. HERRING-LASH: Thank you, Your
16 Honor.

17 THE COURT: I'm going to return that
18 exhibit to the court reporter. Anything other than
19 that we need that take up from the State's
20 perspective at this time?

21 MS. HERRING-LASH: No, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. COCHRAN: No, Your Honor.

24 THE COURT: The witness that was on the
25 stand, ma'am, if you would come forward at this

1 time, please. You may resume the stand.

2 THE WITNESS: (Witness complies with
3 request.)

4 THE COURT: Once you are seated if you
5 would please state your name again for me.

6 THE WITNESS: My name is Older Sister .

7 THE COURT: Now, Ms. Grice, you were
8 placed under another yesterday. Do you recall
9 that?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Do you acknowledge that
12 your testimony today remains under that same oath?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: So I will make you aware
15 that that oath would apply to any testimony you
16 deliver today and you agree to that; is that
17 correct?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Okay. Anything else before
20 we bring the jury in?

21 MS. HERRING-LASH: No, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. COCHRAN: No, Your Honor.

24 THE COURT: Let's bring the jury in,
25 ma'am.

1 (Whereupon the jury entered the
2 courtroom at 9:47 a.m.)

3 THE BAILIFF: All jurors present.

4 THE COURT: Let the record reflect that
5 the jury has returned to the courtroom. One of the
6 bailiffs made me aware that at least one of you had
7 requested the right to take notes during the trial.
8 In the past I have allowed jurors to take notes if
9 we started at the beginning of the trial and the
10 set of notes would be complete, in other words, it
11 would include notes of all witnesses who had
12 testified, all testimony that had been presented.

13 Since we have already completed a day
14 -- half a day of testimony in the case, I feel that
15 it may overly emphasize the remaining testimony for
16 notes to be taken from this point forward. And so,
17 therefore, I'm going to ask that you simply pay
18 attention to the witnesses. Generally jurors do
19 not take notes in trials.

20 One of the things that concerns me also
21 about note taking, something I consider, as I told
22 you, one of the important aspects of being a juror
23 is to observe what's going on in the courtroom, pay
24 attention to the way the testimony is being
25 presented. If someone is taking notes they are not

1 watching what's going on in the courtroom. They
2 are watching their notes, keeping their notes, not
3 paying attention to what's being said or how it's
4 being said. So part of the trial might be missed
5 if notes are being taken as well. So at this point
6 in time I am going to ask that you not take notes.
7 Pay close attention to what goes on in the
8 courtroom. I will try to take breaks to keep you
9 as fresh as we can as we go through the trial, but
10 at this point in time I'm not going to allow the
11 beginning of taking notes in the middle of the
12 trial at this point in time.

13 The State was in the process of
14 examining this witness when we broke at 5:00
15 yesterday. And you may continue with your direct
16 examination.

17 CONTINUED DIRECT EXAMINATION

18 BY MS. HERRING-LASH:

19 Q. Thank you, Your Honor. Older Sister, I think
20 yesterday we talked about instances that occurred
21 in the kitchen and the bedroom and the car. So at
22 this point do you remember any other places or
23 times that any other things happened?

24 A. Yes.

25 Q. What else?

1 A. Once when we were at the pool.

2 Q. Okay.

3 A. It was something that happened one
4 time. We were alone in the pool. And I was
5 swimming around and he was in the pool.

6 Q. And who do you mean by "he"?

7 A. The Defendant. And he kind of pulled
8 me close to him and he was sort of like crouching
9 and walking around because we were in the three
10 feet section of the pool and I was floating and --
11 after a few moments he told me to look down. And I
12 saw that he had pulled out his penis. And then he
13 started rubbing his penis. And that didn't go on
14 for very long because to my recollection someone
15 walked up to the gate of the pool and we had to get
16 out.

17 Q. Your Honor, may I? I am going to show
18 you what has been admitted as State's Exhibit
19 No. 4. And, Older Sister, what is that?

20 A. That's the gate to the pool.

21 Q. Okay. You can kind of see -- can you
22 kind of see the pool in the background?

23 A. Yes.

24 Q. So that's the walkway?

25 A. Yes.

1 Q. You had mentioned yesterday, Older Sister ,
2 that you would go off places with Mr. Daugherty and
3 one of the places you mentioned was to get
4 doughnuts. Did you ever go other places with him
5 in the car just to ride places?

6 A. Yeah. He would take me to all sorts of
7 places. He would take me with him to the store.
8 He would take me to go get something to eat and he
9 would take me with him when he went to pick up my
10 aunt.

11 Q. And where did your aunt work?

12 A. She worked at Catos.

13 Q. Would y'all go on time to pick her up
14 or early or late or what would --

15 A. We were usually around maybe an hour
16 early.

17 Q. What did y'all do?

18 A. We just sat in the car and waited for
19 her. Sometimes we'd go into the store for a little
20 bit while we waited for her.

21 Q. And were these times pleasant times
22 when y'all would go places?

23 A. Most of these times were pleasant.

24 Q. And why did you go off with him knowing
25 what had happened on some occasions?

1 A. Because most of the time it just
2 happened in the house or around the house. And
3 outside of those times, he was usually nice to me.

4 Q. What did you think of him as?

5 A. I mean outside of what he did to me I
6 thought of him as like a friend and since he was
7 with my aunt a potential uncle.

8 Q. And did he do things with your friends?

9 MS. BIRT: Objection, speculation.

10 THE COURT: I will ask you to lay a
11 foundation for any knowledge she may have
12 concerning his activity with others.

13 BY MS. HERRING-LASH:

14 Q. Were there fun things that he would do
15 with your friends that you observed?

16 A. There was this one time where we all
17 took turns riding the motorcycle with him.

18 Q. So that was a fun thing?

19 A. Yes.

20 Q. Yesterday you mentioned that you -- he
21 showed you and you watched pornography. And where
22 -- what different devices did you watch that on?

23 A. Was normally his laptop or his smart
24 phone and I think at one point on the television.

25 Q. Now, when you say smart phone, where

1 would you be when you would watch it on the smart
2 phone?

3 A. Normally we would be in the car,
4 especially while waiting for my aunt.

5 Q. At Catos parking lot?

6 A. Yes.

7 Q. And do you remember any specifics of
8 the pornography you saw?

9 A. Nothing very specific. It was normally
10 pretty general.

11 MS. HERRING-LASH: Court's indulgence
12 for one moment?

13 THE COURT: Yes, ma'am.

14 (Off-the-record conference.)

15 MS. HERRING-LASH: Your Honor, may I
16 approach the witness?

17 THE COURT: You may.

18 BY MS. HERRING-LASH:

19 Q. Older Sister, I'm going to show you first of
20 all, what has been marked as State's Exhibit No. 5.
21 Do you recognize that?

22 A. Yes.

23 Q. And what is that?

24 A. That's a picture of myself and Ashley.

25 Q. Is that the room where you have been

1 talking about, the bedroom?

2 A. Yes.

3 Q. And I want to show you State's Exhibit
4 No. 6 and what is that?

5 A. That is me in the old apartment sitting
6 at the table.

7 Q. And is that during the time that these
8 events happened?

9 A. I would say it was around the time that
10 the events happened possibly.

11 Q. Is that your birthday?

12 A. Yes.

13 Q. Do you remember which birthday that
14 was?

15 A. I don't recall for sure.

16 MS. HERRING-LASH: Your Honor, at this
17 time the State would offer into evidence State's
18 Exhibit No. 5 and 6.

19 MS. BIRT: Your Honor, we object under
20 401, 403. We also believe these are cumulative.
21 The same objections we had to the photos 8, 9 and
22 10 yesterday.

23 THE COURT: May I see them?

24 MS. HERRING-LASH: Yes, Your Honor.

25 (Hanging.)

1 THE COURT: Overruled. I will overrule
2 the objections. They are admitted.

3 (STATE'S EXH. 5-6 in evidence.)

4 BY MS. HERRING-LASH:

5 Q. Older Sister, I'm going to show you on the
6 smart board in front of you which is State's
7 Exhibit No. 5. And where is that picture?

8 A. I'm sitting on the edge of the bed.

9 Q. Can you point out where the bed is just
10 in case people can't see it?

11 A. It's right here.

12 Q. And what is behind you to the left?

13 A. That's a shelf where they keep books
14 and food and other items.

15 Q. Is that the shelf you drew yesterday
16 that was kind of that wall?

17 A. Yeah.

18 Q. And can you see the TV in that picture
19 now?

20 A. Yes.

21 Q. Where is the TV?

22 A. It is right in front of the bed.

23 Q. Can you make a point to it?

24 A. (Witness complies with request.) Here.

25 Q. Okay. Can you see the computer in that

1 picture too?

2 A. Yes. It would be over here.

3 Q. And so you're sitting on the edge of
4 the bed?

5 A. Yeah, around the edge of the bed.

6 Q. And what -- is the date on that
7 picture?

8 A. It is --

9 Q. Let me move it for you.

10 A. It's August 15th, 2010.

11 Q. And that's when you were living there?

12 A. Yes.

13 Q. I want to show you what has been marked
14 as State's Exhibit No. 6. Is that you, Older Sister ?

15 A. Yes.

16 Q. And is that taken at that apartment?

17 A. Yes.

18 Q. Older Sister, back at that point in time I
19 guess you said you were 10 and 11?

20 A. Yes.

21 Q. What was your perspective about
22 adult/child relationships?

23 A. Well, for a while I had a vague
24 perspective, but after the abuse started, it began
25 to blur.

1 Q. What blurred about it?

2 A. Well, I knew that I had to listen to
3 adults when they told me to do something and while
4 I had been warned about strangers, but I'd never
5 been warned about anybody close to me doing
6 anything like this. And after a while it just -- I
7 would just either block it out or it just seemed
8 normal even though it made me feel ashamed.

9 Q. And can you tell us about how often
10 this would happen?

11 A. Would normally -- depends on whether I
12 was on a break from school or if he had work or
13 even a job at the time. But if it were around
14 summer during a long break I would say at most it
15 would happen maybe once a week.

16 Q. And what would determine if it
17 happened?

18 A. Normally the house would be empty or
19 nearly empty.

20 Q. Would it happen if other children were
21 there sometimes? I mean your sisters.

22 A. Not to my knowledge.

23 Q. What about if Ashley was home, did it
24 ever happen?

25 A. No.

1 Q. What about if your mother was home, did
2 it ever happen?

3 A. No.

4 Q. What about if your grandmother was
5 home?

6 A. Possibly maybe if she was asleep.

7 Q. And what about if Brian's children were
8 visiting?

9 A. No.

10 Q. Have you told us about all of the times
11 today?

12 A. All the times that I can remember, yes.

13 Q. And did anything ever come out of his
14 penis?

15 A. No, but it would get wet at the tip.

16 Q. After do you remember when you moved
17 out?

18 A. I'd say it was around 2012, 2013.

19 Q. Do you remember what grade you were in
20 what school?

21 A. I think I was leaving seventh grade.

22 Q. Are you sure?

23 A. I'm not 100 percent sure, but I know
24 that by the time I was in eighth grade I was
25 definitely moved out.

1 Q. Where did you go to eighth grade?

2 A. I went -- I started the year at
3 Edgefield.

4 Q. Then where did you go?

5 A. Berkeley Alternative.

6 Q. When did you go to Lang?

7 A. I went for my sixth and seventh grade
8 year.

9 Q. Were you living in Goose Creek when you
10 went to Lang?

11 A. Not to my recollection.

12 Q. Do you remember whether this happened,
13 anything happened after you moved out?

14 A. Nothing happened after we moved out.

15 Q. After you moved out did you still
16 sometimes go and visit with your grandmother?

17 A. Sometimes, but not all the time.

18 Q. Would you go for special occasions
19 let's say?

20 A. Yeah, I would perhaps go if there was a
21 special occasion.

22 Q. Did [REDACTED] Younger
23 Sister go more than you, would that
be fair to say?

24 A. Yes, [REDACTED] Younger
25 Sister and [REDACTED] M. H. went more than
I did.

1 Q. At that point in time did they need a
2 babysitter?

3 A. I would say that they probably did,
4 yes.

5 Q. And did you need a babysitter by that
6 point?

7 A. Not really, no.

8 Q. And now, before February of 2015 when
9 this all came out had you told anyone else?

10 A. Yes.

11 Q. And who was that person?

12 A. A friend of mine named Z.R. [REDACTED].

13 Q. What school were you going to?

14 A. Lang.

15 Q. And when you told her had it stopped or
16 was it still going on or do you know?

17 A. It had stopped.

18 Q. So when you were at Lang at that point
19 it had stopped?

20 A. Yes.

21 Q. And in what way did you tell her?

22 A. Through text message.

23 Q. And after -- was it daytime or evening
24 time when you told her?

25 A. It was at night.

1 Q. And what happened the next day?

2 A. I was supposed to be going to school,
3 but I was sick and her mom had read the text and --

4 Q. Is that what you think, her mom read
5 the text?

6 A. Yes.

7 Q. Okay.

8 A. Her mom read the text and she -- I
9 think she went to the school and the counselors
10 tried to call for me to get me to come to talk
11 about this, but I wasn't at school so they called
12 the police.

13 Q. And then what happened?

14 A. And then they tried to check at the
15 address that they thought that I was at and then --

16 Q. Where was that address?

17 A. That was -- I don't remember the
18 address.

19 Q. What city was it in?

20 A. Mt. Pleasant.

21 Q. Where did they end up coming to?

22 A. They came to our home in Goose Creek.

23 Q. By that time you were living in Goose
24 Creek?

25 A. Yes.

1 Q. And what happened when this officer got
2 there?

3 A. He asked to come in and from what I
4 remember, he talked to my parents first. And then
5 he wanted to talk to me in private.

6 Q. Where did you talk with him?

7 A. Outside in his car.

8 Q. And did he ask about the allegations?

9 A. Yes.

10 Q. And what did you do?

11 A. I panicked and I denied them.

12 Q. Why did you deny them?

13 A. I wasn't ready to -- I wasn't ready to
14 pursue legal action.

15 Q. What did you feel about the officer
16 talking to you?

17 A. I was very anxious and I really did not
18 want to talk about what happened to me and I just
19 wanted the officer to leave. I wanted to go back
20 inside.

21 Q. And did you talk with Z.R. again?

22 A. Not very much after what happened, not
23 for a while.

24 Q. Did y'all hang out any more?

25 A. I think we might have hung out once

1 after this.

2 Q. And then did you end up going to
3 another school?

4 A. Yes.

5 Q. Now, the next time you told, was that
6 the night that you told your stepfather or had you
7 told anyone in between then?

8 A. Either before or after I think I told
9 my friend, another friend that I was going to Lang
10 with, Sam.

11 Q. Do you know where he is?

12 A. I think he lives somewhere in Mt.
13 Pleasant.

14 Q. You don't know where?

15 A. No.

16 Q. Tell me about the evening that you told
17 your stepfather.

18 A. Well, it was a night after he had
19 lectured us and my sister went into her room and
20 then she came out and asked me to come into the
21 room with her. And --

22 Q. How was she acting?

23 A. She seemed very upset.

24 Q. Like was she -- what made you think she
25 was upset?

1 A. She seemed like she was about to cry.

2 Q. And then what happened?

3 A. And then she confessed to me about what
4 happened to her.

5 Q. Did you know anything about that before
6 that evening?

7 A. I had no idea.

8 Q. Had you ever told her about what
9 happened to you before that evening?

10 A. No, I did not.

11 Q. And so she told you, you can't repeat
12 what she said, but she told you?

13 A. Yes.

14 Q. What did y'all do then?

15 A. I then told her and then we told our
16 stepfather.

17 Q. And why did you tell your stepfather?

18 A. We didn't want to upset our mother.

19 Q. And did you -- what ended up happening
20 after you told your stepfather?

21 A. He left the room. And then after a
22 while not too long after that he told our mother.

23 Q. And then did she come?

24 A. Yes.

25 Q. And what happened then?

1 A. My sister and I were crying and she
2 gave us a hug.

3 Q. And did y'all end up having to go to be
4 interviewed?

5 A. Yes.

6 Q. And did you go to a place called
7 Dorchester Childrens Center?

8 A. Yes.

9 Q. And was that the first time you really
10 talked about it in detail to someone?

11 A. Yes.

12 Q. And after that did you go to some
13 counseling?

14 A. Yes.

15 Q. How do you feel, Older Sister, about having
16 told about this?

17 A. I have gone through many feelings about
18 this. At first I was very scared and there were
19 times where I regretted it because after this it
20 felt like I had split my family apart.

21 Q. What do you mean by that?

22 A. Well, our grandmother didn't come
23 around as much and our aunt to this day wants
24 nothing to do with us. We don't get to see our
25 cousin. We haven't seen him really since a little

1 bit before we told.

2 MS. HERRING-LASH: Court's indulgence
3 for one moment.

4 THE COURT: Yes, ma'am.

5 (Off-the-record conference.)

6 BY MS. HERRING-LASH:

7 Q. Just one more question, Older Sister. When
8 you told Z.R. you were at Lang and in what grade?

9 A. I was in seventh.

10 Q. And when you told your stepfather it
11 was what grade would you have been in?

12 A. I think I was in 10th grade.

13 MS. HERRING-LASH: Those are all the
14 questions I have.

15 THE COURT: Defense may cross-examine.

16 MS. BIRT: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. BIRT:

19 Q. Good morning.

20 A. Good morning.

21 Q. Older Sister, my name is Jessica. I'm going
22 to ask you a few questions. I will say the same
23 thing I said to your sister yesterday. Just so you
24 know, if you have any questions about what I am
25 asking or you are confused just let me know, okay?

1 A. Okay.

2 Q. Just make sure that any answer to the
3 questions you give me you say verbally like you
4 have been doing so that the court reporter can
5 write it down, all right?

6 A. All right.

7 Q. So I want to talk about just really
8 quick the apartment that you lived in when you
9 lived with your grandma. Do you remember that
10 apartment?

11 A. Yes.

12 Q. I'm going to put State's Exhibit 1 up
13 here on the screen. Do you recognize that?

14 A. Yes.

15 Q. Is that your grandmother's apartment?

16 A. Yes.

17 Q. And that's the location that several of
18 these incidents occurred, right?

19 A. Yes.

20 Q. I want to talk to you specifically
21 about that pink box that says Ashley's room. Do
22 you recognize that?

23 A. Yes.

24 Q. Can you tell me Ashley's room, it's on
25 the first floor, right?

1 A. Yes.

2 Q. So it's basically on the ground level?

3 A. Yes.

4 Q. And there was an apartment or condo
5 above it?

6 A. Yes.

7 Q. And you see that little box in the pink
8 room that says window right here?

9 A. Yes.

10 Q. Now, that window, what did it open up
11 to? If you were to open up that window what would
12 you see?

13 A. You would see the stairs I think, yes.

14 Q. And if a person was standing outside
15 that window would they be right there eye level
16 with you?

17 A. Yes, to my recollection, yes.

18 Q. Okay. And also on that room you see
19 this line right here? This is the left wall?

20 A. Um-hmm.

21 Q. Is that --

22 A. Yes.

23 Q. And on that side that says hallway. Is
24 that the outside hallway?

25 A. Yes.

1 Q. So this wall shared between Ashley's
2 room and the outside hallway, when people would
3 walk up they would be walking right next to that
4 wall, right?

5 A. Yes.

6 Q. And then this right here is the front
7 door to the apartment?

8 A. Yes.

9 Q. So the incident that you were speaking
10 with Ms. Herring-Lash about yesterday, about the
11 incident when you remember people coming home so
12 you had to get dressed quickly? Do you remember
13 that?

14 A. Yes.

15 Q. In that incident you were talking
16 about, those people were walking up this hallway
17 right here when that happened, right?

18 A. Yes.

19 Q. Now, before today you have met with Ms.
20 Herring-Lash, right?

21 A. Yes.

22 Q. You have also met with a lady, an
23 individual that was her investigator?

24 A. Yes.

25 Q. And you have met with a counselor or a

1 therapist at the Dorchester Childrens Center?

2 A. Yes.

3 Q. You have never met with me, though,
4 before today, right?

5 A. Right.

6 Q. You have never met with Mr. Cochran
7 sitting here at the table in the brown suit?

8 A. Never, no.

9 Q. I want to talk to you specifically
10 about your conversations with a therapist at
11 Dorchester Childrens Center. Her name was Candra,
12 right, do you remember?

13 A. I didn't --

14 Q. It's okay if you don't remember her
15 name. Do you remember speaking with someone there?

16 A. Yes, for my forensic interview.

17 Q. Do you remember her?

18 A. Yes.

19 Q. Do you remember that interview was in
20 February of 2015, right?

21 A. Yes.

22 Q. That was about two years ago now?

23 A. Yes.

24 Q. Do you remember that during that
25 interview, I will just call her the therapist. The

1 therapist told you that the interview was being
2 recorded?

3 A. Yes.

4 Q. And you understood what that meant,
5 right?

6 A. Yes.

7 Q. And during that interview or let me
8 back up. You knew that when you went there that
9 day you knew what you were going there to talk to
10 her about, right?

11 A. Yes.

12 Q. And you knew that it was a very
13 important subject you were going to talk to her
14 about?

15 A. Yes.

16 Q. And kind of a difficult one?

17 A. Yes.

18 Q. Now, during that time you spent with
19 her you told her everything that had happened to
20 you, right?

21 A. Yes, everything that I could remember
22 that day, yes.

23 Q. So during that time you told her about
24 two different incidents that happened to you while
25 living at your grandma's house, right?

1 A. Yes.

2 Q. You told her that there was an incident
3 in a bedroom?

4 A. Yes.

5 Q. And you told her that there was an
6 incident in the living room?

7 A. Yes.

8 Q. You didn't tell her about any incident
9 in a car?

10 A. No.

11 Q. You didn't tell about any incident in a
12 pool?

13 A. No.

14 Q. Or any incident in a kitchen?

15 A. No.

16 Q. I want to talk to you a little bit
17 about some of the incidents you did talk about here
18 today because today you talked about five different
19 incidents that I made notes of and I know that you
20 said there might be more, but there were five that
21 you talked about. I want to go through them and
22 you tell me if it's right or wrong, okay?

23 A. Okay.

24 Q. You said that there was one incident in
25 the kitchen, right?

1 A. Yes.

2 Q. One in the bedroom?

3 A. Yes.

4 Q. I think there might have been two in a
5 bedroom, they happened at different times?

6 A. Yes.

7 Q. One in a car?

8 A. Yes.

9 Q. And then this morning you talked about
10 an incident in the pool?

11 A. Yes.

12 Q. Now, the incident that you discussed in
13 the kitchen, you said that it was at nighttime?

14 A. Yes.

15 Q. You didn't think at that time that
16 anyone was awake, right?

17 A. Anyone who was home was not awake.

18 Q. Do you remember what time in the
19 evening it was, about?

20 A. I do not remember for sure. All I know
21 is that it was very dark outside.

22 Q. Do you remember if it was close to
23 bedtime or well before bedtime?

24 A. It was around bedtime.

25 Q. And you don't believe that if anyone

1 was there that they were awake?

2 A. No.

3 Q. And you're aware that at the time you
4 were living at your grandma's house some of the
5 family would sleep in the living room?

6 A. Yes.

7 Q. I want to talk to you a little bit
8 about specifically the incident you talked about
9 this morning at the pool. Do you remember what
10 grade you were in during -- around that time that
11 that happened?

12 A. I don't.

13 Q. But it was during the summertime?

14 A. Yes.

15 Q. You weren't in school then?

16 A. No.

17 Q. And you said this was a time when you
18 and Brian were the pool with no one else there,
19 right?

20 A. Yes.

21 Q. I want to talk a little bit about the
22 pool. I'm going to show you State's Exhibit 4.
23 This is a photo that you were shown this morning,
24 right, by Ms. Herring-Lash?

25 A. Yes.

1 Q. That's the photo of the gate that leads
2 into the pool?

3 A. Yes.

4 Q. Now, from this photo can you tell to
5 the left side of the photo what does this gate
6 enclose?

7 A. This right here?

8 Q. Yes.

9 A. This is the tennis court.

10 Q. And is that a chain link fence?

11 A. Yes.

12 Q. So if you were in the pool you could
13 see through that fence to anyone in the tennis
14 court, right?

15 A. Yes.

16 Q. And also this gate to the pool, it's
17 not a solid gate, right? You can see through it?

18 A. Yes.

19 Q. Do you remember about what time of day
20 you were swimming at that time?

21 A. I don't remember for sure what time of
22 day. All I know is that it was around -- it had to
23 have been around maybe five or six in the evening
24 if we were in the pool.

25 Q. So five or six in the evening. But you

1 are sure that it was during the summer when you
2 didn't have school, right?

3 A. Yes.

4 Q. You said that at that time there was
5 just no one there with you and Brian?

6 A. There was no one there with us.

7 Q. And thank you for clearing that screen.
8 I saw that. Thank you. Now, let's talk about
9 generally car rides that you would take with Brian.
10 You talked here I guess was yesterday in court
11 about the one incident that occurred in the car,
12 right?

13 A. Yes.

14 Q. But there were other incidents you
15 drove with him other places than that, right?

16 A. Yes.

17 Q. And sometimes you said you would drive
18 to the mall to go shopping?

19 A. Yes.

20 Q. And sometimes you would drive to go
21 pick up your Aunt Ashley from work?

22 A. Yes.

23 Q. And in those instances nothing
24 happened, did it?

25 A. No.

1 Q. So there were some car rides where
2 nothing happened?

3 A. The car ride that I mentioned where
4 something did happen, that was the only car ride
5 when anything happened.

6 Q. Thank you for clarifying that. So you
7 weren't afraid to go with Brian in the car, were
8 you?

9 A. No.

10 Q. Now, during the times that this was all
11 going on, right when everything started all the way
12 to the end you said that especially during the
13 summer that approximately maybe one time a week
14 this would happen?

15 A. Yes, that was my guess at that, yes.

16 Q. And even though it was happening that
17 much you didn't tell anybody about it?

18 A. No, I did not.

19 Q. Now, after -- you said after these
20 incidents stopped you did tell a friend about this?

21 A. Yes.

22 Q. That friend's name was Z.R. ?

23 A. Yes.

24 Q. You told her just over text message
25 generally what had happened to you?

1 A. I didn't go into detail. And at the
2 time I think I even used the wrong words to
3 describe what happened to me.

4 Q. You told her generally what happened?

5 A. Yes, told her that I was sexually
6 abused.

7 Q. And it is your belief that she then
8 somehow let her mom find out?

9 A. No. Her mom would check her text
10 messages.

11 Q. So her mom read the text messages you
12 sent to her?

13 A. Yes.

14 Q. And then from there somehow the school
15 found out?

16 A. Yes.

17 Q. And the police came to your -- I guess
18 to the North Charleston house or Mt. Pleasant
19 house?

20 A. Yes.

21 Q. You weren't there?

22 A. I was not.

23 Q. So they eventually came to your house
24 when you were living in Goose Creek?

25 A. Yes.

1 Q. You said they spoke with your mom and
2 stepdad first?

3 A. That's what I remember. I don't know
4 for sure.

5 Q. That's what you think happened?

6 A. Yes. That's what I think happened.

7 Q. After the police officer was done
8 speaking with them he pulled you aside to talk to
9 you?

10 A. Yes.

11 Q. He talked to you just one on one?

12 A. Yes.

13 Q. And at that time you decided you didn't
14 want to go through this anymore?

15 A. No, I was too scared.

16 Q. So you told the police officer that
17 nothing happened?

18 A. Yes, I denied that anything had
19 happened to me.

20 Q. After the police officer left you went
21 back into the house with your mom and stepdad,
22 right?

23 A. Yes.

24 Q. And you and your mom and stepdad didn't
25 have any conversations about what happened?

1 A. I think I talked to my mom, but I don't
2 remember the details of that conversation.

3 Q. But nothing -- so I will rephrase that
4 question. Even though you might have talked about
5 it that time you didn't go see a counselor?

6 A. No, not for anything related to that.

7 Q. And your mom or you didn't go back to
8 the police?

9 A. No.

10 Q. And I want to make sure that my notes
11 are right. Did you also say that you told a friend
12 of yours named Sam?

13 A. Yes.

14 Q. No police ever came to speak with you
15 after you told Sam?

16 A. No.

17 Q. I want to go specifically to when you
18 indicated you told your stepdad Ben and your mom
19 eventually found out about all of this, okay? You
20 said at that time you were in the 10th grade?

21 A. Yes.

22 Q. And you mentioned that your stepdad Ben
23 had been lecturing you and your sister?

24 A. Yes.

25 Q. Can you briefly, not in detail, but

1 just tell me what you were being lectured about?

2 A. My sisters and I, we argue a lot and we
3 tend to not get along when we are doing house
4 chores or well anything. So he had been lecturing
5 us about being able to work together to confide in
6 each other.

7 Q. That's when Younger Sister decided to tell you
8 what had happened to her?

9 A. Yes.

10 Q. And it was only after Younger Sister told you
11 what happened to her that you also told her that
12 the same thing had happened to you?

13 A. Yes.

14 Q. Can I ask you how long you and Younger Sister
15 talked about it?

16 A. Not very long. We didn't go into
17 detail.

18 Q. You were both pretty upset about it?

19 A. Yes.

20 Q. And you left the room to go tell your
21 stepdad?

22 A. To my recollection, yes.

23 Q. Just generally he eventually found out
24 that night what you and Younger Sister had been talking
25 about, right?

1 A. Yes.

2 Q. And then it was your stepdad who then
3 told your mom what happened?

4 A. Yes.

5 Q. And at that point once your mom found
6 out after this time you guys talked about it the
7 police did get involved, right?

8 A. Yes.

9 Q. And then you did go to counseling this
10 time?

11 A. Yes. And it took a while because my
12 mom spent the whole day trying to desperately get
13 the police's attention and in the end it led us to
14 the Dorchester childrens place.

15 Q. How much time between when you told
16 your stepdad and your mom what happened, told them
17 together and you went to the Dorchester Childrens
18 Center, how much time passed between those two
19 things happening?

20 A. I do not recall for sure, but it wasn't
21 a very long period of time.

22 Q. Would you say maybe a month?

23 A. At most.

24 Q. And you indicated that when you went to
25 the Dorchester Childrens Center that that was the

1 first time you had disclosed what happened to you
2 in detail?

3 A. Yes.

4 Q. So when you told your mom and Ben maybe
5 a few weeks prior to you didn't tell them details?

6 A. No.

7 Q. You only told them generally what
8 happened?

9 A. Yes.

10 Q. Same with Younger Sister to your knowledge?

11 A. Yes.

12 Q. Older Sister, were you aware of any other
13 individuals who also claimed that Brian had hurt
14 them besides Younger Sister?

15 A. I do, but --

16 Q. That's okay. And based on that was it
17 because you saw anyone else get hurt?

18 A. No.

19 Q. You just heard about potentially
20 someone else being hurt?

21 A. Yes.

22 Q. You yourself never heard anything
23 directly at the time they were being hurt?

24 A. No, I did not.

25 Q. Didn't see anything?

1 A. I did not.

2 MS. BIRT: Court's indulgence.

3 THE COURT: Yes, ma'am.

4 (Off-the-record conference.)

5 MS. BIRT: All right. Older Sister, I just
6 have a few more questions and I promise I will be
7 done.

8 BY MS. BIRT:

9 Q. You had just indicated to Ms.
10 Herring-Lash that you felt like although it was a
11 relief to tell your story you felt like it split
12 your family apart?

13 A. Yes.

14 Q. And you have not seen your Aunt Ashley
15 very much since this happened?

16 A. No. She wants nothing to do with us.

17 Q. Or your cousin Spencer, right?

18 A. She doesn't want us to see him.

19 Q. That's because you believe -- well,
20 start that over. You're aware that Brian still
21 lives with your grandma, right?

22 A. Yeah.

23 Q. And your grandma also lives with your
24 Aunt Ashley; is that right?

25 A. Yes.

1 Q. Thank you.

2 MS. BIRT: No further questions, Your
3 Honor.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MS. HERRING-LASH:

7 Q. Younger Sister, when you went to talk to the
8 lady at the Dorchester Childrens Center for your
9 interview -- I am sorry, I called you Younger Sister
10 Older Sister, did you tell her everything that happened?

11 A. I only told her what I remembered.

12 Q. When you talked about this are you more
13 likely to answer direct questions?

14 A. Yes.

15 Q. Now, you were asked about the night
16 that that happened in the kitchen. Do you remember
17 that?

18 A. Yes.

19 Q. And when it happened in the kitchen
20 that night was anybody in the living room?

21 A. No. I don't know where they were at.
22 They probably were at the store because my mom
23 would occasionally go night shopping.

24 Q. Night shopping?

25 A. Yes.

1 Q. And so you're sure there was no one in
2 the living room?

3 A. There was no one in the living room.

4 Q. And now that evening or the day that
5 this occurred in the pool, was there anyone playing
6 tennis?

7 A. No, there was not.

8 Q. And were y'all in the water when it
9 happened?

10 A. Yes.

11 Q. And if someone walked up what part of
12 the bodies would have been out of the water?

13 A. Our upper bodies.

14 Q. And what about your -- would anyone
15 just walking down that walkway have been able to
16 see into the pool into the water?

17 MS. BIRT: Objection, speculation.

18 THE COURT: Sustain that objection.

19 BY MS. HERRING-LASH:

20 Q. Let me just show you what is State's
21 Exhibit No. 4. If you were in the pool would you
22 have a view of that walkway?

23 A. If you were at the area where it says
24 about five or six feet, then yes you would.

25 Q. What area were y'all in?

1 A. We were in the three foot section.

2 Q. And where is that if you can -- we
3 can't see the pool, you can kind of --

4 A. It would be about right here
5 (indicating).

6 Q. And so you could see someone walking?

7 A. You could hear them, but from this
8 direction you wouldn't be able to see them until
9 they came up to the gate.

10 Q. Which direction? You need to touch on
11 there so we can see.

12 A. In this direction.

13 Q. Okay.

14 A. You would be able to hear them.

15 Q. What about the direction that we are
16 looking at?

17 A. We were looking for --

18 Q. Down that walk. If somebody walked
19 down the walkway could you see them?

20 A. No.

21 Q. Did anybody walk down that walkway?

22 A. To my recollection, yes.

23 Q. And where were they by the time -- are
24 you talking about the walkway we see right there?

25 A. Yes.

1 Q. Where were they when this activity
2 stopped? Can you point?

3 A. I'd say they were about right here and
4 he had already put his penis away. And by the time
5 they were up to the gate, we were about to get out
6 of the pool.

7 Q. Do you know who that was or did you
8 know the person?

9 A. I don't remember who it was for sure.
10 I think it might have been a family member.

11 Q. And when you said y'all were alone that
12 day were you alone at home or at the pool?

13 A. At the pool.

14 Q. Do you know if there were other family
15 members at the home?

16 A. I would think that there were family
17 members at the home.

18 Q. And you think that may have been a
19 family member who walked up?

20 A. Yes, I think so.

21 Q. Now, after the officer left that day
22 when we are talking about after you had told Z.R.,
23 did you tell your mom that that had happened?

24 A. No, I did not tell my mom that anything
25 had happened to me. I denied it to her like I did

1 to the police officer.

2 Q. And you mentioned a moment ago when you
3 were asked that you had not heard from anybody, but
4 you had heard about other people.

5 A. Yes.

6 Q. And did you hear about those other
7 people after you told your stepfather or before you
8 told your stepfather?

9 A. After I told my stepfather.

10 Q. So you had not heard anything about
11 other people until after --

12 A. Yes, that's correct.

13 MS. HERRING-LASH: Those are all the
14 questions I have. Thank you.

15 THE COURT: Recross?

16 MS. BIRT: No thank you, Your Honor.

17 THE COURT: You may step down. Thank
18 you very much.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: State may call its next
21 witness.

22 MR. POULOS: State calls Bensen Gomez.

23 THE COURT: Sir, if you will come
24 forward to the clerk to be sworn, please.

25 BENSEN GOMEZ

1 having been duly sworn, testifies as follows:

2 THE COURT: Sir, once you are seated
3 state your name.

4 THE WITNESS: Ben Gomez.

5 THE COURT: Counsel, your witness.

6 DIRECT EXAMINATION

7 BY MR. POULOS:

8 Q. Good morning, Mr. Gomez. Where do you
9 live?

10 A. [REDACTED] in Goose Creek.

11 Q. And who do you live with?

12 A. Lisa Batten and her daughters.

13 Q. What are their names?

14 A. Younger Sister, Older Sister and M. H. [REDACTED].

15 Q. Mr. Gomez, what's your relationship
16 with Ms. Batten?

17 A. She is my fiancée.

18 Q. How long have you been dating?

19 A. Oh, since 2010.

20 Q. How long have you lived in Goose Creek?

21 A. That house?

22 Q. Yes.

23 A. It was May 5th I think we closed on it.

24 Q. What year?

25 A. 2011.

1 Q. So you moved to Pandora Drive May 5th,
2 2011?

3 A. Right, yes, sir.

4 Q. At that time did Lisa and her daughters
5 move in with you?

6 A. Yes, sir.

7 Q. And where were they moving out of?

8 A. It was her mama's house. I forget the
9 exact address.

10 Q. Do you recall what city?

11 A. It was in North Charleston off of
12 Rivers Avenue.

13 Q. Did you ever visit Lisa at that
14 apartment or stay there?

15 A. Yes, sir.

16 Q. Did you ever live there or would you
17 just stay over?

18 A. No, I would just like stay the weekend
19 over and stuff like that.

20 Q. Who all do you remember living in the
21 apartment?

22 A. Rhonda Young, Ashley Young, Brian and
23 Lisa and her children.

24 Q. How often would you say you went to see
25 her at that apartment?

1 A. Like every weekend.

2 Q. When you would visit would you have an
3 opportunity to interact with the Defendant?

4 A. Sometimes, yes. I know we would talk
5 and stuff, yeah.

6 Q. What was his general demeanor with you?

7 A. He was kind of a hard person really to
8 figure out to tell the truth. I didn't really --
9 he wasn't really, you know, we didn't go out. We
10 weren't like buddies or anything like that. But he
11 was -- he just didn't -- he wouldn't talk much.

12 Q. Okay. Did you observe Brian
13 interacting with Older Sister and Younger Sister

14 A. Yeah. I mean, yeah, they were like a
15 family.

16 Q. How would he interact? Describe it for
17 us?

18 A. Well, what I noticed a lot whenever I
19 first started going over there is like he would
20 take -- ask them if they wanted to go to the store,
21 but he would always ask just one at a time and
22 that's what came up to me. And I was like Lisa,
23 isn't that kind of weird that why don't he take
24 both of them.

25 Q. Who are you talking about when you say

1 both of them?

2 A. Older Sister and Younger Sister.

3 Q. Would he ever take them together at the
4 same time that you recall?

5 A. I never recalled that.

6 Q. Did you ever go to the pool with the
7 family?

8 A. Yes, sir.

9 Q. Did Brian ever go to the pool as well?

10 A. Yes, sir.

11 Q. Did you notice anything about his
12 interaction with them in the pool area or after?

13 A. What I would notice was whenever the
14 child would say I got to go use the restroom
15 because there was no restroom there they would walk
16 across the street and use the restroom at the
17 house. And Brian would always go like I'll go
18 ahead and make sure they get across the street safe
19 and everything so...

20 Q. So you stated that you moved to Goose
21 Creek in May of 2011. I am sorry, when did you
22 start dating Lisa?

23 A. 2010 around July.

24 Q. So you had about ten months to observe
25 Brian at that apartment?

1 A. Yes, sir.

2 Q. Was this -- were the interactions that
3 you observed, taking them for car rides, walking
4 home from the pool, was that consistent during the
5 time that you visited the apartment in those ten
6 months?

7 A. Pretty much, yeah. I mean --

8 Q. Mr. Gomez, do you recall the day you
9 first found out about the sexual abuse?

10 A. Yeah.

11 Q. When was that?

12 A. I forget the date exactly.

13 Q. Do you recall the month and year?

14 A. It was like two years ago.

15 Q. You were living in Goose Creek at the
16 time? You had moved out?

17 A. Right, yes, sir.

18 Q. What had been going on that day before
19 the girls told you?

20 A. Nothing too much that day. I mean I
21 just noticed that they were real sad and they
22 seemed like they were like off in the distance.

23 Q. What led you to finding out?

24 A. Well, I walked by their room and I
25 heard one of them crying. So I stuck my head in.

1 there. I said hey, is everything all right? And I
2 mean is there something wrong? And they were like
3 no, everything is fine. So I was like all right.
4 So I went and sat down and then I believe it was
5 **Younger** that came to me and said I got something to
6 **Sister** tell you, but we both want to tell you in the room.
7 So I was like all right. So I went in there and
8 then that's when we had this discussion about Brian
9 and everything, they told me everything about what
10 went on and --

11 Q. Did they tell you they were sexually
12 abused?

13 A. Yes, sir.

14 Q. Did they go into a lot of detail at
15 that time about what had happened?

16 A. They each told me an incident that had
17 happened to them with Brian and --

18 MR. COCHRAN: Objection, outside time
19 and place.

20 THE COURT: Beg your pardon?

21 MR. COCHRAN: Object, this is outside
22 time and place, hearsay.

23 THE COURT: Sustain the objection.

24 BY MR. POULOS:

25 Q. Without getting into any specifics

1 about what they said, was it more a general
2 statement or a detailed statement?

3 A. It was more of a detailed each one, but
4 I mean this is what I found out by going in the
5 room and what I heard.

6 Q. What was their demeanor as they were
7 telling you this?

8 A. They were pretty upset. They were
9 crying and their main thing was like don't tell
10 mom. And I was like well, mom needs to know. I
11 mean that's the momma bear so she needs to know
12 what's going on. And so they wanted -- I convinced
13 them to let mama know because they were like
14 scared, you know, and I told them they didn't do
15 anything wrong. It is not their fault.

16 Q. Do you recall if they were hugging each
17 other or trying to console each other as well?

18 A. Older Sister more, yeah, towards Younger Sister.
19 Older Sister felt worse about it.

20 Q. Were they typically big huggers, these
21 girls?

22 A. No.

23 Q. After the girls told Lisa do you recall
24 what Lisa did, the mother?

25 A. Yes. She got pretty upset. She got

1 real, real upset.

2 Q. Did she leave?

3 A. She did. She did leave the house. She
4 was -- I told her it's not the best thing to do,
5 calm down, and she just said I just need to leave.

6 MR. COCHRAN: Object to hearsay.

7 THE COURT: I will sustain that
8 objection.

9 BY MR. POULOS:

10 Q. After the left mother did you stay with
11 the girls?

12 A. Yes, sir.

13 Q. What happened there?

14 A. A lot of emotions came out still with
15 the girls. And I was trying to keep them calm and
16 everything because I mean you could imagine what it
17 was like, you know, from what we just heard, what
18 was going on and so everybody was kind of worried
19 about Lisa at that time because she just left.

20 MR. POULOS: No further questions,
21 Your Honor.

22 THE COURT: You may cross.

23 CROSS-EXAMINATION

24 BY MR. COCHRAN:

25 Q. So you had interacted with Brian for

1 about 11 months? That was on weekends when you
2 would come and I think you said you came to the
3 house to -- because it was technically Rhonda's
4 apartment?

