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VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Kershaw County

Tanya A. Gee, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JAMES WAYNE MILLER,

APPELLANT

APPELLATE CASE NO 2016-000642

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, South Carolina 29202
(803) 576-1800

ATTORNEYS FOR RESPONDENT

PAGES 1-500

INDEX

INDEX i

TRIAL TRANSCRIPT DATED MARCH 14 – 18, 2016 1

MOTION FOR A CONTINUANCE 9

RULING BY THE COURT 15

MOTION TO ADMIT EXPERT TESTIMONY 16

MOTION IN LIMINE TO PREVENT THE STATE FROM REFERRING TO S.C. CODE SECTION 17-23-175 22

RULING BY THE COURT 24

MOTION IN LIMINE TO PREVENT ANY EXPERT WITNESS FROM GIVING AN OPINION ON THE TRUTHFULNESS OF THE VICTIM 25

MOTION IN LIMINE TO PREVENT THE STATE FROM MENTIONING ANY REFERENCES OF POTENTIAL MISCARRIAGES OF THE VICTIM 26

RULING BY THE COURT 27

MOTION IN LIMINE TO PREVENT THE STATE WITNESSES FROM MENTIONING THE DEFENDANT'S ALLEGED DRUG ABUSE 28

RULING BY THE COURT 31

RENEWAL OF MOTION FOR A CONTINUANCE 33

RULING BY THE COURT 33

OPENING REMARKS BY THE COURT 35

OPENING STATEMENT BY MS. SENN 41

OPENING STATEMENT BY MS. GOOD 45

TESTIMONY

BROOKS HOUSER

Direct examination by Ms. Cavanaugh 47
Cross examination by Ms. Good 62
Redirect examination by Ms. Cavanaugh 68

JUSTIN SCOTT
Direct examination by Ms. Senn....70
Cross examination by Ms. Good....77
Redirect examination by Ms. Senn....81

CODY WILSON
Direct examination by Ms. Senn....82
Cross examination by Ms. Good....86
Redirect examination by Ms. Senn....88

THOMAS SHERWOOD HATHAWAY
Direct examination by Ms. Cavanaugh....90
Cross examination by Ms. Good....95
Redirect examination by Ms. Cavanaugh....96

COMPLAINANT
Direct examination by Ms. Cavanaugh....97
Cross examination by Ms. Good....170
Redirect examination by Ms. Cavanaugh....194

TAMMY LYNN PRICE
Direct examination by Ms. Cavanaugh....196
Cross examination by Ms. Good....248
Redirect examination by Ms. Cavanaugh....268

SUSAN LUBEROFF
Direct examination by Ms. Cavanaugh....269
Cross examination by Ms. Good....282
Redirect examination by Ms. Cavanaugh....284

BREANA KEETER
Direct examination by Ms. Senn....289
Cross examination by Ms. Good....311
Redirect examination by Ms. Senn....323
Recross examination by Ms. Good....324

MELISSA SKIPPER WALLACE
Direct examination by Ms. Cavanaugh....325
Cross examination by Ms. Good....347

COURTNEY THOMPSON
Direct examination by Ms. Senn....353
Cross examination by Ms. Good....362
Redirect examination by Ms. Senn....364
Recross examination by Ms. Good....365

MARTHA PENROD
Direct examination by Ms. Senn....366
Cross examination by Ms. Good....381
Redirect examination by Ms. Senn....388

STEVEN KNAFELC
Direct examination by Ms. Senn....389
Cross examination by Ms. Good....396
Redirect examination by Ms. Senn....403

ALLISON FOSTER (PROFFERED)
Direct examination by Ms. Cavanaugh....406
Cross examination by Ms. Good....418

DEFENDANT'S ARGUMENT TO EXCLUDE TESTIMONY OF ALLISON FOSTER....422

STATE'S ARGUMENT TO ADMIT TESTIMONY OF ALLISON FOSTER....424

RULING BY THE COURT....426

TESTIMONY

ALLISON FOSTER
Direct examination by Ms. Cavanaugh....430
Cross examination by Ms. Good....446
Redirect examination by Ms. Cavanaugh....450