5 A. Right.

6 Q. And you would be there about every
7 weekend? Where would you sleep?

8 A. On the couch.

9 Q. It was a two bedroom apartment,
10 correct?

11 A. Yes, sir.

12 Q. And Rhonda had one bedroom, correct?

13 A. Yes, sir.

14 Q. And the other bedroom was shared by
15 Brian and Ashley, correct?

16 A. Right, correct.

17 Q. And so there was one couch in the
18 living room, correct?

19 A. Um-hmm.

20 Q. And you would sleep on the couch?

21 A. Yes, sir.

22 Q. And the girls would sleep in the living
23 room?

24 A. Sometimes they would and sometimes they
25 wouldn't.

1 Q. Sometimes they would sleep with Rhonda?

2 A. Right.

3 Q. Did they ever sleep in Brian and
4 Ashley's room?

5 A. I can't remember. I mean I can't
6 recall if that happened or not.

7 Q. So if Rhonda was in her bedroom asleep
8 and Brian and Ashley were in their bedroom asleep
9 then in the living room it was you and the three
10 girls, M. H. , Younger and Older
11 Lisa? Sister Sister and their mother

12 A. Right.

13 Q. All of you in the living room?

14 A. Yes, sir.

15 Q. And you and Lisa slept on the couch
16 together or just you?

17 A. No, we slept on the couch.

18 Q. Was it a pull out couch?

19 A. It was a big couch, but it wasn't a
20 pull out couch, no.

21 Q. So it is your testimony that you would
22 go to the pool with the girls, correct, and that
23 Brian would also go to the pool with the girls?

24 A. Yes, sir. I mean we all kind of went
25 as a group.

1 Q. And so when you went as a group Ashley
2 and Rhonda and Lisa would all be there, too?

3 A. I mean sometimes there might not be one
4 person there. You know, depends if they were just
5 getting home from work and stuff like that.

6 Q. But Rhonda wasn't working, correct?

7 A. Rhonda, I don't know if she was. I
8 don't think she was working.

9 Q. And if you were at the pool it was
10 summertime?

11 A. Right.

12 Q. And if Ashley and Lisa, the girls'
13 mother, were at work were you watching the girls?

14 A. No, I guess Rhonda was.

15 Q. So Rhonda would be at home watching the
16 girls. So if you all were in the pool Rhonda would
17 be at the pool with you, correct?

18 A. Sometimes, yes.

19 Q. Was it just you and the girls
20 sometimes?

21 A. No, I wouldn't swim without Lisa.

22 Q. You didn't swim if Lisa wasn't there?

23 A. In the pool. Usually I didn't swim
24 that much.

25 Q. You said today that Brian would only

1 take one girl with him to run errands?

2 A. Yes, I mean that's what made me
3 question it. That's what made me say something
4 to --

5 Q. You thought enough of it at that time
6 when they were all living in the apartment to bring
7 this up to Lisa?

8 A. Um-hmm.

9 Q. And you discussed it with Lisa?

10 A. Um-hmm.

11 Q. What year was this?

12 A. I can't remember the year. Had to have
13 been around 2010 because that's when we met. Had
14 to be within that year.

15 Q. So 2010 to 2011 when y'all moved out of
16 the house?

17 A. Right.

18 Q. You discussed it with her in 2010. Did
19 she have any concerns?

20 A. She did. I mean she didn't really -- I
21 mean she was -- she didn't think, you know,
22 anything was like that was going to happen so --

23 THE COURT: Counselor, we are going to
24 take a short break right now.

25 Ladies and gentlemen of the jury, I'm

1 going to allow you to step back to the jury room.
2 As always when you leave the courtroom, don't
3 discuss anything about the case until I ask you to
4 do so. You may retire to the jury room.

5 (Thereupon, the jury exited the
6 courtroom at 10:50 a.m.)

7 THE COURT: Counselor, I got a request
8 from the jury they needed a break. Sir, I'm going
9 to let you step down, but I will caution you not to
10 discuss your testimony with anyone during the
11 break. Do you understand that?

12 THE WITNESS: Yes, sir.

13 THE COURT: We will have a short
14 recess. I will remain on the bench. Thank you.
15 very much. We're in recess.

16 (A recess transpired.)

17 THE COURT: State ready to proceed?

18 MS. HERRING-LASH: Yes, Your Honor.

19 THE COURT: Defense ready?

20 MR. COCHRAN: Yes, Your Honor.

21 THE COURT: Let's bring the jury back
22 in.

23 (Whereupon the jury entered the
24 courtroom at 11:01 a.m.)

25 THE COURT: Sir, you are going to have

1 to move down all the way to that seat there. Thank
2 you very much. The jury has returned to the
3 courtroom. You may resume your examination.

4 BY MR. COCHRAN:

5 Q. Thank you, Your Honor. So when we left
6 off I believe we were talking about you raising
7 concerns with Lisa about Brian's interactions with
8 the girls and you expressed those concerns to her,
9 correct?

10 A. Yes, sir.

11 Q. Did you ever express those concerns to
12 Ashley or Rhonda?

13 A. No. No, I didn't.

14 Q. Just so we are clear for the jury,
15 Rhonda is the grandmother of Younger Sister, Older Sister and
16 M.H. , correct?

17 A. Correct.

18 Q. And Ashley is their aunt?

19 A. Correct.

20 Q. Now, you would stay on weekends. You
21 were working at the time I assume?

22 A. Right.

23 Q. So prior to you moving into the house
24 in Goose Creek in 2011 was there a period of time
25 where you moved into the apartment and stayed

1 there?

2 A. No. I mean I never took up residence
3 there.

4 Q. So there was never a time where you
5 lived at the apartment for approximately three
6 months or so?

7 A. No, I mean I had -- I actually had a
8 house.

9 Q. Okay.

10 A. I already had a house. I was just
11 trying to find a house for me and Lisa.

12 Q. Right. And so you never stayed through
13 the week for a period of two or three months?

14 A. Oh, yeah, sometimes like, you know,
15 holidays or stuff like that, yes.

16 Q. So there were times where you would
17 stay more than a weekend?

18 A. Yes, like during the week too.

19 Q. Okay. Always slept in the living room
20 on the couch?

21 A. What's that now?

22 Q. You always slept in the living room on
23 the couch?

24 A. Yes. That's the only place that I
25 would sleep, yes, sir.

1 Q. There is a third daughter that we
2 haven't been talking very much about named M.H. [REDACTED],
3 correct?

4 A. Right.

5 Q. She is the youngest of the three girls?

6 A. Correct.

7 Q. And when you had this discussion with
8 Older Sister [REDACTED] and Younger Sister [REDACTED] about them having been abused
9 M.H. [REDACTED] was asked about this as well?

10 A. I didn't ask her anything about it.

11 Q. Were you aware of M.H. [REDACTED] being asked
12 about this because she lived in the apartment as
13 well?

14 A. Right.

15 Q. She denied ever having been abused,
16 correct?

17 A. I mean, like I had said, I never asked
18 her so I mean I didn't want to bring that up to
19 her. She never, you know, told me anything about
20 it.

21 Q. Okay. Now, you said before that you
22 and Brian didn't have a whole lot of interaction?
23 That he was kind of quiet?

24 A. I mean we talked about wrestling and
25 football, stuff like that. I know he's a Gamecock

1 fan and stuff like that. We would talk about
2 games. But we never like went out like to the bars
3 or anything like that or never went to like a
4 football game or anything like that. We would just
5 talk about sports and stuff.

6 Q. Did you ever have any issues with
7 Brian?

8 A. As far as issues as far as like?

9 Q. Have an argument?

10 A. Yeah, I mean, but this -- I remember
11 one time I did, yes, sir.

12 Q. And that was over Brian saying
13 something to M.H. [REDACTED] is that correct?

14 A. That was him cursing. I mean I
15 consider them my -- my children. So --

16 Q. Back in 2010 you considered them your
17 children?

18 A. No, just this is after I moved into the
19 new house. And I was there for a while.

20 Q. So when you got into the argument with
21 Brian what year was that, approximately?

22 A. Oh, Lord, I can't remember that. But
23 it wasn't too far after I moved into the house.

24 Q. After you moved into the house in 2011?

25 A. Probably 2011, maybe '12.

1 Q. And Brian was with the girls, with all
2 three girls or just M.H. or what?

3 A. I think he was with all three of them.

4 Q. Okay. And he used a curse word?

5 A. Yes. Well, he cursed at them and yes,
6 he told -- I mean I can't say that, but I found out
7 that, you know, he was talking rough to the girl
8 and that he was threatening to spank her.

9 Q. Okay. And you heard him do this?

10 A. No, she told me -- I can't say what she
11 told me, but yeah, she told me.

12 Q. Okay. So you were informed about this
13 by the girls?

14 A. By M.H.

15 Q. Okay. What about Younger Sister and Older Sister?
16 Were they there?

17 A. I mean they didn't tell me nothing
18 about it. I had just got home from work and
19 M.H. ran up to me.

20 Q. And told you?

21 A. And told me about it.

22 Q. And then you and Brian had words?

23 A. Well, I guess you could say that. He
24 really didn't say much. I just told him if you got
25 a problem with my kids make sure to come tell me,

1 if not I'm going to kick your ass.

2 Q. Did you threaten him I guess?

3 A. Sure. I ain't going to lie, yeah.

4 Q. And this was at --

5 A. I was pissed off so...

6 Q. Yes, sir. This was at your house in
7 Goose Creek where this took place?

8 A. Um-hmm.

9 Q. So was Brian driving them over there or
10 what?

11 A. Brian was in the driver's seat. I
12 guess they had some kind of -- like I said, I just
13 came home from work. I guess they had some kind of
14 function or something and Ashley was with them too.

15 Q. Ashley was with them too. And was
16 Rhonda with them too?

17 A. I don't remember Rhonda with them.

18 Q. Now, did you talk to Ashley about this
19 because these are her nieces, correct?

20 A. No. I looked at Ashley and she just
21 looked away after I said that. So I mean I just
22 wanted it to be known that I'm taking
23 responsibility for these kids and I didn't want
24 anybody disrespecting them and everything.

25 Q. Now, this is -- Ashley is their aunt,

1 correct, she's Lisa's sister?

2 A. Right.

3 Q. And she is very close with the girls,
4 correct, especially ^{Younger}_{Sister} ?

5 A. Especially ^{Younger}_{Sister} , yes.

6 Q. And were curse words never said around
7 these girls?

8 A. I mean when we -- when they were young,
9 we didn't want them to hear it, but as they got
10 older kids in school would say stuff and stuff like
11 that and they would come and ask us what words mean
12 and stuff.

13 Q. Did the girls ever get spanked?

14 A. Yeah.

15 Q. By you?

16 A. Yes.

17 Q. By Lisa?

18 A. Yes.

19 Q. When the girls came out and told you
20 the story about abuse, this was in your house in
21 Goose Creek and this was in the year 2015, correct?

22 A. Um-hmm.

23 Q. You said a couple years ago?

24 A. No, I didn't say 2015.

25 Q. A couple years ago I think you said?

1 A. Yeah.

2 Q. 2015 was a couple of years ago. So if
3 you had -- you had this conversation with just

4 Younger Sister and Older Sister, correct, not M. H.

5 A. Yes, sir.

6 Q. You said that you walked by the room
7 and heard one or both of them crying; is that
8 correct?

9 A. Yes, sir.

10 Q. And isn't it true that they were also
11 arguing with each other having some kind of sister
12 spat?

13 A. No, not to my recollection.

14 Q. So you weren't lecturing them?

15 A. Lecturing them, no. We were talking on
16 the couch and everything.

17 Q. Okay.

18 A. They were on the couch and they got up
19 from the living room and they went into the room.

20 Q. So you're denying that you were
21 lecturing them in any way for having an argument?

22 A. Right.

23 Q. For fighting?

24 A. Not for fighting. I do remember what
25 we were talking about exactly.

1 Q. You remember it exactly? This was just
2 a heart to heart.

3 A. Yeah. I was just asking them what was
4 wrong because they were acting like they were sad
5 and everything, but there was not an argument. So
6 I was like why do you feel sad and everything and I
7 think they really didn't say nothing.

8 Q. Was Lisa home at this time?

9 A. Yes, sir.

10 Q. Between that day when they spoke to you
11 about this and 2011 when you moved out of Rhonda's
12 apartment did you have contact regularly with
13 Rhonda, Ashley and Brian?

14 A. After I moved into my house? Yeah,
15 they would come over off and on. They still stayed
16 in touch.

17 Q. You spoke with the police about this,
18 correct?

19 A. Did I talk to the police about it?

20 Q. They interviewed you?

21 A. Yes.

22 Q. And it's your testimony today that you
23 were not lecturing the girls, that they weren't in
24 trouble? They weren't arguing about anything?

25 A. No, they weren't arguing. There was no

1 conflict of any kind.

2 MR. COCHRAN: Beg the Court's
3 indulgence.

4 (Off-the-record conference.)

5 BY MR. COCHRAN:

6 Q. Do you recall the police responding to
7 a similar accusation regarding Older Sister prior to
8 this?

9 A. Yes, sir..

10 Q. Was that at your house or was that at
11 the apartment?

12 A. That was at my house.

13 Q. Did you discuss it with Lisa?

14 A. No.

15 Q. Do you remember what year this was when
16 this -- when the police came?

17 A. I don't know.

18 Q. It's okay if you don't remember dates.

19 A. I don't.

20 Q. But it was prior to the girls
21 disclosing to you and after you moved?

22 A. Right.

23 Q. So between 2011 and 2015?

24 A. Right.

25 Q. When Lisa and the girls were still

1 living with Rhonda you had expressed concerns,
2 correct, about Brian's interactions with the girls
3 is what you're saying?

4 A. What I said was I just think it is
5 weird that he takes one girl along instead of
6 taking two girls along..

7 Q. This is when they were still living
8 with Rhonda?

9 A. Right, correct.

10 Q. You expressed that you thought that was
11 weird, you thought that was strange, made you
12 uncomfortable?

13 A. Made me, you know, like why is that,
14 you know, why is he always taking the girls alone.

15 Q. And then after that the police are at
16 your house responding to an accusation of sexual
17 abuse, correct?

18 A. Well, like I said, what's what it was
19 about, but I wasn't -- I didn't discuss that with
20 her or anything.

21 Q. You didn't discuss it with Older Sister, but
22 you were aware of it?

23 A. Right.

24 Q. Did the police talk to you about it?

25 A. No. That's what I am saying. I wasn't

1 involved in that.

2 Q. Did you go to the police and talk to
3 the police officer who came to your house and tell
4 them about your concerns that you had had prior?

5 A. No.

6 Q. Did Lisa?

7 A. No.

8 Q. But then on this day when the girls
9 disclosed that was when you guys decided something
10 needed to be done?

11 A. When the girls spoke with me, yeah.

12 Q. Even though you had concerns back when
13 you lived with Rhonda and when the police show up
14 at your door nothing came of either of those
15 things, correct?

16 A. Yes, sir. I mean like I said, wherever
17 the police came up the second time I was there, but
18 they told me don't worry about it I guess because
19 it was about that.

20 Q. When you talked to the police regarding
21 this incident when you and Lisa went and were
22 interviewed by detectives, did you tell them about
23 all the concerns that you had back when you were
24 staying at Rhonda's place on the weekends? You
25 handwrote a statement, right?

1 A. Oh, the handwritten statement, yes,
2 sir.

3 Q. Did you tell them about your concerns?

4 A. I mean when I talked to them I told
5 them how it was weird how he used to act and stuff.

6 Q. Now, you thought it was weird. Did you
7 ever -- you said you thought of these girls as your
8 kids, right?

9 A. Right.

10 Q. You wanted to protect them. Did you
11 ever sit them down and ask them about going out
12 with Brian, just them?

13 A. No, because after I had said something
14 to Lisa about that, about him taking them to the
15 store, she said no, it's been like that. That's
16 been going on like that, you know. Like I said
17 before, nobody expects that is going to happen to
18 them.

19 Q. Did she ever put a stop to him taking
20 them out just by themselves?

21 A. No, I don't think so.

22 Q. You said when you were all at the pool
23 one girl would go back to the apartment and Brian
24 would get out of the pool and go back with her.
25 Did you ever go to the apartment to check on them?

1 A. No. I mean there was times I took the
2 girls over too.

3 Q. There were times when you would just go
4 over there?

5 A. Yeah.

6 Q. But you -- what Brian was doing was
7 making you feel uncomfortable, right, that's why
8 you brought it up to Lisa, correct?

9 A. Um-hmm.

10 Q. And you never went to go check on
11 things when he was at the apartment alone with the
12 girls?

13 A. No.

14 Q. You never asked the girls about these
15 trips that they were taking with Brian?

16 A. No.

17 Q. Even after the police were at your
18 doorstep talking to Older Sister in their patrol car
19 about sexual abuse allegations?

20 A. Yes, I mean that's -- like I said, that
21 was talked to her mom by the police officer.

22 Q. You thought of them as your kids?

23 A. Right.

24 Q. To the point where you confronted Brian
25 and threatened him?

1 A. It had nothing to do with that. I
2 wasn't threatening him because of that.

3 Q. But that's how far you would take it
4 to --

5 A. Yes, sir.

6 Q. -- assert yourself as a parent or as a
7 caretaker?

8 A. Yes, sir. See, I know what you're
9 trying to say. See, what I am saying is these
10 girls were afraid to say anything. Okay? They
11 didn't want to tell their mom because they felt
12 they had did something wrong. Okay? There's a lot
13 of things that go on in life and you can look back
14 on it and say either I wish I did it that way, I
15 wish I did it that way. But like I said, nobody
16 thinks it's going to happen to them or their family
17 until it happens to their family.

18 Q. Okay. Until there's a policeman on
19 your doorstep interviewing a kid about these?

20 A. Afterwards the kids each time said no,
21 we are just playing around because they were scared
22 they were in trouble.

23 Q. But you had concerns?

24 A. Yeah.

25 Q. There's a police officer right there?

1 A. Yeah. I just can't make up accusations
2 and stuff. I can't go to him and say that he used
3 to live like this. He would walk them to the pool
4 right there.

5 Q. You couldn't?

6 A. No.

7 Q. You couldn't tell that to the police?

8 A. You don't want to say anything you
9 might get sued for. You understand?

10 Q. You were worried about getting sued?

11 A. Yeah. I don't want to say anything
12 then it comes back wrong. Nobody wants to say
13 anything -- like I said, you don't want to think
14 about that happening to you until it does.

15 Q. It is possible that these kind of
16 accusations could be false?

17 A. There has been people that have went to
18 jail that I have heard of that were pedophiles and
19 then I have found out that they were not guilty,
20 yes.

21 MR. COCHRAN: Thank you. No more
22 questions.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION

25 BY MR. POULOS:

1 Q. Mr. Gomez, when Lisa and the girls and
2 you were living at the apartment were you working?

3 A. Yes, sir.

4 Q. What were your hours generally?

5 A. Seven to like 5:00 in the afternoon.

6 Q. How many days a week would you work?

7 A. Five or six.

8 Q. Did you have one particular day when it
9 was usually your day off?

10 A. Sunday.

11 Q. When you would go to the apartment were
12 you going to visit Lisa?

13 A. Yes. I mean she was my girl at the
14 time so --

15 Q. Right. So when you told defense
16 counsel that you wouldn't go swimming without Lisa,
17 was that because if Lisa wasn't at the apartment
18 you were not at the apartment?

19 A. Right. I wasn't technically living
20 there so I couldn't go in the pool.

21 Q. You said you never took up a residence
22 there. Were there times that you would stay over
23 for extended periods?

24 A. Yes. Like I said, like for holidays
25 and stuff and, you know, if they had a birthday

1 going on.

2 Q. In your mind you didn't consider
3 yourself to be quote unquote a resident of the
4 apartment?

5 A. Never set up a residence there. Like I
6 said, I had a house that I owned at the time.

7 Q. The swimming pool that we have been
8 talking about, we live in Charleston, right? Is it
9 warm enough to swim in that pool at times other
10 than summer?

11 A. Yes.

12 Q. Other than when the girls were on
13 summer break?

14 A. I mean technically, yeah, you can, but
15 I think they lock it up. There's a lock on it.

16 Q. Is the pool not open except for when
17 school is out for the summer?

18 A. I don't know times it's exactly open
19 and when it is not. But I know they lock it up
20 like when it gets cold.

21 Q. When it gets cold?

22 A. So nobody can go in there, you know.

23 Q. Late spring, early fall, still pretty
24 warm in Charleston?

25 A. Right, yeah.

1 Q. Let's talk about the sleeping
2 arrangements again briefly. The girls often slept
3 with Rhonda up in her bedroom?

4 A. Right.

5 Q. So that left you and Lisa on the couch?

6 A. Well, I mean depends. Sometimes she
7 slept with her mom too. And then if there was --
8 too crowded then she -- that's why I was trying to
9 get a house and get out of there.

10 Q. So there were nights when the girls
11 would sleep with Rhonda and there were nights that
12 Lisa would sleep with Rhonda as well?

13 A. Um-hmm.

14 Q. And were there times that you and Lisa
15 would go out on dates in the evenings or at nights?

16 A. Yeah, I mean it was -- I mean not that
17 it is not great now, but it was great in the
18 beginning. We went out on dates and, you know, all
19 the time.

20 Q. You already covered this briefly with
21 the defense counsel, but the first time the police
22 came and talked to Older
Sister and Lisa did you talk to
23 the police?

24 A. No, sir. They all called them out on
25 the porch and the officer spoke with them on the

1 porch.

2 Q. With Lisa?

3 A. With Lisa and Older
Sister .

4 Q. And you thought that Lisa should handle
5 it at that time?

6 A. Well, they told me don't worry about
7 it. So I mean she is the queen. So if she says
8 don't worry about it I ain't going to worry about
9 it.

10 Q. Lisa told you?

11 A. Right.

12 Q. Not to worry about it. A moment, Your
13 Honor?

14 THE COURT: Yes, sir.

15 (Off-the-record conference.)

16 MR. POULOS: No further questions,
17 Judge.

18 THE COURT: Recross?

19 MR. COCHRAN: No, Your Honor, thank
20 you.

21 THE COURT: You may step down, sir.
22 Thank you very much. State may call its next
23 witness.

24 MR. POULOS: State calls Scott Wyant.

25 THE COURT: Sir, come forward.

SCOTT WYANT

having been duly sworn, testifies as follows:

THE COURT: Sir, please state your name.

THE WITNESS: Scott Cameron Wyant, W-Y-A-N-T.

DIRECT EXAMINATION

BY MR. POULOS:

Q. Good morning, Mr. Wyant.

A. Good morning, sir.

Q. Where do you currently work?

A. I currently have a landscaping business.

Q. Where did you work in April of 2015?

A. At North Charleston Police Department.

Q. What were your responsibilities with the police department?

A. I was the sergeant over the forensics unit.

Q. In the course of the investigation in this case did you assist with the execution of a search warrant?

A. Yes, I did.

Q. Was that at [REDACTED]?

A. That's correct.

1 Q. Do you remember who else was on scene
2 with you?

3 A. I believe Rebecca Bailey and Detective
4 Benton.

5 Q. What did you do there?

6 A. They frequently call me out to assist
7 with search warrants and basically my
8 responsibility boils down to I take photographs of
9 the items they find important to their case and
10 then I collect those items, transport those items
11 to the station. And when they don't need any
12 further processing then I package them and log them
13 into the property room.

14 Q. Mr. Wyant, did you collect items during
15 the search warrant at the Dunlap Street address?

16 A. Yes, I did.

17 Q. Mr. Wyant, I'm going to show you what's
18 been marked for identification as State's
19 Exhibit 12. Tell me if you recognize that item and
20 what is it.

21 A. Yes, I do.

22 Q. What is it?

23 A. It's a Sony Vaio laptop computer.

24 Q. Did you collect that computer from that
25 residence during that search warrant?

1 A. Yes, I did.

2 Q. Do you recall where it was located?

3 A. I'll have to have a copy of my report,
4 but no, I don't, unless you have the pictures.

5 Q. I'm going to show you a copy of the
6 report.

7 A. Yes, I do.

8 Q. Where did you recover it?

9 A. Was recovered from bedroom No. 1 which
10 is the -- I have listed down as master bedroom.

11 Q. I am also going to show you what's been
12 marked as State's Exhibit 13, ask you if you
13 recognize that item as well.

14 A. Yes, I do.

15 Q. What is it?

16 A. It is an HP Photosmart digital camera.

17 Q. Did you recover that camera from the
18 same residence?

19 A. Yes, I did.

20 Q. Do you remember where it was located?

21 A. It was recovered from the living room,
22 dresser in the living room.

23 Q. Mr. Wyant, I'm going to show you what's
24 been marked as State's Exhibit 15. Do you
25 recognize the items in that bag as well?

1 A. Yes, I do.

2 Q. What are those?

3 A. These are four pornographic movies.

4 Q. Did you recover those items during that
5 same search warrant?

6 A. Yes, I did.

7 Q. Where were those located?

8 A. They were recovered from the bedroom.
9 No. 1 which is the master bedroom.

10 Q. Mr. Wyant, once you recovered these
11 items what did you do with them?

12 A. Once the items are collected I secure
13 them in my vehicle. I transport them to the
14 station. I then package them. As you see I put
15 labels on them. I seal them, put initials on them
16 showing that I collected and I sealed them. They
17 get signed over to the evidence custodian in the
18 property room and then the photos from the scene
19 get downloaded into our computer photo drive and
20 also burnt onto like a DVD.

21 Q. Did you turn those items into evidence
22 the same day that you recovered them?

23 A. Yes, I believe I did.

24 Q. Mr. Wyant, was that your only
25 involvement in this case?

1 A. Yes, as far as I know, yes.

2 MR. POULOS: May I have a moment, Your
3 Honor.

4 (Off-the-record conference.)

5 BY MR. POULOS:

6 Q. Mr. Wyant, can you tell us again what
7 the address is where you executed the search
8 warrant?

9 A. Was on Dunlap Street. I have down here
10 on my report [REDACTED].

11 Q. Is that the incident location or the
12 search warrant location?

13 A. I'm not sure. Do you have the incident
14 report?

15 Q. In your report next to [REDACTED]
16 [REDACTED] what does it say, incident location?

17 A. Yes.

18 Q. Incident location, okay. In the
19 narrative of your report does it give the address
20 of the search warrant location?

21 A. Yes. Thank you for clearing that up.
22 Yeah, I get the incident location from the incident
23 report and I put it at the top of my actual report
24 the way the template is set up. But I actually
25 responded to [REDACTED] [REDACTED] as in

1 delta with reference to assisting with a search
2 warrant.

3 MR. POULOS: I have no further
4 questions, Your Honor. Thank you.

5 THE COURT: You may cross-examine.

6 CROSS-EXAMINATION

7 BY MR. COCHRAN:

8 Q. You conducted the search warrant with
9 Detective Bailey I guess was the lead detective on
10 the case?

11 A. I believe so, yes.

12 Q. Was she present during the execution of
13 the search warrant?

14 A. Yes, I believe so.

15 Q. And when you -- in a case like this
16 when you recover -- you said you had pornographic
17 DVD's; is that correct?

18 A. Yes, that is correct.

19 Q. And a laptop, camera and flash drives,
20 were those the other items?

21 A. The digital camera, a Funsaver disposal
22 camera, EZ Share camera, a laptop, a handy cam,
23 five memory cards, a photo album, small photo album
24 and four pornographic movies.

25 Q. And all of those items were secured as

1 evidence?

2 A. That's correct.

3 Q. And some of those items are then given
4 to Homeland Security for forensic testing, correct?

5 A. I didn't have any further -- but, yes,
6 they will send it to them, off to SLED or whoever
7 they need to.

8 Q. To determine -- one of the reasons for
9 that is to determine whether or not anything
10 contains child pornography?

11 A. I believe so.

12 Q. There's no child pornography in this
13 case, correct?

14 A. I don't know. I just collected the
15 items.

16 Q. You were aware that this is a criminal
17 sexual conduct case being lodged against Brian
18 Daugherty, correct?

19 A. I was aware that it was a CSC, criminal
20 sexual conduct with a minor.

21 Q. Were you aware of all of the parties
22 involved?

23 A. No.

24 MR. COCHRAN: No more questions, Your
25 Honor. Thank you.

1 THE COURT: Redirect?

2 MR. POULOS: None, Your Honor.

3 THE COURT: Sir, you may step down.

4 Thank you very much. Counselor, the exhibits are
5 still on the witness stand. State may call its
6 next witness.

7 MR. POULOS: State calls Z.R. [REDACTED].
8 [REDACTED] Z.R. [REDACTED]

9 having been duly sworn, testifies as follows:

10 THE COURT: Please state your full name
11 once you are seated.

12 THE WITNESS: My name is Z.R. [REDACTED].

13 THE COURT: Thank you. Counselor, your
14 witness.

15 DIRECT EXAMINATION

16 BY MR. POULOS:

17 Q. Good morning, Z.R. [REDACTED].

18 A. Good morning.

19 Q. Please tell us the town or city where
20 you currently live?

21 A. Charleston, South Carolina.

22 Q. And how old are you?

23 A. I'm 17 years old.

24 Q. How long have you lived here in
25 Charleston?

1 A. I have lived here my whole life except
2 for my fifth grade year.

3 Q. Did you attend middle school here
4 locally?

5 A. Yes.

6 Q. Where did you go?

7 A. Lang Middle school.

8 Q. When you were at Lang Middle did you
9 know Older Sister [REDACTED] ?

10 A. I did.

11 Q. How did you know her?

12 A. We were good friends.

13 Q. Do you remember when you first met her,
14 became friends?

15 A. We became friends in the sixth grade.

16 Q. And would Older Sister [REDACTED] ever stay over at your
17 house?

18 A. Huh-uh. Oh, yeah, yes.

19 Q. How often would you say she would stay
20 over at your house?

21 A. Only twice.

22 Q. Did you ever stay over at her house?

23 A. No.

24 Q. Did you and Older Sister [REDACTED] ever text each
25 other?

1 A. Often.

2 Q. Did there come a time -- well, let me
3 rephrase. How often would you text each other?

4 A. Every day.

5 Q. So a primary means of communication?

6 A. Um-hmm.

7 Q. Did there come a time when Older Sister had
8 told you she was sexually abused?

9 A. Yes.

10 Q. How did she tell you? Was it face to
11 face, text, phone call?

12 A. She told me over a text.

13 Q. Did she tell you when the abuse had
14 occurred?

15 A. She said when she was younger it was.

16 Q. Did she tell you where it had occurred?

17 A. In the home.

18 Q. Was it a single text message?

19 A. It was a series.

20 Q. What was the context of the
21 conversation?

22 A. We had been arguing.

23 Q. Did she seem upset?

24 A. Um-hmm.

25 Q. What happened after you received that

1 text?

2 A. I tried to delete it, but then I felt
3 guilty and I told my mom.

4 Q. Do you know what your mother did?

5 A. She reported it to the school and the
6 school, they had to report it to the police
7 department.

8 Q. You said you were friends starting in
9 sixth grade. When did this occur, what grade were
10 you in?

11 A. I think it was my sixth grade year.

12 Q. Did you or did Older [REDACTED] Sister keep going to
13 school with you for very long after that?

14 A. Until the seventh grade.

15 Q. So did she eventually stop going to
16 your school?

17 A. Um-hmm.

18 Q. Did you guys keep in touch?

19 A. Not until recently.

20 MR. POULOS: A moment, Your Honor?

21 THE COURT: Yes.

22 (Off-the-record conference.)

23 BY MR. POULOS:

24 Q. Did the two of you hang out or spend
25 time together after you got that text that you

1 recall?

2 A. Not that I recall.

3 MR. POULOS: No further questions, Your
4 Honor.

5 CROSS-EXAMINATION

6 BY MR. COCHRAN:

7 Q. Do you remember -- so this was your
8 sixth grade year. What year would that have been,
9 like 2012, 213?

10 A. 2012/2013 school year.

11 Q. And you said this text message that she
12 sent to you was a series of text messages?

13 A. It was a back and forth.

14 Q. So as she was texting you were asking
15 her questions, she was answering the questions?

16 A. Um-hmm.

17 Q. And it was in the context of an
18 argument that brought it about?

19 A. Yeah.

20 Q. Do you remember what you guys were
21 arguing about?

22 A. Just things in my life.

23 Q. Just like teenage things?

24 A. Yeah.

25 Q. Did you know Older Sister family?

1 A. Not well.

2 Q. And you didn't hang out much with her
3 after you guys exchanged these text messages?

4 A. Huh-uh.

5 Q. Did the police ever come talk to you
6 about it?

7 A. I know they interviewed my mother, but
8 not me personally.

9 Q. Did [REDACTED] Older Sister mother or stepfather ever
10 contact you or your mother that you recall?

11 A. Not that I know of. Probably my mom.

12 MR. COCHRAN: Beg the Court's
13 indulgence.

14 (Off-the-record conference.)

15 BY MR. COCHRAN:

16 Q. You mentioned that you and [REDACTED] Older
17 Sister didn't remain close or stay in close contact until
18 recently. Was that just because of the trial was
19 coming up and you guys got back in touch?

20 A. No, I just had like some sort of
21 intuition I wanted to reconnect with her.

22 Q. And you guys have been in contact since
23 then?

24 A. Um-hmm.

25 MR. COCHRAN: Thank you. Nothing

1 further, Your Honor.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MR. POULOS:

5 Q. Z.R. [REDACTED], once you recently reconnected
6 with Older Sister [REDACTED] did you talk about the details of this
7 case?

8 A. Not until my mom had been contacted by
9 the lawyers.

10 MR. POULOS: No further questions, Your
11 Honor.

12 THE COURT: Recross?

13 MR. COCHRAN: Nothing, Your Honor.

14 THE COURT: You may step down, thank
15 you very much. State may call its next witness.

16 MS. HERRING-LASH: State would call

17 L.B. [REDACTED]

18 L.B. [REDACTED]

19 having been duly sworn, testifies as follows:

20 THE COURT: State your name, please.

21 THE WITNESS: L.B. [REDACTED]

22 THE COURT: Your witness, counselor.

23 DIRECT EXAMINATION

24 BY MS. HERRING-LASH:

25 Q. L.B. [REDACTED], is your first name L.B. [REDACTED]?

1 A. Yes, ma'am.

2 Q. And I'm Debbie Herring-Lash. I have
3 spoken to you on the phone. Where do you live?

4 A. In Orangeburg.

5 Q. And how long have you lived in
6 Orangeburg?

7 A. Couple months.

8 Q. And what is your date of birth?

9 A. [REDACTED].

10 Q. [REDACTED]? And before Orangeburg where did
11 you live?

12 A. Goose Creek. I lived in a bunch of
13 places.

14 Q. When did you live in Goose Creek?

15 A. When I was like ten.

16 Q. And do you remember when you were ten
17 what grade you were in?

18 A. Fifth.

19 Q. Where in Goose Creek did you live?

20 A. I don't remember the name of the
21 street.

22 Q. And did you know a girl named Younger
23 [REDACTED] Sister?

24 A. Yes, ma'am.

25 Q. And how do you know Younger
Sister?

1 A. We were friends.

2 Q. Were you friends from school or the
3 neighborhood?

4 A. Friends from school.

5 Q. And did you live near her?

6 A. I lived close to her, yes, ma'am.

7 Q. And would you visit her?

8 A. Yes, ma'am.

9 Q. And where would you visit her?

10 A. At her house.

11 Q. And what kind of things would you all
12 do?

13 A. We would go to the park by her house
14 and hang.

15 Q. Hang out?

16 A. Yes.

17 Q. And did there come in time in fifth
18 grade when she told you about a sexual assault?

19 A. Yes, ma'am.

20 Q. And did she tell you when it had
21 happened?

22 A. When she was six or seven.

23 Q. And did she tell you where she was?

24 A. No, ma'am.

25 Q. Did you ask her a lot of questions

1 about it?

2 A. No, ma'am.

3 Q. And did you go home and tell people
4 about it?

5 A. No, ma'am.

6 Q. Did you keep it a secret?

7 A. Yes, ma'am.

8 Q. And have you -- when is the last time,
9 if you know, that you talked to [REDACTED] Younger
[REDACTED] Sister ?

10 A. Last week.

11 Q. And between when she was in the fifth
12 grade and last week had you talked to her any?

13 A. No. We talked on the phone couple of
14 times.

15 Q. Had y'all remained real close friends?

16 A. Mostly.

17 Q. And did she tell you somebody would be
18 calling you?

19 A. No, ma'am.

20 MS. HERRING-LASH: Those are all the
21 questions I have. You may answer any that Mr.
22 Cochran has.

23 CROSS-EXAMINATION

24 BY MR. COCHRAN:

25 Q. Mr. Bias, so you were about ten at the

1 time you had this discussion with Younger
2 was the same age? Sister

3 A. Yes, sir.

4 Q. And so that was about 2012. And do you
5 remember why or what brought this about, what you
6 guys were talking about?

7 A. No, sir.

8 Q. Do you remember where you were when you
9 had the discussion?

10 A. In her house.

11 Q. So you'd been to that house and that
12 was the house in Goose Creek?

13 A. Yes, sir.

14 MR. COCHRAN: Beg the Court's
15 indulgence. Nothing further, Your Honor. Thank
16 you, sir.

17 THE COURT: Redirect?

18 MS. HERRING-LASH: No, Your Honor.

19 THE COURT: You may step down. Thank
20 you very much. State may call its next witness.

21 MS. HERRING-LASH: The State would call
22 Lisa Batten.

23 THE COURT: Once you are seated, ma'am,
24 I will ask that you please state your name.

25 THE WITNESS: My name is Lisa Batten.

1 THE COURT: Thank you. Counselor, your
2 witness.

3 DIRECT EXAMINATION

4 BY MS. HERRING-LASH:

5 Q. Ms. Batten, where do you live?

6 A. In Goose Creek.

7 Q. And who lives with you?

8 A. Younger Sister [REDACTED], Older Sister [REDACTED] and my
9 daughter M.H. [REDACTED] and Ben.

10 Q. And where do your girls go to school
11 now?

12 A. Well, I home school them.

13 Q. And how long have y'all lived there?

14 A. Since May 2011.

15 Q. And are you working now?

16 A. No, I'm not.

17 Q. Where did you last work?

18 A. I worked at -- for the UPS store.

19 Q. Where was that store located?

20 A. In Mt. Pleasant.

21 Q. And what were your hours?

22 A. From 10:00 to 6:30 Monday through
23 Friday and then if I worked Saturdays it was 10:00
24 to 4:00.

25 Q. And when did you start working at UPS?

1 A. 2010, February 2010.

2 Q. So you started there almost a year
3 before you moved to Goose Creek?

4 A. Correct.

5 Q. Now, you said you began working at ten.
6 Would you go early?

7 A. Yes.

8 Q. And why?

9 A. Because I had Older Sister enrolled in school
10 in Mt. Pleasant and she had to be at school like at
11 8:30, something like that.

12 Q. And so you worked until 6:30?

13 A. Yes.

14 Q. So what time did you and Older Sister usually
15 get home?

16 A. 7:30, sometimes 7:15, between 7:00 and
17 7:30.

18 Q. And where were y'all living during that
19 period of time in 2010 before you moved in 2011?

20 A. On Rolling Fork Road.

21 Q. And is Rolling Fork Road in Charleston
22 County?

23 A. Yes.

24 Q. And when you lived there who all lived
25 there or did it change?

1 A. It did.

2 Q. When did you move there? Let's start
3 there.

4 A. Moved in when Older Sister was two or three.
5 It was 2001. We were there for 9/11.

6 Q. So 2001 you moved in. And you lived
7 there until May of 2011?

8 A. Yes.

9 Q. And who lived there when you moved in?

10 A. My mom and my sister.

11 Q. And did someone else move in? James
12 was his name?

13 A. Yes, my husband moved in.

14 Q. And when did he move out?

15 A. 2009, maybe.

16 Q. And did Brian Daugherty ever move in?

17 A. Yes.

18 Q. When did he move in?

19 A. It was 2008 or '9. I just know that
20 James left not long after Brian came.

21 Q. And do you know how old Brian is?

22 A. No.

23 Q. Do you know if he is in his 20s or 30s?

24 A. I believe he's in his 30s.

25 Q. And when you worked at UPS he was

1 living there?

2 A. Yes.

3 Q. And where -- at that point in time did
4 -- let's go over the adults in the house starting
5 with Ashley. Did she work the whole time?

6 A. Yes.

7 Q. And where did she work?

8 A. Cato.

9 Q. And what were her hours like?

10 A. She worked all different hours.
11 Sometimes she opened up and sometimes she closed so
12 she really kind of worked all kind of hours,
13 probably like 50 or 60 hours a week sometimes, but
14 she worked different hours.

15 Q. Did she work on weekends also?

16 A. Yes.

17 Q. And you said you worked on Saturdays?

18 A. Yes.

19 Q. What about your mother? Rhonda?

20 A. She was not working.

21 Q. When did she stop working?

22 A. I'm not sure about the exact date.

23 Q. Did she work at the Radisson?

24 A. She did.

25 Q. And when she stopped -- why did she

1 stop working?

2 A. She got hurt at work and so she was on
3 workman's comp and then she got sick and she had
4 congestive heart failure so she --

5 Q. She couldn't go back?

6 A. Right.

7 Q. And when she did work until she had her
8 accident did she work weekends and nights?

9 A. Yes, she sometimes worked 16 hours a
10 day. It was a lot of work.

11 Q. Was that food and beverage?

12 A. Yes.

13 Q. Those are long hours?

14 A. Right.

15 Q. And where did Brian work?

16 A. Seems like he worked for try something
17 mechanical something and --

18 Q. Did he have more than one job?

19 A. Yes, he worked at a gas station at one
20 point. He worked at a Ferguson's. I don't -- I
21 mean I don't know. I think he drove truck for one
22 place. I don't know what he did.

23 Q. What were his hours?

24 A. Well, he would go in early usually.

25 Now, originally when he first was with us he would

1 go in early, but he didn't work very late, like I
2 think he would be home at like three or four
3 sometimes.

4 Q. And did he work weekends often?

5 A. No, I don't remember him working
6 weekends.

7 Q. And now when you lived in those
8 apartments -- let me just show you. I'm going to
9 show you what has been previously marked and
10 entered into evidence as State's Exhibit No. 2. Is
11 that the apartment complex you are talking about
12 that y'all lived in?

13 A. Yes.

14 Q. Did that apartment complex have a
15 neighborhood pool?

16 A. Yes.

17 Q. And did y'all use that a lot?

18 A. Almost daily, yeah.

19 Q. Would you say it was like your
20 babysitter?

21 A. Um-hmm, yeah. All my kids were
22 swimmers by the time they were two.

23 Q. Did everybody in the family go to the
24 pool?

25 A. Yeah.

1 Q. What about Brian?

2 A. He came over there sometimes.

3 Q. Did he stay as long as y'all did?

4 A. No.

5 Q. Did the girls ever go places with
6 Brian?

7 A. Yes.

8 Q. Where would they go?

9 A. They would go to the store with him.

10 And they would go to pick Ashley up from work with
11 him and I mean he has been known to take them to
12 the zoo and Bee City and places like that except
13 for the youngest one. He never took her anywhere.

14 Q. Did he take them most of the time
15 together or separately or was there a difference?

16 A. He would grab Older Sister if he was going to
17 go to the store. Mostly one at a time.

18 Q. And --

19 A. I mean --

20 Q. You said to pick up Ashley?

21 A. Yes.

22 Q. That would be from Catos?

23 A. Um-hmm.

24 Q. And at that point in time did you have
25 any problem with the girls going off with him?

1 A. No, I didn't.

2 Q. Did the children, did they go with him
3 willingly?

4 A. Um-hmm.

5 Q. And did Brian's children also come
6 sometimes?

7 A. Yeah. He always had kids with him.

8 Q. I mean did his actual children visit?

9 A. Yes, every other weekend or something
10 like that.

11 Q. And where did they stay when they came?

12 A. They stayed in the room with Ashley and
13 Brian or sometimes they would throw a sleeping bag
14 on the floor and sleep in the living room, but
15 mostly they stayed with them.

16 Q. And was there a girl in the
17 neighborhood that y'all lived in when you lived
18 there named Promise?

19 A. Yes.

20 Q. And who was she friends with?

21 A. She was friends with all of my girls,
22 but, you know, as Older Sister got older, she kind of
23 didn't really play like they did. And Promise was
24 kind of special needs so she didn't really get
25 older. She kind of just stayed there with Younger Sister

1 and M. H. and played with them.

2 Q. And when y'all moved in 2011 do you
3 know if she was still in the neighborhood or not?

4 A. Yeah.

5 Q. Did they continue to play with her
6 after that?

7 A. Yeah.

8 Q. By the time this came out in 2015 do
9 you know if she was still there?

10 A. She was not.

11 Q. Was she in state or out of state?

12 A. She was out of state.

13 Q. And after you moved did the girls
14 continue to go back over to visit with your mom?

15 A. Yeah.

16 Q. How often would they go?

17 A. Younger Sister wanted to be with her grandma a
18 lot. She would go on the weekends a lot, but other
19 than that my mom picked the kids up from school.

20 Q. When you say kids, what kids do you
21 mean?

22 A. Younger Sister and M. H.

23 Q. So your mom would pick Younger Sister and
24 M. H. up?

25 A. Um-hmm.

1 Q. And so Older Sister didn't I guess need a
2 babysitter?

3 A. No. She was over in Mt. Pleasant with
4 me.

5 Q. So she was -- would be with you. Did
6 Younger Sister in particular want to go and see Ashley?

7 A. Yes. They were very close.

8 Q. Now, at some point did Brian and Ashley
9 and Rhonda move out of that apartment?

10 A. Yes.

11 Q. Do you know when they moved out?

12 A. I can't -- I mean all these dates, I'm
13 not -- I don't know the date.

14 Q. Where did they move to?

15 A. They moved to an apartment on Dunlap
16 Street.

17 Q. And did y'all continue to visit them on
18 Dunlap Street?

19 A. I would pick the kids up from over
20 there because my mom picked them up from school
21 and --

22 Q. By kids who do you mean?

23 A. Younger Sister and M.H. and by then Older Sister
24 was going to school in Goose Creek so she just rode
25 the bus home.

1 Q. Did y'all hang out with Brian and
2 Ashley and your mom for special occasions, those
3 kind of things?

4 A. In the beginning, yeah, birthday
5 parties, Thanksgiving, Christmas.

6 Q. So everybody was fine?

7 A. Yeah.

8 Q. Now, did there come a time I guess the
9 first week in February of 2015 that you found out
10 about this?

11 A. Um-hmm.

12 Q. Had you ever heard anything about it
13 before?

14 A. They had never told me anything about
15 any of this before.

16 Q. Did the police ever come to your house
17 about it?

18 A. Yes.

19 Q. Do you know when that was?

20 A. Older Sister was in seventh grade. She was
21 in school in Mt. Pleasant so it was seventh grade.

22 Q. Did she go to school in Mt. Pleasant
23 for sixth grade also at Lang?

24 A. Yes, sixth or seventh grade.

25 Q. And what happened? Somebody show up at

1 the door or what happened?

2 A. Yeah. The detective called me from Mt.
3 Pleasant and wanted to know my address because he
4 had to come and talk to us and he didn't say why.
5 But when he got there I went on the porch to talk
6 to him and he said he wanted to speak with Older
Sister
7 by herself. And so I went back inside and he
8 talked to her and then I went outside and spoke to
9 him.

10 Q. Did he leave then?

11 A. I mean I spoke with him for a few
12 minutes and then he left, yeah.

13 Q. And did you know that he was speaking
14 to her about an allegation?

15 A. Yes, he told me that.

16 Q. Did you question Older
Sister ?

17 A. I did.

18 Q. And did she tell you about it?

19 A. No, she just -- she was like no, no.
20 Don't worry about it. It's okay. Nothing
21 happened. And so I told her you can't say stuff
22 like that about people if it's not true because you
23 can ruin someone's life.

24 Q. And did you just drop it after that?

25 A. Yeah.

1 Q. Did she ever come to you again about
2 that?

3 A. No, she really just couldn't get away
4 from me fast enough.

5 Q. That day?

6 A. Back to her room where she stayed.

7 Q. What did she do after you told her
8 that?

9 A. Nothing.

10 Q. You said she went to her room?

11 A. Right.

12 Q. Was that unusual?

13 A. No, she stayed in there a lot.

14 Q. Like explain what you mean to the jury?

15 A. She hardly ever came out of her room.
16 She really didn't leave the house for the last two
17 years at all.

18 Q. How often on a day would she come out
19 of her room?

20 A. There were days if I didn't go in her
21 room I didn't see her.

22 Q. Would you -- would she eat?

23 A. I mean she ate. I mean she ate when
24 she felt like it and if her nerves were bad she
25 usually didn't eat.

1 Q. Did it -- did she sit with you all?

2 A. No. She would take -- come out, get
3 her food and go back to her room.

4 Q. And so that day she just went to her
5 room?

6 A. Yeah.

7 Q. Did you follow up and try to pursue
8 that with her?

9 A. No.

10 Q. Do you know why not thinking back?

11 A. Yeah, I mean because you don't -- don't
12 think that stuff like that really happens in your
13 circle I guess so you don't want to -- I don't know
14 -- I just --

15 Q. And did you at that point in time
16 question **Younger Sister**?

17 A. No.

18 Q. Did y'all keep this from her so to
19 speak?

20 A. Well, yeah. I wasn't going to go
21 broadcasting something. **Older Sister**, she was trying to
22 say no, no, no, so I didn't want to drag the two
23 younger girls into the middle of it. I mean it
24 was --

25 Q. Did you ever say anything to Ashley or

1 your mother about it?

2 A. My mom was there.

3 Q. She was?

4 A. When the police came to my house so she
5 knew about it, but we didn't -- really tried not to
6 talk about it. I mean we just didn't.

7 Q. Did your mom come out on to the porch?

8 A. No.

9 Q. Without saying what you said did you
10 tell her what the officer had told you?

11 A. Yeah.

12 Q. And so what did you and your mother do?

13 A. She didn't do anything. I took Older Sister
14 out in the garage and talked to her.

15 Q. And now, skipping forward I guess from
16 that time in 2011 to February of 2015, do you
17 remember -- does the first week in February 2015
18 sound familiar?

19 A. Yeah.

20 Q. Are you pretty sure about that?

21 A. Yeah.

22 Q. And what happened on the evening that
23 you found out what was going on? What were you
24 doing? Let's start there.

25 A. I was trying to get M.H. to finish

1 her home schooling stuff. She was a challenge.

2 And I could hear the other girls Older Sister and Younger Sister ,

3 I could hear them arguing, but Ben, I thought he
4 was handling it. So I just kept doing what I was
5 doing.

6 Q. When they were arguing where were they?

7 A. In the bedrooms. I think they were in
8 Older Sister room.

9 Q. And when you say Ben was handling it,
10 was he in the room with them?

11 A. Well, not at first. I mean, but he did
12 eventually go in there. Like I said, I was at the
13 table so I didn't really get involved with it at
14 the beginning.

15 Q. So you couldn't hear exactly what they
16 were saying to each other?

17 A. No.

18 Q. And did eventually Ben come out?

19 A. Yes.

20 Q. And then what happened after he came
21 out?

22 A. Well, he came out once, but he went
23 back in.

24 Q. When he came out the first time did he
25 like sit down or --

1 A. I think he went back in the room; I
2 don't know.

3 Q. Do you know why he went back in the
4 room? Did you hear anything?

5 A. I think Younger Sister asked him to come back
6 in the room.

7 Q. When he went back in there what room
8 did he go back into, if you remember?

9 A. I wasn't in there.

10 Q. Do you know if he went into Older Sister
11 room or Younger Sister and M.H. room or do you know?

12 A. I really don't remember.

13 Q. If you don't know just --

14 A. No. I was in the kitchen like I said
15 helping M.H. with her school work. But after he
16 came out again he came and said I need to talk to
17 you.

18 Q. When he was in the room you had said a
19 moment ago you could hear the yelling between the
20 girls before?

21 A. Not really yelling. They were arguing.
22 With three girls they argue.

23 Q. But M.H. was with you?

24 A. Right.

25 Q. Now, when Ben was in the room did you

1 hear anything?

2 A. No.

3 Q. And when Ben came out of the room how
4 did he appear?

5 A. He just said we need to talk and --

6 Q. It was -- without saying anything he
7 said, did y'all talk?

8 A. Yes.

9 Q. And what did you do after talking with
10 Ben?

11 A. You mean what did I say?

12 Q. What did you do?

13 A. I went in the room with the girls.

14 Q. When you got in the room with the girls
15 how were they acting?

16 A. They were hugging and crying.

17 Q. Was hugging a common thing for these
18 girls?

19 A. No.

20 Q. And where were they in the room?

21 A. They were sitting on Older Sister bed.

22 Q. And what did you do?

23 A. I went and I was hugging them and
24 crying too.

25 Q. And did they tell you at that point

1 about a sexual assault?

2 A. They told me some things.

3 Q. Did they tell you when it had happened?

4 A. Yeah, different instances of things
5 that would happen.

6 Q. And you can't go into any details. But
7 did they tell you where?

8 A. Yes.

9 Q. Where did this happen?

10 A. Sometimes in the car, sometimes in
11 Ashley and Brian's bedroom.

12 Q. What did you do that evening after you
13 were talking with them?

14 A. Well, I got them calmed down and when I
15 got them in bed I grabbed my car keys, grabbed
16 Ben's car keys. I left the house because I wanted
17 to go and find him. I didn't even put shoes on.
18 It was raining. It was cold. But when I got to
19 the car and started driving I was like I don't have
20 any idea where he is because I knew he was working
21 nights somewhere. And I didn't have any weapons to
22 hurt him with. That sounds terrible, but you don't
23 know what you want to do and then kind of just lost
24 it and I couldn't see where I was driving so I
25 pulled into my friend's neighborhood and she drove

1 me home.

2 Q. And did you begin the next day trying
3 to make a law enforcement report?

4 A. Yeah.

5 Q. Was that a bit difficult?

6 A. I think I got shuffled between three or
7 four different police departments because if you
8 don't know specific dates they won't even make a
9 police report for you. And called the Department
10 of Social Services and they won't help you if the
11 person that did these things are not living in the
12 house with the child at the time.

13 Q. Where did you eventually go to find
14 some kind of help?

15 A. The Dorchester Childrens Center.

16 Q. And from there was a police report
17 made?

18 A. Yes.

19 Q. And did you speak with law enforcement?

20 A. I did.

21 Q. And did Bensen?

22 A. Yes.

23 Q. Did you take your girls there at any
24 time also?

25 A. Yes.

1 Q. And did you take your girls to
2 Dorchester Childrens Center?

3 A. Yes.

4 Q. And did you continue to take them there
5 for counseling?

6 A. Yes.

7 MS. HERRING-LASH: Court's indulgence
8 for one minute.

9 THE COURT: Yes, ma'am.

10 (Off-the-record conference.)

11 MS. HERRING-LASH: Those are all the
12 questions I have. If you would answer any that Mr.
13 Cochran has.

14 THE COURT: Your witness, counselor.

15 CROSS-EXAMINATION

16 BY MR. COCHRAN:

17 Q. Ms. Batten, the discussion you had with
18 your girls that you just talked with the solicitor
19 about, was it in 2015, right, was a couple of years
20 ago?

21 A. Right.

22 Q. You lived -- moved out of your mother's
23 house or apartment in 2011?

24 A. Yes.

25 Q. And sometime after that was the

1 incident where police came to your house over a
2 text message that Older Sister sent to a friend?

3 A. Correct.

4 Q. That was regarding the same allegations
5 that we're here for today, correct?

6 A. Correct.

7 Q. And at that time Younger Sister told you that
8 she was just kidding or that --

9 A. Older Sister.

10 Q. Older Sister was just kidding, didn't happen?

11 A. She was clearly startled the police
12 officer showed up at the house and really just
13 tried to backpedal because I was assuming she
14 wasn't ready to tell.

15 Q. Was this like a uniformed police
16 officer or detective?

17 A. It was a detective.

18 Q. And the detective took her to the car
19 to have a conversation?

20 A. No, they stood on the front porch.

21 Q. Were you present for that?

22 A. I stepped inside while they talked.

23 Q. And then you also talked to the
24 detective?

25 A. I did.

1 Q. And at some point between 2011 and 2015
2 **Younger Sister** also made a disclosure to you, correct?

3 A. No.

4 Q. She told you that she had been abused,
5 she made accusations, then she said she was just
6 kidding as well, correct?

7 A. I was at work and didn't hear what she
8 said. I know what you are talking about. But I
9 was working. I did not hear what she said.

10 Q. This was when you were working at UPS.
11 So she was visiting you at work I think -- was she
12 the daughter, her and **M.H.** who would come to
13 work with you sometimes, or come to work after
14 school I guess?

15 A. They came with me on Saturdays
16 sometimes. **Older Sister** came after school during the
17 week when she was in school in Mt. Pleasant.

18 Q. So you're aware of **Younger Sister**
19 recollection that she told you about this while you
20 were at work?

21 A. Right, but --

22 Q. Sometime prior to 2015?

23 A. Right, but when she was explaining it
24 to me because I didn't remember or have no
25 recollection of it, she said when I turned around

1 and said what did you say? That she said never
2 mind, I'm just kidding. I never heard what she
3 said to begin with so I mean --

4 Q. But according to **Younger** she had
5 **Sister** attempted to tell you about this at that time?

6 A. Right.

7 Q. And that she -- she also said that she
8 was just kidding?

9 A. Um-hmm.

10 Q. She never told you about speaking with
11 her friend **L.B.** about this?

12 A. No.

13 Q. When you guys initially talked about
14 when you go to the police and you have to give them
15 dates, things like that. Initially you guys had
16 this down as abuse occurring all the way until or
17 through 2012, correct? Those dates had to be
18 changed?

19 A. I don't recall the exact dates. I mean
20 we really had to sit down and talk with the kids
21 and map everything out. You got to take into
22 consideration **Younger** was like six when this started
23 **Sister** so I mean trying to get dates mapped out is --

24 Q. Right. After --

25 A. -- a challenge.

1 Q. -- the day that the police came
2 regarding Older Sister text message, after that day did
3 you still have contact with Brian?

4 A. We didn't see them very much and then
5 there was an incident later on with my youngest
6 daughter and then we did not see them anymore.

7 Q. Your daughter M.H.

8 A. Yes.

9 Q. And M.H. has never alleged any kind
10 of sexual abuse?

11 A. No.

12 Q. She was interviewed by Dorchester
13 County?

14 A. Yes.

15 Q. She was also living in your mother's
16 apartment at the same time?

17 A. Um-hmm.

18 Q. She would have been like three or four
19 years old, something like that, during 2010, 2011?

20 A. So she was -- when we moved out she was
21 like --

22 Q. What year was she born?

23 A. '04.

24 Q. So she was born in 2004. She was six
25 in 2010. All right. So you mentioned that there

1 was an incident with M.H. . Now, is the incident
2 you are referring to an incident where Brian and
3 Ben had sort of a verbal altercation?

4 A. Um-hmm.

5 Q. Ben confronted Brian?

6 A. Yeah.

7 Q. About using profanity to M.H. ?

8 A. Um-hmm.

9 Q. And that was when Ashley was there with
10 him, correct?

11 A. Yes.

12 Q. And so I know this is sort of confusing
13 to me. When the solicitor was talking to you she
14 talked about you guys moving from Rhonda's
15 apartment to Goose Creek, right? And at some point
16 Brian and Ashley and Rhonda moved from that same
17 apartment to Dunlap Street. Is that still in North
18 Charleston?

19 A. They were in North Charleston.

20 Q. And at that time and around the time I
21 guess when Ben and Brian had this altercation about
22 M.H. that was around the time when contact
23 started to lessen I guess?

24 A. Yes.

25 Q. So the girls weren't seeing their

1 grandmother and Ashley as much?

2 A. No.

3 Q. I am talking about the time period
4 between 2015 when you guys had the conversation
5 with the girls, prior to that, but after --

6 A. They would still go and see my mom.
7 Brian just did not come to my house after that.

8 Q. And Brian lived with your mother?

9 A. Yes.

10 Q. And did the girls still go to your
11 mother's house?

12 A. She picked them up from school because
13 I worked in Mt. Pleasant and I didn't get off work
14 until 6:30 so the after school program ends at six
15 so I couldn't get to them in time. So I paid my
16 mom to pick my kids up and watch them.

17 Q. And was your mother still picking them
18 up from school and taking them to her place where
19 Brian was living after Older Sister -- after the police
20 came about Older Sister text message?

21 A. Yeah, I think so, I mean, yeah.

22 Q. And so after the incident with M.H.
23 it was just you didn't have Brian over at your
24 house anymore?

25 A. Right.

1 Q. Did Ashley and Rhonda still come over,
2 Ashley and your mother I should say.

3 A. Well, Ashley didn't go -- she didn't
4 really go a lot of places without Brian. I mean my
5 mom would come over.

6 Q. So were **Younger Sister** and **Older Sister** and **M. H.**
7 not seeing Ashley as much after?

8 A. Unless **Younger Sister** would go over and spend
9 the night with my mom.

10 Q. So **Younger Sister** would go over and spend the
11 night at your mother's house?

12 A. Yeah.

13 Q. Did she want to do this, want to go
14 over and spend the night?

15 A. Yeah.

16 Q. That wasn't like because you needed
17 child care, she wanted to spend time over there?

18 A. No, she liked to be around her
19 grandmother and she was very close to Ashley.

20 Q. Okay. Ashley is your sister?

21 A. Yes.

22 Q. Younger sister or older sister?

23 A. Yes, she's younger.

24 Q. Now, after your mother's work injury
25 she was kind of the caretaker because of your

1 working full time, right? Talking about the years
2 2009 to 2011?

3 A. Well, I didn't start working until 2010
4 so --

5 Q. 2010 to 2011?

6 A. Yes.

7 Q. 2011 you would have been home with the
8 girls a lot?

9 A. When I was working?

10 Q. When you were not?

11 A. When I wasn't working I was home with
12 my kids every day.

13 Q. And so it was your mother after she got
14 injured?

15 A. Yes.

16 Q. And Brian was working?

17 A. Yes.

18 Q. You mentioned is it your ex-husband
19 James and he is Younger Sister and M.H. father?

20 A. Yes.

21 Q. He lived in Rhonda's apartment as well.
22 There was some overlap from where James and Brian
23 lived there?

24 A. Yeah.

25 Q. But not a long time I guess?

1 A. No.

2 Q. Was there occasion -- were there two
3 occasions when the police were called on James?

4 A. I'm sure, yes.

5 Q. And would you agree with that Brian
6 called the police on James at least twice?

7 A. He may have called him or Ashley. I
8 don't remember which one of them called. Usually
9 was because I was being abused in some way.

10 Q. So that was abuse by James directed at
11 you physically?

12 A. Yes.

13 Q. Brian and Ashley would call the police?

14 A. Sometimes, yes.

15 Q. And the girls would hear or see some of
16 this sometimes?

17 A. Yes.

18 Q. And then after one I guess more
19 egregious incident he was gone for good at that
20 point?

21 A. Yes.

22 Q. Did he go to prison?

23 A. For that, no.

24 Q. For other stuff?

25 A. Yeah, but it wasn't even in the state.

1 It was much later. He had left.

2 Q. And was that -- that was around 2009,
3 something like that when he left for good, or was
4 he there in the apartment at all in 2010 to the
5 best of your recollection?

6 A. No, he wasn't there in 2010. It would
7 have been probably 2008 or '9. The dates are
8 all --

9 Q. I understand. Typically sleeping
10 arrangements in the apartment, a lot of people in
11 the apartment. Your mother had her own bedroom,
12 right?

13 A. Um-hmm.

14 Q. And you and the girls sometimes would
15 share a bed with her?

16 A. Yeah.

17 Q. And so it wasn't unusual for like
18 Older Sister to sleep in her grandmother's bed with her?

19 A. Older Sister always slept in there.

20 Q. Older Sister and Rhonda always slept in that.
21 Was a king size bed?

22 A. Yes.

23 Q. Sometimes M. H. and Younger Sister too?

24 A. Yes.

25 Q. Sometimes you?

1 A. Yes.

2 Q. And when Ben would stay he would sleep
3 on the couch in the living room?

4 A. Yes.

5 Q. And sometimes the girls, particularly
6 Younger Sister and M. H. , would also sleep in the living
7 room?

8 A. We would all sleep in the living room.

9 Q. But Older Sister typically slept --

10 A. Always.

11 Q. -- with Rhonda. A lot of times you
12 would sleep in the living room as well?

13 A. Yes.

14 Q. The normal setup was Brian and Ashley
15 in one bedroom, grandma and Older Sister in one bedroom,
16 you, Ben, M. H. and Younger Sister in the living room?

17 A. Well, me, M. H. and Younger Sister. Ben
18 didn't stay with us every night.

19 Q. But sometimes he would stay more than
20 just the weekend, right?

21 A. Yes.

22 Q. Then you guys moved out. You go to
23 Goose Creek and that is where M. H. and Younger Sister
24 make their joint accusation to Ben and to you,
25 correct?

1 A. Older Sister .

2 Q. I am sorry, Older Sister and Younger Sister . They
3 made this accusation to Ben?

4 A. Yes.

5 Q. You said that Ben was basically
6 handling like a sisterly spat like argument?

7 A. Yes.

8 Q. Typical for the girls to argue like any
9 sisters do?

10 A. Right.

11 Q. This was not some out of the ordinary
12 argument?

13 A. No.

14 Q. In terms of volatility?

15 A. No. No hitting each other, was just
16 like --

17 Q. Going back and forth. He then deals
18 with it as you said. Was he just like lecturing
19 them?

20 A. Ben -- Ben is all about family first.
21 So he's one of those that's your sister, she is
22 going to be your only friend one day, y'all have to
23 confide in each other and love each other and he
24 gives them that spiel quite a bit, so you know.

25 Q. But he also disciplines, right?

1 A. Well, I mean if you call that
2 discipline, yes, he scolds them.

3 Q. He spansks them on occasion or did?

4 A. Maybe three or four times he would pop
5 them, but we don't really spank our kids.

6 Q. You're not -- you don't do that much
7 either?

8 A. No.

9 Q. When you were living with your mother
10 in that apartment when the girls were young did you
11 still give them baths and things like that?

12 A. Yeah.

13 Q. And you guys went to the swimming pool
14 a lot you said. Did you ever notice any kind of
15 unusual bruising or markings on them giving you
16 concern that they are being physically abused?

17 A. No.

18 Q. Younger Sister never told you that she was
19 being physically abused by Brian, hit, spanked,
20 paddled?

21 A. No.

22 Q. Hit with a piece of wood?

23 A. No, that was M. H. .

24 Q. M. H. got spanked once. Younger Sister never
25 brought that up though?

1 A. No.

2 Q. You never saw anything to corroborate

3 any kind of physical abuse of Younger
Sister, correct?

4 A. No.

5 Q. Younger
Sister would typically want to go with
6 Brian to go pick Ashley up from work, that was one
7 instance where they were in the car together a lot?

8 A. Um-hmm.

9 Q. Because she was very close with Ashley,
10 she wanted to go to get her more; is that correct?

11 A. Yeah.

12 Q. Did you ever have concerns, red flags,
13 anything at your mother's house regarding the
14 girls?

15 A. No.

16 Q. Did you and Ben ever discuss it while
17 you were living with your mother?

18 A. Well, Ben was like why does he always
19 have to take the kids with him everywhere he goes
20 and I am like don't know.

21 Q. Everywhere he goes --

22 A. Maybe he doesn't want to sit in the car
23 by himself.

24 Q. Everywhere he goes meaning to like pick
25 Ashley up, things like that?

1 A. Right, to go to the store and stuff.

2 Q. But the one thing that was daily was
3 going to pick Ashley up?

4 A. Yes.

5 Q. And **Younger**
6 **Sister** wanted to go with him to go
pick Ashley up, she expressed a desire to do that?

7 A. I don't remember her expressing desires
8 to go, but he would always say somebody want to
9 ride with me or something like that and one of them
10 would go.

11 Q. Okay. This girl Promise that was in
12 your neighborhood, Promise McClain, correct?

13 A. McClain, something like that.

14 Q. Did you speak with **Younger**
15 **Sister** regarding
Promise and some accusations regarding her?

16 A. I have.

17 Q. To your knowledge no follow up, nothing
18 like that from Detective Bailey in this case
19 related to this case? Anybody ever come to talk to
20 you, law enforcement, anything like that?

21 A. No.

22 Q. About Promise, where to find her, how
23 to get in contact with her?

24 A. They asked if they knew where she was.

25 Q. Is that the solicitor or the police?

1 A. The detective, I think she asked. I
2 don't remember.

3 Q. But to your knowledge there was no
4 follow up? That's not involved in this case?

5 A. No.

6 Q. The girls were taken to Dorchester
7 Childrens Center for forensic interviews, right?
8 That is Older Sister, Younger Sister and M.H. ?

9 A. Um-hmm.

10 Q. M.H. did not disclose any sexual
11 abuse whatsoever?

12 A. No.

13 Q. Did she disclose some things like
14 spanking, things like that?

15 A. No.

16 Q. Drug use regarding her father James?
17 Did DSS ever talk to you about those things,
18 cocaine or marijuana use in their presence?

19 A. No.

20 Q. Did you speak with the social worker
21 and the DCC people regarding a medical exam
22 followup for Younger Sister and Older Sister

23 A. No.

24 Q. Nobody ever told you to take them to
25 the doctor?

1 A. No.

2 Q. They were not taken to the doctor
3 regarding this incident or these accusations, I am
4 sorry.

5 A. No. I took them to the pediatrician
6 and I told her what was going on and I mean they
7 was just there for a regular exam, that was it.

8 Q. You told the pediatrician about this
9 case?

10 A. What was happening, yes.

11 Q. Was that like 2015, 2016, soon after
12 their DCC interviews?

13 A. Yes. It wasn't -- they never told me
14 to take the kids to a medical doctor or anything.

15 Q. Okay. And so when you took them to the
16 pediatrician it was a regular checkup visit?

17 A. Right, but she --

18 Q. Inquired about it?

19 A. No, but I felt like she should know.
20 She's their doctor. If something happened I wanted
21 her to be aware.

22 Q. Did she follow up in terms of any exam?

23 A. No.

24 Q. So it was just discussion between you
25 and her. Did she talk to the kids about it?

1 A. I mean she might have asked a couple of
2 questions or something, but it wasn't like --

3 Q. Not like a sitdown?

4 A. No.

5 Q. Is there a period when you were living
6 with Rhonda that the pool was closed for like
7 repairs or something like that or remodeling?

8 A. I think DHEC closed it down once
9 because it got all cloudy and mucky looking.

10 Q. How long was it closed for?

11 A. I have no idea.

12 Q. For the whole summer?

13 A. I mean if they closed it after I don't
14 know.

15 Q. I am talking about while you were
16 living there?

17 A. I don't think it was ever closed for
18 the whole summer, no.

19 MR. COCHRAN: Beg the Court's
20 indulgence.

21 (Off-the-record conference.)

22 BY MR. COCHRAN:

23 Q. At the pool, typical trips to the pool,
24 they always had adult supervision, right?

25 A. Yes.

1 Q. And that adult supervision would pretty
2 much either be you or Rhonda, their grandmother?

3 A. Or, yes, friends. I mean friends would
4 come over and have Lisa -- my friend Lisa, she was
5 there all the time with us.

6 Q. All those adults with the kids?

7 A. Yes.

8 Q. And a lot of times their grandmother
9 would be with them in the summertime, right?

10 A. Yes.

11 Q. Their grandmother would be the one
12 taking them to the pool. Did you go often or just
13 when you could kind of thing when you were off
14 work?

15 A. No, I mean --

16 Q. Weekends?

17 A. When I was working I didn't go that
18 much. Every now and then we would go in the
19 evenings sometimes. I would go on the weekends,
20 but I mean of course if I was at work my mom would
21 be the one that would take them over there during
22 that time.

23 Q. Never saw anything unusual that would
24 give you concern?

25 A. No.

1 MR. COCHRAN: No more questions, Your
2 Honor. Thank you.

3 THE COURT: Redirect?

4 MS. HERRING-LASH: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. HERRING-LASH:

7 Q. Ms. Batten, would you describe your
8 girls' personalities as being different from each
9 other?

10 MR. COCHRAN: I would object to that
11 being outside the scope of cross, Your Honor.

12 THE COURT: Redirect has to address new
13 matters raised by the cross-examination. Approach.

14 (Following proceedings were held at the
15 bench.)

16 MS. HERRING-LASH: I was going to ask
17 her about M.H. [REDACTED], I would ask about M.H. [REDACTED]
18 particularly. I think he brought up about she
19 never said there was anything that occurred with
20 her. She is a much different type of child than
21 Older Sister [REDACTED] and Younger Sister [REDACTED]. I think that's within what he
22 asked her about.

23 MR. COCHRAN: I would say it is not. I
24 didn't ask about their personalities.

25 THE COURT: You did ask about M.H. [REDACTED].

1 MR. COCHRAN: I remember, yes.

2 MS. HERRING-LASH: I will ask her about

3 M.H. [REDACTED].

4 THE COURT: Okay. You may proceed as
5 we have discussed.

6 (End of sidebar conference.)

7 BY MS. HERRING-LASH:

8 Q. Is M.H. [REDACTED] personality a little
9 different from let's say Older Sister [REDACTED]

10 A. Yeah. M.H. [REDACTED] is -- M.H. [REDACTED] is very
11 different from both of her sisters.

12 Q. How?

13 A. She is very sensitive. She's just --
14 personality wise I don't know, she is very
15 sensitive. She doesn't -- I don't know what you
16 are looking for.

17 Q. I don't know. Let me just continue on.

18 A. She has --

19 Q. Is it fair to say that you did not act
20 upon or take any actions about any of this until
21 the girls told you?

22 MR. COCHRAN: Objection to leading,
23 Your Honor.

24 THE COURT: Overruled.

25 BY MS. HERRING-LASH:

1 Q. Is that fair to say?

2 A. Well, yeah, I had no idea anything was
3 happening until they told me.

4 Q. So when the officer told you?

5 A. Well, he -- I don't know if I can say
6 what he said.

7 Q. No. Did Older Sister deny it?

8 A. Yeah, I mean -- yes, she -- yeah.

9 Q. And so was it February of 2015 before
10 the girls said anything to you?

11 A. Yes.

12 MS. HERRING-LASH: That's all the
13 questions I have.

14 MR. COCHRAN: No recross.

15 THE COURT: Ma'am, you may step down.
16 Thank you very much. Ladies and gentlemen of the
17 jury, at this time we are going to break for lunch.
18 As always, when you leave the courthouse I will
19 give the same instructions. Don't attempt to
20 gather any information about this case. Don't
21 discuss the case with anyone. Don't allow it to be
22 discussed with you. Don't try to listen to or
23 watch or read any media reports. Should anyone try
24 to contact you about your service in the case
25 please report that to us. We are at about a

1 MS. HERRING-LASH: Do you read it to
2 them?

3 THE COURT: Beg your pardon?

4 MS. HERRING-LASH: Do you read it to
5 them?

6 THE COURT: I'm going to read it to the
7 jury when they come in and let them know. Bring
8 the jury in.

9 (COURT. EXH. 1, stipulation, was marked
10 for identification.)

11 (Whereupon the jury entered the
12 courtroom at 2:17 p.m.)

13 THE COURT: Sir, if you would step
14 down, this gentleman, to the front row. Thank you
15 very much. We like to keep those alternates back
16 there in the back corner. Thank you very much.
17 The record will reflect the jury has returned to
18 the courtroom. If any of you have had any
19 difficulty in following my instructions thus far in
20 the trial, please stand. It appears that all
21 jurors have been able to comply with my
22 instructions thus far.

23 I have -- during our break the
24 attorneys involved in this case have entered into a
25 stipulation. Let me explain to you what is meant

1 by a stipulation. When both sides agree to the
2 truth of a certain fact it can be stipulated to and
3 that eliminates the need for proof on that point.
4 So if both sides agree that a fact is true, I then
5 advise you of that fact and it becomes a
6 stipulation.

7 In this particular case, the
8 stipulation is in regard to a witness who was
9 listed as a potential witness in our discussions
10 during jury selection. Let me go over the
11 stipulation with you.

12 This states the State and the defense
13 stipulate to the following: The detective in State
14 versus Brian Daugherty, Rebecca Bailey, had to
15 undergo surgery and is unavailable to attend the
16 trial. So that is a stipulation of fact. I will
17 put it into the record and it will be part of the
18 exhibits that you will be allowed to see when you
19 begin your deliberations.

20 When we ended earlier the State was in
21 the process of calling its witnesses. You may call
22 your next witness.

23 MR. POULOS: Thank you, Your Honor.
24 State stalls agent Henry Cook.

25 THE COURT: You may come forward to the

1 clerk and be sworn, please.

2 HENRY COOK

3 having been duly sworn, testifies as follows:

4 THE COURT: Sir, please state your
5 name.

6 THE WITNESS: Henry Cook.

7 THE COURT: Thank you. Counselor, your
8 witness.

9 DIRECT EXAMINATION

10 BY MR. POULOS:

11 Q. Good afternoon, Mr. Cook. Where are
12 you currently employed?

13 A. Homeland Security Investigations here
14 in Charleston, South Carolina.

15 Q. How long have you been with Homeland
16 Security?

17 A. Since 2010.

18 Q. What are your responsibilities there?

19 A. Conduct criminal investigations and I
20 also do computer forensics.

21 Q. Do you have any specialized training or
22 certification in that field?

23 A. I do. I have specialized training in
24 computer forensics, yes.

25 Q. What are your certifications?

1 A. A Plus certified which is information
2 technology like IT certification. And certified
3 examiner for the forensics toolkit which is an
4 access data product.

5 Q. Did you analyze a number of devices in
6 relation to this case?

7 A. I did.

8 Q. Let me approach.

9 THE COURT: You may.

10 BY MR. POULOS:

11 Q. I can show you what's been marked as
12 for identification as State's Exhibit 12. Tell me
13 if you recognize that device?

14 A. I do.

15 Q. What is that?

16 A. It's a Sony Vaio laptop.

17 Q. Is that one of the devices you analyzed
18 in this case?

19 A. It is.

20 Q. How do you know that?

21 A. It looks familiar and the service tag
22 appears to have -- to be the same one.

23 Q. In your analysis did you uncover
24 pornographic video and images from this computer?

25 A. I did.

1 Q. Just to be clear, we are not talking
2 about child pornography, right?

3 A. No, no, child. I did not find any
4 child.

5 Q. Approximately how many pornographic
6 videos were saved to this computer?

7 A. I found approximately 241 videos.

8 Q. Do these videos depict both oral sex
9 and intercourse?

10 A. Yes.

11 Q. Were there also pornographic images
12 that were not videos recovered from this computer?

13 A. Yes.

14 Q. Approximately how many pornographic
15 images did you find on the computer?

16 A. I would say over 9,000.

17 Q. Were there also nonpornographic images
18 on the computer?

19 A. Yes.

20 Q. What appeared to be personal photos,
21 family photos?

22 A. Yes.

23 Q. Show you what's been in evidence as
24 State's Exhibit 5 and 9. Do you recognize these
25 photos as having been located on that computer?

1 A. They appear to be the same. They would
2 have, of course, been in digital format and not
3 printed.

4 Q. Those were some of the personal photos
5 you observed on the computer?

6 A. Yes, that's correct.

7 Q. Were you able to recover any data
8 regarding internet history from May 2009 to May
9 2011?

10 A. Yes, I was.

11 Q. According to that data was this
12 computer used to access pornography on line during
13 those dates?

14 A. Appeared to be, yes.

15 Q. Approximately how many suspected
16 pornographic URL's did you see searched on that
17 computer?

18 A. I would say over 5,000.

19 Q. What is a URL?

20 A. URL is uniform resource location which
21 is a common -- more commonly known as a website,
22 website address.

23 Q. Did you also analyze what I am showing
24 you is State's Exhibit 13 already in evidence? Not
25 in evidence, marked for identification.

1 A. Yes.

2 Q. And were personal photographs found on
3 that camera as well?

4 A. They were.

5 Q. Showing you State's Exhibits 6, 8 and
6 10 already in evidence. Were those three of the
7 photos that were found on that camera?

8 A. Yes. Again, this would have been in
9 digital format, but yes.

10 Q. Agent Cook, did you also analyze a
11 phone in this case?

12 A. I did.

13 Q. Showing you what's marked as State's
14 Exhibit 14 for identification, is that the phone
15 you analyzed?

16 A. Yes, it is.

17 Q. And in analyzing that phone did you
18 recover any data that predated 2015?

19 A. No, I did not.

20 Q. And were all of the devices brought to
21 you for analysis by Detective Rebecca Bailey from
22 the North Charleston Police Department?

23 A. That's correct.

24 Q. Did you have any other involvement in
25 this case?

1 A. I did not.

2 (Off-the-record conference.)

3 BY MR. POULOS:

4 Q. Just to be clear, all these items that
5 you analyzed are related to this case against Mr.
6 Brian Daugherty, correct?

7 A. To my knowledge, yes.

8 MR. POULOS: No further questions, Your
9 Honor.

10 THE COURT: Defense may cross-examine.

11 CROSS-EXAMINATION

12 BY MR. COCHRAN:

13 Q. Thank you, Your Honor. Please the
14 Court. You couldn't know by examining these things
15 who or necessarily know who all accessed these
16 devices, correct?

17 A. That's correct.

18 Q. And this is an extensive examination of
19 this laptop, correct?

20 A. Extensive?

21 Q. Thorough?

22 A. Yes.

23 Q. You basically went in to find
24 everything you possibly could find, that included
25 searches for potentially deleted or other items

1 such as that might have been deleted or hidden?

2 A. That's -- the software will recover
3 deleted items, yes.

4 Q. No child pornography whatsoever was
5 found --

6 A. No.

7 Q. -- on any of these items. And the
8 laptop was -- the phone contents were 2015, but the
9 laptop was prior to 2015, correct?

10 A. Correct.

11 MR. COCHRAN: Nothing further, Your
12 Honor. Thank you.

13 THE COURT: Anything on redirect?

14 MR. POULOS: No.

15 THE COURT: Sir, you may step down.
16 Thank you very much. You wish to excuse this
17 witness?

18 MS. HERRING-LASH: Yes, Your Honor.

19 THE COURT: Any objection?

20 MR. COCHRAN: No, Your Honor.

21 THE COURT: You are free to leave the
22 courthouse if you would like, sir. State may call
23 its next witness.

24 MS. HERRING-LASH: The State would call
25 Dr. John Melville.

1 JOHN MELVILLE, M.D.

2 having been duly sworn, testifies as follows:

3 THE COURT: Please state your full
4 name.

5 THE WITNESS: John Melville.

6 THE COURT: Thank you. Your witness.

7 DIRECT EXAMINATION

8 BY MS. HERRING-LASH:

9 Q. Dr. Melville, where do you work?

10 A. I work at the Medical University of
11 South Carolina.

12 Q. And how long have you been there?

13 A. I started in October.

14 Q. What duties did you take over when you
15 began there?

16 A. I am the division chief of child abuse
17 pediatrics.

18 Q. And what is your professional
19 background?

20 A. I'm a physician. So after I completed
21 my bachelors and masters degree I attended medical
22 school at the University of California San Diego,
23 completed an MD degree. After my medical training
24 I did a double residency in internal medicine,
25 which is medical care of adults, and pediatrics,

1 which is medical care of children, at the Akron
2 General Medical Center in Akron Children's Hospital
3 in Akron, Ohio.

4 Following my residency I was board
5 certified in general pediatrics by the American
6 Board of Pediatrics and general internal medicine
7 by the American Board of Internal Medicine,
8 although I have not maintained my internal medicine
9 credentials.

10 After four years as a general internist
11 and pediatrician in north Alaska I went back to
12 school at the University of Texas Health Science
13 Center in San Antonio for a three-year post
14 doctoral fellowship in child abuse pediatrics. As
15 a child abuse pediatrics fellow I was responsible
16 to evaluate children suspected to have been abused
17 or neglected under the supervision of faculty.

18 I also conducted research on topics of
19 child abuse, taught at the local and national
20 level. Following my fellowship I took a
21 comprehensive exam and was board certified in child
22 abuse pediatrics by the child abuse subboard of the
23 American Board of Pediatrics.

24 I am currently a member and a fellow of
25 the American Academy of Pediatrics and a member of

1 its section on child abuse and neglect. I am also
2 a member of the Ray Helfer Society which is a
3 professional organization for child abuse
4 pediatricians and within the Ray Helfer Society I
5 am the cochair of the research committee.

6 I have evaluated over 600 children
7 suspected to have been abused or neglected.

8 Q. Do you have any specialized training in
9 child sexual abuse or is that included in what you
10 just explained to us?

11 A. So sexual abuse is one of the species
12 of abuse that is taught throughout training in
13 fellowship. I have also published literature
14 specifically about children who are sexually
15 abused.

16 Q. And have you testified as an expert in
17 the area of child sexual abuse?

18 A. Many, many times.

19 Q. What states?

20 A. I have testified in Alaska, Texas,
21 Ohio. I have testified in a federal court martial.
22 I have testified in federal district court.

23 Q. And is this your first time in a South
24 Carolina court?

25 A. It is.

1 MS. HERRING-LASH: Your Honor, at this
2 time we would offer Dr. Melville as an expert in
3 the area of child sexual abuse.

4 THE COURT: Any objection?

5 MR. COCHRAN: No objection, Your Honor.

6 THE COURT: Ladies and gentlemen of the
7 jury, let me take a moment to digress and explain
8 to you what we are doing here because this is a
9 process we are going to go through. We may do it
10 again during the trial.

11 Generally the rules of evidence that
12 govern how witnesses can testify and what witnesses
13 can testify to does not allow witnesses to express
14 opinions about matters. An exception to that
15 general rule is made for witnesses who are
16 qualified or designated by the Court as an expert
17 witness and that can be within some profession,
18 some area of employment, occupation, field of
19 endeavor.

20 And for witnesses who are declared to
21 be an expert within such a field they are allowed
22 then to state their opinions within the area of
23 their expertise and also state the reasons why they
24 hold those opinions.

25 Now, later on when I charge you

1 concerning the law in this case I will include in
2 that charge a discussion or some information
3 concerning how you are allowed to treat testimony
4 given by all witnesses, including experts. But the
5 process that we are going through now is to have
6 this witness qualified as an expert within his
7 field without objection.

8 I will qualify him as an expert. That
9 will allow him to state his opinions within that
10 field and the reasons why he might hold those
11 opinions. So, counselor, I have declared him to be
12 an expert as you have requested. You may proceed.

13 BY MS. HERRING-LASH:

14 Q. Thank you, Your Honor. Dr. Melville,
15 have you seen any of the people regarding this
16 case?

17 A. I have not.

18 Q. Have you reviewed any of the materials
19 in this case?

20 A. I have not.

21 Q. So you're here to speak to the jury
22 strictly as an expert in this area?

23 A. That is my understanding, yes.

24 Q. Now, Dr. Melville, is there research in
25 the area of findings of trauma in sexual assault

1 cases?

2 A. There is.

3 Q. And what is some of that research as
4 far as time frame?

5 A. As far as -- so the vast majority of
6 children who report having been sexually abused or
7 sexually assaulted do not have visible findings
8 that would be only possibly be caused sexual abuse.
9 Perhaps the leading article on this case is
10 published in I think it was 2000, early 2000's by
11 Dr. Adams where they looked at 236 children where
12 there was a trial and a jury such as yourselves
13 convicted somebody of committing child sexual
14 abuse. Of those 236 children that there was a
15 conviction for sexual abuse, only 14 percent of
16 them had findings that would be definitive evidence
17 of sexual abuse.