JUSTIN DILL
Direct examination by Ms. Cavanaugh....452
Cross examination by Ms. Good....472
Redirect examination by Ms. Cavanaugh....477
Recross examination by Ms. Good....480

STATE RESTS....481

MOTION TO PERMIT THE DEFENDANT TO TAKE PRESCRIPTION MEDICINE....482

RULING BY THE COURT....483

COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY....484

CLOSING ARGUMENT BY MS. CAVANAUGH....487

CLOSING ARGUMENT BY MS. GOOD....524

CHARGE ON THE LAW....545

NOTE FROM THE JURY 559

NOTE FROM THE JURY 563

RE-CHARGE ON THE LAW OF REASONABLE DOUBT 565

NOTE FROM THE JURY 568

NOTE FROM THE JURY 572

NOTE FROM THE JURY 581

ADDITIONAL JURY INSTRUCTIONS GIVEN 581

VERDICT 583

POLLING OF THE JURY 583

SENTENCING 593

STATE'S EXHIBIT #1 (MIRANDA RIGHTS 8/11/12 at 3:47 pm) 595

STATE'S EXHIBIT #2 (MIRANDA RIGHTS 8/11/12 at 5:15 am) 596

COURT'S EXHIBIT #1 (EMAIL DATED 3/9/16) 597

COURT'S EXHIBIT #4 (JURY QUESTION) 598

COURT'S EXHIBIT #5 (JURY QUESTION) 599

COURT'S EXHIBIT #6 (JURY QUESTION) 600

COURT'S EXHIBIT #6 (JURY QUESTION) 601

COURT'S EXHIBIT #7 (JURY QUESTION) 601

INDICTMENTS AND SENTENCE SHEETS 602

CERTIFICATE OF COUNSEL 608

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #46 (CD INTERVIEW REDACTED); STATE'S EXHIBIT #47 (CD INTERVIEW REDACTED)

1

State of South Carolina)) County of Kershaw)) State of South Carolina,)) Plaintiff,) vs.)) James Wayne Miller,)) Defendant.))	In the Court Of General Sessions Indictment No.: 2012-GS-28-1381 2012-GS-28-1382 Transcript of Record

March 14 through 18, 2016

Camden, South Carolina

BEFORE:

The Honorable Tanya Gee, Judge; and a Jury.

APPEARANCES:

Kathryn Cavanaugh, Assistant State Solicitor
Karlen Senn, Assistant State Solicitor
Attorneys for the State

Anna Good, Esquire
Attorney for the Defendant

INDEX

MARCH 14, 2016

	PAGE
MOTIONS	9
JACKSON V. DENNO HEARING	
WITNESS	PAGE
CORPORAL BROOKS HOUSER	
Direct Examination by Ms. Cavanaugh	17
Cross Examination by Ms. Good	24
Redirect Examination by Ms. Cavanaugh	28
DEPUTY THOMAS HATHAWAY	
Direct Examination by Ms. Cavanaugh	30
Cross Examination by Ms. Good	35
JUSTIN DILL	
Direct Examination by Ms. Cavanaugh	37
Cross Examination by Ms. Good	52
MOTIONS	56
JURY SELECTION	65
MARCH 15, 2016	
JURY SWORN	106
COURT'S INSTRUCTIONS	106
OPENING STATEMENTS	
By Ms. Senn	112
By Ms. Good	116