18 So from that we can get that the
19 majority, 86 percent, of these children who were
20 sexually abused when they were examined by a
21 physician had no findings of sexual abuse at all or
22 at least no findings that could only be caused by
23 sexual abuse.

24 This study has been replicated a number
25 of times by other groups with similar results.

So this is one of the many reasons why

1 a normal exam does not mean nothing happened. We
2 know that frequently there are no injuries even
3 though there has been sexual abuse. We know that
4 from Adams and from some other papers and from
5 McCann, we know that even if there was an injury
6 the usual course of those injuries is to heal
7 quickly and show no residual evidence of an injury
8 after it is healed.

9 Q. And with that having been said, Dr.
10 Melville, going back to another issue, what is the
11 time frame if there is in the medical research that
12 you would expect to find DNA present after an
13 assault?

14 A. DNA is gone very, very quickly. We
15 look to two papers in 2011 by Thackery and Giradet.
16 It is very rare to find DNA on a child's body more
17 than 24 hours after the assault. In South
18 Carolina, like many states, the cut off we use for
19 when it is appropriate to do a forensic evidence
20 exam or a rape kit as it is called is 72 hours.
21 That's being generous. Beyond that very rare, one
22 out of a couple of hundred children, might have DNA
23 at 96 hours or about four days after the assault.
24 Beyond that it is extraordinarily unlikely to find
25 DNA as a result of a sexual assault.

1 Q. And that having been said, Dr.
2 Melville, in your expert opinion would there be a
3 reason forensically for a collection-type medical
4 exam four years after cunnilingus?

5 A. So cunnilingus is contact between a
6 mouth and a female's genitals which often would not
7 be expected to find injury. As far as finding
8 evidence of a crime, it would be extraordinarily
9 unlikely to find evidence of cunnilingus four years
10 following an assault. The recommendation to do an
11 exam would be for medical rather than for legal or
12 forensic reasons.

13 Q. And could the same be said in the
14 likelihood of discovering DNA or other forms of
15 evidence four years after digital penetration?

16 A. Again, you would be extremely unlikely
17 to find evidence of digital penetration four years
18 following a -- four years following digital
19 penetration there would be unlikely to find any
20 evidence of the event and extraordinarily unlikely
21 to find DNA evidence of the event.

22 Q. Can you think of any reason why you
23 would be able to find DNA four years later?

24 A. No. If DNA were found it would be
25 evidence of more recent contact.

1 Q. And can the same be said for fellatio?

2 A. So fellatio is when a penis goes into
3 the mouth. Again, it is very unusual to find DNA
4 evidence more than even eight to twelve after that
5 happens. So if DNA were found four years later
6 that would be evidence of repeated contact. It
7 would not be reasonable to believe that the DNA had
8 stayed in the mouth for four years.

9 Q. And what is genital penetration?

10 A. Genital penetration -- my understanding
11 is that that is more of a legal definition than a
12 medical definition. But my understanding of the
13 legal definition is that any intrusion, however
14 slight, into the genital area or between the labia
15 of the female is considered genital penetration.

16 Q. Is that different than introital
17 penetration or penetration into the vaginal area or
18 introitus?

19 A. So we -- people have words for the
20 parts of the female genitalia that are often used
21 in the -- by people who are not physicians in ways
22 that differ from the technical definition. So the
23 outer most part of a woman's genitalia are the
24 labia or the lips and that are labia majora or
25 outer lips and labia minora within that.

1 Between the lips of the vagina or
2 between the lips that we would call the vulva.
3 That area between them is called the introitus.
4 Coming on the back of the introitus this is the
5 hymen and then the birth canal. Now, the canal the
6 babies come out of, that is the anatomic vagina.
7 So your question was?

8 Q. Is there a difference between genital
9 penetration and what I guess what we would think of
10 as lay people as full intercourse?

11 A. So again, the term full intercourse is
12 not a --

13 Q. Medical?

14 A. -- medical term, but most adults who
15 have intercourse the penis would enter into the
16 birth canal. So it would go between the labia
17 through the hymen and into the birth canal. A
18 penis could also penetrate just between the labia
19 and remain in the introitus and my understanding is
20 that that would still be considered penetration
21 according to the legal definition in South
22 Carolina.

23 Q. And I guess just the same question
24 again. Would you be -- would you think in your
25 opinion that you would be able to find forensic or

1 trauma evidence four years after genital
2 penetration?

3 A. It would be unusual to find evidence of
4 trauma four years following any kind of genital
5 penetration.

6 Q. Those are all the questions I have. If
7 you will answer any that Mr. Cochran has.

8 A. Certainly.

9 CROSS-EXAMINATION

10 BY MR. COCHRAN:

11 Q. Dr. Melville, you indicated through the
12 studies of child abuse allegations that involved a
13 conviction in court that there was a low or
14 moderately low percentage where there was physical
15 evidence, whether that be DNA evidence or evidence
16 of injury, correct?

17 A. That is correct. It is unusual to find
18 physical evidence of injury among cases that have
19 resulted in convictions.

20 Q. That doesn't mean that a medical
21 examination or a rape kit as you called it of a
22 child alleging sexual abuse would be pointless?

23 A. I recommend examinations for medical
24 purposes regardless of the interval.

25 Q. Right. When you say you recommend them

1 for medical purposes, you mean regardless of
2 whether or not they are looking forensically for
3 injury, whether they are scraping skin or DNA,
4 things like that, you still want to treat the
5 patient?

6 A. Correct. I believe that the
7 examination is therapeutic.

8 Q. So in cases of child allegation of
9 sexual abuse, a medical exam is appropriate and
10 recommended?

11 A. Absolutely.

12 Q. And certainly it would be unreasonable
13 to find evidence of four-year old saliva or semen
14 or even certain injuries related to intercourse?
15 It would be extremely unusual, probably
16 unreasonable to believe that that would be
17 remaining after four years I believe is what you
18 testified to?

19 A. Especially with regard to the DNA. It
20 would be implausible for DNA to still be there
21 after four years.

22 Q. And so if a medical exam was conducted
23 in relation to these allegations and those things
24 did turn up, because they do turn up sometimes,
25 right?

1 A. Absolutely.

2 Q. And if they did turn up four years
3 later, that would suggest not that those things
4 that remained there for four years, but that they
5 were new?

6 A. If DNA were present on an exam that
7 would be definitive evidence that there had been
8 more recent contact, yes.

9 Q. That the abuse was ongoing and not, in
10 fact, four years old?

11 A. It would not indicate there was -- it
12 would not indicate the absence of abuse four years
13 previously. But if DNA were recovered at the time
14 of the exam it would indicate that there had been
15 sexual contact more recently than four years
16 previously.

17 Q. Within 72 hours or so?

18 A. It would neither support nor deny that
19 abuse had occurred four years previously.

20 Q. And the reason why -- people watch TV
21 now and know this anyways, but the reason why
22 nurses and doctors will swab and scrape for DNA is
23 because DNA can be tested to identify who the owner
24 of that saliva or semen was, correct?

25 A. DNA can be tested to determine who the

1 source of the material is.

2 MR. COCHRAN: Beg the Court's
3 indulgence.

4 (Brief pause.)

5 Nothing further, Your Honor. Thank
6 you, Doctor.

7 THE COURT: Redirect?

8 MS. HERRING-LASH: No, Your Honor. Ask
9 the witness be excused.

10 THE COURT: Any objection to his being
11 excused?

12 MR. COCHRAN: No, Your Honor.

13 THE COURT: You are free to go, Doctor.
14 Thank you for coming today. State may call its
15 next witness.

16 MS. HERRING-LASH: Your Honor, I think
17 we have a point of law before the next witness.

18 THE COURT: All right. Ladies and
19 gentlemen of the jury, this is one of those
20 occasions I need to take some matter up with the
21 attorneys outside of your presence so I'm going to
22 ask you to step back to the jury room while I have
23 those discussions with the attorneys. As always, I
24 will ask you not to discuss anything about the case
25 until I ask you to begin deliberations. You may

1 oath.

2 DANIELLE NICKELS

3 having been duly sworn, testifies as follows:

4 THE COURT: Please state your name once
5 seated.

6 THE WITNESS: Danielle Nickels.

7 THE COURT: Your witness, counselor.

8 DIRECT EXAMINATION

9 BY MS. HERRING-LASH:

10 Q. Ms. Nickels, where do you work?

11 A. I work at the Dorchester Childrens
12 Center.

13 Q. And do you do interviews of children at
14 the Dorchester Childrens Center?

15 A. I do.

16 Q. Did you see Younger Sister [REDACTED] ?

17 A. I did.

18 Q. When did you see her?

19 A. Actually I don't have the report on the
20 stand with me.

21 Q. If I showed you the report would that
22 refresh your memory as to the date of your
23 interview?

24 A. Yes, ma'am. I saw her February 17th,
25 2015.

1 Q. And at that appointment did you conduct
2 an interview that was taped?

3 A. Yes.

4 Q. And may I approach the witness, Your
5 Honor?

6 THE COURT: You may.

7 BY MS. HERRING-LASH:

8 Q. I want to show you what has been
9 admitted into evidence as State's Exhibit No. 11
10 and ask you if you recognize this?

11 A. That is a recording of the interview.

12 Q. And how do you know that is the
13 recording that you did?

14 A. That has my initials on it which means
15 that I reviewed it. It is a copy of it.

16 Q. And what date did you review it?

17 A. February 13th, 2017.

18 MS. HERRING-LASH: Your Honor, at this
19 time the State would offer to publish this
20 interview.

21 THE COURT: You may publish the disc.

22 MS. HERRING-LASH: Your Honor, I'm
23 going to sit down.

24 THE COURT: Ladies and gentlemen, when
25 we talk about publishing a matter in court, that

1 means we are going to show it to you. So it is
2 just the way we talk about that in court. Any time
3 I say they have the right to publish matters that
4 means that they have the right to show it to you.

5 (Thereupon, Exhibit 11 was played for
6 the jury without the reporter taking it down
7 verbatim.)

8 (Video played from 3:11 p.m. to 4:34
9 p.m.)

10 MS. HERRING-LASH: Those are all the
11 questions I have. Answer any from Mr. Cochran.

12 THE COURT: You may cross-examine.

13 CROSS-EXAMINATION

14 BY MR. COCHRAN:

15 Q. Ms. Nickels?

16 A. Yes, sir.

17 Q. Would you agree that the bulk or
18 majority of abuse that **Younger Sister** alleged during your
19 interview, the place where that would have occurred
20 would be the house where she was living with her
21 mother and grandmother?

22 A. She -- from what I heard when she
23 reported it was her grandmother, mom, Ashley, Brian
24 and her sisters and sometimes her biological dad
25 and then off and on with stepdad.

1 Q. And the typical place of the abuse was
2 that house. Sometimes the car I guess there was
3 attempted abuse, but --

4 A. If we are talking incidents related to
5 Brian, then yes.

6 Q. And during the interview she alleged
7 that these things took place in a bedroom while
8 other people were home, sometimes her sisters, her
9 grandmother, sometimes even her mother?

10 A. Yeah.

11 Q. You make -- when you meet with kids in
12 this capacity you do make recommendations, correct?

13 A. Correct.

14 Q. And in this case you also submitted
15 reports, correct?

16 A. A written report summary of the
17 interview, yes.

18 Q. And then as part of that report you
19 list your recommendations?

20 A. Yes.

21 Q. And a recommendation was made in this
22 case that a forensic medical exam should be
23 conducted or completed for Younger Sister correct?

24 A. If that's what is written. I don't
25 have a copy of the report.

1 Q. If I showed you a copy would that
2 refresh your memory?

3 A. Yes.

4 Q. Specifically talking about item No. 5
5 and I believe that is your signature at the bottom?

6 A. Yes. That is my signature and, yes, it
7 does recommend **Younger** complete a forensic medical
8 **Sister** exam.

9 Q. And you completed a forensic interview,
10 correct?

11 A. Correct.

12 Q. And a forensic medical exam would be
13 done by a nurse or doctor?

14 A. A medical professional, yes, sir.

15 MR. COCHRAN: Beg the Court's
16 indulgence.

17 THE COURT: Yes, sir.

18 (Off-the-record conference.)

19 BY MR. COCHRAN:

20 Q. There were accusations that you
21 discussed about another individual. Her name was
22 Promise McClain and was that your understanding
23 that was a person in the neighborhood from your
24 interview?

25 A. I think she said she lived in the

1 grandma's neighborhood.

2 Q. And you -- the reason for that
3 questioning about other people, seeing other people
4 abused, things like that, hearing about it, is
5 because this information is passed along to law
6 enforcement to potentially follow up on, correct?

7 A. So whenever a child would report any
8 allegations or hearing about any allegations of
9 abuse or neglect we ask for information just to
10 make sure that we can report that to the
11 appropriate authorities whether it is law
12 enforcement or DSS.

13 MR. COCHRAN: Thank you. No more
14 questions, Your Honor.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MS. HERRING-LASH:

18 Q. Would the report in this case have been
19 giving law enforcement this tape?

20 A. Ma'am?

21 Q. Would the report have been giving law
22 enforcement that tape?

23 A. Are you talking about the report
24 regarding Promise?

25 Q. Yes.

1 A. So if I had information about Promise
2 and the location of the alleged incident then I
3 would give that information to law enforcement. If
4 law enforcement would request a copy of the
5 interview then they could view it to get more
6 details, but I would just give any information that
7 I had.

8 Q. Did you get enough in that to do that?

9 A. I don't know. I would need to know
10 that incident location of the specific abuse.

11 Q. It was what you just heard?

12 A. So -- I don't think I had enough
13 information to make a report, no.

14 MS. HERRING-LASH: That's all the
15 questions I have.

16 THE COURT: Any recross?

17 MR. COCHRAN: No recross, Your Honor.

18 THE COURT: You may step down, thank
19 you very much. I would ask the counselors to
20 approach, please.

21 (Following proceedings were held at the
22 bench.)

23 THE COURT: How many more do you have?

24 MS. HERRING-LASH: I have just one more
25 witness. She is here.

1 calling its witnesses. The State may call the next
2 witness.

3 MS. HERRING-LASH: The State would call
4 Dr. Carole Swiecicki.

5 THE COURT: Come forward, ma'am, to be
6 sworn.

7 CAROLE SWIECICKI

8 having been duly sworn, testifies as follows:

9 THE COURT: Once you are seated,
10 ma'am, please state your name.

11 THE WITNESS: My name is Carole
12 Swiecicki. First name is C-A-R-O-L-E, last name
13 is S-W-I-E-C-I-C-K-I.

14 DIRECT EXAMINATION

15 BY MS. HERRING-LASH:

16 Q. Dr. Swiecicki, where do you work?

17 A. I'm the executive director at the Dee
18 Norton Low Country Children's Center.

19 Q. And what is that?

20 A. It's a childrens advocacy center which
21 is a national model for responding when there is a
22 concern about child abuse or neglect.

23 Q. And what are your duties there?

24 A. As the executive director I oversee the
25 program. We have 37 staff members in different

1 departments, including clinical and forensic
2 services, grants and programs, development,
3 marketing, finance operations of the center.

4 Q. And how long have you been there?

5 A. I have been the executive director for
6 three years.

7 Q. And what is your educational
8 background?

9 A. I have my bachelors degree in
10 psychology from the University of Florida and my
11 masters and doctorate in clinical psychology from
12 St. Louis University.

13 Q. And what is your professional
14 background?

15 A. I'm a licensed psychologist in South
16 Carolina and have been a psychologist for the last
17 -- since 2007. I have been licensed almost ten
18 years.

19 Q. And do you have any specialized
20 training in the area of child sexual abuse?

21 A. I do. I completed my clinical
22 internship for my Ph.D. at the National Crimes
23 Victims Center at MUSC specializing in working with
24 individuals who've experienced child abuse and
25 other types of traumatic events, including sexual

1 abuse. And then did my post-doctoral fellowship
2 which is a year of training at St. John's
3 University in a specialty program for children who
4 are victims of abuse, including sexual abuse.

5 Q. And what are your professional
6 affiliations?

7 A. I'm a member of the American
8 Professional Society on the Abuse of Children, the
9 American Psychological Association, the Association
10 for Behavioral and Cognitive Therapies and then I'm
11 on the board of directors of the South Carolina
12 Network of CAC which are the centers that are
13 similar to the one where I work and also the board
14 of directors of National Childrens Alliance which
15 accredits childrens advocacy centers like mine.

16 Q. Have you had -- do you have any peer
17 review publications in the area of child sexual
18 abuse?

19 A. I do. I have published with some
20 colleagues a study on how caregivers symptoms
21 impact childrens symptoms when they have reported
22 being sexually abused and then some of my other
23 publications involve a sample of children that have
24 experienced multiple types of traumatic events,
25 including sexual abuse and other type of abuse.

1 Q. And have you done presentations in the
2 area of child sexual abuse?

3 A. Yes.

4 Q. What are some of those?

5 A. Some of the ones specifically in sexual
6 abuse have to do with reasons why children disclose
7 abuse, asking children about things like that, and
8 mostly under the umbrella of how children respond
9 to sexual abuse and how effective treatments are
10 for those children. Also some primary prevention
11 presentations about preventing sexual abuse.

12 Q. And have you testified in the area of
13 the dynamics of child sexual abuse?

14 A. Yes.

15 Q. How many times and what courts?

16 A. Approximately 15 times. Prior to
17 taking my position here I was the mental health
18 director at a childrens advocacy center in Norfolk,
19 Virginia and so I have testified in Norfolk
20 criminal court, family court in Virginia, courts
21 and family court in Virginia Beach, criminal court,
22 military court martials and then here in Charleston
23 as well.

24 MS. HERRING-LASH: Your Honor, at this
25 time we would offer Dr. Swiecicki as an expert in

1 the dynamics of child sexual abuse.

2 THE COURT: Any objection to that
3 designation?

4 MR. COCHRAN: Yes, Your Honor, we do
5 object. Not based on her qualifications, we just
6 object that this is not area of expertise, that
7 what she is going to testify to is not outside the
8 common knowledge of the typical juror.

9 THE COURT: All right. Ladies and
10 gentlemen of the jury, this is a matter that I am
11 going to need to take up with the attorneys in this
12 matter. It's one of those situations where I will
13 ask you to step back to the jury room while I do
14 that. As usual I will tell you not to begin any
15 discussions about the case until I ask you to do
16 so. You may retire to the jury room.

17 (Thereupon, the jury exited the
18 courtroom at 9:24 a.m.)

19 THE COURT: Counsel, let me hear from
20 you more fully on your objection and the basis for
21 it, please.

22 MR. COCHRAN: Yes, Your Honor. I
23 haven't really requested a proffer just because I
24 have heard this witness and other witnesses with a
25 similar position. Typically in these cases this

1 type of expert witness will testify to delayed
2 disclosure, typical or atypical behavior of child
3 abuse victims, family members, things like that.
4 Basically what ends up happening is there is
5 testimony that essentially all behavior is normal,
6 no behavior excludes the possibility of sexual
7 abuse. That some children delay their disclosure.
8 Some children disclose immediately. Some family
9 members don't believe them. Some family members do
10 believe them. And what our argument is is not that
11 she doesn't deal with this at an expert level
12 necessarily, but what she is testifying to, what
13 she's being offered for is not anything that a
14 common juror wouldn't know.

15 That sometimes people would delay a
16 disclosure about sexual trauma. Sometimes they
17 will disclose immediately. Sometimes their parents
18 will believe them, sometimes they wouldn't.
19 Sometimes it would affect their behavior, sometimes
20 it wouldn't. That's basically the gist of the
21 testimony. Every single time. And it's just not
22 expertise. It does not help the jury decide
23 something that they didn't already know.

24 THE COURT: Any cases that you are
25 citing?

1 MR. COCHRAN: Your Honor, there is --
2 the case law has been developing and changing in
3 South Carolina with regards typically to time and
4 place witnesses. And SANE nurses and forensic
5 interviewers and those, that testimony has been
6 limited. Courts have in South Carolina considered
7 the argument I am making, and just full disclosure,
8 the case law in South Carolina I believe does
9 disagree with me at this point, but because the
10 case law is changing so rapidly and drastically in
11 a lot of areas regarding testimony in child sex
12 abuse cases, I do feel that it's necessary to make
13 this objection.

14 THE COURT: All right. I will hear the
15 State concerning whether her testimony is within
16 the common knowledge of all jurors.

17 MS. HERRING-LASH: Yes, Your Honor. We
18 would refer to State v. Damon Brown which is 768
19 S.E. 2d 246, a 2015 case. Where the Court looked
20 at that exact argument and to quote that case, it
21 said, "Expert testimony concerning common behavior
22 characteristics of sexual abuse victims and the
23 range of responses to sexual assault encountered by
24 experts is admissible. Such testimony is relevant
25 and helpful and explaining to the jury the typical

1 behavioral patterns of adolescent victims of sexual
2 assaults. It assists the jury in understanding
3 some of the aspects of the behavior of victims and
4 provide insight into the abused child's often
5 strange behavior."

6 That court found that it was beyond the
7 common knowledge of the lay juror. That was one of
8 the issues. I think what this court found in the
9 Brown case has stayed pretty much the same. It
10 changed a whole line of cases in that this is the
11 case that said the State must put up a blind
12 expert, not someone that has any knowledge.

13 THE COURT: I was going to ask you.
14 Does she have any particular knowledge of this
15 case?

16 MS. HERRING-LASH: No, Your Honor. She
17 doesn't even work at the same center where these
18 children have ever been seen.

19 THE COURT: I see.

20 MS. HERRING-LASH: So this case has
21 stood through several subsequent to that to allow
22 blind experts. But they did address the fact that
23 this is not knowledge that is beyond what a lay
24 juror would have.

25 THE COURT: All right.

1 MS. HERRING-LASH: In fact, I guess I
2 would bring out that it's been argued already why
3 these kids didn't tell.

4 THE COURT: Beg your pardon?

5 MS. HERRING-LASH: I think there is
6 some question as to why you didn't tell, why they
7 wouldn't have told. In some --

8 THE COURT: You are talking about in
9 the questioning of the witnesses already?

10 MS. HERRING-LASH: Yes, Your Honor.

11 THE COURT: In this case. Anything
12 further, Mr. Cochran?

13 MR. COCHRAN: Your Honor, I do agree
14 with Ms. Herring-Lash that the case law disagrees
15 with me on this point. I will just point to the
16 Court's gatekeeper function on a case-by-case basis
17 in admitting experts.

18 THE COURT: Well, why don't we do this:
19 I'm going to ask that you put a little more
20 information from this witness on the record
21 concerning her familiarity with this case or lack
22 thereof and what she intends to testify about
23 before we bring the jury back in and then I'll make
24 a ruling on your offer.

25 MS. HERRING-LASH: Do you want me to go

1 through her entire testimony or just --

2 THE COURT: My understanding of the
3 case that you have cited is that it does allow that
4 testimony from a witness who has no particular
5 information about this case and is talking
6 generally about the scientific research or
7 publications in this field.

8 MS. HERRING-LASH: Right.

9 THE COURT: Concerning the disclosure.
10 So that's not on the record now. You have argued
11 it to me. But I'd like to hear the witness say
12 that before I make the ruling.

13 MS. HERRING-LASH: Okay.

14 THE COURT: You may proceed.

15 BY MS. HERRING-LASH:

16 Q. Dr. Swieciciki, have you met the family
17 involved in this case?

18 A. Not to my knowledge.

19 Q. Have you had any -- reviewed any of the
20 materials regarding this case, any of the reports
21 or anything like that?

22 A. No.

23 Q. To your knowledge have they ever been
24 seen by your agency?

25 A. No.

1 Q. And you have not discussed the case
2 with anyone from the Dorchester Childrens Center
3 where they were seen?

4 A. Correct.

5 THE COURT: All right. I'm going to
6 overrule the objection. I will qualify her as an
7 expert in the field if she can offer it. I will
8 allow you to go through that questioning in front
9 of the jury. I just wanted to be sure we had it on
10 the record. Let's bring the jury back in.

11 Before the jury comes in I would
12 caution the witness against bolstering any stories
13 or statements that have been previously made.

14 MS. HERRING-LASH: She doesn't know
15 any.

16 (Whereupon the jury entered the
17 courtroom at 9:33 a.m.)

18 THE COURT: The record will reflect the
19 jury has returned to the courtroom. Ladies and
20 gentlemen, quite often when you're out and I am
21 considering these issues we take testimony that is
22 proffered during that period of time from
23 witnesses. We did that in this case and I'm going
24 to ask that the counselor go back over those
25 questions before you. My ruling is that I will

1 allow this witness to testify as an expert as she
2 has been tendered. You may proceed, counselor.

3 BY MS. HERRING-LASH:

4 Q. Dr. Swieciciki, have you met the family
5 involved in this case?

6 A. Not to my knowledge.

7 Q. Have you interviewed any of the
8 witnesses or the victims in this case?

9 A. No.

10 Q. Have you gone over any of the materials
11 regarding anything in this case?

12 A. No.

13 Q. Have you met with anyone from the
14 Dorchester Childrens Center, because I think you're
15 at the Dee Norton Low Country Childrens Center.
16 Have you met with any of those individuals about
17 this case?

18 A. No.

19 Q. Have you heard any of the testimony in
20 this case?

21 A. No.

22 Q. So your testimony here today would be
23 based not on the credibility of these witnesses,
24 but on your knowledge in general of the dynamics of
25 child sexual abuse?

1 A. Correct.

2 Q. Is that --

3 THE COURT: Yes, ma'am. You may
4 proceed.

5 BY MS. HERRING-LASH:

6 Q. Dr. Swiecicki, is there a term called
7 delayed disclosure in your field of expertise?

8 A. Yes.

9 Q. And is that commonly seen in children
10 that are victims of child sexual abuse?

11 A. Delayed disclosure is considered
12 disclosing about an incident of abuse up to one
13 month. So it is considered immediate for that
14 first month. And studies vary a little bit based
15 on whose included in the studies about how common
16 it is, but between 25 and about 40, 43 percent of
17 children disclose immediately within that first
18 month. So slightly over half of children delay
19 more than one month. And pretty consistent in
20 those studies about 25 percent of children who are
21 abused as children don't tell anyone until they're
22 adults.

23 Q. So if they tell within one month that's
24 considered immediate?

25 A. Correct.

1 Q. And have you witnessed this in your
2 clinical experience also?

3 A. Yes. It is very common.

4 Q. What is some of the research that you
5 talked about? Can you cite some of the research
6 areas?

7 A. Sure.

8 Q. In delayed disclosure?

9 A. Sure. So the last 20 years there has
10 really been a lot more research on this area to try
11 and understand the dynamics around children telling
12 about an incident of sexual abuse and typically the
13 factors related to delayed disclosure that have
14 been studied fall into sort of two areas. One is
15 characteristics of the child, of the abuse, of the
16 offender, and the other set of areas are childrens
17 perceptions of what reasons they have that they
18 tell people about why they might have told or not
19 have told. Do you want me to talk about the
20 specifics?

21 Q. Can you kind explain I guess why kids
22 don't tell.

23 A. Um-hmm. So when -- that's part of the
24 studies about children actually tell us why they
25 haven't told. Children have a lot of anticipated

1 consequences that they think about. So the
2 research shows that they have anticipated negative
3 consequences that they might have happen to
4 themselves. So they said that they don't tell
5 because they think they are going to get into
6 trouble. They are afraid that their parents will
7 be mad at them. They are afraid that their parents
8 will be upset, that, you know, the parents learning
9 something like this is happening would be upsetting
10 to the parent. They also talk about feared
11 consequences to the offender. The vast majority of
12 times with sexual abuse the offender is someone
13 that the child and family knows.

14 So oftentimes there's other
15 relationships to that person. So the child
16 anticipates they might go to jail or that they
17 might not like the child anymore. Children want
18 adults to like them so they also talk about that
19 being a reason that they don't tell right away.

20 Q. And may -- I guess you kind of touched
21 on this, the relationship between the child and the
22 offender can impact?

23 A. Yes. So the other piece of the
24 research is those characteristics of the child and
25 the abuse itself. So when the offender is somebody

1 that's in the family, be it an uncle, stepparent,
2 someone that's within the family, the child is more
3 likely to delay their disclosure. Also if the
4 abuse started --

5 MR. COCHRAN: Objection to bolstering
6 in that regard, Your Honor.

7 THE COURT: I will hear from you as to
8 whether or not that was bolstering.

9 MS. HERRING-LASH: I don't think that
10 had anything to do with the case in particular,
11 Your Honor, because this witness knows nothing
12 about the relationship.

13 THE COURT: I find that she is
14 testifying generally and I will deny the motion.
15 The objection is overruled.

16 THE WITNESS: Also if the abuse starts
17 before the child is ten, so in younger children
18 when the abuse started they are likely to delay
19 disclosure. And then when the abuse is chronic as
20 opposed to a one-time incident, they are more
21 likely to delay disclosure.

22 MR. COCHRAN: Your Honor, again I
23 object, but can I just have a standing objection on
24 the line of questions?

25 THE COURT: Yes, sir. Overruled. You

1 may proceed.

2 BY MS. HERRING-LASH:

3 Q. And would a threat be necessary to
4 prevent a child from telling?

5 A. Can you be more specific?

6 Q. I guess do children always to have been
7 threatened to not tell?

8 A. Not necessarily. That would fall in
9 those sort of perceived consequences. So sometimes
10 offenders might threaten to hurt the child or hurt
11 the family, to hurt a pet. And so then the child
12 fears that that's a negative consequence.
13 Sometimes children come up with these anticipated
14 consequences without any threat at all.

15 Q. In their mind they may come up without
16 a threat ever been made?

17 A. Correct.

18 Q. Do -- is it a common everyday -- does a
19 child's common everyday experiences with the adults
20 impact their disclosure?

21 A. Childrens -- that's a broad question.
22 So part of what the research shows is that children
23 will gauge reactions of the adults in their lives
24 to telling about even things that are sort of
25 peripherally around the abuse. So saying I don't

1 want to go to so and so's house, the child
2 sometimes will say that they felt like they were
3 telling a piece of what's going on even though to
4 the grownup they don't know what the child is
5 saying. They will gauge how the adults react to
6 that in terms of deciding whether they are going to
7 say something else. That applies to parents, but
8 also kids talk about that with therapists, that
9 they will gauge how the therapist responds to them
10 telling a little bit and then they might tell a
11 little more.

12 Q. Do you mean like they tell -- they're
13 gauging if the therapist can handle it or not?

14 A. Yes. That's actually specifically what
15 some of the studies have said, that when children
16 have been asked why they didn't tell a therapist
17 and they have said that they do not think the
18 therapist could handle hearing it. They felt they
19 would upset the therapist. Other studies where the
20 child did tell the therapist they said that they
21 would tell them that inappropriate touching was
22 happening but weren't ready to say who the offender
23 was because they just didn't feel ready or didn't
24 feel like the therapist -- they wanted to know how
25 the therapist would act first.

1 Q. And does that same reasoning go for a
2 child gauging if a caretaker would be ready to hear
3 what they are saying?

4 A. Yes, it again goes back to some of
5 these feared consequences. They are trying to test
6 out if they are right about how somebody might
7 react or not.

8 Q. And if the child is away from an abuser
9 totally would that necessarily mean that they would
10 tell at that point?

11 A. No. The factors related to delayed
12 disclosure really apply regardless of whether the
13 abuse is still going on. It's really just
14 characteristics that impact the timing of that
15 disclosure regardless of whether they are still in
16 touch with that person.

17 Q. It sounds like, you know, saying it's
18 more within the child's perception what is really
19 in their environment I guess?

20 A. Correct. I mean some of those things
21 about feared consequences really have to do with
22 perceptions of relationships, not the abuse itself.

23 Q. And what are some of the things that
24 may prompt a child to tell about child sexual
25 abuse?

1 A. So some of the things, one of the main
2 things that have actually shown up is an adult
3 asking them. So parents learning things, talking
4 to their children about safe touches and saying has
5 this ever happened to you. Children oftentimes
6 also might have a prevention program at school
7 where they learn about behaviors that are okay
8 touches and not okay touches and that will prompt
9 them to tell someone.

10 They also do in the literature talk
11 about lying to protect others, so fearing that like
12 it might happen to a sibling or someone else in the
13 family. Wanting the abuse to actually stop does
14 come up, but it's not one of the things that are
15 first mentioned. Children talk about wanting to
16 not feel bad about what's happening, kind of
17 feeling an urge to tell somebody and that prompts
18 them to tell.

19 Q. Is there research on or in your
20 clinical experience that children often may tell
21 friends or other people besides parents first?

22 A. There is literature on that and
23 parents, specifically mothers and peers, are the
24 two most common first people that children tell.
25 And it depends on their age. Younger children are

1 more likely to tell mother first. And then teens
2 and older children are more likely to tell a peer
3 first.

4 Q. And are there two kind of disclosures,
5 like purposeful or accidental?

6 A. We categorize disclosures in various
7 ways. Those are sort of two broad categories.

8 Q. What does that mean?

9 A. A purposeful disclosure would be a
10 child who has decided okay, I'm now going to tell
11 someone. An accidental disclosure might be if
12 somebody walks in and see the abuse happening it's
13 now sort of been disclosed or if a child says
14 something else that leads to a question that then
15 leads to them disclosing. As an example like if a
16 movie was playing while the abuse was happening and
17 the child tells their parents that they've seen
18 that movie, the parent says when did you see that
19 and then the child says well, when this was
20 happening. So they did not really intend to tell
21 about the abuse.

22 Q. And what about -- and purposeful is
23 when they have just made a decision?

24 A. Um-hmm.

25 Q. And if a disclosure is revealed before

1 the child is ready as if perhaps accidental or some
2 other way does that impact their disclosure or
3 their potential for disclosure?

4 A. There is not a lot of literature on the
5 subset of children who have an accidental
6 disclosure in terms of how that then impacts
7 things, the next steps.

8 Q. Is disclosure a process or an event?

9 A. Disclosure is a process.

10 Q. And what does that mean?

11 A. It means that happens more so over time
12 as opposed to everything coming out at once.
13 Similarly to how I talked about the child who
14 talked about telling a therapist, that child told
15 bits and pieces and then more of the story. And
16 really it's natural that we talk about things in
17 our own lives naturally. We don't tell every
18 detail at once. We tend to tell things we think
19 are most relevant.

20 Q. And is -- when you interview a child do
21 you expect to get all of the details at that point
22 in time?

23 A. No. We tend to frame our questions to
24 try and help get specific information, but it
25 really depends on the factors of the case in terms

1 of how much, how recent it was, how many times it
2 happened, things like that to where when you are
3 asking questions of a child, you are really just
4 trying to be nonleading and give a frame to ask
5 information, but it's just very unusual that
6 everything would come out.

7 Q. One of the things you mentioned during
8 that is it -- does it impact the memory if it is
9 ongoing and similar as opposed to a one-time event
10 that can be chronic with a child?

11 A. So that's -- when we store memories
12 when they are a one-time event we store them a
13 little bit differently than when they happen over
14 and over again. So they became sort of scripted
15 memories.

16 Q. What does scripted memory mean?

17 A. A scripted memory is something that you
18 do routinely so you have sort of a script for it
19 and know that it happens. Driving to work or
20 driving your child to school is something that you
21 probably just do routinely so you have a script for
22 it. So your memories of it aren't distinctive of
23 everything that happened on Monday or Tuesday or
24 Wednesday. They sort of blend together unless
25 something out of the ordinary happens.

1 Q. To help me understand, it is like if it
2 happens over and over like driving to work you may
3 not be able to tell what happened on Monday as
4 opposed to Tuesday if it was a routine drive in?

5 A. Exactly. Unless something out of the
6 ordinary happens.

7 Q. And if something out of the ordinary
8 happens would that be an episodic memory as opposed
9 to a script memory?

10 A. It would be more discrete. They are
11 both types of episodic memories which is our own
12 personal memory as to opposed to things that we
13 have read about.

14 Q. And explain what you mean by discrete
15 memory?

16 A. Discrete is more of a one-time event.
17 It's something that happened and would be out of
18 the ordinary that stands out. The example that I
19 have talked about with this is I used to drive to
20 work on an old road that had two ponds. So
21 although driving to work is a really normal event
22 this one day there was this huge alligator snapping
23 turtle crossing. So very unusual. I stopped and
24 took a picture. So that day when somebody said how
25 is your morning going that would be something

1 really unusual I would talk about with my drive
2 versus something that is actually scripted. I
3 would never have told somebody I drive by these
4 ponds.

5 Q. And are there common behavioral
6 reactions to sexual abuse?

7 A. So sexual abuse victims are at higher
8 risk for several behavioral outcomes. Things like
9 outbursts, self-injurious behavior, thoughts of
10 self harm and then acting on those thoughts. For
11 younger children temper tantrums, defiance, they
12 are at higher risk for that.

13 Q. So is there kind of a realm of
14 possibilities?

15 A. There is a range of possibilities and
16 behavioral outcomes. There are about 16 to
17 40 percent of children who have been abused
18 experience those type of things.

19 Q. And I guess that would go to say that
20 there's nothing, no behavior that is diagnostic?

21 A. Correct.

22 Q. You could be a successful person or not
23 and nothing can diagnose whether you have been
24 sexually abused?

25 A. Not behaviorally.

1 Q. And what about a common emotional
2 reaction?

3 A. So emotionally children who have been
4 sexually abused are also at higher risk for things
5 like sadness, nervousness, being jumpy, having
6 nightmares, diagnosis of depression and
7 post-traumatic stress disorder. They are at higher
8 risk for those. Again, not all of them experience
9 that, but they are at higher risk.

10 Q. And one of the expectations perhaps of
11 emotional reaction would be crying and being upset?
12 Do you see that in interviews of children?

13 A. Not typically in the interview. So the
14 interview is frequently someone that the child just
15 met or, you know, has met maybe one other time.
16 And it's just not that common that they're showing
17 those emotions right away in the interview itself.

18 Q. What does the -- you see the flat
19 affect in children often?

20 A. Yes.

21 Q. What does that mean?

22 A. So flat affect is -- affect itself is
23 the expressions of emotion that we show sort of on
24 our bodies and faces. Flat affect would be sort of
25 looking none and having no emotion that you are

1 really showing. It's really considered to be part
2 of the constellation of symptoms of post-traumatic
3 stress disorder and depression. Both seem to have
4 flat affect which is really kind of a numbing,
5 looking numb emotionally.

6 Q. And does a child's perception of the
7 abuse impact the symptomology?

8 A. Yes.

9 Q. What does that mean?

10 A. So a child's thoughts about the abuse
11 actually predict their symptoms. In some studies
12 they are above and beyond the severity of the
13 abuse. So what a child thinks about the abuse. As
14 an example, if the child has experienced noncontact
15 sexual abuse. So nothing physically touched them,
16 was not penetration, but there was some sort of
17 abuse. Sometimes those children will have thoughts
18 that they are pregnant and that people can tell on
19 their body and that predicts more severe symptoms
20 even above and beyond the severity of the abuse
21 which that would be considered less severe. And
22 you can have some children who experience more
23 severe abuse, but if their thoughts are not
24 distressing to them then they actually have fewer
25 symptoms.

1 Q. And does a child's reaction to -- I
2 think you touched on this a moment ago -- let me
3 rephrase that. The entire constellation of their
4 environment impact like if they are in a -- I think
5 you talked about all different kinds of abuse going
6 on together may impact.

7 A. I am sorry?

8 Q. A child's reaction to the abuse?

9 A. So if children have experienced more
10 than one type of abuse, so physical abuse and
11 sexual abuse, those children are the highest risk
12 for developing symptoms, particularly
13 post-traumatic stress disorder. Three out of four
14 of those children are more likely to develop
15 post-traumatic stress disorder if they have
16 experienced both of those types of abuse.

17 MS. HERRING-LASH: I think those are
18 all the questions I have, Dr. Swieciciki. If you
19 would answer any from Mr. Cochran.

20 CROSS-EXAMINATION

21 BY MR. COCHRAN:

22 Q. So certainly there are I guess more
23 common behavioral traits and less common behavioral
24 traits, but as the solicitor said, nothing is
25 diagnostic. There is no behavioral trait where you

1 could say this child is behaving this way so they
2 must not have been abused or they are behaving this
3 way so they must have been abused, correct?

4 A. Correct. It is really about risk.
5 They are at heightened risk for certain things.

6 Q. And it is not just sexual abuse that
7 can create this sort of trauma and these sort of
8 behaviors in a child. It could be exposure to
9 extreme domestic violence, correct?

10 A. Yes.

11 Q. And there is such a thing as false
12 accusations from children regarding sexual abuse,
13 correct?

14 A. There's a little bit of literature on
15 that, yes.

16 Q. But it happens, it is possible?

17 A. It's possible.

18 Q. And it is possible for there to be a
19 disclosure, a truthful disclosure of sexual abuse
20 and it is possible for the child to identify the
21 wrong person, correct?

22 A. There's not any literature on that.

23 Q. Would you agree that it is possible for
24 a witness to identify the wrong offender?

25 A. I think that's a little bit outside of

1 my scope of expertise, but in general I think
2 that's a possibility.

3 Q. And you said that sometimes there will
4 be disclosure without telling all of the details?

5 A. The process of disclosure, really
6 things tend to come out not every detail at once,
7 but more in bits and pieces and the details grow as
8 the children tell more about it.

9 Q. Some details could be true, some could
10 be false?

11 A. The literature shows that the false
12 information tends to be a very small minority of
13 cases where that's happened.

14 Q. And -- but it is possible?

15 A. Yes.

16 Q. And details can be exaggerated over
17 time or the exaggeration could be lessened over
18 time?

19 A. There's really no literature on
20 exaggeration.

21 Q. There is no instances of child sexual
22 abuse narratives that involve exaggeration?

23 A. Exaggeration -- a part of it is that
24 exaggeration would need to be defined. We get very
25 -- in the studies get very specific about exactly

1 what exaggeration would mean. So in some of the
2 literature really when they are looking at whether
3 something is a true statement or a false statement,
4 there needs to be some sort of corroboration, you
5 know, that beyond like a court making a finding
6 that this is a fact or the child having a sexually
7 transmitted infection or the offender confessing,
8 those would be sort of corroborating information
9 and then if the child makes a statement that
10 doesn't match that it would be considered false.

11 But there's just very little
12 information in the literature on that and nothing
13 that's defined as exaggeration.

14 Q. So there is little information on
15 exaggeration or falsehood or interviews where some
16 details could be true, some could be false and I
17 mean let's be clear. This jury has seen a forensic
18 interview. For obvious reasons when a child is
19 alleging sexual abuse the child is not going to be
20 interrogated, correct?

21 A. Forensic interviewing as a field is
22 meant to be done by someone who has knowledge of
23 children and is able to ask nonleading questions in
24 a way that's not -- interrogation makes it seem
25 like they are being interrogated as a suspect.

1 Q. Right.. So you don't want during a
2 forensic interview -- a forensic interview in some
3 sense is therapeutic, correct?

4 A. No. It's really meant to be fact
5 finding and neutral. And although if they are done
6 at children advocacy centers like mine we have
7 several disciplines that they then could have
8 coordination with therapeutic services. The goal
9 of it really is meant to be fact finding as opposed
10 to a person being in a therapeutic role.

11 Q. And this is fact finding in terms of
12 asking nonleading questions and accepting the
13 answers, correct?

14 A. Typically.

15 Q. You don't call children out on
16 inconsistencies, correct?

17 A. Depends on what's going on in the
18 interview.

19 Q. Typical forensic interview?

20 A. Really there's no typical in terms of
21 that.

22 Q. Do you see that? Do you see exchanges
23 between interviewers and children in your
24 experience where there's a back and forth, a
25 questioning of inconsistencies or details that

1 might be left out or they just ask questions and
2 receive the answers?

3 A. Typically ask questions and receive the
4 answers. I mean it's a conversation so there's
5 back and forth.

6 Q. Right. There are questions and
7 answers?

8 A. And there are sometimes clarifying
9 questions.

10 Q. Right. But again, whether or not
11 there's literature on it, whether or not you
12 believe it, false accusations are possible?

13 A. There is some literature on that
14 between two and seven percent of disclosures in the
15 studies that have looked at that were false, were
16 found to be false.

17 Q. Were proved to be false?

18 A. They weren't in courts, but were in the
19 studies by how they defined it false.

20 MR. COCHRAN: No more questions, Your
21 Honor. Thank you.

22 THE COURT: Redirect?

23 MS. HERRING-LASH: Nothing, Your Honor.

24 THE COURT: You may step down. You
25 wish to excuse the witness?

1 MS. HERRING-LASH: Yes, Your Honor.

2 THE COURT: Any objection?

3 MR. COCHRAN: No.

4 THE COURT: You are free to leave the
5 courthouse if you would like. State may call its
6 next witness.

7 MS. HERRING-LASH: Your Honor, at this
8 time the State rests.

9 THE COURT: All right. Ladies and
10 gentlemen, that completes the presentation of
11 evidence by the State. At this time there's some
12 housekeeping matters, things I have to take up with
13 the attorneys before we proceed with the remainder
14 of the trial. So, again, I'm going to ask you to
15 step back to the jury room. And as always, don't
16 discuss the case until I ask you to do so. You may
17 retire to the jury room.

18 (Thereupon, the jury exited the
19 courtroom at 10:00 a.m.)

20 MR. COCHRAN: Your Honor, I would have
21 one matter regarding the last witness that we did
22 have.

23 THE COURT: Yes, sir.

24 MR. COCHRAN: I would move to exclude
25 her testimony based on the latter part of my

1 questioning of her. There are cases on point where
2 in South Carolina, I will have to find them, I
3 didn't expect this to necessarily happen, but where
4 this sort of expert testimony has been deemed
5 improper where they get into percentages regarding
6 truthfulness. And I believe the case that comes to
7 mind is the case out of Orangeburg where an expert
8 from Charleston actually who frequently testifies
9 in this court testified to a certain percentage, a
10 very high percentage, in the 80s or 90s of sexual
11 abuse allegations being true. And I believe
12 that --

13 THE COURT: She gave that answer in
14 response to your question.

15 MR. COCHRAN: That was in response to
16 my question, Your Honor. But I did not question
17 her regarding percentages. I asked if false
18 accusations were possible and she then offered that
19 it was somewhere below ten percent. I have had a
20 standing objection to her as a witness period.

21 THE COURT: I understand that.

22 MR. COCHRAN: I believe that her
23 testimony overall was inadmissible. But given that
24 more egregious fact I would ask that her testimony
25 be stricken from the record in its entirety.

1 THE COURT: That portion of the
2 testimony?

3 MR. COCHRAN: I would ask that -- well,
4 I would ask it all be stricken because I had a
5 standing objection to the entire testimony,
6 particularly that portion though.

7 THE COURT: All right.

8 MS. HERRING-LASH: Your Honor --

9 THE COURT: I will have to research
10 that case since I don't have a name for it.

11 MS. HERRING-LASH: I think I can find
12 it, but I think the bottom line here is there was
13 no other way for her to respond to that question
14 without asserting what the literature said.

15 THE COURT: I think the response was to
16 the effect that the literature would be. I can
17 review it.

18 MS. HERRING-LASH: And she said well,
19 there is literature regarding false accusations and
20 that literature is -- I can't remember the
21 percentage she said. But she never -- she didn't
22 even bring that up when he was asking about
23 fabrication. She didn't bring it up until he kept
24 questioning her about isn't it possible, whether
25 you believe it or not or whether the research shows

1 it or not, isn't it possible and then she
2 responded. I don't think that you can ask and ask
3 and ask for a response and then object when you get
4 it.

5 THE COURT: All right. Let's see if he
6 can find the case he is referring to.

7 MS. HERRING-LASH: I know the name of
8 the witness was Don Elsey. E-L-S-E-Y. We can't
9 get into Westlaw on ours.

10 THE COURT: Let me research that, E-L.

11 MS. HERRING-LASH: S-E-Y.

12 THE COURT: State v. Portello.

13 MS. HERRING-LASH: Is that out of
14 Orangeburg?

15 THE COURT: Let me check. From
16 Dorchester County.

17 MS. HERRING-LASH: Yes, I think that
18 may be it.

19 THE COURT: Dr. Elsey was actually the
20 forensic interviewer.

21 MS. HERRING-LASH: Yes, Your Honor, I
22 think he was.

23 MR. COCHRAN: He was also designated as
24 an expert in the same field as in this case. So he
25 played -- he had two hats.

1 THE COURT: He was the person who
2 conducted the interview and was testifying about
3 the interview.

4 MS. HERRING-LASH: Right, Your Honor.
5 I think that's what the -- why the case law now
6 doesn't allow the expert interviewer -- expert
7 testimony from the interviewer because any
8 statistics or any information given even in general
9 the jury would refer back to the specific interview
10 because that's what they see him as having
11 knowledge of.

12 So I think it's very different. And I
13 haven't read the case and the law and I don't know
14 if this was on direct or cross that he was making
15 those statements.

16 THE COURT: I am trying to find where
17 he refers to him having referred to statistics. I
18 am not finding that.

19 MS. HERRING-LASH: It may be a
20 different --

21 THE COURT: Mr. Cochran, can you help
22 me where that case refers to statistical testimony?

23 MR. COCHRAN: No, Your Honor. That's
24 not the case -- it is a case similar to that, same
25 witness and everything.

1 THE COURT: Well, help me. I'm --

2 MR. COCHRAN: Well, Your Honor, I mean
3 even if --

4 THE COURT: You are raising the
5 objection so if you can point me to what you are
6 objecting to.

7 MR. COCHRAN: Yes, Your Honor. And
8 even if we are not talking specifically about
9 percentages and things like that, we are talking
10 about probability of truthfulness which I believe
11 is an area where these experts are not supposed to
12 go. I would argue that I asked a yes or no
13 question. She expounded on it in an area that I
14 could not have anticipated. It was the second time
15 I asked the question. I began with that question,
16 I was going to end with that question, and she was
17 being evasive in my opinion on a very simple
18 question and she ended up providing a percentage
19 from a -- that goes directly to truthfulness or
20 falsehood which is an area that the courts have
21 been clear is someplace where these types of expert
22 witnesses are not supposed to go or any witnesses
23 really. Simply not supposed to discuss the
24 probability that a witness or victim is telling the
25 truth. And that's what she said.

1 THE COURT: Well, that's what you were
2 asking about. You were asking aren't there false
3 disclosures.

4 MR. COCHRAN: If it was possible that
5 someone could give a false.

6 THE COURT: That's what you asked.

7 MR. COCHRAN: That is what I asked,
8 yes, but not the probability.

9 THE COURT: You didn't ask for a
10 percentage, I'll give you that. But you were
11 asking as to whether or not false disclosures
12 occur.

13 MR. COCHRAN: Correct.

14 THE COURT: Specifically what this says
15 is that says there was some clarifying questions,
16 this is the answer, and then she says right. You
17 said right but again, whether or not there's
18 literature on it, whether or not you believe it,
19 false accusations are possible. And she said --
20 you asked about the literature and by doing that
21 you said whether or not there's literature on it,
22 whether or not you believe it, false accusations
23 are possible. She said there is some literature on
24 that between two and seven percent of disclosures
25 in the studies that have looked at that were false,

1 were found to be false. And you asked were proven
2 to be false and she answered they weren't in
3 courts, but were in the studies by how they defined
4 it false. You said no more questions.

5 MS. HERRING-LASH: Your Honor, I think
6 there's no way this witness would even know what
7 she was -- she would not know she was prohibited
8 from answering a question that was asked. And to
9 not anticipate it, most of her responses even
10 throughout direct were based on literature and what
11 the literature said. And when you asked --

12 THE COURT: The questions referred to
13 the literature.

14 MS. HERRING-LASH: His questions
15 referred to the literature. She just simply
16 responded. I don't think you can ask and ask and
17 then object to the answer.

18 THE COURT: Well, I think you can. I
19 am not going to say you can't object to it. The
20 question is whether I will sustain the objection or
21 not at this point in time. And I guess where we
22 are is I don't disagree with you that the witness
23 would not have been allowed to come in here and
24 offer opinions as to the average truthfulness of
25 these questions.

1 But in this case, you asked questions
2 about the literature, whether you believe it or
3 not, the literature says it or not there are false
4 accusations was the gist of the question. And she
5 said well, the literature said that. So she
6 answered it by answering the literature. I don't
7 disagree with you that that's not the purpose of
8 her testimony. She was not referring specifically
9 to this case. In fact, she said she has no
10 knowledge of the testimony in this case. She has
11 not seen the interviews in this case. That's been
12 told to the jury. She has no knowledge of what was
13 said in the case or how it was said or even looked
14 at. So the jury I don't think could take from her
15 testimony she is talking specifically about this
16 case. She's talking in general about this type of
17 -- this area of psychology.

18 What I am going to do is I'm going to
19 strike that response from the record and instruct
20 the jury to disregard the response. I don't know
21 that it speaks to anything in particular in this
22 case. I am not going to exclude all of her
23 testimony because I think she was being responsive
24 to the question you asked and I understand that you
25 might not have anticipated that, but in your

1 question when you asked her about the literature,
2 she answered by talking about the literature. So
3 it is not totally unforeseen that she would go in
4 that direction when the question went in this
5 direction.

6 So I'm going to strike that response
7 from the record and tell the jury to disregard it
8 and I will instruct them in my charge on the law
9 that any matters that I have stricken from the
10 record should not be considered by them in any
11 manner in determining an outcome in the case. So I
12 will remove it from the testimony.

13 MR. COCHRAN: Your Honor, so the State
14 has rested at this point?

15 MS. HERRING-LASH: Yes.

16 THE COURT: Yes. So there are some
17 other things we need to talk about.

18 MR. COCHRAN: At this point, Your
19 Honor, defense would move for a directed verdict in
20 this case as to all charges. This would be a
21 blanket motion for directed verdict. The basis for
22 this would be there is no evidence even in the
23 light most favorable to the State that this
24 occurred and that it is not corroborated by any
25 outside eyewitness who is not alleging abuse, no

1 physical evidence, no forensic evidence.

2 One thing I would use to support that
3 is the courts recently reversed a number of cases
4 in South Carolina based on a charge that was given
5 in these kind of cases that instructed jurors that
6 a victim's testimony need not be corroborated.

7 Now, certainly that doesn't mean that
8 it needs to be corroborated, but I believe that
9 that creates an issue in this case, Your Honor. We
10 would argue that there was absolutely no
11 corroboration other than what has been demonstrated
12 to be questionable disclosures and we would move
13 for a directed verdict on that basis, Your Honor.

14 THE COURT: From the State.

15 MS. HERRING-LASH: Your Honor, I think
16 in the light move favorable to the State there are
17 facts in the record for the jury to believe this
18 happened if they choose to believe based on the
19 credibility. We are not asking for a corroboration
20 charge. I realize that that would be in violation
21 of what the court has said, but the statute was not
22 struck down. There still does not require
23 corroboration.

24 THE COURT: Statute states that, but I
25 think the courts have made clear that that --

1 MS. HERRING-LASH: Not --

2 THE COURT: It would be a comment on
3 the facts by the Court.

4 MS. HERRING-LASH: So if the jury
5 chooses to believe the evidence as it is, they have
6 plenty of evidence to find the Defendant guilty. I
7 would, however, based on the way the testimony went
8 from Older Sister [REDACTED], I do think that she did not give
9 evidence that the criminal sexual conduct with a
10 minor in the second degree based on intercourse
11 would have occurred because her testimony was that
12 the time that he put his penis in her enough to
13 cause pain was when she was ten years old. And
14 that that was the only time that it happened and
15 the second degree is based on after she turned 11.

16 So I think the evidence before the jury
17 is that that particular battery only happened once
18 and it would have been at age ten so that would be
19 the first degree. So I would agree based on the
20 facts that is the before the jury they do not have
21 the --

22 THE COURT: Let's talk about which
23 indictment we are talking about.

24 MS. HERRING-LASH: Your Honor,
25 2015-GS-10-04924. I have separate pages, but I'm

1 sorry, that's the correct one. It is the
2 allegation of sexual intercourse second degree upon

3 Older Sister

4 THE COURT: I have that indictment out
5 and you are acknowledging the proof does not
6 support that.

7 MS. HERRING-LASH: I think so, Your
8 Honor, because she was very much clear that that
9 happened when she was ten. And this indictment
10 goes to after she turned 11. The other batteries
11 were ongoing so I think there is facts in the
12 record if the jury chooses to believe them that the
13 cunnilingus and the digital penetration would have
14 continued past February the 18th, 2010.

15 MR. COCHRAN: Certainly we cannot
16 object to dismissing that indictment, Your Honor.
17 I did also want to --

18 THE COURT: That indictment will be
19 dismissed.

20 MR. COCHRAN: Thank you, Your Honor.
21 The second part of my directed verdict motion, Your
22 Honor, goes specifically to the -- that count is
23 dismissed, but in terms of being criminal sexual
24 conduct with a minor in a first degree, I do
25 believe that the testimony was not specific or

1 clear enough to provide evidence of penetration,
2 however slight. There was some testimony regarding
3 pressure. We would argue that that does not rise
4 to the level of penetration.

5 THE COURT: That's as to which victim?

6 MR. COCHRAN: Well, pressure was
7 specifically Ms. Grice I believe. Both alleged --
8 both are victims of first degree penetration so the
9 motion goes to both, all counts of first degree
10 that require proof of penetration, Your Honor, and
11 we would also point to the lack of any physical
12 evidence to that effect.

13 MS. HERRING-LASH: I think she said
14 more than pressure. She said it hurt really bad
15 and that there was pressure and pain. In State v.
16 Mathis, I don't have the cite --

17 THE COURT: That was Ms. Hutchinson.

18 MS. HERRING-LASH: No, Ms. Grice. She
19 said that it hurt really bad and that she thinks it
20 went in a little bit, but not all of the way. Ms.
21 Hutchinson said it did not go in. And he is not
22 charged with intercourse for her. And State v.
23 Mathis I think says the Court can send a case to
24 the jury based on the victim's recitation of
25 feeling pain. That's enough and she specifically

1 said that.

2 THE COURT: I recall the testimony
3 about the pain. All right. That motion is denied.
4 Anything else on the direct verdict?

5 MR. COCHRAN: Just to renew all motions
6 and objections previously made, Your Honor.

7 THE COURT: I understand. I will
8 inquire of your client of his right to testify. I
9 would ask the clerk please place the Defendant
10 under oath.

11 BRIAN DAUGHERTY

12 having been duly sworn, testifies as follows:

13 THE COURT: You can be seated, Mr.
14 Daugherty. Sir, we have reached the stage of your
15 -- of this trial where you have the right to
16 present your defense and at this time I want to be
17 sure I go over with you certain of your
18 constitutional rights.

19 I'm going to explain them to you at
20 this time and when I have completed this I will
21 give you an opportunity to ask questions of me and
22 I will also give you an opportunity to consult with
23 your attorney or other people if you wish to do so.

24 As I said, we have reached the stage of
25 the trial when you have the right to present your

1 THE COURT: Any other matters the
2 defense would like to bring up?

3 MR. COCHRAN: No, Your Honor.

4 THE COURT: We are going to take a
5 short break while we have got the jury out so we
6 will be in recess for about five to ten minutes.
7 Court is in recess at this time.

8 (A recess transpired.)

9 THE COURT: State ready to proceed?

10 MS. HERRING-LASH: Yes, Your Honor.

11 THE COURT: Defense ready?

12 MR. COCHRAN: Yes, Your Honor.

13 THE COURT: All right. Let's bring the
14 jury in.

15 (Whereupon the jury entered the
16 courtroom at 10:41 a.m.)

17 THE COURT: The record will reflect
18 that the jury has returned to the courtroom. Now,
19 ladies and gentlemen of the jury, during your
20 absence I went over some matters with the
21 attorneys. I want to make you aware of a ruling
22 that I made during my discussions with the
23 attorneys in this case.

24 At the close of the testimony of the
25 last witness to testify, there was an exchange that

1 took place that I am ruling to be impermissible
2 testimony. And I'm going to strike that testimony
3 from the record.

4 What I am referring to is a question
5 that was asked. It says, "Right. But again,
6 whether or not there's literature on it, whether or
7 not you believe it, false accusations are
8 possible?"

9 The witness went on to answer by
10 stating that there is some literature, stated a
11 percentage of disclosures that were found to be
12 false, and the question after that, "Were proved to
13 be false?"

14 The answer was, "They weren't in court,
15 but were in the studies by how they defined it."

16 As to those two questions and two
17 answers, I am striking them from the record. Now,
18 later on when I charge you on the law I will
19 explain to you the effect of that ruling. But what
20 it means is that I have removed those questions and
21 answers from the record, therefore, those are
22 matters that you should not consider in any way in
23 reaching a verdict in this case. Since they are no
24 longer a part of the record they are no longer a
25 part of the evidence that you are to consider.

1 So I will be going over that again with
2 you in more detail when we charge you on the law,
3 but I will let you know I have made that ruling in
4 your absence that that would be taken from the
5 record.

6 Now, when we took our break -- just one
7 second, let me get back to where I need to be here.
8 When we took our break, the State had completed the
9 presentation of its evidence and when we started
10 the trial I explained that once we reach this stage
11 of the trial the defense would have the right to
12 present its case. Defense may call its first
13 witness.

14 MR. COCHRAN: Thank you, Your Honor.
15 May it please the Court, defense calls Brian
16 Daugherty.

17 THE COURT: Come forward, sir, and be
18 sworn.

19 BRIAN DAUGHERTY
20 having been duly sworn, testifies as follows:

21 THE COURT: Once you are seated, sir,
22 state your name, please.

23 THE WITNESS: Brian Christopher
24 Daugherty.

25 THE COURT: Thank you. Counselor, your

1 witness.

2 DIRECT EXAMINATION

3 BY MR. COCHRAN:

4 Q. Mr. Daugherty, Brian, how old are you?

5 A. Thirty-eight years old.

6 Q. And what do you do for a living?

7 A. I pump concrete.

8 Q. Who do you work for?

9 A. Trident Concrete Pumping.

10 Q. Brian, did you rape Younger Sister ?

11 A. No.

12 Q. Did you rape Older Sister ?

13 A. No.

14 Q. Did you molest Younger Sister ?

15 A. No.

16 Q. Did you molest Older Sister ?

17 A. No.

18 Q. Did you ever touch either of these
19 girls in an inappropriate manner in any way?

20 A. No.

21 Q. Mr. Daugherty, do you have children?

22 A. Yes.

23 Q. How many children do you have?

24 A. I have four kids.

25 Q. And are any of them here today?

1 A. Yes, my daughter Jasmine and my son
2 Austin.

3 Q. Who do Austin and Jasmine live with?

4 A. They live with their mother.

5 Q. Do you have joint custody, shared?

6 A. Joint custody.

7 Q. And who is your youngest child?

8 A. My youngest child is Spencer.

9 Q. And how old is he?

10 A. He's four.

11 Q. Who does he live with?

12 A. He lives with Ashley and her mother
13 right now.

14 Q. And who are you living with?

15 A. Who do I live with? My parents.

16 Q. And going back to 2009 and 2010, where
17 were you living?

18 A. Back in 2009, 2010 I was living on
19 Dunlap Street or no, Rolling Fork with Ms. Rhonda
20 and Ashley.

21 Q. That is the apartment that we have been
22 referring to?

23 A. Yes.

24 Q. When did you move there?

25 A. August 2008.

1 Q. When did you meet Ashley?

2 A. August 2008.

3 Q. Are you still in a relationship with
4 her?

5 A. Yes.

6 Q. And how did you meet Ashley?

7 A. Through James and Lisa.

8 Q. When you were living in this apartment,
9 this is Rhonda's apartment?

10 A. Yes.

11 Q. She is the person on the lease,
12 everyone was living with her at that time?

13 A. Yes.

14 Q. When you were living in this apartment
15 did you have your own bedroom, did you share a
16 bedroom?

17 A. Shared a bedroom with Ashley.

18 Q. There has been a lot of talk during the
19 trial about a swimming pool at the apartment
20 complex. Did you ever go to this swimming pool?

21 A. Yes, I did.

22 Q. How often would you go to the pool?

23 A. Maybe once, twice a month.

24 Q. And did you swim or were you sitting on
25 the pool deck?

1 A. I would swim. Usually have the kids
2 with me.

3 Q. Okay. How often did your children come
4 to that apartment?

5 A. Every other weekend and on occasion a
6 little more.

7 Q. And when we are referring to your
8 children we are talking about just Austin and
9 Jasmine?

10 A. Correct.

11 Q. Spencer was not born at that time?

12 A. Spencer was not born.

13 Q. So when you were at the pool it would
14 typically be when your kids were in town?

15 A. Normally, yes.

16 Q. Did you ever come to the pool or leave
17 the pool alone with Younger Sister ?

18 A. No.

19 Q. Did you ever leave the pool alone with
20 Older Sister ?

21 A. No.

22 Q. Did you ever expose either of those
23 girls to pornography?

24 A. No.

25 Q. There was some evidence about a laptop

1 that's in evidence, DVD's and other electronic
2 devices. Who does that -- first of all, were you
3 aware there was pornography on the laptop?

4 A. Yes.

5 Q. Whose laptop is that?

6 A. It's Ashley's.

7 Q. Who all had access to that laptop?

8 A. Pretty much anyone in the house.

9 Q. Did you need pass codes to get into the
10 laptop?

11 A. It was on there, but the children were
12 using it so much that I took it off.

13 Q. When were you arrested for this charge?

14 A. April 2015.

15 Q. And you said you are living with your
16 parents? You are not currently in jail?

17 A. No, I'm not currently in jail.

18 Q. So you came to court voluntarily?

19 A. Yes.

20 Q. And you came to face your charges?

21 A. Yes.

22 Q. Understanding these are extremely
23 serious --

24 A. Yes.

25 Q. -- criminal accusations. Brian, were

1 you ever at the pool at the same time as Younger Sister or

2 Older Sister

3 A. Yes.

4 Q. Were you ever in the pool or at the
5 pool alone with either girl?

6 A. No.

7 Q. Did you take car rides frequently with
8 either girl, just one of them at a time?

9 A. Yes.

10 Q. And what was the purpose of that?

11 A. Running to the store or picking up
12 Ashley from work.

13 Q. And who would typically ride with you
14 on those occasions?

15 A. Most of the time it was Younger Sister

16 Q. And why is that?

17 A. Because Younger Sister and Ashley were so close
18 and Younger Sister always wanted to go.

19 Q. Okay. So Younger Sister would ask you to --
20 ask to ride with you to pick Ashley up from work?

21 A. Yes.

22 Q. Where did Ashley work?

23 A. She worked at Catos.

24 Q. About how far is that from the
25 apartment?

1 A. The one at Oakbrook, 12 miles.

2 Q. Were you always the one pretty much who
3 picked Ashley up?

4 A. Typically, yes.

5 Q. And would Younger Sister typically want to go
6 with you for that?

7 A. Yes.

8 Q. Were you say they were close, they were
9 particularly close, more than for a typical aunt
10 and niece relationship?

11 A. Kind of like a mother/daughter
12 relationship, but not biologically. You know, they
13 are blood related, but yeah.

14 Q. They were especially close?

15 A. Yes.

16 Q. Would you say that Younger Sister is closer to
17 Ashley than the other two girls, M. H. and
18 Older Sister?

19 A. Yes.

20 Q. Brian, I'm going to ask this again.
21 Did you ever do anything sexually inappropriate
22 with Older Sister?

23 A. No.

24 Q. Did you ever do anything sexually
25 inappropriate with Younger Sister?

1 A. No.

2 Q. I have no more questions, Your Honor.

3 Brian, please answer any questions that the

4 solicitor has for you.

5 THE COURT: You may cross-examine.

6 CROSS-EXAMINATION

7 BY MS. HERRING-LASH:

8 Q. Mr. Daugherty?

9 A. Yes, ma'am.

10 Q. You said right now you are working a
11 concrete job?

12 A. I pump concrete for a living.

13 Q. And how long have you had that job?

14 A. A year this month.

15 Q. And where did you work before that?

16 A. Wando Ready Mix.

17 Q. And how long did you work there?

18 A. Nine months.

19 Q. What were your hours?

20 A. They varied. I would work overnight.

21 I would come in early in the morning and work until

22 we were done. I mean it really depended on how

23 much concrete we had to get out.

24 Q. And where did you work before that?

25 A. I was incarcerated for three months and

1 before that I was at Ferguson Water Works.

2 Q. What were your hours at Ferguson?

3 A. Typically went in about 6:30, 7:00 and
4 I was manager so I stayed as late as probably about
5 6:00 or 7:00 at night.

6 Q. And when was the time frame you worked
7 there?

8 A. When was the time frame? May 2012 up
9 until my arrest date.

10 Q. And where did you work before Ferguson?

11 A. I worked for Trident Mechanical.

12 Q. And what were your hours there?

13 A. Typically I would go in -- well, when I
14 first started working there I was just a helper,
15 but when I left I was a driver and I would
16 typically go out of town so I would leave anywhere
17 between 2:00 or 3:00 in the morning and come home
18 about 6:00 or 7:00 at night.

19 Q. And so what was that time frame?

20 A. I started working for Trident
21 Mechanical October 2008 up until May 2012.

22 Q. So your hours -- what days of the week
23 would you work at Trident?

24 A. What days of the week? Typically it's
25 Monday through Friday. And only when weekends were

1 required did we work weekends.

2 Q. So you would -- you were gone from 2:00
3 in the morning to 6:00 at night Monday through
4 Friday from 2008 to May of 2012?

5 A. No. It varied, but those -- I mean
6 typically a normal working day would be like 6:00
7 or 7:00 in the morning until probably four or
8 five in the afternoon. But when I went out of town
9 is when I had the long hours and I went out of town
10 I would say two to three days a week.

11 Q. When you weren't out of town you would
12 be home in the evening?

13 A. Yes.

14 Q. And how often did you have to work
15 weekends?

16 A. I would say maybe once, twice a month,
17 you know, not always.

18 Q. Because your kids were coming every
19 other weekend. So if you were working weekends
20 they wouldn't come?

21 A. No.

22 Q. And but they visited I think there has
23 been testimony about every weekend?

24 A. That's the way the court order reads.
25 Every other weekend.

1 Q. But sometimes they didn't?

2 A. Yes.

3 Q. And where did you work before Trident?

4 A. I was incarcerated for three weeks for
5 failure to pay child support. Before that I worked
6 at MAU for a couple of weeks at Amazon off of
7 Ashley Phosphate making books, paperback books.
8 Before that I was manager of McDonalds.

9 Q. Between these jobs was there any laid
10 off time?

11 A. Maybe a week.

12 Q. Huh?

13 A. Maybe a week. It was at the very
14 beginning of my and Ashley's relationship.

15 Q. And so between the jobs there would be
16 just a week?

17 A. Yeah. I mean I never really had a
18 problem finding work.

19 Q. And so when you moved into is it
20 Rolling Fork?

21 A. Yes.

22 Q. That was August of 2008?

23 A. Yes.

24 Q. Who all lived there then?

25 A. Ashley, Ms. Rhonda, Lisa, James,

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Younger Sister Older Sister M. H. , and then I moved in.

Q. And so the girls lived there the entire time that you were there?

A. Yes.

Q. And you said that sometimes y'all would be at the pool?

A. Yes.

Q. But that you were never there alone with either girl?

A. That is correct. I was never alone.

Q. Any particular reason?

A. I mean Ms. Rhonda was there, Lisa or James was there. I mean there's no real reason.

Q. Now, James wasn't there very long, was he?

A. James was there -- roughly about a year.

Q. Didn't he leave or was incarcerated in 2009?

A. I am the one that called the police and had him arrested twice, but he got out the very next day so I wouldn't call that being incarcerated.

Q. The second time he didn't come back because of DSS?

1 A. Yes, that's correct.

2 Q. And so he was gone so he wouldn't have
3 been there at the pool, it would have been Rhonda?

4 A. Yeah, if Lisa or James was not there it
5 was Ms. Rhonda.

6 Q. And Lisa was -- when she was working at
7 UPS she was gone long days also, right?

8 A. Typically.

9 Q. So when we talk about the pool, mostly
10 it was weekends or only weekends?

11 A. For me it would only be weekends.

12 Q. We are talking about you.

13 A. If I went it would only be on the
14 weekends.

15 Q. And you did go off a lot with the
16 girls?

17 A. Yes.

18 Q. And so there was no reason for you not
19 to be alone with them?

20 A. No.

21 Q. As a matter of fact, you said Younger
Sister
22 would ask to go places with you?

23 A. Yes.

24 Q. Because you took her some places that
25 were fun?

1 A. No.

2 Q. You didn't take her to stores ever?

3 A. I took her to the stores, yes.

4 Q. You didn't take them to -- you didn't
5 take them to the zoo or to Bee Town?

6 A. Me, Ashley and my kids were present
7 when they did that.

8 Q. I mean you took them places?

9 A. You made it sound like I was alone with
10 them.

11 Q. Was there any problem in your
12 relationship with the girls?

13 A. I mean they were typical kids, bad at
14 times, good at other times. I mean I didn't really
15 see a problem.

16 Q. And did you know of any problem they
17 had with you?

18 A. Not that I know of.

19 Q. There was no vendetta that they had?
20 They got along fine with you?

21 A. I mean they are kids. I don't see a
22 vendetta.

23 Q. And you felt comfortable going off with
24 them alone because there were no issues with them?

25 A. I mean I didn't typically like them,

1 but I mean, yeah, I didn't have a problem.

2 Q. What do you mean you didn't
3 particularly like them?

4 A. Well, they were -- when they were bad.
5 I mean I don't want to be around bad kids. I mean
6 so -- I mean there were no issues, but I don't want
7 to take them when they are bad. I don't want to be
8 with my kids when they are bad.

9 Q. You said **Younger Sister** went with you most
10 times to pick up Ashley?

11 A. Yes.

12 Q. So was she not bad?

13 A. I mean I guess you could say that.

14 Q. How often was she bad?

15 A. I guess -- I don't know, every other
16 day, weekly basis, maybe.

17 Q. What did you do when she was bad?

18 A. I didn't do anything.

19 Q. You never did anything?

20 A. No.

21 Q. You never spanked her?

22 A. No.

23 Q. Or popped her?

24 A. No.

25 Q. At all?

1 A. Ever.

2 Q. What about any of the kids?

3 A. I spanked M. H. one time and I popped
4 her once.

5 Q. Only once?

6 A. Only once.

7 Q. Is that the time everybody has talked
8 about?

9 A. Yes.

10 Q. And that just happens to be the only
11 time?

12 A. Yes. I remember it because Lisa was
13 furious and she instinctively told everyone never
14 to leave the girls alone with me since then.

15 Q. But they did, didn't they?

16 A. Yes, they did.

17 Q. So when was it that she said never
18 leave the girls alone with you?

19 A. When?

20 Q. When was it that she said it?

21 A. When I spanked M. H. I popped her
22 one time.

23 Q. Do you know when that was?

24 A. She took some clothes to James at
25 Palmetto when he got out of jail from the first

1 time I had him arrested and she asked me to watch
2 the girls. So I would say late 2008, early 2009.

3 Q. So from late 2008 through early 2009
4 she told everybody not to leave the girls alone
5 with you?

6 A. And I spanked M.H. [REDACTED]. She was mad
7 about it.

8 Q. But she was fine with you taking them
9 off alone in the car?

10 A. Yes.

11 Q. But you couldn't be alone with them at
12 the house?

13 A. According to her, yeah.

14 Q. But it was okay to go off alone in the
15 car?

16 A. Makes no sense, yes.

17 Q. Did you kind of think maybe I shouldn't
18 be taking them in the car since I'm not allowed to
19 be alone with them in the house?

20 A. I had nothing to worry about.

21 Q. I am saying based on what she said did
22 that ever cross your mind?

23 A. I never really paid her much attention.

24 Q. You didn't pay her any attention?

25 A. No.

1 Q. So you would be alone with the kids if
2 you wanted to?

3 A. No.

4 Q. Were you or weren't you?

5 A. Only in the car.

6 Q. There was no time during all the time
7 y'all lived there that there was an occasion where
8 people were gone and you were alone at the house?

9 A. Not that I remember.

10 Q. Would that be unusual?

11 A. Unusual how?

12 Q. For one person to be alone with the
13 kids in the house?

14 A. I mean I don't think anybody -- you
15 have eight people living in a two bedroom
16 apartment. It's almost impossible to be alone with
17 anybody.

18 Q. A lot of these people worked?

19 A. Well, yeah.

20 Q. Adults?

21 A. Most of the adults, but Lisa was at
22 home with the girls before Ms. Rhonda was hurt.

23 Q. And Lisa worked from February of 2010
24 in Mt. Pleasant?

25 A. Yes, and Ms. Rhonda was in charge of

1 the girls.

2 Q. And would she ever take naps?

3 A. Not that I remember.

4 Q. Did she have congenital heart failure?

5 A. She was diagnosed with that in

6 March 2013.

7 Q. And before that she had been sick how?

8 A. Never that I remember.

9 Q. She wasn't on workman's comp?

10 A. When she got hurt at work. That's not
11 being sick.

12 Q. That was from 2011 to '13?

13 A. She got hurt December 2009.

14 Q. And but her workman's comp was 2011 to
15 2013, wasn't it?

16 A. I don't keep up with her personnel
17 records.

18 Q. Now, you have testified I think that
19 you knew that the computer was at your house?

20 A. Yes.

21 Q. But it was not yours?

22 A. It's Ashley's, but I mean it was open
23 to anybody who wanted to use it in the house.

24 Q. And you used it?

25 A. I did use it.

1 Q. What did you use it for?

2 A. Research, I looked at porn. I mean I
3 don't know, typical anything I wanted to know like
4 research wise and Mapquest whenever I was going out
5 of town. You know, I bought a motorcycle, parts,
6 you know, stuff like that.

7 Q. Did you use it to look at over 200 and
8 something pornographic videos that are on there?

9 A. I never kept count.

10 Q. Did -- what about the sites? Did you
11 have any particular sites that you went to a lot?

12 A. I had one in particular, yes.

13 Q. That was bookmarked?

14 A. Yes.

15 Q. What was that?

16 A. X Video.

17 Q. X Videos?

18 A. Yes.

19 Q. And do you remember the name of some of
20 the videos that you watched?

21 A. No.

22 Q. Would it help you if I showed you the
23 list of the names of the videos?

24 A. You can if you want.

25 Q. May I approach the witness?

1 THE COURT: You may.

2 BY MS. HERRING-LASH:

3 Q. Is this one of the videos that you
4 watched?

5 A. I don't believe so, but I mean it is
6 possible.

7 Q. What is that one?

8 A. It says, "Daughter fucks parents."

9 Q. What about this one?

10 A. Which one?

11 Q. This one.

12 A. "Father fucks friend's daughter."

13 Q. Does that sound familiar at all?

14 A. Not particularly, no.

15 Q. Did you just watch a whole lot of them?

16 A. Well, yeah, looked at a lot of porn,
17 but I never read titles.

18 Q. You just looked at the porn?

19 A. Big breasted women or, you know, big
20 booty women. I mean the pictures are there. I
21 don't really particularly look at the titles. You
22 can't go by titles.

23 Q. What about this one?

24 A. Let's see. "Brother and sister role
25 play."

1 Q. What about this one?

2 A. "Virginity lost." No, I would not look
3 at that.

4 Q. You wouldn't look at that? What would
5 that one be about?

6 A. Well, I have never been with a virgin,
7 but I mean from the stories I have heard it would
8 be kind of nasty.

9 Q. What about this one?

10 A. "Fucking my neighbor's daughter."

11 Q. Would you have watched that one?

12 A. Possibly, yes.

13 Q. And there were around 5,000 of these?

14 A. I never kept count.

15 Q. And you also know there were also four
16 DVD's that were taken; is that true?

17 A. Yes.

18 Q. Show you one. May I approach?

19 THE COURT: You may.

20 BY MS. HERRING-LASH:

21 Q. Was this one of the ones that was taken
22 from your home?

23 A. Yes.

24 Q. And what does the cover of that depict,
25 not the writing, but the --

1 A. It's a school girl outfit.

2 Q. Like a short skirt and little tiny
3 anklet socks?

4 A. Yes.

5 Q. And is that a school girl?

6 A. Yes. This is the same one Ashley has.

7 Q. But does that look like a school girl
8 or an adult dressed like a school girl?

9 A. It is an adult dressed like a school
10 girl, yes.

11 Q. And you watched that one?

12 A. It was Ashley's video.

13 Q. Did you watch it or not?

14 A. I think I watched one scene because two
15 of those were mine and two of those were hers.

16 Q. And so a lot of these 5,000 sites, they
17 were Ashley -- what Ashley was watching?

18 A. Some of them, not -- I wouldn't say all
19 of it or anything, but yeah.

20 Q. When would she watch?

21 A. Either with me or in private. I mean
22 that would probably be the only time.

23 Q. What would be the only time?

24 A. With me or sometimes in private.

25 Q. And would y'all watch it together?

1 A. Yes.

2 Q. When y'all watched it together would
3 you have the door shut?

4 A. Of course.

5 Q. And if she watched it would she have
6 the door shut?

7 A. I would think so.

8 Q. And if you watched it you would have
9 the door shut?

10 A. Yes.

11 Q. And you also had some pornographic
12 videos on your phone, didn't you?

13 A. Yes.

14 Q. And did you watch those when you were
15 in the car at a parking lot waiting to pick Ashley
16 up?

17 A. Typically if it was on my phone I was
18 either at work or I mean sounds kind of bad, but I
19 was taking a dump at work just killing time.

20 Q. What about when you were sitting
21 waiting in the parking lot?

22 A. No.

23 Q. Why not there?

24 A. It's a public place.

25 Q. In your car?

1 A. It's highly lit. It's a public place
2 and I would typically have either my children or
3 Younger with me.
4 Sister

5 Q. But if you are sitting in a car looking
6 at a phone you're thinking that people can see into
7 the car?

8 A. Well, I know people can see into the
9 car. I can see into other people's cars.

10 Q. They would have to walk up, you would
11 know they were coming?

12 A. I sat right in front of the store every
13 time.

14 Q. You never sat parked anywhere but right
15 in front of the store?

16 A. Yes, every time.

17 Q. And how long in advance would you get
18 there?

19 A. I was usually late.

20 Q. You were usually late?

21 A. Yes.

22 Q. And you were late right in front of the
23 store?

24 A. Yes.

25 MS. HERRING-LASH: Court's indulgence
 one moment?

1 THE COURT: Yes, ma'am.

2 (Off-the-record conference.)

3 BY MS. HERRING-LASH:

4 Q. When -- do you remember when Lisa and
5 the girls moved out? I know the date may be
6 difficult, but do you remember?

7 A. I would say to my recollection it was
8 late winter, early spring, either 2010 or 2011.

9 Q. And what -- there has been testimony
10 2011. Does that sound right to you?

11 A. I mean if that's when they closed on
12 their house I would say that would be accurate.

13 Q. And after that time did y'all still
14 have family gatherings together?

15 A. Yes.

16 Q. And did you still see the girls and
17 particular Younger Sister

18 A. I mean Younger Sister came over, you know,
19 after school for maybe an hour at the most before
20 Ben or Lisa got there to pick them up. Maybe every
21 now and again on the weekends. I mean that was
22 pretty much the gist of it, yeah.

23 Q. And the whole family, did you and
24 Ashley and your son go over to their house
25 sometimes?

1 A. We were invited over for holidays,
2 birthday parties, that was pretty much it.

3 Q. So at that point in time there was no
4 controversy going on between you and this family?

5 A. There was, but I don't think it was
6 really known to everybody.

7 Q. Was that about M.H. ?

8 A. No. I had an issue with them smoking
9 weed in the house so we always left when they
10 started smoking weed.

11 Q. In your house?

12 A. No, in their house.

13 Q. But other than that you're saying that
14 occurred, y'all were fine, no problems, no
15 animosities?

16 A. I mean I don't know. I mean the girls
17 would always tell me from day one that Ben had an
18 issue with me so...

19 Q. But you had no issue with the girls?

20 A. I had no issue with anybody.

21 Q. They were bad all the time I guess?

22 A. No, I did not say all the time.

23 Q. Every day or every other day?

24 A. Few days a week.

25 Q. Now, you mentioned that you have two

1 children, Austin and?

2 A. Jasmine.

3 Q. And you spend time with them?

4 A. Yes.

5 Q. And did -- you're aware that your
6 children were investigated by DSS?

7 A. They were investigated by DSS and in
8 the Low Country Childrens Center three, maybe four
9 times.

10 Q. And was one of the allegations that was
11 investigated about Austin sexual abuse?

12 A. Yes, I did make that report and Low
13 Country Childrens Center investigated it. Both
14 kids admitted to it and DSS did nothing.

15 Q. So that was the allegation of pictures
16 being taken of Austin?

17 A. From my understanding what had happened
18 was his uncle drew something on his butt, put him
19 over his shoulder and paraded him around the house
20 and there were pictures taken.

21 Q. So that was the allegation that someone
22 and his aunt or uncle took pictures of him?

23 A. I wasn't there, but to my understanding
24 that's what happened.

25 Q. And what were the other reports that

1 you made?

2 A. Physical abuse on my son. He lived
3 with us for a year. Again --

4 Q. When you say us, what do you mean?

5 A. He lived with me, Ms. Rhonda and
6 Ashley. They had already moved out. Low Country
7 Childrens Center investigated. They called the
8 abuse and the punishment that he received torturous
9 and DSS did nothing.

10 Q. So that was for a year after they left?

11 A. After they left he moved in and, yes,
12 he was there for one school year.

13 Q. So DSS did nothing about that?

14 A. They investigated it and dropped it.

15 Q. Does that mean they found that it
16 didn't happen or do you know?

17 A. Well, no, she held out.

18 Q. What do you mean?

19 A. Basically DSS doesn't like to keep
20 cases open over a year. So once you reach the one
21 year mark they close it out one way or the other.
22 There were stipulations in the closing, but nothing
23 ever came of it. He's --

24 Q. Is that what happened in your DSS case?

25 A. What do you mean by DSS case?

1 Q. Regarding this?

2 A. I mean they just closed it out.

3 Q. After a year?

4 A. Yes.

5 Q. But weren't there stipulations?

6 A. Basically there were stipulations, but

7 I mean nothing ever came of it.

8 Q. What are they?

9 MR. COCHRAN: Your Honor, I have to
10 object to relevance regarding DSS cases and other
11 parts of this.

12 MS. HERRING-LASH: Yes, Your Honor. I
13 think he's talked about being around his son and
14 that is a stipulation.

15 THE COURT: I'm going to sustain the
16 objection. Let's move on to something else.

17 MS. HERRING-LASH: Those are all the
18 questions I have, Mr. Daugherty.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. COCHRAN:

22 Q. Brian, just to clarify those questions
23 regarding that DSS case, those were reports you
24 made against other people regarding Austin and
25 Jasmine, correct?

1 A. Well, they were never against Jasmine.
2 She was brought in because she lived at the same
3 house, but yes, three times and I reported it to
4 DSS.