WITNESS	PAGE
CORPORAL BROOKS HOUSER	
Direct Examination by Ms. Cavanaugh	118
Cross Examination by Ms. Good	133
Redirect Examination by Ms. Cavanaugh	139
DEPUTY JUSTIN SCOTT	
Direct Examination by Ms. Senn	141
Cross Examination by Ms. Good	148
Redirect Examination by Ms. Senn	152
DEPUTY CODY WILSON	
Direct Examination by Ms. Senn	153
Cross Examination by Ms. Good	157
Redirect Examination by Ms. Senn	159
DEPUTY THOMAS HATHAWAY	
Direct Examination by Ms. Cavanaugh	161
Cross Examination by Ms. Good	166
Redirect Examination by Ms. Cavanaugh	167
Complainant [redacted]	
Direct Examination by Ms. Cavanaugh	168
Cross Examination by Ms. Good	241
Redirect Examination by Ms. Cavanaugh	265
TAMMY PRICE	
Direct Examination by Ms. Cavanaugh	267
Cross Examination by Ms. Good	319
Redirect Examination by Ms. Cavanaugh	339

	WITNESS	PAGE
SUSAN LUBEROFF, M.D.		
	Direct Examination by Ms. Cavanaugh	340
	Cross Examination by Ms. Good	353
	Redirect Examination by Ms. Cavanaugh	355
	MARCH 16, 2016	
BREANA MILLER KEETER		
	Direct Examination by Ms. Senn	360
	Cross Examination by Ms. Good	382
	Redirect Examination by Ms. Senn	394
	Recross Examination by Ms. Good	395
MELISSA SKIPPER WALLACE		
	Direct Examination by Ms. Cavanaugh	396
	Cross Examination by Ms. Good	418
COURTNEY THOMPSON		
	Direct Examination by Ms. Senn	424
	Cross Examination by Ms. Good	433
	Redirect Examination by Ms. Senn	435
	Recross Examination by Ms. Good	436
MARTHA DAVID PENROD		
	Direct Examination by Ms. Senn	437
	Cross Examination by Ms. Good	452
	Redirect Examination by Ms. Senn	459
STEVEN KNAFELC		
	Direct Examination by Ms. Senn	460

Cross Examination by Ms. Good 467
Redirect Examination by Ms. Senn 474
ALLISON FOSTER, Ph.D., (Proffered.)
Direct Examination by Ms. Cavanaugh 477
Cross Examination by Ms. Good 489
ALLISON FOSTER, Ph.D.
Direct Examination by Ms. Cavanaugh 502
Cross Examination by Ms. Good 517
Redirect Examination by Ms. Cavanaugh 521
JUSTIN DILL
Direct Examination by Ms. Cavanaugh 523
Cross Examination by Ms. Good 543
Redirect Examination by Ms. Cavanaugh 548
Recross Examination by Ms. Good 551
PLAINTIFF RESTS 552
JAMES WAYNE MILLER
Examination by the Court 557

MARCH 17, 2016

DEFENDANT RESTS 563
CLOSING ARGUMENTS
By Ms. Cavanaugh 564
By Ms. Good 601
CHARGE OF COURT 622

6

MARCH 18, 2016

VERDICT OF THE JURY		660
SENTENCE OF THE COURT		664

EXHIBITS

COURT'S

NO.	DESCRIPTION	ID.	EVDS.
1	E-mail Julie Taylor 3/9/16	10	
2	CD Interview Unredacted	554	
3	CD Interview Unredacted	554	
4	Jury Question	637	
5	Jury Question	640	
6	Jury Question	647	
7	Jury Question	652	

STATE'S

NO.	DESCRIPTION		
1	Miranda Rights 8/11/12	39	528
2	Miranda Rights 8/6/12	39	536
3	Photo of Road	128	128
4	Photo Side of House	128	128
5	Photo of Dock	128	128
6	Photo	160	304
7	Photo	160	304
8	Photo	160	304
9	Photo of Front Door	160	304
10	Photo	160	304