5 Q. The incident with M.H. [REDACTED] that has been
6 discussed in terms of you spanking M.H. [REDACTED] and Lisa
7 got upset about it, were you alone with M.H. [REDACTED]
8 when this happened or was Ashley or Rhonda with
9 you?

10 A. I was at the house babysitting the
11 three girls so Lisa could take clothes to James at
12 the Palmetto Center. And that was the only time I
13 was ever -- I had ever been alone with them.

14 Q. And was Ashley or Rhonda with you when
15 you then had this altercation with Ben?

16 A. Ashley was in the car when me and Ben
17 had our little argument.

18 MR. COCHRAN: Beg the Court's
19 indulgence.

20 (Off-the-record conference.)

21 BY MR. COCHRAN:

22 Q. And the pornography that was talked
23 about, the pornography was on a shared laptop.
24 Would you say that a lot of this pornography was
25 part of the sexual relationship between you and the

1 mother of your child Ashley?

2 A. Yes.

3 MR. COCHRAN: No more questions, Your
4 Honor. Thank you.

5 THE COURT: Recross?

6 MS. HERRING-LASH: No, Your Honor.

7 THE COURT: Sir, you may step down.
8 Defense may call its next witness.

9 MR. COCHRAN: Your Honor, the defense
10 calls Ashley Young.

11 THE COURT: Ma'am, come forward to be
12 sworn, please.

13 ASHLEY YOUNG

14 having been duly sworn, testifies as follows:

15 THE COURT: State your name, please,
16 ma'am.

17 THE WITNESS: Ashley Young.

18 THE COURT: Thank you. Counselor, your
19 witness.

20 DIRECT EXAMINATION

21 BY MR. COCHRAN:

22 Q. May it please the Court. Ms. Young,
23 what is your relation to Younger Sister, Older
24 Sister and M.H. ?

25 A. I'm their aunt.

1 Q. And what is your relationship with
2 Brian Daugherty?

3 A. He's my fiance and father of my child.

4 Q. Still in a relationship?

5 A. Yes.

6 Q. Who do you live with?

7 A. His parents and my mom.

8 Q. And what's your mother's name?

9 A. Rhonda Young.

10 Q. And is she the grandmother of Younger
11 Older Sister and M. H. ?

12 A. Yes.

13 Q. And the apartment that is at issue in
14 this case, are you aware of the apartment I am
15 talking about?

16 A. Yes.

17 Q. And whose apartment was that?

18 A. My mother's.

19 Q. That's Rhonda?

20 A. Yes.

21 Q. And how long did you live in that
22 apartment?

23 A. Probably like 12 and-a-half years.

24 Q. So a long time?

25 A. Yes.

1 Q. And I guess the bulk of that time until
2 2008 was it you, your sister and your mother and
3 your sister's kids?

4 A. Yes.

5 Q. And at least one or two of her -- if
6 Lisa's kids were born while y'all were living in
7 the apartment?

8 A. Older Sister was first and then my sister
9 went to Texas with her husband James Hutchinson,
10 then she came back pregnant with Younger Sister.

11 Q. When did Brian move into the apartment?

12 A. August of 2008.

13 Q. When did Ben Gomez move into the
14 apartment, before or after Brian?

15 A. After.

16 Q. Soon after or long after?

17 A. Long.

18 Q. I guess did he move in or did he just
19 stay there?

20 A. He stayed for about three months until
21 they moved into their house.

22 Q. Prior to that how much would he stay
23 there?

24 A. Pretty regularly.

25 Q. Like every weekend, during the week,

1 what?

2 A. I believe it was some during the week.

3 Q. What were -- how many bedrooms were in
4 the apartment?

5 A. Two.

6 Q. Did you have a bedroom?

7 A. Yes.

8 Q. Did you share that bedroom with
9 anybody?

10 A. Brian.

11 Q. And who had the other bedroom?

12 A. My mom and Older Sister

13 Q. So you say your mom and Older Sister -- were
14 all of the grandkids allowed to sleep in her room
15 typically?

16 A. Yes, sometimes.

17 Q. Was Older Sister the one that typically slept
18 in Rhonda's room?

19 A. Yes.

20 Q. If people weren't sleeping in Rhonda's
21 room where were they sleeping?

22 A. The living room.

23 Q. So have you been in a relationship with
24 Brian since 2008 or earlier than that?

25 A. Yes.

1 Q. 2008?

2 A. Um-hmm.

3 Q. Did you have a laptop in the apartment?

4 A. Yes.

5 Q. And did Brian have a laptop in the
6 apartment?

7 A. No.

8 Q. Did he use your laptop?

9 A. Yes.

10 Q. Showing you State's Exhibit, 12 is this
11 your laptop?

12 A. Yes.

13 Q. Were you aware that there was an
14 extensive amount of pornography on this laptop?

15 A. Yes.

16 Q. Would you -- would it be a fair
17 characterization that a lot of the pornography on
18 the laptop would have been part of the sexual
19 relationship between you and Brian?

20 A. That's correct.

21 Q. You said you all have a child together?

22 A. Yes.

23 Q. What's the child name?

24 A. Spencer.

25 Q. How old is he?

1 A. Four.

2 Q. You're aware what Brian has been
3 accused of?

4 A. Yes.

5 Q. How well did you know **Younger** and **Older**
6 or do you know them? **Sister** **Sister**

7 A. Very.

8 Q. Do you love them?

9 A. Yes.

10 Q. Still?

11 A. Yes.

12 Q. Do you love Brian?

13 A. Yes.

14 Q. There was a pool at the apartment
15 complex?

16 A. Right across the street.

17 Q. What was the family's routine with
18 regards to the pool?

19 A. I want to say when my mom got hurt she
20 would pick the girls up from school. They would
21 snack, do homework and then if there was time
22 before my sister got off work they would go to the
23 pool.

24 Q. Was this typically in the summer when
25 the girls were not in school?

1 A. Possibly.

2 Q. And you said when your mother got hurt.
3 The jury is very aware of this at this point, but
4 what are you referring to?

5 A. When she hurt herself at the Radisson.

6 Q. So this was a work injury?

7 A. Correct.

8 Q. Did it put her out of work for an
9 extended period of time?

10 A. I would say three years.

11 Q. And when did that happen, about?

12 A. I want to say December of 2009.

13 Q. And prior to her injury who was the
14 primary caretaker for the girls when they were not
15 in school?

16 A. Before my mom got hurt and before my
17 sister worked it was my sister and then usually my
18 mom.

19 Q. When did Lisa start working at her job?

20 A. I don't recall.

21 Q. Was it after your mom got hurt or
22 before?

23 A. Before I believe.

24 Q. So she would have been the one that was
25 primarily with her three daughters during the day

1 or the summers on weekends?

2 A. When she didn't work, um-hmm.

3 Q. After she got a job and after your
4 mother was hurt would your mother watch the girls?

5 A. Yes.

6 Q. Would she be home with them all day
7 during the summers?

8 A. Yes.

9 Q. And no summer school for any of the
10 girls?

11 A. No.

12 Q. Would she be -- did -- were the girls
13 of the age where they could go to the pool by
14 themselves?

15 A. No.

16 Q. So they all had supervision?

17 A. Um-hmm.

18 Q. Who was typically the adult supervisor
19 at the pool?

20 A. My mother.

21 Q. Was Brian ever the sole adult
22 supervision for any of the girls at the pool?

23 A. I don't recall.

24 Q. Do you think you would remember
25 something like that?

1 A. Yes.

2 Q. Do you remember anything like that?

3 A. No.

4 Q. Safe to say that he was never the sole
5 parental adult supervision of the pool for the
6 girls?

7 A. No.

8 Q. Did he ever go to the pool with just
9 one girl?

10 A. I don't think so.

11 Q. Would you remember something like that?

12 A. Probably.

13 Q. Would it be out of the ordinary?

14 A. Yes.

15 Q. And at some point who moved out of this
16 apartment first?

17 A. Lisa and the girls.

18 Q. And why did they move out of the
19 apartment?

20 A. They moved -- got a house in Goose
21 Creek with Ben.

22 Q. So Ben got a house in Goose Creek and
23 Lisa and her kids went with him?

24 A. That's correct.

25 Q. And did it have anything to do with any

1 kind of animosity between you and Lisa or Brian or
2 Lisa?

3 A. No.

4 Q. Do you recall an incident where Brian
5 and Ben had a disagreement or verbal altercation?

6 A. Yes.

7 Q. And what was that regarding?

8 A. Brian used profanity with M. H. in
9 the car.

10 Q. Did he spank or pop her?

11 A. No.

12 Q. Not that you witnessed?

13 A. I was there.

14 Q. You were there in the car?

15 A. Yes.

16 Q. And he used profanity and Ben was upset
17 about that?

18 A. Correct.

19 Q. Was Lisa upset about that?

20 A. I only remember Ben coming out to the
21 car.

22 Q. So you witnessed the verbal altercation
23 between Ben and Brian?

24 A. Yes.

25 Q. And you don't remember Lisa being

1 there?

2 A. I don't think so.

3 Q. Whose -- so you were working at the
4 time. Who would come pick you up from work?

5 A. Brian and the girls.

6 Q. Did you ever drive to work and drive
7 home by yourself?

8 A. No, we only had one car.

9 Q. Whose car was it?

10 A. There would have been several. The
11 blue Explorer would have been my mom's. And then I
12 had a gold Toyota Camry and then we traded both of
13 those in for a white Dodge Journey.

14 Q. And that was then the primary
15 transportation for everybody who was living in the
16 house?

17 A. Yes.

18 Q. Who would drop you off at work?

19 A. Usually my mom.

20 Q. So your mother would drop you off in
21 the morning at work and Brian would pick you up?
22 Did anybody commonly come with Brian to pick you up
23 from work?

24 A. His kids or my nieces.

25 Q. Any niece in particular?

1 A. Younger
Sister most of the time.

2 Q. So when his kids were in town they
3 would come with him?

4 A. Um-hmm.

5 Q. When his kids were in town were they
6 pretty much always with Brian?

7 A. I recall, yes.

8 Q. And would there ever be times when
9 Brian would come to pick you up with just Younger
Sister ?

10 A. Yes.

11 Q. And why would that be?

12 A. When he would bring multiple kids to
13 the store there was a lot of disturbances and it
14 embarrassed me at work so I remember telling him
15 preferably try not to bring all of them at the same
16 time.

17 Q. And if it was just Younger
Sister why Younger
Sister ?
18 Can you describe to the jury your relationship with
19 Younger
Sister ?

20 A. Me and Younger
Sister were extremely close.

21 Q. Were you closer with Younger
Sister e than with
22 the other two nieces?

23 A. Yes.

24 Q. Why are you getting emotional?

25 A. (Crying.) Because she was like my

1 daughter.

2 Q. And has your relationship with the
3 girls been limited or ceased as a result of these
4 accusations?

5 A. Yes. She called me after the
6 allegations.

7 Q. I want you to stop there. You cannot
8 discuss what other people said.

9 A. Okay.

10 Q. Now, do you want to have a relationship
11 with the girls?

12 A. At this time I don't know.

13 Q. Prior to -- after the girls moved out
14 with their mother into Ben's house in Goose Creek,
15 how long did you guys live in the apartment?

16 A. Repeat the question.

17 Q. So after Ben and Lisa and the girls
18 moved out of the apartment did you and your mother
19 and Brian remain in the apartment for a period of
20 time?

21 A. Yes.

22 Q. About how long?

23 A. We moved out after my son's first
24 birthday.

25 Q. Okay. And after Lisa and the girls and

1 Ben moved out of the apartment, was there still
2 contact with them?

3 A. Yes.

4 Q. What was sort of the -- obviously
5 wasn't as much when you were all living together,
6 but what was the nature of that contact?

7 A. My mom would pick the girls up from
8 school and then they would come over to the
9 apartment and then when Lisa got off UPS she did
10 pick the girls up from our house, so pretty
11 regularly.

12 Q. Now, obviously you got emotional
13 talking about **Younger Sister**. What effect have these
14 accusations had on your family and you?

15 A. I mean they are my family. But Brian
16 is the father of our son. So I tried to go off of
17 what I remember our relationship being like and
18 what I would have observed him being like with the
19 girls.

20 Q. And after all that evaluation is it
21 safe to say you thought about this a lot?

22 A. Correct.

23 Q. And you want what's best for your son
24 Spencer?

25 A. Absolutely.

1 Q. And you have made the decision to stay
2 with Brian?

3 A. Um-hmm.

4 Q. And how about your mother Rhonda? Who
5 does she live with?

6 A. She lives with me and my son and
7 Brian's parents.

8 Q. And Brian as well?

9 A. I plead the Fifth.

10 MR. COCHRAN: Your Honor, no more
11 questions.

12 THE COURT: You may cross-examine.

13 CROSS-EXAMINATION

14 BY MR. POULOS:

15 Q. Good morning, Ms. Young.

16 A. Hi.

17 Q. So you met Brian around August 2008?

18 A. Um-hmm.

19 Q. He moved in the same month?

20 A. Correct.

21 Q. At the time you were about 21 years
22 old?

23 A. That's correct.

24 Q. He was about 30?

25 A. Um-hmm.

1 Q. Fair to say he was kind of your first
2 long-term relationship, first live-in boyfriend?

3 A. He was my first boyfriend.

4 Q. James, Younger Sister and M. H. father,
5 left about a month or two after Brian moved in,
6 correct?

7 A. I don't recall.

8 Q. I want to talk to you about who was
9 working when and where, okay?

10 A. Um-hmm.

11 Q. Your mother Rhonda worked at the
12 Radisson for a period of time, correct? She
13 stopped in 2009?

14 A. Correct.

15 Q. That's when she got hurt.

16 A. Um-hmm.

17 Q. She had congestive heart failure?

18 A. After the fact.

19 Q. After that. When was that diagnosis
20 made, do you remember?

21 A. I believe 2013.

22 Q. She was on worker's comp starting in
23 2011; is that right, or do you recall?

24 A. If she got hurt in 2009 should have
25 been shortly after that.

1 Q. Okay. How old is your mother?

2 A. Like 60 something.

3 Q. Would she take naps?

4 A. I don't recall.

5 Q. You don't recall. You work at Cato 50
6 plus hours a week?

7 A. Forty-five plus.

8 Q. Forty-five plus. Sometimes you work
9 weekends?

10 A. Pretty much three weekends a month.

11 Q. Most weekends.

12 A. Um-hmm.

13 Q. Brian would pick you up from work every
14 day?

15 A. Yeah.

16 Q. And what time would you typically get
17 off work?

18 A. I believe the store closed at eight.
19 Would have been between 8:00 and 8:30.

20 Q. So we can assume that Brian would have
21 already got off of work long enough to be at the
22 house, get the car, presumably have **Younger** or
23 **Older** with him and come get you?
Sister

24 A. Yeah.

25 Q. At some point Lisa worked at the UPS

1 store in Mt. Pleasant starting in 2010; is that
2 right?

3 A. I don't remember when she started.

4 Q. She would work -- she would take Older
5 to school in the mornings, right? Sister

6 A. Yes. Older
7 Sister went to school in Mt.
8 Pleasant.

9 Q. So she would have to leave around 6:00
10 in the morning, 6:30?

11 A. Probably..

12 Q. They would typically get home around
13 6:30 at night?

14 A. Yeah. If she went to the grocery store
15 could have been a little later than that.

16 Q. Brian had various jobs which we have
17 already gone through a little bit. What was his
18 typical work schedule like?

19 A. Usually Monday through Friday.

20 Q. Now, Lisa would work on the weekends as
21 well, correct, occasionally?

22 A. I don't remember if the UPS store was
23 open on Sunday so probably just Saturdays.

24 Q. Saturdays. Okay. So, Ms. Young, with
25 all these work schedules and school schedules and
various things going on, wouldn't you agree that

1 there would certainly be times when Brian was at
2 the apartment alone with Older Sister and Younger Sister ?

3 A. I mean the majority of the time either
4 Lisa when she didn't work would have been there or
5 my mom would have been there. But he did live at
6 the apartment so I am not going to say that's not a
7 possibility.

8 Q. Right. So between April 2009 and
9 May 2011, that's two years and a month, certainly
10 between that period of time there would have been
11 occasions for him to be in the apartment alone with
12 Older Sister and Younger Sister

13 A. Okay.

14 Q. Is that yes or no?

15 A. I mean yes, I guess.

16 Q. Let's talk about the sleeping
17 arrangements. You slept in your bedroom?

18 A. With Brian.

19 Q. With Brian. Rhonda slept in her
20 bedroom?

21 A. With Older Sister

22 Q. With Older Sister. Sometimes Younger Sister would
23 sleep in there?

24 A. And probably sometimes M. H.

25 Q. Sometimes Lisa would sleep in there?

1 A. Probably.

2 Q. Probably. Ben would stay over
3 occasionally, but not every night, right?

4 A. I remember him being there quite often.

5 Q. He wasn't there every night?

6 A. No. He had a house with his brother.

7 Q. Right. So, Ms. Young, let me pose a
8 hypothetical to you. If it's late in the evening
9 or at night, say bedtime, and you're sleeping in
10 your room and Lisa and the girls are asleep in
11 Rhonda's room, and Bensen is not there, that means
12 there would be nobody in the living room, fair to
13 say, right?

14 A. I guess.

15 Q. You and **Younger Sister** used to be close, we
16 talked about that a little bit. You thought of her
17 as a daughter, she thought of you as a mother?

18 A. She has said she wanted me to be her
19 mother several times, yes.

20 Q. From the beginning, from the very
21 beginning you have never believed them about these
22 allegations, right?

23 A. That's a fair judgment, yes.

24 Q. You found out about the allegations on
25 February 6th, 2015?

1 A. Correct.

2 Q. You haven't spoken with Lisa since that
3 day?

4 A. I have not.

5 Q. Haven't spoken with [Older Sister] since that
6 day?

7 A. I have not.

8 Q. [Younger Sister] called you once in March of
9 2015, but you didn't want to talk about the details
10 with her?

11 A. Correct.

12 Q. You haven't talked to her since then?

13 A. I have not.

14 Q. From the beginning, Ms. Young, since
15 the allegations came out, you have based your
16 position without knowing a single solitary detail
17 about what happened, without having talked to
18 [Older Sister], without having talked to [Younger Sister], without
19 having talked to Lisa, you made up your mind from
20 the very first day on February 6th, 2015, that this
21 couldn't be true; is that fair to say?

22 A. I don't think so.

23 Q. How so?

24 A. Because I recall several conversations
25 that I would have had where I was giving Brian the

1 benefit of the doubt because of our relationship
2 and basing everything on my opinions on the
3 subject, but if anything were to have happened, I
4 was trying to keep a fair judgment about it.

5 Q. You said you didn't believe it from the
6 very beginning. You had conversations with Brian
7 about it?

8 A. Okay.

9 Q. That's what you used to make your
10 decision?

11 A. I mean our relationship and the fact
12 that I witnessed him around the girls, how he is
13 with his kids and my son.

14 Q. I think you told Mr. Cochran a few
15 times that if Brian had been alone with the girls
16 in the pool or in the apartment that you would have
17 remembered. You don't specifically remember, but
18 you think if it had happened you would have
19 remembered. Why is that? Why would you have
20 remembered an instance that happened in 2009, 2010,
21 2011 as benign as him being at a pool with Older
22 if you had no reason to remember it? Sister

23 A. Brian was hardly ever at the pool.

24 Q. Hardly ever?

25 A. Hardly ever. I won't say never, but

1 I'm going to say not the majority of the time.

2 Q. You told Mr. Cochran that's your
3 computer?

4 A. Yes.

5 Q. You know we are going to talk about
6 pornography?

7 A. Okay.

8 Q. This is a computer you share with
9 Brian, correct?

10 A. Yes.

11 Q. It's the same computer the police took
12 from your residence on Dunlap Street?

13 A. Correct.

14 Q. The same computer you had used when you
15 were on Rolling Fork when you lived with Lisa and
16 the girls?

17 A. Correct.

18 Q. You stated that some of the pornography
19 on the computer was yours; is that right?

20 A. Yes.

21 Q. How much of the pornography would you
22 say is yours?

23 A. I mean I can't tell you exact number.
24 I could tell you websites that I typically would
25 have been subscribed to or would have looked up.

1 Q. Tell me about a website.

2 A. King.com.

3 Q. What about Xvideos.com?

4 A. Probably.

5 Q. You are aware that Xvideos.com is
6 bookmarked on the computer?

7 A. I don't know.

8 Q. You don't know. Are you aware that
9 **Younger Sister** told her counselor that Xvideos.com --

10 MR. COCHRAN: Objection. He is asking
11 her about a conversation she would not be aware of.

12 THE COURT: He asked her if she was
13 aware. I will allow him to ask if she is aware of
14 a conversation.

15 MR. COCHRAN: I would ask that be
16 limited without the content of the conversation.
17 The jury has the --

18 THE COURT: He has to describe it. I
19 will ask you to do so, but not disclose the
20 contents of the conversation.

21 BY MR. POULOS:

22 Q. Are you aware of any conversations
23 **Younger Sister** had with her counselor about seeing videos
24 on the Xvideos.com?

25 A. No.

1 Q. Were there any particular themes to the
2 pornography that you and Brian would share or that
3 you would look at by yourself?

4 A. Yes. I liked separate stuff than what
5 Brian likes.

6 Q. What would you look at with Brian?

7 MR. COCHRAN: I object on the relevance
8 at this point, Your Honor.

9 THE COURT: He's on cross-examination.
10 He's examining the contents of the computer that
11 was seized. I'm going to overrule the objection,
12 give more latitude on cross-examination. You may
13 proceed.

14 BY MR. POULOS:

15 Q. What type of pornography would you look
16 at with Brian?

17 A. Most of it would have been the -- I was
18 showing him when I got into the King.com website
19 which would have been about bound gangbangs because
20 that's what I like, not what he likes. He had no
21 prior knowledge of that until I showed him.

22 Q. Like what?

23 A. Bound gangbangs.

24 Q. Okay. Are you aware of the kind of
25 pornography that he would look at or that you would

1 look at without him?

2 A. Sorry?

3 MR. COCHRAN: Your Honor, I just want
4 to renew my objection. The only reason why any of
5 this is relevant or admissible is because of the
6 accusations of what the girls may have witnessed on
7 the laptop. He is discussing things between just
8 this witness and just my client. That's
9 irrelevant. It's designed to cast aspersions on
10 her character and humiliate them in front of the
11 jury.

12 THE COURT: Help me with the relevance.

13 MR. POULOS: Your Honor, the victims
14 asserted they were shown pornography. They have
15 cited that pornography. Whether or not this is
16 pornography that Ms. Young is aware of or was
17 viewed outside of her presence is relevant to the
18 case. It was found on the computer as alleged to
19 have been shown to the victims during the abuse.

20 MR. COCHRAN: If it is on the computer,
21 Your Honor, that is what the State has used to try
22 to prove their case. Her knowledge of it does not
23 in any way tend to prove that fact is more or less
24 true. They have introduced this. They have gone
25 into titles. They have gone into websites. This

1 witness is aware of what she saw and heard from the
2 computer. Has nothing to do with what is more or
3 less likely to --

4 THE COURT: As to what they may have
5 watched husband and wife between each other, I will
6 sustain the objection. As it relates to the minor
7 alleged victims, I will allow you.

8 MR. COCHRAN: Your Honor, I will also
9 object to her testifying to what my client may or
10 may not have seen because she is not --

11 MR. POULOS: I withdraw that question.

12 THE COURT: He has withdrawn the
13 question. Thank you. You may proceed.

14 BY MR. POULOS:

15 Q. Isn't it true, Ms. Young, in fact you
16 went to work a few times at least upset, crying,
17 confiding in your coworkers about the fact that
18 Brian had been looking at pornography?

19 A. In the early of our relationship, yes,
20 when I was insecure.

21 Q. And that changed?

22 A. When I got pregnant.

23 Q. Once you got pregnant you were no
24 longer insecure about it?

25 A. I felt more secure in our relationship.

1 Q. When did you get pregnant?

2 A. 2011.

3 Q. Was that before or after the girls
4 moved out?

5 A. Probably the same year.

6 Q. So before 2011 it would upset you that
7 Brian would watch pornography?

8 A. That he would lie about it basically.

9 Q. So during that time is when you also
10 shared pornography with him or no?

11 A. Not really. Until I started watching
12 it on King.com and then that's when we had a little
13 discussion about what I was into.

14 Q. So is it fair to say that pornography
15 that was viewed on the computer before 2011 when
16 you were more secure with it was probably not
17 viewed by you?

18 A. I don't recall. I mean it was my
19 laptop. So --

20 Q. Ms. Young, even you can't really
21 provide any sort of motive or reason why Older Sister and
22 Younger Sister would make up these allegations?

23 MR. COCHRAN: I object to that
24 question, Your Honor. Calls for speculation.

25 THE COURT: That would call for

1 speculation unless there is some foundation laid
2 for it.

3 MR. POULOS: Asking her personal
4 knowledge, does she personally know of any reason.

5 THE COURT: That's not the way you
6 asked it.

7 BY MR. POULOS:

8 Q. I will rephrase it. Ms. Young, do you
9 personally know, you have any personal knowledge of
10 any reason why the girls would make up these
11 allegations?

12 A. No.

13 MR. POULOS: May I have just a moment?

14 THE COURT: Yes, sir.

15 (Off-the-record conference.)

16 BY MR. POULOS:

17 Q. Earlier you said that when you were
18 making your decision whether or not to believe
19 **Younger Sister** and **Older Sister** you based it on your observations
20 of his behavior and his interactions with the
21 girls?

22 A. Other children and his relationship
23 with me, yes.

24 Q. And based on your observations of his
25 interactions with those children you came to the

1 conclusion that he must not have done what he is
2 accused of doing?

3 A. I would assume so.

4 Q. So what type of behavior would make you
5 think someone was abusing?

6 MR. COCHRAN: I would object to that
7 question, Your Honor. No one is qualified to
8 testify to the ultimate issue.

9 THE COURT: Well, he's asking what
10 would have caused her to have a different opinion.
11 I will allow him to ask the question.

12 BY MR. POULOS:

13 Q. What type of behavior would you have to
14 see to think that someone was abusing a child or
15 would be a person who would be abusing a child?

16 A. I feel like there would have been
17 something that would stand off that would have
18 seemed odd to me.

19 Q. Odd how?

20 A. If the girls were like visibly upset
21 around him or didn't want to do anything, want to
22 be with him or for any particular reason.

23 MR. POULOS: No further questions, Your
24 Honor.

25 THE COURT: You may redirect.

REDIRECT EXAMINATION

BY MR. COCHRAN:

Q. So is it fair to say that you did not see significant changes in the girls behavior after Brian moved in?

A. No, I didn't see anything.

Q. Did not see any changes?

A. Huh-uh.

Q. And the other members of the household had access to your laptop?

A. I mean they would have had access to it. Usually the kids would always use it.

Q. Kids would use your laptop that is sitting on the table right there?

A. Yes.

Q. And so it would be possible for people to see search histories, things like that?

A. Yes.

Q. Were **Younger Sister** and **Older Sister** adept with technology and things like that?

A. Probably.

Q. Typical kids with computers?

A. I mean they never asked for help to use the computer so...

Q. They get on the internet by themselves

1 unsupervised?

2 A. Yes.

3 MR. COCHRAN: No more questions.

4 THE COURT: Recross?

5 MR. POULOS: No further questions.

6 THE COURT: You may step down. Thank
7 you very much. Defense may call its next witness.

8 MR. COCHRAN: Your Honor, we call
9 Rhonda Young.

10 THE COURT: Ma'am, come forward to be
11 sworn.

12 RHONDA YOUNG

13 having been duly sworn, testifies as follows:

14 THE COURT: Please state your name,
15 ma'am.

16 THE WITNESS: Rhonda Young.

17 THE COURT: Thank you. Mr. Cochran.

18 DIRECT EXAMINATION

19 BY MR. COCHRAN:

20 Q. May it please the Court. Ms. Young,
21 what is your relationship to Lisa Batten, Younger
22 [REDACTED], Older Sister [REDACTED] and M. H. [REDACTED] Sister
23 ?

24 A. Lisa is my daughter, and the girls are
25 my granddaughters.

Q. Did they ever live with you?

1 A. Yes.

2 Q. How long did they live with you, the
3 granddaughters live with you?

4 A. Up until they moved in their house.

5 Q. Where did you guys live?

6 A. In Woodland Place.

7 Q. Was that an apartment?

8 A. It was a condo.

9 Q. Two bedroom?

10 A. Yes.

11 Q. Do you know why you are here today?

12 A. Yes.

13 Q. Do you know what this case is about?

14 A. Yes.

15 Q. And you know what **Older Sister** and **Younger Sister**
16 have alleged against Brian Daugherty?

17 A. Yes.

18 Q. Who is Brian Daugherty to you?

19 A. He is my daughter's fiance, my youngest
20 daughter's fiance.

21 Q. Would you lie to protect Brian?

22 A. No.

23 Q. Do you love your daughter Lisa?

24 A. I do.

25 Q. Do you love your granddaughters?

1 A. Yes.

2 Q. Has your contact or relationship been
3 affected in any way by these accusations?

4 A. Not until I came to court. I mean not
5 until I agreed to come to court. I saw them like,
6 you know, on the weekend that I didn't have
7 Spencer.

8 Q. Have you tried throughout, though, to
9 maintain a relationship with --

10 A. Yes.

11 Q. -- Lisa and Younger Sister ?

12 A. Yes.

13 Q. M. H. and Older Sister ?

14 A. Yes. We have.

15 Q. You have maintained that relationship?

16 A. Yes.

17 Q. Did you at sometime receive a
18 significant work injury?

19 A. I did in December of 2009.

20 Q. December of 2009. Was it enough of an
21 injury to keep you out of work?

22 A. I didn't work after that.

23 Q. Do you receive worker's compensation?

24 A. I do.

25 Q. And where were you living when this

1 occurred?

2 A. Woodland Place.

3 Q. Who lived you at that time?

4 A. Ashley, Brian, Lisa, Older Sister, Younger Sister and
5 M. H. .

6 Q. And was Lisa to the best of your
7 recollection working at UPS when you were injured?

8 A. No.

9 Q. So she got that job after you were
10 injured?

11 A. Right.

12 Q. So prior to your injury who primarily
13 watched the girls when they were not in school?

14 A. Lisa. Lisa didn't work then.

15 Q. After Lisa got a job you were injured
16 in --

17 A. I was.

18 Q. And who watched the girls during the
19 summer when they weren't at school on weekends?

20 A. I did. After I got hurt I did.

21 Q. Were you the primary person to
22 supervise them at the apartment or anywhere when
23 they were not at school?

24 A. While she was at work, yes.

25 Q. She was obviously --

1 A. Then I was off.

2 Q. She was still an active mother living
3 with the girls?

4 A. Right.

5 Q. But you were not working at the time?

6 A. Right.

7 Q. There has been a lot of talk about a
8 swimming pool at that apartment complex or
9 condominium. There was a swimming pool near your
10 unit?

11 A. Across the street.

12 Q. Across the parking lot?

13 A. Um-hmm.

14 Q. And this was not a public road. This
15 was a parking lot for the complex?

16 A. Right.

17 Q. Who typically -- this has been asked of
18 other witnesses, but were the girls of an age at
19 any point when they lived in the apartment to be at
20 the swimming pool unsupervised?

21 A. It wasn't allowed.

22 Q. They always had adult supervision?

23 A. Right.

24 Q. Was Brian Daugherty ever the sole adult
25 supervision for any of the girls at the swimming

1 pool?

2 A. No.

3 Q. You say that definitively?

4 A. Absolutely.

5 Q. You would remember that?

6 A. Yes.

7 Q. And it didn't happen?

8 A. Pardon?

9 Q. Did not happen?

10 A. No.

11 Q. Was there ever a time --

12 A. He didn't go to the pool. Very rare.

13 Q. So he rarely went to the pool?

14 A. Right.

15 Q. Now, his kids used to come stay at the
16 apartment on weekends?

17 A. Yes.

18 Q. He would go to the pool with them?

19 A. He would take them to the pool, but
20 most of the time he would leave them with me.

21 Q. And was he ever in the pool one on one
22 with **Older Sister** or **Younger Sister**?

23 A. No.

24 Q. Was there ever an instance where Brian
25 would come to the pool from the apartment to take

1 one of the girls back to the apartment?

2 A. Absolutely not.

3 Q. Was there ever an incident or was there
4 ever an instance where everyone would be at the
5 pool and Brian would take one of the girls back to
6 the apartment?

7 A. No.

8 Q. Do you recall an instance after Lisa
9 moved out of the apartment with Ben and her girls
10 where Brian got into a verbal altercation with Ben?

11 A. He got -- they got in an argument over
12 the girls.

13 Q. Which girl in particular?

14 A. Younger Sister and M. H. . Because we were
15 taking them home and they were being bad in the car
16 and he told them to shut the F up.

17 Q. He used profanity?

18 A. Right.

19 Q. He didn't say F, he said the word?

20 A. Yes.

21 Q. And who did that upset?

22 A. When they went home and told Ben it
23 upset Ben and Lisa.

24 Q. Younger Sister and M. H. both told Ben?

25 A. I'm not sure.

1 Q. You weren't present. And Ben was
2 upset. Did you -- were you a witness to Ben and
3 Brian having this spat?

4 A. I'm not sure if it happened that
5 particular day or if was like the next time.

6 Q. You might have heard about it?

7 A. No, I knew that they got in an
8 argument, but I'm not sure if I witnessed it. They
9 just -- we know it because at that point he stopped
10 going over there.

11 Q. Stopped going to the house in Goose
12 Creek. When you say he, you mean Brian?

13 A. Brian.

14 Q. Was that a big deal for people to use
15 profanity around the girls?

16 A. No.

17 Q. Would other adults in the apartment
18 when you all were living use profanity in front of
19 the girls?

20 A. Yes.

21 Q. Would Ashley use profanity?

22 A. Yes.

23 Q. Would Lisa use profanity?

24 A. Yes.

25 Q. So the girls were exposed to profanity?

1 A. Right.

2 Q. Just not necessarily in a hostile
3 manner?

4 A. No. Just -- yeah.

5 Q. Common way of talking sometimes?

6 A. Right. More so with arguing or fussing
7 or something.

8 Q. So roughly 2008 to 2011 in your
9 apartment Brian was living there and all three of
10 your granddaughters were living there?

11 A. Yes.

12 Q. So a three-year period, roughly, maybe
13 a little less, where you lived with both Brian and
14 the three girls. Were you ever concerned about
15 behavior, relationships between Brian and the
16 girls?

17 A. No.

18 Q. Were you ever suspicious of anything?

19 A. No.

20 Q. Where did you sleep?

21 A. I slept in the back bedroom.

22 Q. When you were watching the girls summer
23 afternoons, weekends, Lisa was working, Ashley was
24 working, Brian was home, would that have happened?

25 A. On the weekends possibly.

1 Q. Would you ever take naps to just let
2 Brian take care of the girls himself?

3 A. No. I mean I might have laid down on
4 the couch, but no.

5 Q. Not take a full nap?

6 A. No, that would be hard to do with three
7 kids in the house.

8 Q. They demand your attention?

9 A. Pretty much.

10 Q. So sleeping arrangements, you had your
11 own bedroom?

12 A. No, I slept with Younger Sister and Older Sister
13 most of the time. At some point all of us
14 would be in the bed, king size bed.

15 Q. And sometimes would even be you, Lisa
16 and all three girls?

17 A. Yes.

18 Q. Sometimes it would be you and Older Sister
19 Did Older Sister pretty much spend every night in your
20 bed?

21 A. Older Sister was in my room every night.
22 That was her room.

23 Q. If somebody wasn't sleeping in your bed
24 where would they be sleeping?

25 A. In the living room.

1 Q. What about Ashley and Brian?

2 A. They had -- she had her own room.

3 Q. Brian stayed in her room? Did Brian
4 ever sleep in the living room?

5 A. No.

6 Q. Did you hear or ever see people viewing
7 pornography in the apartment?

8 A. No. I didn't know there was porn until
9 they came to collect everything.

10 Q. They being the police regarding the
11 case?

12 A. When they did the search.

13 Q. That was in regards to this case?

14 A. Yes.

15 Q. Did you give the girls when they were
16 little baths?

17 A. I did. Well, I put them back there,
18 yes.

19 Q. And you obviously were at the pool with
20 them frequently. They were wearing bathing suits?

21 A. Right.

22 Q. Did you ever notice bruising, injuries,
23 anything like that?

24 A. No.

25 Q. Change in behavior after Brian moved

1 out?

2 A. No.

3 Q. Have you maintained a relationship with
4 Brian since these accusations?

5 A. Yes.

6 Q. Ashley as well?

7 A. Mostly after the -- they said that he
8 could see Spencer.

9 Q. This being the courts?

10 A. Yes, they being the courts.

11 Q. You are aware of Brian using the car
12 that everybody kind of used?

13 A. Yes.

14 Q. Would he ever drive any of Lisa's
15 daughters anywhere?

16 A. Yes.

17 Q. Would it ever be just Brian and one
18 girl?

19 A. Yes.

20 Q. What was the most typical scenario
21 where that would occur?

22 A. Like he would -- I know he has taken
23 like Older Sister to like Wal-Mart. He has taken Younger Sister
24 to get Ashley from work.

25 Q. Why would Younger Sister in particular go to

1 get Ashley from work?

2 A. Because her and Ashley were close.

3 Q. Especially close?

4 A. She wanted to live with us.

5 Q. And she did live with you. So you are
6 referring to after she moved to Goose Creek. Would
7 she still come back frequently to your apartment?

8 A. Yes.

9 Q. Was Brian still living in the apartment
10 at that time?

11 A. Yes.

12 Q. Younger
Sister would still come and spend
13 weekends? Was that because you wanted her to come
14 over?

15 A. No. Yes, sure. I would want her to
16 come over.

17 Q. And would she want to come over?

18 A. Yes.

19 Q. Did she stay during the week?

20 A. In the summer she would. She could.

21 Q. All your granddaughters were welcome?

22 A. Right.

23 Q. And after they moved out and moved to
24 Goose Creek were some of the girls still going to
25 school in North Charleston?

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A. Yes, Younger Sister and M. H.

Q. And who picked them up from school?

A. I did.

Q. Typically?

A. Um-hmm. Unless Lisa was off.

Q. They would also stay at your house during the time too?

A. Until she got off work.

Q. But there were times when Younger Sister would just want to come to your apartment, wouldn't necessarily have to do with child care, she wanted to stay there?

A. Yes. She would spend the weekend and stuff with us.

MR. COCHRAN: Beg the Court's indulgence.

(Off-the-record conference.)

MR. COCHRAN: Thank you, Ms. Young. No more questions. Please answer any questions the solicitor has for you.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MS. HERRING-LASH:

Q. Ms. Young, you lived in that apartment as we have all established and you never knew there

1 was porn in there?

2 A. No.

3 Q. And Brian would take the girls off
4 alone, that was fine with everybody?

5 A. Yes.

6 Q. Was there a time when he popped M.H.
7 and that became an issue with Lisa wanting him to
8 be alone with the girls?

9 A. I didn't recall it, but they, you know,
10 Ashley said he did.

11 Q. Said what?

12 A. Ashley said that Brian had popped her
13 because he got in an argument -- they got in an
14 argument. No, Ashley had popped her and got in an
15 argument with her. I never -- no, I never saw
16 Brian.

17 Q. You don't know about that?

18 A. Brian's issue was mostly with his son.

19 Q. What do you mean?

20 A. With his discipline, him being --
21 that's the only time I really saw he had a paddle.

22 Q. You never saw him use the paddle on

23 M.H. ?

24 A. Not that I recall.

25 Q. Or Lisa get upset with him for that?

1 A. No.

2 Q. Now, I think you said, I may have the
3 time a little wrong, it was basically about two or
4 three summers that everybody lived there?

5 A. Yes.

6 Q. And y'all would frequent the pool?

7 A. Yes.

8 Q. Except for Brian?

9 A. Brian didn't go to the pool and what
10 time Ben stayed there he didn't go to the pool. He
11 wasn't -- said he wasn't a pool person.

12 Q. And so if one of the girls had to go
13 home from the pool to get a lunch or go to the
14 restroom or do anything, and they went home, if
15 Brian wasn't at the pool he would be there?

16 A. He would be at work usually.

17 Q. On the weekend?

18 A. No, he would run errands. He might be
19 in there.

20 Q. Would there be any reason in the world
21 why it wouldn't be okay for him to be alone with
22 one of these girls?

23 A. No, not really I mean.

24 Q. And you had said that there was never
25 an occasion that he was alone with one of them at

1 the pool?

2 A. No.

3 Q. And you are talking about as far as you
4 know?

5 A. No, he was not.

6 Q. How do you know?

7 A. But his kids were there.

8 Q. How do you know?

9 A. Because they weren't allowed to go over
10 there without an adult, without me or whatever.

11 Q. He wouldn't be an adult?

12 A. He wouldn't be allowed -- the only way
13 they would go over there is if he took his kids
14 over there.

15 Q. So they would not be allowed to go with
16 him?

17 A. No.

18 Q. Why not?

19 A. Because usually I would go.

20 Q. Why was he not?

21 A. Because I would be the one that would
22 go with them. I enjoyed the pool as much as they
23 did.

24 Q. Why would he not be allowed to go to
25 the pool?

1 A. He could probably be allowed, but he
2 just didn't. He stayed --

3 Q. That you know?

4 A. He stayed in his room. He wasn't
5 socially around us as far as the living room and
6 all that.

7 Q. He never --

8 A. Socialized out. He would come from
9 work and go in his room.

10 Q. That's --

11 A. In their room.

12 Q. Except for to go get Ashley?

13 A. Right, or if he had to go to the store
14 or run errands.

15 Q. So you would know every day for those
16 summers if there was a day that he left and went to
17 the pool in the afternoon?

18 A. Yes.

19 Q. You would know that?

20 A. If he left in his swim trunks.

21 Q. How would you know? You are telling
22 the jury you know what he did every day.

23 A. I didn't know what he did any day when
24 he was in his room, okay? I am saying he did not
25 take the girls. He did not go over to the pool.

1 He barely would go over with Ashley.

2 Q. And you would absolutely positively
3 know where he was and what he was doing?

4 A. No.

5 Q. And you never took a nap ever?

6 A. I would lay on the couch or something,
7 but you don't -- with three kids that young, no,
8 you don't leave them unattended.

9 Q. Was there other --

10 A. As soon as Lisa got off work I was off.
11 I could go to my room. Me and Older Sister or Older Sister
12 would have the TV.

13 Q. If there was another adult there, say
14 Brian, they wouldn't be unattended if you took a
15 nap?

16 A. He didn't interact with them like that.

17 Q. He didn't?

18 A. No.

19 Q. At all?

20 A. He was in his room.

21 Q. So he didn't interact with the kids?

22 A. Not so much, no. Older Sister would go in
23 and play Guitar Hero in their room.

24 Q. So they did want to be around him?

25 A. What? No, Older Sister would go in there and

1 be in there and play Guitar Hero almost all the
2 time.

3 Q. So Older Sister was in his room all the time?

4 A. Yes.

5 Q. A lot?

6 A. A lot.

7 MS. HERRING-LASH: Those are all the
8 questions I have.

9 REDIRECT EXAMINATION

10 BY MR. COCHRAN:

11 Q. When she would play Guitar Hero in his
12 room was this with other kids or Ashley or what was
13 going on?

14 A. There would be other kids in there.
15 They would take turns.

16 Q. And kids in Brian's bedroom, would the
17 door be open?

18 A. Yes. It was right in front of the
19 door. You could see it.

20 Q. You could see in Brian's room watching
21 TV?

22 A. Yes.

23 Q. You knew where the kids were?

24 A. I couldn't see in their room from my
25 room. But if I went by the hallway Guitar Hero

1 would be on. I mean you can hear it, you can see
2 it.

3 Q. You knew what the kids were doing when
4 they were under your watch?

5 A. Yes.

6 Q. It wasn't Older Sister going into the bedroom
7 with Brian and them shutting the door?

8 A. No.

9 MR. COCHRAN: No more questions, Your
10 Honor.

11 MS. HERRING-LASH: No more questions,
12 Your Honor.

13 THE COURT: You may step down. Thank
14 you very much. Defense may call its next witness.

15 MR. COCHRAN: Your Honor, the defense
16 rests.

17 THE COURT: State wish to call any
18 rebuttal?

19 MS. HERRING-LASH: Yes, Your Honor.

20 THE COURT: You may.

21 MS. HERRING-LASH: The State would call
22 Nicki Harter.

23 THE COURT: Come forward,
24 please.

25 NICKI HARDER

1 having been duly sworn, testifies as follows:

2 THE COURT: Once you are seated state
3 your name, please.

4 THE WITNESS: I'm Michelle Harder.

5 DIRECT EXAMINATION

6 BY MS. HERRING-LASH:

7 Q. Ms. Harder, you go by Nicki?

8 A. Yes.

9 Q. And where do you live?

10 A. Currently in Summerville.

11 Q. And where do you work?

12 A. With Catos.

13 Q. What do you do?

14 A. I'm a district manager for this part of
15 the state.

16 Q. And have there been times before that
17 that you were store manager?

18 A. Yes, ma'am.

19 Q. What stores did you manage?

20 A. I managed Goose Creek, Oakbrook,
21 Summerville, Citadel Mall, North Charleston, I
22 believe that's all.

23 Q. A lot of them?

24 A. Yes.

25 Q. Do you also know Ashley Young?

1 A. Yes.

2 Q. And how long have you known Ashley?

3 A. Very young age. Our parents told us
4 back when we were two, but my memory reflects maybe
5 five.

6 Q. And when you were working at Catos did
7 you help Ashley to get a job there?

8 A. Yes.

9 Q. And what stores did she work at?

10 A. When I recruited her I hired her on at
11 the Goose Creek location. Promoted her once I
12 moved from the Goose Creek location to the Citadel
13 Mall and she was promoted to an assistant manager
14 at that time. After I closed the Citadel Mall I
15 went to Summerville as the store manager. Then
16 moved to North Charleston and after North
17 Charleston I became the DSM of the Oakbrook
18 location and she became my first assistant then.

19 Q. So were any of those times, did that
20 put you all in a store together?

21 A. Yes. We have been in a store together
22 for two and-a-half, three years.

23 Q. Before -- she left Catos at some point?

24 A. Oh, yes, yes.

25 Q. But before that?

1 A. Yes.

2 Q. And did you meet her fiance Brian?

3 A. Yes, numerous occasions.

4 Q. And would he come to pick her up from
5 work sometimes?

6 A. Yes.

7 Q. And did he have a routine of arriving
8 late or early?

9 A. The routine was normally early. And
10 normally late. He would stay later just because
11 Ashley worked later.

12 Q. When you say early, about how early
13 would he arrive?

14 A. I would say 40 minutes to -- 40 minutes
15 to an hour maybe, just depends on the day.

16 Q. And where -- would he park in any one
17 place?

18 A. I can't recall that. Based on the
19 location it was a very small parking lot so if we
20 were busy in the store I can't say where I know
21 where he parked. If we were not busy I mean there
22 was sometimes it was the first row, the second row,
23 parked in a corner next to the pine tree that was
24 at the parking lot, but I can't recall.

25 Q. It wasn't a routine?

1 A. No, no routine.

2 Q. Did he often have one of the girls with
3 him?

4 A. Yes.

5 Q. And now -- as well as working with
6 Ashley you were close with her?

7 A. Yes.

8 Q. And were there times that Ashley was
9 upset and crying about Brian's pornography
10 watching?

11 A. Yes, there were times.

12 Q. And was there a time she became more
13 upset about it?

14 A. By memory, she's -- she came to my
15 house one time very upset and she told Brian she
16 went shopping. My memory when she came to the
17 house she was all upset. She was telling me she
18 had --

19 MR. COCHRAN: Objection, hearsay.

20 BY MS. HERRING-LASH:

21 Q. Just without saying exactly what she
22 said she was upset?

23 A. Yes, she was upset.

24 Q. What was it due to?

25 A. Porn.

1 MR. COCHRAN: Object to the product of
2 hearsay, same thing.

3 THE COURT: I'm going to ask the
4 witness not to quote what someone said. She is not
5 allowed to do so.

6 BY MS. HERRING-LASH:

7 Q. What was the time frame when she became
8 upset?

9 A. I'd say early -- late 2007, early 2008
10 until the time frame of our hearsay all the way up
11 until 2012.

12 Q. When she became pregnant was she still
13 getting upset about it then?

14 A. Yes.

15 Q. And more upset?

16 A. Yeah, I would say so, yes.

17 Q. And was some of the reason for her
18 being upset --

19 MR. COCHRAN: Objection --

20 THE COURT: She hasn't finished the
21 question yet so let her do that. You have to stand
22 up if you want to object.

23 MR. COCHRAN: Yes, Your Honor. I
24 apologize.

25 BY MS. HERRING-LASH:

1 Q. -- based on her doing internet history
2 searches?

3 A. Yes.

4 MR. COCHRAN: Your Honor, I just object
5 to that question in terms of product of hearsay.

6 MS. HERRING-LASH: I also think that it
7 is impeachment.

8 THE COURT: I'm not going to find that
9 to be hearsay. I will overrule that.

10 BY MS. HERRING-LASH:

11 Q. So her upsetness was based on internet
12 searches of what he had looked at?

13 A. Yes.

14 Q. And you said that behavior lasted until
15 2012?

16 A. Yes, it was -- there were periodic
17 moments. It wasn't all the time, but there was
18 moments she did bring it to my attention.

19 Q. Enough that she was crying?

20 A. She has cried on two occasions, yes.

21 Q. About the pornography use?

22 A. Yes.

23 MS. HERRING-LASH: Those are all the
24 questions I have.

25 THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. COCHRAN:

Q. Did law enforcement ever come talk to you?

A. No.

Q. When you found about this case did you go to the law enforcement or were you contacted by the state's attorneys?

A. I was contacted by her.

MR. COCHRAN: No more questions.

THE COURT: Anything further?

MS. HERRING-LASH: No, Your Honor.

THE COURT: You may step down. Do you wish to excuse the witness?

MS. HERRING-LASH: Yes, Your Honor.

THE COURT: Any objection?

MR. COCHRAN: No, Your Honor.

THE COURT: You are free to go, ma'am.

MS. HERRING-LASH: State --

THE COURT: State wish to call any other rebuttal witnesses?

MS. HERRING-LASH: No.

THE COURT: Ladies and gentlemen of the jury, that completes the presentation of the evidence in the case. At this stage of the

1 an opportunity to make any motions concerning my
2 charge at that time.

3 MR. COCHRAN: Yes, Your Honor.

4 (Whereupon the jury entered the
5 courtroom at 1:35 p.m.)

6 THE COURT: Let the record reflect the
7 jury has returned to the courtroom and I hope
8 everyone had a good lunch break. If any of you had
9 any difficulty in complying with my instructions
10 during the break please stand. It appears that all
11 jurors have been able to comply with my
12 instructions thus far.

13 I told you that when we had completed
14 the presentation of evidence the attorneys would
15 have their second opportunity to directly address
16 you about the case in what we refer to as their
17 closing arguments or their summation.

18 The State will be going first followed
19 by the defense and then the State will be allowed a
20 limited reply once that argument has been
21 completed. So the State may proceed at this time.

22 MS. HERRING-LASH: May it please the
23 Court.

24 THE COURT: Yes, ma'am.

25 MS. HERRING-LASH: Counsel. Good

1 afternoon. Child sexual assault cases are very
2 different from many kind of cases, as an example a
3 DUI case, where the crime happens on the street or
4 the highway to the view of the public. These
5 crimes happen in the privacy of the home and
6 usually where the Defendant and the victim live
7 together and the Defendant is the person that has
8 the choice of when and where.

9 It's not like a robbery case when the
10 law enforcement goes out and finds evidence and
11 brings it into you and says this is what was taken
12 and this is where we found it. The only thing
13 stolen is the innocence and that can't be brought
14 into here and shown to you.

15 But perhaps most important and most
16 difficult is that children as you heard commonly
17 most often don't tell right away. Whether that be
18 fear of the Defendant, fear of hurting someone they
19 love, fear of the unknown, fear of not being
20 believed, or just using their common, everyday
21 experience as a child which most of us have
22 probably forgotten. When you're a child, when
23 you're a kid you are at the mercy of those that
24 take care of you. Adults do not take the word of
25 children over adults most of the time. And kids

1 know that.

2 So that puts them in a very vulnerable
3 position where they have to stand up to an adult.
4 The other thing that makes it very difficult is
5 because of that jurors do not have the forensic
6 evidence that you may want at trial, the forensic
7 evidence that you may want, the kind of trace
8 evidence like DNA. And that is because that
9 doesn't exist if the child did not tell right away.
10 And they are also trying to forget.

11 It would be much easier in this case if
12 Younger Sister and Older Sister could forget about this. Much
13 easier than to have to come in here. And they
14 tried. Older Sister told you she tried really hard. But
15 what -- and unfortunately what makes them -- the
16 vulnerability that makes children victims is the
17 very thing that makes it hard to protect them.
18 Especially when years later they are expected to
19 come into a courtroom and give you details not only
20 of what happened, but when it happened, to sequence
21 it, to tell you this is what happened first, this
22 is what happened second. And to tell you when it
23 happened. And to tell you whether it was summer,
24 tell you what time of the day it was.

25 And if they don't do that, then they

1 are accused of making it up. They are accused of
2 lying. People lie for motive. I would ask you
3 what motive these girls would have to make this up.
4 They have nothing to gain. They haven't lived in
5 this home with this particular person in three
6 years and 10 months. According to all the
7 witnesses, defense included, there was no motive.
8 There was nothing going on that made people dislike
9 each other, get angry at each other. There was
10 nothing going on. There was no motive.

11 Perhaps **Younger Sister** got to the point where
12 she just couldn't hide it any longer. You heard
13 that she had began fighting, having anger problems
14 at school. Perhaps she told for one reason and
15 that's justice.

16 Now, **Younger Sister** was six years old at the
17 time that that began. She said she was shown porn,
18 but she really didn't understand what it was, that
19 she remembers seeing it and could describe some of
20 it to you, but didn't know exactly what was going
21 on. She told you, though, also details about the
22 first time that he laid her on the bed he touched
23 himself and then got her on the edge of the bed and
24 tried to put his penis in her. But said to her
25 it's too big. She said he never tried that again.

1 She didn't try to tell you this was what he did
2 every time. She told you he never did that to her
3 again.

4 But there are other things that
5 happened. Even the first he laid her on the edge
6 of the bed, her legs over, he knelt and licked her
7 private area. He also stood by the door, had her
8 kneel and put his penis in her mouth.

9 As he often put his fingers in her,
10 often licked her, often had her put his penis in
11 her mouth. He threatened her, to hurt her. She
12 was afraid and upset, but she said when she left
13 out and went back out where people were she didn't
14 know how to act. What she knew is that she
15 couldn't tell. Who knows how a six-year old acts.

16 Now, she did tell you all about a trip
17 to a flea market. First they went to the mall and
18 then the flea market or I may have that mixed up.
19 And then he was driving in the car with his left
20 hand and he used his right hand to put his hand
21 into her pants and touch her vaginal area.

22 There were many times that she said he
23 would touch her and put his fingers in her. She
24 told you about another time when she was laying on
25 the edge of the bed and he had her put her

1 shoulders over -- her legs over his shoulders and
2 licked her private area. She also told you about a
3 time when he was standing at the door and she was
4 kneeling and he had her put his penis in her mouth
5 and that time someone came. And this particular
6 time she remembers she had her bathing suit bottoms
7 on and they were around her ankles. And so she
8 tried -- she was pulling them up as she left and I
9 think she said it was her sister and she acted like
10 she had been doing something else.

11 Dr. Swiecicki explained to you, one of
12 the things she explained to you is that when events
13 occur chronically or routinely or over more than a
14 couple times and they are kind of the same, they
15 are in the same place on the bed or in the bedroom
16 kneeling on the floor, she didn't talk about that.
17 The example she gave was driving to work. But that
18 memories can mesh unless there is a unique thing
19 like the ankles of -- the bathing suit around the
20 ankles when someone comes. That happened one time.
21 That stands out. Going off in the car to the flea
22 market happened one time so that kind of stands
23 out. The first time stands out because it was the
24 first time. Others more kind of blend together and
25 become hard to distinguish.

1 Now, you also saw as far as Younger
2 concerned the tape that she had at the Dorchester
3 Childrens Center. That was long. But one of the
4 things that they had to do is they don't just ask
5 about this which is what we are interested in.
6 They don't just ask about that. She has to ask
7 about, you know, did your lights ever go off, did
8 you ever lose electricity, did anybody ever leave
9 you alone, did anybody ever spank you. They have
10 to ask all that because their interest is in the
11 entire child and the safety and not just what the
12 child is there for.

13 Now, Younger
14 Sister did tell them about the
15 first incident and there was nothing in that that
16 was inconsistent with what she told you in here.
17 She told them also about digital penetration. She
18 told them and you about cunnilingus, which is
19 licking her, fellatio, which is him putting his
20 penis in her mouth, so she told you about the same
21 things. And she left out in the interview about
22 the flea market trip, but as Dr. Swiecicki
23 explained, sometimes disclosure is a process and
24 you may depending on the interview or how much time
25 you may remember one of them. She may come in here
 again and say I forgot that and tell you about

1 something else because she is retrieving her memory
2 as it happens.

3 One thing that was pretty clear from
4 the interview is that she did not go there just to
5 talk about Brian. She talked about everything in
6 her life that they asked her a question about. The
7 man down the street, that Rhonda, Lisa, everybody
8 had spanked her, popped her. She didn't leave
9 anything out. She had seen drug use by a friend's
10 brother. James had been abusive to her mother.
11 She thought about and answered all the questions.
12 She even told you about something that she had
13 heard Brian's dad done. She didn't know for sure.
14 Told Mr. Cochran no, I don't know. I just know I
15 heard that. She even told you about things that
16 she overheard like about Austin, the son, having an
17 uncle or someone take pictures. That may have
18 seemed kind of outrageous and unbelievable, but lo
19 and behold Mr. Daugherty said that did happen. His
20 son did have photos taken. So **Younger Sister** did overhear
21 that.

22 So she was giving information that she
23 was asked about. And please keep in mind that
24 **Younger Sister** was six years old. The memories that were
25 being stored were those of a six-year old. She's

1 now 14. And it may be hard to explain exactly what
2 those memories were. She told you about a threat.
3 A threatening voice to a six-year-old wouldn't have
4 to be nearly what a threat to us would be. A shove
5 to a six-year-old wouldn't be the same as to an
6 adult or even a 14-year-old. A threat that may
7 fall on deaf ears to an older person may mean a lot
8 to a six-year-old. No telling what triggered her
9 to tell when she did, but thank goodness that she
10 did.

11 Older Sister you next heard from. Older Sister
12 tells you first of all about the first event. How
13 ingenious to pass a note to a ten-year-old. That
14 is exactly how they communicate. Little notes. Do
15 you like me, check yes or no. A note saying you're
16 pretty. A note saying can I touch you. She was
17 kind of startled by this, but said she shook her
18 head yes. Then he went into the kitchen. You have
19 the blueprint. The kitchen sink was away from the
20 table where it would have been a view to the
21 hallway, more people. He went to the sink and
22 touched her.

23 She told you the next time that she
24 remembered here today or here Monday or Tuesday was
25 when they were home alone and he invited her into

1 the room.

2 Told her to lay on the bed and take her
3 clothes off. He took his clothes off, took her to
4 the edge of the bed, and tried to put his penis
5 inside of her. She said that it really hurt very
6 bad. That she felt pressure and pain. She thought
7 it went in a little bit. That is genital
8 penetration, however slight. Dr. Melville talked
9 some about legal penetration as opposed to
10 introital penetration or into the vaginal area.
11 Legally, putting his penis in a little bit enough
12 for her to feel pain and her statement it went in a
13 little bit, is penetration.

14 She also told you about another time
15 that was unique which may be why she remembered
16 this specific time, where they went to get
17 doughnuts. She didn't remember exactly where they
18 went, but remembered the doughnut part of it in
19 specific. And that they went to afterward a
20 secluded area, parked, he told her to get in the
21 back seat, take off her clothes. He got in the
22 back seat, took off his clothes. She may have said
23 -- I apologize, I just don't remember that specific
24 detail, and that he wanted her to grind on him.

25 Now, she told you at that point she had

1 seen porn, he had been showing her porn when they
2 were sitting in the bed together. She seen it on
3 the laptop. She had seen it on the phone. She had
4 seen it on the computer. So she kind of knew what
5 was expected, but she wasn't very good at it. So
6 he had to take her hips in his hands and move her
7 so that he got the grinding right.

8 She told you about other times that he
9 would put his fingers in her. He would fondle her
10 breasts, and another time she told you about he had
11 her on the edge of the bed, and he was kind of
12 kneeling or sitting kind of on the bed and was
13 licking her vaginal area. That is one of the times
14 that someone either knocked on the door or was
15 trying to come in the door and she had to hurry out
16 and leave really quickly. So another time that he
17 was almost caught.

18 In the pool area. She tells you the
19 next day when she came back that something did
20 happen one time in the pool. That he was just
21 standing. She was floating. Much taller. He just
22 took his penis out and was between her legs. The
23 bathing suit was on. You have seen the pictures
24 how the pool is. He would have seen anyone. You
25 would have had to have gotten close enough to the

1 pool to look into the water to know anything
2 untoward was happening. From a distance you could
3 see them holding his knees in the pool.

4 Now, whether or not you believe that
5 there was absolutely, absolutely not one day, not
6 one hour in all of these summers that Rhonda Young
7 knew he could not be outside with Older Sister, that's
8 just something y'all have to decide if you believe
9 if that is preposterous or could be true.

10 She told you, I am sorry, it's hard for
11 me to remember. I have tried hard to forget.
12 Another thing that was very confusing for Older Sister,
13 she told you it's confusing because the
14 relationship, he was also a potential uncle. He
15 gave her friends rides on the motorcycle, took her
16 places. So he was also kind of fun which made it
17 even more confusing.

18 The other thing that Older Sister told you is
19 when I said how often or what would decide how
20 would it come about, she thought that it was based
21 on opportunity. If they were alone and perhaps not
22 only alone, but other kids perhaps or sometimes if
23 the grandmother would be there and be sleeping.
24 But that it wasn't every day. It wasn't -- it was
25 at the very most that she was not sure even at that

1 time once a week out of all of these years. Those
2 few times. Would not be like he is doing this
3 every day. So that people would have to catch him.
4 As you have heard over and over again, everybody
5 had work schedules, and was working or not working.
6 So that there was always opportunity when you live
7 in a house with someone. And if there's not then
8 there is something -- people are trying really hard
9 for you not to be. That's something you also need
10 to wonder why was he never allowed to be alone.
11 She planned on telling Z.R. as a confident not
12 knowing that Z.R. would tell. But she did. When
13 that officer came to that door Older Sister was in
14 absolute shock.

15 Now, perhaps if a guidance counselor
16 had to be the one to bring her to the office and
17 ask something about it, she may have been more
18 likely to have talked, but a cop standing on your
19 doorstep in the middle of the day isn't exactly the
20 most conducive to telling about something that is
21 shameful, something that you have tried to hide,
22 something that you feel was partly your fault,
23 something that who knows what would happen. If I
24 tell this will I be taken away? Will my mama get
25 in trouble? Will my grandmother get in trouble?

1 What will happen? There is no way for her to have
2 known.

3 Think about **Older Sister** on the stand. If
4 you can remember, she fought back her emotions.
5 She literally was choking the emotions back. She
6 was thinking and clearly telling you about
7 something from her memory. She was like that just
8 because it was so hard. But she knew one thing
9 that was necessary. And that was that y'all had to
10 hear it and you had to hear it from her or there
11 would be no justice for her.

12 She also said that nothing ever came
13 out of his penis that she remembered, but it would
14 get wet at the tip. Another thing that she
15 mentioned is that first time after when he tried to
16 put his penis in her when he left or when she left
17 he kind of grinned and referred to the wet spot on
18 the bed. Those are the kind of things that you
19 don't make up. Those vivid memories you don't make
20 up. You tell them because they're what happened.

21 Thank goodness that Bensen did talk to
22 the girls that night and for some reason they felt
23 they could tell. Now, just to go back, he did say
24 he worked. He was there when Lisa was there. But
25 he had long hours, too, and he did kind of find

1 things strange. Like Brian being alone with the
2 girls and taking the girls out. No one in the
3 family found that strange. Lisa believed when the
4 girls told her. But before that like she didn't --
5 when Bensen would complain he's taking them. She's
6 glad. He's a potential uncle spending time with
7 them. That's a good thing. They got to go lots of
8 places. I think she said he took them to Bee World
9 and the zoo and lots of fun things.

10 Perhaps that day in 2011 when the law
11 enforcement officer came to her porch she should
12 have done something. Perhaps she should have done
13 more that day. But Older Sister told her no, nothing
14 happened. No one, no one wants to believe that a
15 child is being assaulted. We especially do not
16 want to believe that our child is being assaulted.
17 And we especially do not want to believe that it is
18 a family member. You have all those same things
19 going on in her. You just don't want this to be
20 true.

21 And, frankly, when Older Sister tells her
22 that it didn't happen, there's not much she could
23 have done. You can't -- you take the person to law
24 enforcement, they say nothing happened, nothing is
25 going to be done.

1 She didn't know about what Younger
2 told L.B. so she did not know that there had been
3 other disclosures by Younger
4 Sister .

5 Now, on the night that the girls did
6 tell her, gave her some details, she immediately
7 asked. She tried to call -- first she got mad and
8 tried to find him. Then she told law enforcement.
9 She got through all that. She took the girls to
10 DCC. She took the girls to law enforcement. She
11 took the girls to counseling. She took the girls
12 to a pediatrician. She took the girls to court.
13 They have gone through a lot. She didn't -- she
14 knew she said that Promise existed, but until the
15 date Younger
16 Sister told she never knew anything and by
17 that time Promise she testified was out of the
18 state.

19 A timeline, just because there have
20 been so many days thrown out there, a lot of them
21 we don't know for sure. These are the ones I think
22 that we have a pretty good knowledge of. Lisa and
23 the girls moved in 2001. She said it was right
24 around 9/11. James moved out in later '08 or early
25 '09. Brian moved in in August of '08. When Lisa
began working in February of 2010 and they moved
out in May of 2011. Z.R. told law enforcement in

1 late 2011. And then finally the first week in
2 February the girls tell Lisa and Bensen and it gets
3 reported.

4 Detective Bailey is not able to be
5 here, but you did hear from the witnesses that she
6 talked to and you saw the evidence that she had
7 done a search warrant for and the analysis of that.
8 The work schedule, Ashley worked 45 plus I think
9 she said hours per week, sometimes she closed and
10 sometimes she opened. Lisa started working
11 7:00 a.m. to 7:00 p.m. Saturdays half a day.
12 Rhonda until she got hurt. She got hurt in 2009.
13 And Ben 7:00 a.m. to 6:00 p.m. Brian, different
14 jobs with some gaps. He said he mostly kept a job.
15 But he was home we know early enough to pick Ashley
16 up.

17 Dr. Melville did not see anybody in
18 this case. He didn't know anything about this case
19 in particular. But he was here to explain to you
20 in case you were wondering why four years later
21 there would be nothing forensically productive to
22 get from a law enforcement kind of exam. There
23 would be no chance of DNA from an event that
24 happened four years earlier. So there was no
25 reason for a forensic exam which is why law

1 enforcement did not refer.

2 Now, there is a doctor, he thinks every
3 patient should be seen after something like that,
4 but you heard Lisa say that she did take them to a
5 pediatrician.

6 Henry Cook is the person from the
7 Homeland Security and he testified about the
8 videos, the images, the web pages and the phone
9 that he got. He found nothing earlier than 2015
10 leading him to believe that was not the one that
11 Mr. Daugherty had back in 2010 and '11.

12 And you heard a lot about that. But we
13 have made the decision, the State has, not to put
14 that pornography that was found into evidence and
15 not to put the pornographic DVD into evidence. You
16 do not need to have to see that. You don't need to
17 have to look at that. There's no reason to inflame
18 you by looking at that. They looked at the
19 pornography. Each person in the privacy of their
20 home can look at what they want to. But what it
21 does do is show you that it corroborates what these
22 girls said. Some of the titles that he read out
23 that they had looked at corroborates the kind of
24 things that the girls said that they saw. And that
25 is why we brought that in and why we do not believe

1 that you need to be subjected to that.

2 Z. R. , Older Sister told her in the fifth
3 grade. Z. R. did the right thing, talked about the
4 report. Ask yourselves if she made it up in 2015
5 how do you explain she was already telling someone
6 in 2011?

7 She wasn't forced to come out in
8 public, but she told about this years earlier.
9 That corroborates that it happened. L. B. was told
10 by Younger Sister in the -- when he and Younger Sister were in the
11 fifth grade in 2012. He didn't tell anybody.

12 Younger Sister didn't want him to tell anyone. When she
13 thought he was going to she was like no, no, I made
14 it up. He never told anyone. But once again, ask
15 yourselves why did she start telling in 2012 if it
16 didn't happen? Why would she be telling this?

17 One of the things that we have gone
18 over ad nauseam is that the house, the girls had
19 told you that it happened. They almost got caught
20 twice. But it happened. Sleeping arrangements
21 don't matter because no one ever said it happened
22 in the middle of the night when anybody was
23 sleeping. The only time it was at night was when
24 Older Sister said that they were in the kitchen and then
25 he stepped to the sink area. As you can see from

1 the blueprint, that would have been not in view of
2 the rest of the house.

3 Before I get to the law, I want to go
4 over a little bit about the defense testimony.
5 Ashley would expect the kids to stay away from
6 someone if they were doing this. She would expect
7 them not to want to go with someone if they were
8 doing this. You know, that's not an unusual
9 expectation. I understand totally why she would
10 think that. That's what a lot of people think.

11 And that is exactly why Dr. Swiecicki
12 came here and talked to you. Because that is what
13 you want to think. She doesn't know -- to make it
14 clear -- anything about this case or these people.
15 She has talked about things that don't relate to
16 the case. She didn't know about this case. But in
17 general children continue to stay around the person
18 that is assaulting them. They go years without
19 telling sometimes until adulthood she said. They
20 just don't tell. They stay around the person.
21 They learn to live with it. Because what's the
22 option? They don't know what the option is. So
23 they learn to live with it.

24 And she told you also that the
25 disclosure is a process, sometimes a child may see

1 how to gauge what the person is going to do. Her
2 example was a therapist, a child telling a
3 therapist. And thinking that therapist wasn't
4 ready for this. What **Younger Sister** was doing was she
5 tried to tell Lisa and that reaction kind of maybe
6 decided **Younger Sister** not to go on and tell. Even the
7 Defendant and Ashley both have told you there was
8 no motive for these kids. You have to decide on
9 the credibility of the grandmother.

10 Ashley asked you to believe that most
11 of this porn, half of this porn was hers. She had
12 no problem with this porn at all. Well, in the
13 beginning a little bit. And then when she got
14 pregnant she felt more secure and decided that she
15 was in bond gang stuff and so then they started
16 watching it together. You heard from Nicki Harder
17 who was a friend, long-time friend of Ashley's, but
18 also worked at the store. Unlike what Brian said
19 she said he didn't arrive late, usually 45 minutes
20 or more early. Didn't always park in the front
21 which you can, depending on where the parking is
22 available, often to the side where there was a
23 little tree. He would have usually **Younger Sister**, one of
24 the girls with him. She also told you that Ashley
25 was upset about the porn up until 2012. After they

1 moved out. And that Ashley would check his history
2 and be upset about he had been looking at the porn.
3 Just use that when you are judging the credibility
4 of the witnesses.

5 The law in this case is criminal sexual
6 conduct with a minor first degree. One of the
7 charges, there's several counts of this charge.
8 This is -- and the elements of the charge are the
9 things the State must prove to you beyond a
10 reasonable doubt. The elements the State must show
11 to you that a person, in this case the Defendant,
12 is guilty of criminal sexual conduct with a minor
13 in the first degree if the actor engages in the
14 sexual battery, in other words, explain to you what
15 those are, and the victim is less than 11.

16 You have heard the date and the birth
17 date. Criminal sexual conduct with a minor in the
18 second degree. You also have some of these charges
19 because during the time frame **Older Sister** turned 11 so
20 she was over the age of ten and that activity that
21 happened after she turned 11 would have been
22 criminal sexual conduct with a minor in the second
23 degree. Same elements. State must prove to you
24 Brian Daugherty committed a sexual battery upon the
25 victim who was 14 or less but at least 11. In

1 Older Sister case she was 11.

2 A sexual battery, in our case we are
3 looking at intercourse or genital penetration,
4 however slight. The penis into the vaginal or the
5 genital area. Cunnilingus, which is the licking of
6 the vagina, fellatio, which is the penis in the
7 mouth, or any part of a person's body or any object
8 into the genital opening. That is what Older
9 explained to you. That that is a legal definition
10 of intercourse.

11 He is also charged with lewd act upon
12 up a minor. There's a lot of words. You can read
13 them. But what this normally is thought of is
14 child molestation. Touching and fondling, fondling
15 the breasts, kissing, rubbing the vagina on the
16 outside, rubbing the butt, this kind of rubbing and
17 touching. You must look back at all of the
18 witnesses and judge all their credibility, their
19 motives, their corroboration. As I said, the State
20 has to prove those elements to you beyond a
21 reasonable doubt. Not every doubt, not any doubt,
22 a doubt which is reasonable and honest a juror
23 seeking the truth could find.

24 Ladies and gentlemen, there are few
25 things in this world, if any, that you will ever

1 know with absolute certainty and if you knew that
2 Brian Daugherty committed these acts with absolute
3 certainty you would have been a witness. You
4 wouldn't have been a juror because you would have
5 seen it.

6 That's not the standard. The standard
7 is reasonable doubt. If you are firmly convinced.
8 You came in here, you heard from these girls, you
9 came in here on Monday knowing absolutely nothing
10 about any of these people because if you did you
11 wouldn't be here or know any of these facts. And
12 if you are now convinced that this is what happened
13 then that burden has been met.

14 The girls told you and we are asking
15 for justice. Thank you.

16 THE COURT: Defense, you may proceed.

17 MR. COCHRAN: Thank you, Your Honor.

18 Good afternoon. Thank you for sitting through a
19 very difficult case and for paying close attention.
20 I am proud to represent Brian Daugherty. I am
21 proud to be his lawyer. A lot of people when you
22 are in my business ask how do you defend people,
23 how do you represent people that you represent? I
24 think when we ask that question when we talk about
25 a case like this, because quite frankly what Brian

1 has been accused of is the worst crimes that a
2 person can commit. And yet I am proud to represent
3 Brian Daugherty. That is because he sits before
4 you an innocent man accused of the worst crime a
5 person can commit. He sits before you an innocent
6 man unless the State and the witnesses that have
7 been presented to you have provided you with proof
8 that is so substantial and so convincing that no
9 reasonable person would hesitate, that no
10 reasonable person could possibly have a doubt.
11 That is the standard and this isn't just about
12 legal jargon. This isn't just about theories like
13 presumption of innocence and reasonable doubt.
14 Brian Daugherty is an innocent man.

15 There are a lot of unanswered questions
16 in this case. When you are talking about
17 reasonable doubt you are talking about deciding
18 whether or not you as a juror have been provided
19 with proof that is so convincing that no reasonable
20 person would fail to do that. When you are talking
21 about a standard that high, all of these unanswered
22 questions are absolutely prudent.

23 What is the first unanswered question
24 in this case that we are dealing with? Why weren't
25 these girls, Younger Sister and Older Sister and M. H. for that

1 matter, ever seen by a medical doctor in relation
2 to their accusations? They were taken for a
3 general pediatrics visit and they were never seen
4 by a medical doctor for the purpose of examining
5 them in relationship to these accusations. There
6 were claims they were sexually abused. They were
7 never seen by a doctor as a result of that.

8 Okay. I have been sitting here
9 listening just as you. Now, the State has given a
10 very clear response to the question. They weren't
11 seen by a doctor because there not would have been
12 -- a medical exam would have been pointless
13 essentially because if Brian had abused them the
14 way that they described four years prior there
15 could not have been saliva, there could not have
16 been semen. And there could not be any kind of
17 physical or forensic evidence on them and it's very
18 likely there might not have been any injuries to
19 them. Okay. So why is that important? Because
20 none of those things could possibly have been on
21 them as a result of Brian's abuse four years later.

22 Would you as a juror find it important
23 and interesting in making your decision if those
24 girls had been seen by a medical doctor four years
25 later after they had not had any contact with Brian

1 and there was evidence of sexual abuse? Would you
2 have found that to be important? I think that that
3 would make or break this case. And these girls
4 were never taken to a medical doctor. If that was
5 as pointless as the State wants you to believe then
6 why did their own witness, the forensic interviewer
7 at the Dorchester Childrens Center, order and
8 recommend that those girls be seen by a medical
9 doctor? And they weren't. If that is pointless
10 then why did she order it? She knew what the
11 accusations were. She ordered it. Their mother
12 did not take them to the doctor.

13 What if? What if they had? What if
14 there had been evidence that could not possibly
15 have come from Brian? Is that something that you
16 would want to know? He's sitting there accused of
17 the most horrendous crimes you can commit and he
18 doesn't even have the benefit of that assurance
19 that those girls had been seen by a doctor and was
20 the abuse after he had not been in contact with
21 them for four years.

22 I know that when you go back into the
23 deliberation room and listen to the State's closing
24 arguments one thing that we are always going to do
25 is talk about one witness or another witness, who

1 agreed or disagreed with one or another. That's
2 just the nature of how trials are. A lot of it is
3 just one person's word against another person's
4 word. In this case it's Brian says I absolutely
5 did not do this. The girls say that he did. But
6 there's obviously context, there are a lot of other
7 witnesses. There were some disagreements and
8 discrepancies. The State wants you to focus on
9 things like Brian saying he was late to pick up
10 Ashley at times and their rebuttal witness came in
11 and said that he was early. Clear disagreement.
12 Who knows whether he was late or early..

13 What actually matters, though, what
14 actually matters in terms of their rebuttal witness
15 that worked with Ashley? What are they trying to
16 say, that he got there 45 minutes early with **Younger Sister**
17 and sat in the parking lot. They want you to think
18 that he sexually abused her in the parking lot.

19 Well, what's the biggest problem with that? **Younger Sister**
20 testified to you. She told you her story. Her
21 story was that he abused her in the car while they
22 were driving and that this abuse stopped when the
23 car stopped. So what's more important, that
24 discrepancy whether or not he was late or early
25 picking them up or this discrepancy that's supposed

1 to allude to this idea of extensive abuse in the
2 parking lot at Catos that is directly contradicted
3 by the State's accuser.

4 What's more important, that we believe
5 Brian as to whether or not he was late picking up
6 Ashley for work or that we focus on these
7 discrepancies between the State's own witnesses?
8 They are crucial to the accusations in this case.
9 Because all of this is about whether or not these
10 things were possible, whether or not there was an
11 opportunity, whether or not there's evidence of
12 proof of it beyond the girls stories. These
13 specifics of the girls stories, these details that
14 the State talked about. They brought in an expert,
15 somebody they called an expert, something I
16 objected to as only focusing on the thing that you
17 know as jurors. An expert comes in, the gentleman
18 who came in, Dr. Melville. He comes in and
19 testifies to things that most people probably don't
20 know about, medicine and treatment, therapy, but we
21 all know that memories can be defective. We all
22 know that we can forget things and that as we tell
23 stories we can add to them or take away from them
24 as we talk about them. That's common sense.
25 That's not expertise.

1 Now, why do I say that? Why do I bring
2 that up? Because this woman is brought in as an
3 expert to explain away discrepancies, to explain
4 away contradictions, to explain away failures,
5 exaggerations and lies.

6 Now, she got up here and tried to say
7 that the studies that they perform can determine
8 how often kids behave in a certain way or whatnot.
9 And I asked her is it possible for a kid to
10 exaggerate? I asked her is it possible for a kid
11 to lie? And she seemed to really quibble with me
12 over that point as though we don't all know that
13 little kids exaggerate and little kids lie
14 sometimes. This is an expert? How ridiculous is
15 that? And what's the other problem with that?
16 Outside of our just common sense, common knowledge
17 of life? Younger
Sister whole interview with the
18 Dorchester Childrens Center. This expert is
19 basically coming here trying to convince you that
20 kids don't exaggerate, kids don't lie. Younger
Sister
21 retracted her own story that she gave to the
22 interviewer at Dorchester Childrens Center.

23 The interview, the tape is in evidence.
24 I don't expect you to watch the entire two hours of
25 it. Feel free to if you want to. In that

1 interview she talked to her interviewer about the
2 first time that -- I believe it was the first time
3 and she recounted a tale where Brian came to the
4 pool and took her and her older sister [Older Sister] and
5 her younger sister [M. H.] back to the apartment
6 from the pool early. So presumably Rhonda and
7 anybody else with her just stayed at the pool
8 without the kids. He took all three of them back
9 to the apartment and took [Younger Sister] into the bedroom
10 and locked the door. And that while her sisters
11 were out in the living room he slammed her on the
12 bed, started choking her and put his fingers down
13 her throat and she tried to scream, and watched
14 pornography with her, and that they talked about
15 this abuse, they talked about doing things that
16 were in the pornography.

17 That's what she said. That was her
18 original accusation to the Dorchester Childrens
19 Center interviewer that is on tape. She has almost
20 completely retracted that entire incident. She has
21 said that the sisters must not have been aware.
22 She has said that -- she has walked back on this
23 idea of her screaming. She has walked back on this
24 choking saying she was threatened.

25 Now, why is that important? You know,

1 the other thing that's important about this is that
2 all of the abuse that she really focuses on in her
3 interview at Dorchester County is that it occurs in
4 the apartment while people are in other rooms
5 asleep or whatever. That all these what seems
6 would have been loud things going on, screaming,
7 choking, threatening, watching pornography with the
8 door closed, she seems to have walked that back.
9 What is important about that is that she has made
10 this initial accusation with Dorchester County
11 right or soon after she disclosed it to her
12 parents. And what happened in the two years since
13 then is that that interview is 2015. Been two
14 years. Now what's she focusing on? She is focused
15 on them driving the car. She is focusing on things
16 that Brian freely admits to, that she rode with him
17 to go pick up Ashley. She's focusing on things
18 that the State and her parents feel more
19 comfortable can be proved because the other things
20 are simply outlandish and don't mesh with the
21 reality of this two bedroom apartment with four
22 adults living there.

23 Brian was not a babysitter. He wasn't
24 a caretaker when Rhonda, their grandmother, was
25 home all the time or their mother, Lisa, was home

1 all the time with them. Just didn't mesh with
2 reality. So they had to walk back from it. They
3 had to focus on other things to try to get the
4 conviction.

5 I want to talk about discrepancies
6 between witnesses. Ms. Herring-Lash, the
7 prosecutor kept bringing up this disclosure that
8 Older Sister made to her friend by text message and
9 talking about how this one instance when she swore
10 it didn't happen so her mother disregarded it.
11 Watch the video. Watch Younger Sister video. She talks
12 about having knowledge of Older Sister text message
13 incident. Whether she got knowledge later on or
14 not, who knows, but what's the other thing she
15 says? She doesn't say that Older Sister is the only one
16 who ever brought this up. She says clear as day to
17 her interviewer that she, Younger Sister, prior to 2015
18 brought this up with her mom and her stepdad. Her
19 mom says she didn't hear it or didn't happen. And
20 her stepdad never even testified about that.

21 Talk about a discrepancy. The initial
22 disclosure from Younger Sister that would have been these
23 red flags, everybody talking about that were not
24 noticed because Brian was such a stealth predator.
25 It is ludicrous. Both girls made these claims at

1 some point and the parents just don't know about it
2 or don't care, they brush it off. Have police
3 leave their house when they are there for that
4 specific purpose. Still continue to have contact
5 with this guy. Because they know it is not true.

6 The sleeping arrangements, the size of
7 the house is important. When people were home, who
8 is taking care of them, when these girls were
9 unsupervised, it is important. They were never
10 unsupervised by either Lisa or Rhonda. Unless they
11 were, right? It was Younger Sister or Older Sister going to the
12 grocery store or riding with Brian to Catos to pick
13 up her beloved Aunt Ashley. That is the only
14 opportunity they were ever left with and the
15 solicitor is left arguing to you, tell me there
16 wasn't absolutely any time, any hour, any minute in
17 this four years that he couldn't have done this.
18 Because that's all they think they need, is just
19 some opportunity and an allegation and some
20 physical possibility, however unlikely. That's
21 what they think they need to prove a case beyond a
22 reasonable doubt. It is simply not the case.

23 He is accused of the worst crime on the
24 books. He faces the consequences for that crime.
25 They have an allegation and some, any possibility

1 that they can grasp for that this could have
2 possibly happened. Is that proof beyond any
3 reasonable doubt so that no reasonable person could
4 disagree with them? Is that the level of proof we
5 should be dealing with right now?

6 This pornography that the solicitor
7 says she could have -- questioned whether or not
8 you can enter these kinds of things into evidence
9 because there are rules about what comes in and
10 what doesn't. It wouldn't be up to the solicitor
11 to introduce all this pornography. It would be up
12 to the judge whether or not he let it in. So I
13 would take care with her saying that during closing
14 argument in that regard.

15 However, nobody is disputing there was
16 a ton of pornography on this computer. What is the
17 only reason that it was allowed in the trial; what
18 was the only reason why it's in any way relevant?
19 That pornography was not in there to say that Brian
20 is a sexually deviant person so he must have done
21 this. No, not at all. That is in no way the way
22 that that is admissible in this trial. The reason
23 why they have put this into evidence is to try to
24 corroborate this accusation that the girls talked
25 about.

1 What's the problem with that? This is
2 the only computer anybody used in the house. These
3 are teenagers. Are we supposed to believe that
4 these teenagers never went on this computer
5 unsupervised? They were allowed to use the
6 computer. Teenagers and the internet, they are
7 like moth to a flame. I mean they were on that
8 computer. You heard **Younger Sister** in her videotape
9 interview talk about the social media, Facebook,
10 Kick, all these different websites, and there's
11 exposure to things. There was exposure to the
12 amount of pornography that was on this computer.
13 It was a shared laptop. It was Ashley's laptop.
14 This idea that he was trying to hide things, that
15 was some constant source of conflict in their
16 lives, why wasn't any of it erased? You heard the
17 guy from Homeland Security come in say they can
18 retrieve things that have been deleted. They have
19 got all of ways of it. It is just on the computer.
20 Nobody is trying to hide it. It is unreasonable to
21 think they were having these massive arguments
22 about things that could have been attempted to be
23 deleted. There's no child pornography. This man
24 supposedly is so irresistibly attracted to a
25 six-year-old has reams of adult pornography? Does

1 that make sense?

2 We have gone over **Younger** testimony
3 versus her interview with Dorchester and all the
4 discrepancies there, all the ways it seems they
5 have tried to make her story make more sense in the
6 two years between the interview and the trial.

7 **Older** also as you heard was interviewed by the
8 **Sister** same entity, videotaped. We did not see that tape,
9 but she did discuss it during her testimony.

10 Because she talked about a number of
11 instances of abuse in the kitchen, you know, at
12 night with four other adults or three other adults
13 in the household, possibly four other adults.
14 Their grandmother and potentially their stepfather
15 when this is happening. So abuse in the kitchen,
16 extensive abuse in the car where she says she was
17 straddling him, runs out to get the doughnuts.
18 That there was an incident in the pool unsupervised
19 and you hear her admit to you that in the videotape
20 interview with her Dorchester interviewer that she
21 didn't tell the interviewer about any of those
22 things. She did not tell them any of those
23 instances about pain or pressure. Those things
24 didn't come out in her interview. It was added on,
25 was piled on these accusations over these two

1 years.

2 Now they want bring in this child
3 behavior expert to basically explain that away to
4 say it's okay if stories change. This is an
5 18-year-old girl who was on the stand. This is not
6 a six-year-old on the stand. Or eight-year-old.
7 She was 16 when she gave her interview, not a
8 little kid.

9 She has gone from saying that this
10 happened twice in the bedroom to in the kitchen,
11 the car, there is pain and pressure, it happened in
12 the pool. What was another thing about Older Sister? We
13 didn't actually hear it from Older Sister. We heard it
14 from Younger Sister and Older Sister by way of her videotape
15 interview.

16 The solicitor talked about the
17 disclosures and Older Sister prior disclosure, how that
18 was the only time the mother could have possibly
19 been aware. And she talked about the text message
20 that she sent, the police showing up unexpectedly.
21 She didn't expect it. And then she also talked
22 about the disclosure to Ben. Their own expert said
23 that the disclosures typically happen and are
24 disclosed to mothers initially or peers. And yet
25 the disclosure was made to the stepfather.

1 So some of these discrepancies they
2 want to swing their way and some they want you to
3 disregard. But the really interesting thing about
4 **Older Sister** text message to **Z.R.** whether or not it
5 came in and testimony was that **Z.R.** said that they
6 were arguing. And what is the one thing that Ben
7 really was in disagreement with all the State's
8 other witnesses, **Older Sister** **Younger**
9 **Sister** and Lisa, he said
10 that this was just kind of a heart to heart kind of
11 crying together and talking about sisterly love.

12 Everybody else said they were arguing.
13 They were having an argument about something and he
14 went in and lectured them. The guy who also admits
15 that he spanked them. What's interesting about
16 **Z.R.** and her testimony is when did **Older**
17 **Sister** bring
18 this up? When they were arguing. Even more
19 interesting, what did **Younger**
20 **Sister** say during her
21 videotape interview about **Older Sister** text message to
22 **Z.R.**? She said that -- **Younger**
23 **Sister** said **Z.R.** was, I
24 guess they were 12 years old, a girl who was acting
25 like her life was the worst. Teenagers, that's
pretty typical and then what did she say? That
Older
Sister wanted to think of something that would show
that she actually had the worst life. I mean can't
we all picture teenagers having this kind of

1 conversation? Talking about how terrible their
2 lives are? Then what happens when they disclose to
3 Ben? Younger Sister makes this disclosure, gets all this
4 happening when she makes a disclosure like the one
5 she did with Z.R. She makes the disclosure, too,
6 during an argument. Same comments. You heard at
7 the beginning of the trial from the judge that the
8 defense doesn't have to say anything. We did not
9 have to put up witnesses. Brian as you know from
10 watching TV, he has the right to remain silent. He
11 does not have to testify in his own defense. He
12 could have sat at that table silent and Ashley
13 didn't have to come in here. More importantly,
14 Rhonda didn't have to come in here to testify. But
15 they all did. They all swore just the same as all
16 the State's witnesses knowing that they were going
17 to be subjected to cross-examination.

18 In Ashley's case that turned out to be
19 character assassination. The State wants to act
20 like they are just talking about this pornography
21 because the girls said that they saw x videos on
22 the address bar of the computer and that
23 corroborates that they could have seen pornography
24 with Brian. So what was the point of dragging
25 Ashley through all these titles, dragging her

1 through all these disgusting titles, all these
2 websites? Private lives? What was the point of
3 that? That was to humiliate and degrade them and
4 make them seem like bad people. What other purpose
5 could that possibly have had?

6 Ashley and Brian decided to take the
7 stand. Maybe you'll get back there, and obviously
8 Brian has a lot to lose so he is going to testify.
9 And Ashley is the mother of her child. They have
10 got a kid together. She has got a lot to lose as
11 well. Rhonda comes in and testifies for the
12 defense. Why on earth would this woman ever come
13 in and testify for Brian? What motive do these
14 girls have to lie? I don't know. Like the
15 solicitor said in her own closing argument, who
16 knows about a six-year-old. Who knows about kids
17 and the accusations and things they say. Who knows
18 about her discrepancies. Who knows about their
19 inconsistencies? I don't know either. And I don't
20 have to. She doesn't have to know them. That's
21 why this system is created on concepts like proof
22 beyond a reasonable doubt so we don't wrongly
23 convict somebody of the worst crime they could
24 possibly accused be of.

25 So why would **Younger Sister** and **Older Sister** make

1 this up? Why would Rhonda come in and testify for
2 Brian? Why would Rhonda come in and say yes after
3 Lisa was always with them until she got a job and
4 when she got a job I was home. One of us was
5 always with the girls at the house. None of this
6 stuff that they say could have happened at the
7 pool, none of that is possible. What motive does
8 she have to come in and stick her neck out
9 jeopardizing her relationship with her daughter and
10 granddaughters to stick up for Brian who she owes
11 nothing to?

12 Why would they make it up? You heard
13 from the State's own expert witness that all of
14 these character traits, behavioral changes, all of
15 these issues with kids that suffer sexual abuse,
16 that every single one of those issues with those
17 kids can be caused by exposure to extreme domestic
18 violence.

19 These are girls who were living in a
20 two bedroom apartment with first Younger Sister and
21 M. H. father and then Ben, had to move away to
22 Goose Creek, away from the aunt who she wanted to
23 be her mother, who Younger Sister wanted to be her mother,
24 she was so close with, their grandmother, they move
25 away to Goose Creek. As little kids they had been

1 exposed to abuse of their mother by her ex-husband.
2 It was so extreme Lisa had her leg broken.

3 These are the kinds of things these
4 kids have been exposed to since a young age. Why
5 is Brian a scapegoat? I don't know. Because he
6 took their aunt away, because he's having a kid
7 with her now living with her. I don't know, but I
8 don't need to know. You don't need to know either.
9 Because some things in life you don't know. But
10 when we are here in a court of law acting as
11 jurors, the evaluators of evidence and proof, not
12 of emotion, not of passion and hatred, when we are
13 acting in that capacity when we are asking
14 ourselves whether or not there's proof that exceeds
15 any possibility of hesitation, proof that no
16 reasonable person on this earth would have
17 questions about or have doubts about. It is so
18 vitally important that that is how we evaluate
19 these cases.

20 I thank you all so much for being on
21 Brian's jury. And I ask that you return a verdict
22 of not guilty. Thank you.

23 THE COURT: State may proceed.

24 MS. HERRING-LASH: Thank you, Your
25 Honor. I will just take a few moments to go over a

1 couple of areas regarding the medical exam. The
2 doctor explained to you why there will be nothing
3 forensically. So the reason would be treatment of
4 the patient which was done to take a child when
5 there has been absolutely no evidence in this case
6 even to suggest that anyone else touched them 72
7 hours before this event, to do something just to
8 take a child and rule out, we would be taking our
9 children every day. There is no evidence anyone
10 touched these kids 72 hours or 90 hours before
11 this. No evidence whatsoever even to be inferred.
12 That would be the reason for a forensic exam which
13 is much different than a medical exam.

14 The issue about the parking lot was not
15 to say that the girls were abused in the parking
16 lot. They never said they were abused in the
17 parking lot. The issue was Brian's credibility.
18 Why did he tell you he always got there late and
19 parked right in front of the store? That's the
20 issue. Not that they were abused in the parking
21 lot.

22 My memory is that Younger Sister testimony
23 was that she in here, she was threatened and that
24 she was grabbed and fingers put down her throat,
25 not different. That's your memory. You have to go

1 on your memory. She didn't walk it back. She said
2 it in here. She did say that there was an occasion
3 where the sisters went and another time when they
4 didn't go.

5 Also, when these girls lived there they
6 were not teenagers. They were six, seven and eight
7 and nine and ten and eleven. They are not the
8 teenagers they are now. You did not see Older Sister
9 interview because of the law. She was too old to
10 have any. Lisa explained to you that Younger Sister never
11 knew about Z.R. report.

12 The pornography was questioned because
13 it was what Younger Sister described to you. Teenager
14 looking like a little girl.

15 Ashley and Rhonda made the decision.
16 Ashley made the decision to stick by her man. I
17 can't tell you why. You do have evidence. You
18 have the details of what they told you and how
19 detailed it was. The judge will explain to you
20 what the burden is. I submit to you it is not
21 beyond any doubt in the world. Thank you.

22 THE COURT: Ladies and gentlemen, that
23 completes the closing arguments and summations by
24 counsel. It is now my responsibility to charge you
25 on the law. We will take a short break. You have

1 heard a lot and I'm going to give you a chance to
2 stretch your legs before we go into the charge on
3 the law. So I will allow you to step back in the
4 jury room. Again as always, I am going to ask you
5 not to discuss anything about the case until I tell
6 you to begin your deliberations. You may retire to
7 the jury room. Thank you very much.

8 (Thereupon, the jury exited the
9 courtroom at 2:49 p.m.)

10 THE COURT: We will take a short break.
11 I will remain on the bench. Court is in recess.

12 (A recess transpired.)

13 THE COURT: State ready to proceed?

14 MS. HERRING-LASH: Yes, Your Honor.

15 THE COURT: Defense? Let's come to
16 order before I bring the jury in.

17 (Whereupon the jury entered the
18 courtroom at 3:00 p.m.)

19 THE COURT: Let the record reflect the
20 jury has returned to the courtroom. As I indicated
21 to you earlier, it is now my responsibility to
22 charge you concerning the law to be applied in this
23 case. I will remind you of the fact that the
24 Defendant has been arrested, charges and
25 indictments issued in this case. Those facts are

1 not evidence in the case and they cannot be
2 considered by you the jury as evidence of guilt in
3 this matter, nor does the fact that those things
4 have occurred create any presumption or inference
5 of guilt.

6 The indictments I'm about to go over
7 with you are simply the documents that are the
8 formal written instruments which contain the
9 charges in this matter that brings the case into
10 this court and informs us of the charges to be
11 tried. It informs the Defendant of the charges
12 that have been lodged against the Defendant. And
13 again there are multiple indictments in this case
14 and I am going to go over those indictments with
15 you at this time.

16 I have divided them into the
17 indictments that apply to one alleged victim and
18 then the other and I have divided them into packets
19 so that the indictments that apply to one alleged
20 victim are together with the other indictments
21 involving this particular victim.

22 The first indictment I will discuss is
23 case number 15-4916. That indictment charges
24 criminal sexual conduct with a minor in the first
25 degree. And in that case it alleges cunnilingus,

1 and I will tell you that that is oral sex performed
2 on a female. The alleged victim in that case is
3 Younger Sister . The second indictment that will
4 be presented is case number 15-4917 and that is
5 also for criminal sexual conduct with a minor in
6 the first degree. The allegations in that
7 indictment involve digital penetration. And again,
8 the alleged victim in that is Younger Sister .

9 Indictment No. 3 which is case number
10 15-5005, CSC with a minor in the first degree.
11 This indictment alleges the sex act of fellatio
12 which is oral sex performed upon a male. The
13 alleged victim in that case is Younger Sister .

14 The next indictment No. 4 of the group
15 case number 15-5009 is lewd act on a minor. Again,
16 the victim in that case is Younger Sister .

17 I'm going to go over these charges with
18 you specifically shortly. Now, the next set of
19 indictments will be with indictment No. 5, involved
20 the alleged victim Older Sister . The No. 5 is case
21 number 2015-4922, CSC with a minor alleging digital
22 penetration with the alleged victim Older Sister .
23 No. 6 is 2015-4925. Criminal sexual conduct with a
24 minor in the second degree and in that case the
25 alleged victim is Older Sister . And indictment

1 seven, 1015-5010 was lewd act on a minor with the
2 victim being Older Sister . The final indictment
3 No. 8 is case No. 17-2001. That is CSC with a
4 minor in the first degree alleging either sexual
5 intercourse, digital penetration or cunnilingus.
6 Again, the victim Older Sister -- alleged victim Older Sister
7 .

8 Now, each indictment charges a separate
9 and distinct offense. You the jury must decide
10 each indictment separately on the evidence and law
11 that applies to that particular indictment. Your
12 decision should be uninfluenced by your decisions
13 as to any other indictment. In other words, you
14 should consider each indictment separately on its
15 own merits. The Defendant may be convicted or
16 acquitted on any or all of the offenses charged.
17 You will be asked to write a separate verdict of
18 either guilty or not guilty for each indictment
19 that's been presented to you.

20 I explained earlier that the Defendant
21 has pled not guilty to each of the indictments and
22 under our system of justice that plea places the
23 burden of proof in this case solely upon the State.
24 It is the State's burden to prove the Defendant
25 guilty by proof beyond a reasonable doubt.

1 Now, a person charged with commission
2 of a criminal offense in this state is never
3 required to prove himself innocent. I charge you
4 that it's an important rule of law that a Defendant
5 in a criminal trial, and it doesn't matter how
6 serious the charge might be, is always presumed to
7 be innocent of the crime for which an indictment
8 has been issued until and unless guilt has been
9 proven to you the jury by evidence that satisfies
10 you of that guilt beyond a reasonable doubt.

11 Now, the presumption of innocence
12 doesn't end when you begin your deliberations. It
13 continues throughout the trial and continues into
14 your deliberations.

15 Let me give you an example. Let's
16 assume that the presumption of innocence is like
17 the robe that I wear into the courtroom. At the
18 beginning of the trial that robe would be about the
19 Defendant's shoulders. It would remain about his
20 shoulders throughout the trial. It would accompany
21 him into your deliberations. It remains about his
22 shoulders until such time as it would have been
23 stripped from him by evidence that satisfies you of
24 the Defendant's guilt beyond a reasonable doubt.

25 The presumption of innocence is not

1 just a legal theory. It's not just a legal phrase.
2 It is a substantial right that every Defendant is
3 entitled to unless you the jury are satisfied from
4 the evidence of the Defendant's guilt beyond a
5 reasonable doubt.

6 Now, you have heard me refer to that
7 standard of proof several times, proof beyond a
8 reasonable doubt. So you may be asking yourself
9 well, just what does that mean? What is the
10 definition of a reasonable doubt? What is a
11 reasonable doubt? And I will tell you that the
12 courts having considered the definition of that
13 phrase proof beyond a reasonable doubt have defined
14 a reasonable doubt as that kind of doubt that would
15 cause a reasonable person to hesitate to act.

16 The State has the burden of proving the
17 Defendant guilty beyond a reasonable doubt. Now, I
18 want to point out one thing to you. I'm not trying
19 to confuse matters. I am trying to clear up
20 matters by going over this with you now. If you
21 have ever been involved in some type of civil
22 litigation, civil litigation is where someone is
23 seeking monetary damages from a Defendant that can
24 be because of a failure to pay a debt, a breach of
25 a contract, personal injuries, things of nature are

1 cases where people seek monetary damages. And
2 those are civil cases. And our justice system has
3 a different standard of proof in civil cases.

4 For somebody to win in a civil case,
5 either the Plaintiff or the Defendant, the scales
6 of justice have to tilt ever so slightly in favor
7 of one side or the other. And the direction in
8 which they tilt is the side that wins that case.
9 So it is proof by the greater weight of the
10 evidence is what it is referred to. Sometimes
11 proof by the preponderance of the evidence is how
12 it is referred to.

13 That does not apply to this case. This
14 is a criminal case. The standard of proof is more
15 powerful than that. Proof beyond a reasonable
16 doubt is that kind of proof which leaves you firmly
17 convinced of the Defendant's guilt.

18 Now, I'm going to point out to you that
19 there's very few things in this world that can be
20 proven beyond any doubt whatever. And that's not
21 the standard of proof to which the State is placed
22 in a case such as this. They do not have to
23 present proof that overcomes every possible doubt.

24 What I will tell you is that if after
25 weighing all of the evidence and you consider the

1 evidence, if you are firmly convinced that the
2 Defendant is guilty of the crime charged beyond a
3 reasonable doubt, you must find the Defendant
4 guilty.

5 However, on the other hand, if you
6 think there's a real possibility that the Defendant
7 is not guilty, then you must give the Defendant the
8 benefit of that doubt and find the Defendant not
9 guilty.

10 I pointed out to you at the beginning
11 of the trial that you and I have different
12 functions in this courtroom. It has been my
13 responsibility to preside over the trial of the
14 case and I have had to make some rulings on the
15 admissibility of evidence or the appropriateness of
16 questions that have been asked and I have warned
17 you at the beginning of the trial and I will remind
18 you now, don't take from anything that I say or
19 something in the discharge of my duties as the
20 presiding officer in this case to somehow indicate
21 to you that I have an opinion one way or the other
22 as to how you decide the facts in this case.

23 You are the sole judges of the facts in
24 this case. I told you earlier the law does not
25 allow me an opinion on that issue. I have no

1 opinion as to how you should determine the facts in
2 this case.

3 I will point out to you that in my job
4 as I told you we are called the gatekeeper of the
5 trial. We decide what comes in and what doesn't
6 come in the gate. It was necessary for me quite
7 often to either affirm objections or to strike
8 evidence from the record and I will tell you now if
9 there was anything that I did not allow into the
10 record or that I struck from the record, those
11 matters should not be considered by you in any
12 manner whatsoever in reaching a verdict in this
13 case.

14 You are only to consider the evidence
15 and the testimony which has been presented from the
16 witness stand and whatever exhibits came into the
17 record through that testimony in reaching a
18 decision in this case. So only those things that
19 were the part of the record or any stipulations
20 that were entered into by the lawyers.

21 As I explained, I have the additional
22 duty to charge you on the law in this case and I
23 have also explained that I am the sole judge of the
24 law. Under your oath as jurors it is your
25 responsibility to take the law as I give it to you,

1 apply it to the facts as you determine the facts to
2 be. That should put you in a position to render a
3 verdict in this case.

4 Now, I explained to you earlier that in
5 every case tried before a jury in this court you're
6 the sole and exclusive judges of the facts in this
7 case. The decisions on the facts, how do you weigh
8 those facts, the effect, the value and weight of
9 the testimony you heard are all matters that are
10 solely up for you to determine. Please again don't
11 take from anything that I say even in this charge
12 on the law to indicate that I have an opinion as to
13 how you should determine the facts in this case.

14 You are the sole judges of those facts.
15 Now, in making those decisions you have the right
16 to consider two types of evidence. Let me explain
17 to you what I mean by two types of evidence. The
18 law generally divides evidence into either what we
19 refer to as direct evidence or circumstantial
20 evidence.

21 Direct evidence is defined as evidence
22 or testimony directly on the fact sought to be
23 proven. It's best explained by testimony from
24 someone who claims to have actually experienced the
25 event, been an eyewitness to the event. They saw

1 something. They heard something. They smelled
2 something. They felt something and they're
3 testifying directly on that fact. That's what we
4 mean by direct evidence.

5 Now, circumstantial evidence is a
6 different type of evidence. Circumstantial
7 evidence is proof of a chain of facts or
8 circumstances that indicate the existence of
9 another fact. It's been described as proof of
10 collateral facts from which a main fact might be
11 reasonably inferred..

12 Now, that's a lot of fancy talk. I try
13 to give a very simple example as to what we mean by
14 proving a fact by circumstantial evidence.

15 Let's say last night before you went to
16 bed you were in your bedroom and you got ready for
17 bed. You walked over to the window and looked
18 outside. The stars were shining. Beautiful night
19 outside. You got in the bed. You slept well all
20 night. You didn't wake up at all. The next
21 morning when the sun came up you got up, walked
22 around the room, decide to go over to the same
23 window you were at the night before. You look
24 outside and the sun is shining but then you notice
25 there's water dripping out of all the trees. You

1 notice there this is puddles in the driveway where
2 they weren't there before. Maybe the lawn in front
3 of your house is wet. It was dry the night before.
4 Now, you know you slept all night. You didn't see
5 it rain, you didn't hear it rain, so you didn't
6 directly experience that, but from the collateral
7 facts that you know to be true, water dripping out
8 of the trees, puddles in the road where they
9 weren't there the night before, wet grass all out
10 in front of the house, you didn't see it rain, you
11 didn't hear it rain, but from those collateral
12 facts you could reasonably infer that it rained
13 during the night.

14 So that's what we mean by proof of
15 collateral facts from which a main fact can be
16 reasonably inferred. The law doesn't make a
17 distinction between the value or the weight that
18 you the jury can give to either direct or
19 circumstantial evidence. There's not a greater
20 degree of certainty required of circumstantial
21 evidence than of direct. As jurors you should
22 weigh all of the evidence in this case. After
23 weighing all of the evidence I will tell you if you
24 are not firmly convinced of the Defendant's guilt
25 beyond a reasonable doubt you must find the

1 Defendant not guilty. However, on the other hand,
2 if you are firmly convinced of the Defendant's
3 guilt beyond a reasonable doubt you must find the
4 Defendant guilty.

5 Now, I want to talk to you because
6 later on when I charge you on the law you may hear
7 some language about intent. What somebody intended
8 to do. I want to talk to you about what is meant
9 by criminal intent. In order to establish certain
10 criminal liability, criminal intent is an element
11 that's required. For example, that's the mental
12 state that the law requires to be proven for a
13 particular crime to have been committed. And it
14 depends on the statute and the crime involved, but
15 it may use the word intent. It may use the word
16 knowledge, recklessness or criminal negligence.

17 I will tell you that criminal intent
18 must be proven by the State if it's an element of
19 the crime charged by proof beyond a reasonable
20 doubt. Criminal intent is always a matter that has
21 to be determined by you the jury from the
22 circumstances surrounding the events that's in
23 question. Because you see, there's no way that we
24 could have been present when the act is committed,
25 look inside someone's head, look at their brain and

1 tell what they intended to do. There is no way to
2 scientifically prove criminal intent or what
3 someone's intent is. So intent is always proven by
4 the facts and circumstances shown to have existed
5 when the event occurred. Intent can be inferred
6 from those circumstances.

7 Now, that's how you make a
8 determination as to whether or not an element
9 required for a crime to have been committed was
10 present. It's not established by direct or
11 positive evidence. It may be established by
12 inference the same way as any other fact may be
13 established, taking into consideration the acts of
14 the party and all of the facts and circumstances of
15 the case.

16 I will tell you that criminal intent is
17 a mental state. It's a conscious wrongdoing. And
18 depending on the crime it's up to you to determine
19 what the Defendant intended to do based on the
20 circumstances shown to have existed at the time of
21 the event.

22 Now, I have told you all along that you
23 are the sole judges of the facts and I want to
24 point out one other thing that necessarily goes
25 with that designation. It is necessary for you as

1 a determiner of the facts to determine the
2 credibility of the testimony you have heard.
3 Credibility means believability. It is your duty
4 as jurors to analyze and evaluate the evidence you
5 have heard, the testimony that you have heard and
6 determine which evidence convinces you of its
7 truth. In determining the believability of
8 witnesses who testified in this case as the sole
9 judges of the facts you have the right to believe
10 all or part of or none of what a witness may have
11 testified to. You have a right to believe one
12 against all the others, or all the others against
13 one. You are the sole judges of the facts. That
14 makes you the sole determiners of the credibility
15 and believability of the witnesses that you have
16 heard.

17 I told you to use your good common
18 sense in listening to the witnesses at the
19 beginning of the trial. And I tell you again to
20 use that common sense in determining the
21 credibility and the believability of the testimony
22 you have heard. You can consider whether a witness
23 has exhibited to you some interest or bias or
24 prejudice or other motive for testifying in the
25 case. You have the right to consider the

1 appearance of the witness, the manner in which the
2 testimony was delivered on the witness stand, in
3 other words, you are the sole judges of the facts
4 that necessarily makes you the sole judges of the
5 credibility and the believability of the testimony
6 you have heard during this trial.

7 Now, there is one other thing I want to
8 point out to you and I will get to the offenses in
9 just a minute. But there is some things I want you
10 to be aware of. I told you during the trial when
11 we qualified one of the witnesses as an expert
12 witness that the rules of evidence don't ordinarily
13 permit witnesses to give opinions or conclusions.

14 There's an exception to the rule given
15 for witnesses who we declare to be an expert in
16 some field or profession or calling. And as to
17 those witnesses who are declared to be witnesses
18 they are allowed to state their opinions as to any
19 relevant matter or material matter within their
20 expertise and state the reasons why they hold those
21 opinions.

22 I will tell you as the sole judges of
23 the facts and credibility of the testimony you
24 should consider the testimony of an expert's
25 opinion given in the case like any other testimony

1 in the case. You give it the weight and the
2 importance that you think it deserves. Should you
3 decide that the opinion of an expert is not based
4 on sufficient education or knowledge or experience
5 or if you conclude that the reasons given in
6 support of the expert's opinion aren't sound or are
7 outweighed by other testimony, you may disregard an
8 opinion by an expert in its entirety. An expert
9 witnesses testimony shouldn't be given any greater
10 weight simply because that person has been declared
11 to be an expert. In other words, it's your duty to
12 evaluate all of the testimony, including the
13 testimony of an expert witness, even though that
14 testimony may not be contradicted by other
15 evidence. Again, you're the sole judges of the
16 facts. You're the sole judges of the weight, the
17 value and effect of the witnesses you heard in the
18 case.

19 Also during the trial you heard
20 testimony from witnesses who were under the age of
21 18. They would be considered to be a child or a
22 minor in this state. Where a witness is a child
23 you the jury must determine as with any other
24 witness whether the testimony given is believable.
25 In deciding believability you can consider not only

1 matters that I have already discussed about
2 believability, you also may consider the age of the
3 child testifying, the child's ability to observe
4 and remember the facts, the child's ability to
5 understand and answer questions, because children
6 sometimes don't understand the procedures in a
7 courtroom. It is up to you to decide whether the
8 child understood the seriousness of appearing as a
9 witness in a criminal trial, whether the child
10 understood the questions, whether the child had a
11 good memory and whether the child understands the
12 difference between the truth and untruthful
13 matters.

14 So it's up to you to decide whether or
15 not the child understood the questions being asked;
16 in other words, you should weigh that testimony as
17 part of your determination of the facts. You
18 should determine the credibility of all of the
19 witnesses in the case.

20 Now, I'm going to discuss with you the
21 different offenses that have been alleged in this
22 case at this time. The first offense that I'm
23 going to discuss with you is the charge of first
24 degree criminal sexual conduct with a minor. And
25 there are indictments for that offense in our group

1 of indictments. The Defendant is charged with
2 first degree criminal sexual conduct with a minor.
3 The State must prove beyond a reasonable doubt that
4 the Defendant engaged in a sexual battery with the
5 victim.

6 Now, a sexual battery is sexual
7 intercourse, cunnilingus, fellatio, anal
8 intercourse or any intrusion, however slight, of
9 any part of a person's body or of any object into
10 the genital or anal openings of another person's
11 body. That's except when the intrusion is
12 accomplished for a medically recognized treatment
13 or diagnosis, diagnostic purpose. The State after
14 -- once the State has proven that then the State
15 must then prove beyond a reasonable doubt that the
16 victim was less than 11 years old at the time of
17 the sexual battery.

18 Now, I will tell you that consent,
19 willingness, indifference or ignorance on the part
20 of the minor, if any, as to what was taking place
21 does not in any way affect the charge of criminal
22 sexual conduct with a minor. That's because an
23 unmarried woman under the age of 14 cannot legally
24 consent to sexual intercourse.

25 Now, the next charge I will discuss

1 with you is second degree criminal sexual conduct
2 with a minor.

3 And there are -- there's indictments
4 for that charge in our group of indictments. The
5 Defendant is charged with second degree criminal
6 sexual conduct with a minor and the State must
7 prove beyond a reasonable doubt that the Defendant
8 engaged in a sexual battery with the victim.

9 Again, a sexual battery is sexual intercourse,
10 cunnilingus, fellatio, anal intercourse or any
11 intrusion, however slight, of any part of a
12 person's body or any object into the genital or
13 anal opening of another person's body again except
14 when it is accomplished for a medically recognized
15 treatment or diagnostic purpose.

16 The State must in addition to that
17 prove that the victim was at least 11 years old,
18 but not more than 14 years old at the time of the
19 sexual battery. So the difference in those charges
20 would be age of the victim.

21 Again, consent, willingness,
22 indifference or ignorance on the part of the minor,
23 if any, as to what was taking place does not affect
24 the charge of criminal sexual conduct with a minor
25 in the second degree because again an unmarried

1 woman under the age of 14 cannot legally consent to
2 sexual intercourse.

3 Another charge that's in our group of
4 charges is a lewd act on a minor. The Defendant is
5 charged with committing a lewd act on a minor. A
6 minor is a person under the age of 18. The State
7 must prove beyond a reasonable doubt that the
8 Defendant was over the age of 14. Next the State
9 must prove that the Defendant willfully and lewdly
10 committed or attempted a lewd or lascivious act or
11 with the body or its parts of a child under the age
12 of 16 years with the intent to arouse, appeal to or
13 gratify the lust, passions or sexual desires of the
14 Defendant or the child. Willfully means
15 voluntarily and intentionally with the specific
16 intent to do something the law forbids. Lewd means
17 obscene, lustful, indecent or lecherous.
18 Lascivious means tending to incite lust, lewd,
19 indecent, obscene or intending to deprave the
20 morals in respect to sexual relations.

21 Mr. Anbesaw Selassie, I believe that's
22 that you right there. You can be seated. You are
23 going to be the foreperson of the jury. That means
24 that you will be the person whose responsible to
25 conduct the jury's discussions. You will be there

1 just to be sure that the discussions move along in
2 an orderly fashion. It will be your responsibility
3 should the jury have a question that the jury
4 wishes to pose to the Court during deliberations,
5 you will write that out on a piece of paper once
6 the jury has agreed on the question, give it to the
7 bailiff, submit it to me. I will determine what
8 answer I can give to any question that you might
9 have.

10 Now, I can tell you I can't answer each
11 and every question that you might have in your
12 deliberations. I have already told you I can't get
13 involved in your decisions on the facts. I can
14 answer a question concerning the procedure, my
15 charge on the law, some limited questions about the
16 evidence because I'm not allowed to comment on the
17 evidence. That's for you to decide. But I don't
18 want you to edit any question the jury has. I want
19 you to submit the question to me. I will decide
20 what the appropriate response ought to be to those
21 questions.

22 I will tell the jury I'm going to give
23 you a form in just a moment that has a separate
24 verdict for each and every indictment that I have
25 gone over with you. It will be your responsibility

1 once you have reached a unanimous verdict, and your
2 verdict must be unanimous, all 12 of the jurors who
3 are considering the question must agree upon the
4 verdict before it becomes the verdict of the jury
5 as to each indictment. Once a verdict is reached
6 it would be your responsibility, sir, to record it
7 on the form. Once the form is completed you will
8 sign that form, knock on the door, let the bailiff
9 know that the verdict has been reached and then you
10 will be brought back to the courtroom for the court
11 to receive the verdict.

12 Now, I have gone over a great deal with
13 you. I may have misspoken about something that I
14 said. I went over a lot of things with you. But
15 what I'm going to do at this time, I am going to
16 ask you on one other occasion to step back to the
17 jury room. Don't begin any discussions about this
18 case until I bring you back for your final
19 instructions. This may be the last time I tell you
20 not to talk about this case. But I'm going to tell
21 you one more time. We will bring you back shortly.
22 It won't be long. I will ask you now to retire to
23 the jury room.

24 (Thereupon, the jury exited the
25 courtroom at 3:30 p.m.)

1 THE COURT: Any exceptions to the
2 charge from the State?

3 MS. HERRING-LASH: No, Your Honor.

4 THE COURT: Anything from the defense?

5 MR. COCHRAN: None, Your Honor.

6 THE COURT: All right. I want you to
7 come forward. Let's go over the exhibits with the
8 court reporter and agree on what's going back to
9 the jury.

10 (Off-the-record conference.)

11 THE COURT: We have got an agreement on
12 the exhibits on the table?

13 MS. HERRING-LASH: Yes, Your Honor.

14 THE COURT: I have gone over with you
15 already the indictments and the verdict form. Any
16 objections from the State as to my submitting those
17 to the jury?

18 MS. HERRING-LASH: No, Your Honor.

19 THE COURT: Any from the defense?

20 MR. COCHRAN: No, Your Honor.

21 THE COURT: Okay. Let's bring the jury
22 back.

23 (Whereupon the jury entered the
24 courtroom at 3:31 p.m.)

25 THE COURT: Mr. Bailiff, if you want to

1 step over, please. Thank you. Give these
2 documents to the foreperson. Thank you. Those are
3 the documents that I told you that I would be
4 giving you. The one is a verdict form.

5 Now, that's a four page verdict form.
6 I have it paper clipped together so probably want
7 to keep that clip there so they don't get mixed up.
8 It has at the top the state and county that we are
9 in. It identifies the court, below it shows that
10 the parties are the State of South Carolina against
11 the Defendant, Mr. Brian Christopher Daugherty.
12 Below that is lists the indictments separately.
13 Each case is numbered separately one through eight.
14 I have again grouped them. The first I believe
15 four indictments deal with the allegations
16 concerning the alleged victim of Younger Sister
17 And then the remainder of them are Older Sister as
18 the alleged victim in those. So I have grouped
19 them together in that fashion.

20 Each -- below each question or each
21 case you will find a place for either a verdict of
22 not guilty or guilty. I will tell the jury don't
23 take from the fact that I put those choices in any
24 order on that form to indicate that I have got a
25 preference as to those verdicts. I have been doing

1 these cases now for about 13 years in circuit court
2 and every verdict form I have ever done has them in
3 the same order so it doesn't mean anything as far
4 as the order that I put either guilty or not guilty
5 in.

6 When the verdict is reached, that is it
7 is unanimous on this question, you will put an X or
8 a check in the blank line next to the appropriate
9 verdict for that indictment and then move on to the
10 next indictment. So you will be considering eight
11 total indictments. For the verdict form to be
12 completed there would be eight verdicts on the
13 form. Once it is completed you will sign it at the
14 end, let the bailiff know the verdicts have been
15 reached. Again, we will come back to the courtroom
16 to receive the verdict.

17 I'm going to send the exhibits back to
18 the jury room with you. You have a right to look
19 at those exhibits during your deliberations. I
20 understand that there is a device by which you can
21 play the disc that's in evidence. If you have any
22 difficulty in doing that again -- if you want to
23 watch it, you don't have to watch it. But if you
24 do let the bailiff know. If you have a problem we
25 will be glad to work that out for you as well.

1 Now, I am not unmindful of the fact
2 that we are at a little -- 20 minutes until 4:00 in
3 the afternoon. I want you to begin your
4 deliberations. You take as long as you feel that
5 you need to to appropriately consider the
6 questions.

7 Now, once we get past 5:00, if you want
8 to continue your work until you finish you have
9 every right to do that. Let us know that you would
10 like something to eat brought to the courthouse.
11 We will have that done. It will be delivered to
12 you in the jury room if that's what you wish to do.
13 If you are staying over we will be glad anyone you
14 want us to call and the clerk will call them and
15 let them know where you are and what you are doing
16 so people won't be concerned about your location if
17 you want to continue your deliberations.

18 If the jury wishes to go home and come
19 back in the morning we can arrange for you to do
20 that as well. You will just need to let us know
21 how you wish to proceed. That's your decision as
22 to how you wish to proceed with your deliberations.

23 Now, any time someone from the clerk's
24 office or the bailiff steps into the jury room to
25 take care of calling people for you or ordering a

1 meal or whatever purpose there might be, stop your
2 deliberations. Do not discuss the case in the
3 presence of that person. The only people that
4 should be present when you discuss the case should
5 be your fellow jurors. So don't continue to
6 deliberate. Stop until they have left the room,
7 then you can resume your deliberations once they
8 have left the room. Any questions about how that
9 would be handled?

10 THE FOREPERSON: No.

11 THE COURT: So if you have any
12 questions during your deliberations again write
13 those on a piece of paper, give them to the
14 bailiff. I will formulate whatever response is
15 appropriate. When I have done that I will call you
16 back from the jury room for us to discuss that
17 response. I can't deal with you in the jury room.
18 I can only deal with you here in the courtroom so
19 you will have to come back to hear those answers
20 here.

21 Now, at this point in time I'm going to
22 direct you to retire to the jury room. The
23 bailiffs will bring you the exhibits to begin your
24 deliberations in the case. The two alternates, if
25 you will please remain seated in the courtroom.

1 excused.)

2 THE COURT: Any objections to my final
3 instruction?

4 MS. HERRING-LASH: No.

5 THE COURT: Any from the defense?

6 MR. COCHRAN: No, Your Honor.

7 THE COURT: We will be in recess then
8 until the jury has a question or we get a verdict.
9 Thank you very much.

10 (Thereupon, the jury began deliberating
11 at 3:43 p.m.)

12 (Thereupon, the following proceedings
13 were held at 8:21 p.m. outside the presence of the
14 jury.)

15 THE COURT: I will ask the attorneys to
16 approach briefly.

17 (Off-the-record conference.)

18 THE COURT: Bring the jury in.

19 (Whereupon the jury entered the
20 courtroom at 8:22 p.m.)

21 THE COURT: Let the record reflect the
22 jury has returned to the courtroom. I received an
23 inquiry form the foreman and let me put that on the
24 record. The inquiry says, "We know that we need 12
25 votes for a guilty verdict, but do we need 12 votes

1 for a not guilty verdict?"

2 To answer that portion of your inquiry
3 the answer is yes. For the jury to enter either a
4 verdict of guilty or not guilty the verdict must be
5 unanimous. All 12 of you would have to agree on
6 that result.

7 The remainder of the inquiry says, "If
8 we do not have 12 votes either way, does that
9 result in a hung jury or in a not guilty verdict?"

10 Well, not exactly. If you don't have
11 12 votes either way, then you are in the process of
12 still deliberating.

13 Now, only if the jury were to inform me
14 that you were to the point where you were
15 deadlocked, that further deliberations are not
16 making progress or there's no discussion taking
17 place, would then I become involved in the matter.
18 At that time I would have to assess the situation,
19 there may be additional instructions that I would
20 give to you at that time, but it would not result
21 in a not guilty verdict regardless. If the Court
22 came to the conclusion that further deliberations
23 or discussions were not possible, would not be
24 fruitful, then I would have the option of deciding
25 as to whether or not to mistry the case or not.

1 So we have -- you haven't informed me
2 that you have reached that stage yet so I'm going
3 to not answer that question one way or the other.

4 What I will tell you is the fact that
5 you cannot get 12 votes either way, it would not
6 result in a not guilty verdict. It would result
7 perhaps in further instructions from the Court
8 should that occur.

9 So where we were right now it appears
10 that you are -- I'm taking it you are still in
11 deliberations. You have not reached a 12 vote one
12 way or the other for a verdict so no verdict has
13 been reached. I want to ask you to return to the
14 jury room to continue your discussions. Thank you
15 very much.

16 (Thereupon, the jury exited the
17 courtroom at 8:26 p.m.)

18 THE COURT: Any objections to my
19 response from the State?

20 MS. LASH: No, Your Honor.

21 THE COURT: Any from the defense?

22 MR. COCHRAN: No, Your Honor.

23 THE COURT: The inquiry will be made a
24 court's exhibit and be part of the record. We will
25 be in recess until we receive an additional

1 question or a verdict. Thank you very much.

2 (COURT'S EX. 2 and 3 marked.)

3 (Thereupon, the jury continued
4 deliberating and the following proceedings were had
5 at 8:30 p.m.)

6 THE COURT: I have received another
7 inquiry from the jury or at least a statement, not
8 a question. The form indicates that we cannot
9 reach an agreement tonight. We plan to reconvene
10 tomorrow morning to reach a verdict and is signed
11 by the foreman. So I'm going to bring them in,
12 give them instructions for their behavior
13 overnight, set a time to convene in the morning.
14 Bring the jury in.

15 (Whereupon the jury entered the
16 courtroom at 8:38 p.m.)

17 THE COURT: I have received an
18 additional note from the foreman, Mr. Selassie.
19 This states that, "We cannot reach an agreement
20 tonight. We plan to convene tomorrow morning to
21 reach a verdict."

22 What we are going to do, at this time I
23 am going to release you for the evening to go home.
24 I will again instruct you as I have previously when
25 you left the courtroom and I hope you realize the

1 would like for us to address let the bailiffs know.
2 We will try to take care of those matters as best
3 we can. Thank you and you're free to return to
4 your deliberations.

5 (Thereupon, the jury exited the
6 courtroom at 9:08 a.m.)

7 THE COURT: Any objections to my
8 instructions from the State?

9 MS. HERRING-LASH: No, Your Honor.

10 THE COURT: Any from the defense?

11 MR. COCHRAN: No, Your Honor.

12 THE COURT: All right. We will be in
13 recess until we receive a question or a verdict.
14 Thank you very much.

15 (Thereupon, the jury began deliberating
16 at 9:10 a.m.)

17 (Thereupon, the following proceedings
18 were had at 10:45 a.m. outside the presence of the
19 jury.)

20 THE COURT: I have received an inquiry
21 from the jury concerning items five and eight on
22 the indictment and the verdict forms. I'm not sure
23 as to exactly what they are asking. So I'm going
24 to call the foreperson in to clarify the question
25 and either respond or get an answer. My

1 THE FOREPERSON: Thank you, Your Honor.

2 THE COURT: Yes, sir. I will ask the
3 bailiff to pick up the old form and return that the
4 to the court reporter. Thank you very much.

5 (Thereupon, the foreman left the
6 courtroom.)

7 THE COURT: Any objection to my
8 response from the State?

9 MS. HERRING-LASH: No, Your Honor.

10 THE COURT: Any from the Defendant?

11 MR. COCHRAN: No, Your Honor.

12 THE COURT: These are your copies. I
13 will give those back to you. The inquiry will be
14 made an exhibit and we will remain in recess until
15 a verdict is reached.

16 (COURT'S EX. 5 marked.)

17 (Thereupon, the jury continued
18 deliberating at 10:50 a.m.)

19 (Thereupon, a verdict was reached at
20 11:46 a.m.)

21 THE COURT: I had the clerk take charge
22 of the replaced verdict form. Do you have that
23 form? If you would give it to the court reporter
24 and have it marked as a court exhibit as a form
25 that you took from the jury.

1 THE CLERK: Yes, sir.

2 THE COURT: Is that correct?

3 THE CLERK: Yes, sir.

4 (COURT'S EX. 6 marked.)

5 THE COURT: I have been informed that a
6 verdict has been reached; is that your
7 understanding?

8 THE BAILIFF: Yes, sir.

9 THE COURT: Bring the jury into the
10 courtroom, please.

11 As the jury is returning I would
12 caution those in the courtroom that outbursts or
13 displays of emotion will not be tolerated by the
14 Court. If you feel that you cannot control your
15 emotions at a time like this, please step outside
16 and we will be glad to inform you of the verdict in
17 that fashion. If you remain in the courtroom, you
18 are expected to maintain decorum. If you have any
19 problems in that regard now would be the time to
20 go.

21 (Whereupon the jury entered the
22 courtroom at 11:48 a.m.)

23 THE COURT: The bailiff has informed me
24 that a verdict has been reached in the case; is
25 that correct?