7

EXHIBITS

STATE'S

NO.	DESCRIPTION	ID.	EVDS.
11	Photo	160	304
12	Photo	160	304
13	Photo	160	304
14	Photo	160	304
15	Photo Stairway	160	190
16	Photo	160	190
17	Photo TV	160	190
18	Photo Hallway	160	190
19	Photo Hallway	160	190
20	Photo Messy Bedroom	160	190
21	Photo	160	
22	Photo Marilyn Monroe	160	190
23	Photo	160	
24	Photo	160	
25	Photo	160	
26	Photo of Cat/Vacuum	287	288
27	Photo Two Beds	287	288
28	Photo of Bed	406	407
29	Photo of Pillow	406	407
30	Photo of Bed	406	407
31	Photo of Pillow	406	407
32	Photo of Carpet	406	407

8

EXHIBITS

STATE'S

NO.	DESCRIPTION	ID.	EVDS.
33	Photo of Carpet	406	407
34	Photo of Carpet/Hat	406	407
35	Photo of Blue Futon	412	412
36	Photo of Blue Futon	412	412
37	Photo of Green Pillow	412	412
38	Photo of Couch	414	415
39	Photo of Couch	414	415
40	Photo of Couch Pillow	414	415
41	Photo of Couch Pillow	414	415
42	Photo of Deck	440	442
43	Photo of Garden	440	442
44	Photo of Fence	440	442
45	Photo of Fence/Dock	440	442
46	CD Interview Redacted	531	531
47	CD Interview Redacted	531	537

CERTIFICATE OF REPORTER

9

March 14, 2016

BAILIFF: All rise.

THE COURT: Thank you. Please be seated. I understand the defendant has some back issues. When I walk in and out of the courtroom, there's no need for you to stand up if you're not able to stand up. That's not a sign of disrespect. I understand what you are going through, sir. All right. I understand we have some pretrial matters in the case of the State versus James Wayne Miller. I will here from the defense attorney on the motion for continuance first.

MS. GOOD: Thank you, Your Honor. As we previously mentioned in chambers, Mr. Miller has had chronic back problem for quite a while, however, in the past week and a half or so it has escalated to the point that he needs surgery. He went to the doctor, Dr. Julie Taylor on March 3rd of 2016, Your Honor, regarding some of his pain. At that time she medicated him with hydrocodone, Your Honor, and ordered an MRI. His MRI was conducted last Wednesday which was March 8th of 2016 and I would like to make this a court exhibit. It indicates that he has five different things wrong with his back and lumbar spine. I'll hand it up to Your Honor.

THE COURT: All right. If we can give this to the court reporter so he can make it a court exhibit, please.

(Whereupon, Court's Exhibit #1 marked for identification.)

THE COURT: Go ahead, Ms. Good.

MS. GOOD: Thank you, Your Honor. After that he went back to his doctor for a follow up where he was prescribed on March 9th, oxycontin, Your Honor. In addition, on March 11th from his doctor, Dr. Julie Taylor, he was given another steroid as well as Lortab. He's struggling here just to sit, Your Honor. He's been laying down ever since March 8th when the pain became significant and according to the MRI is pressing on one of his nerve roots. It's my indication from him as well as his aunt and girlfriend that he has been out in the car blacking out. It's my concern at this time, Your Honor, that he deserves a fair defense and if he cannot help me and aide in his defense based on the combination of medications that they have him on and based on the fact that he does need surgery to fix this as well as if he's blacking out, Your Honor, he cannot aide me in any way and help in cross examining or questions I may need to ask because he would know this case better than I would when it comes to some of the questions as to the victim or the family members who may be testifying against him.

In addition, Your Honor, I just don't think he has

11

the capability at this point to help in his defense based on the medication and the fact that he can't even sit here without - I mean, we had to wheel him in here in a wheelchair, Your Honor. He can't walk. He can't stand up, and it hurts him just to sit. It's my concern that he wouldn't be able to help. This has been pending for three and a half years, Your Honor. He's been on bond. He's obviously here today. This is the first time we have actually been in a courtroom for a trial. It's been scheduled previously before and the State had one more of the date certain to be able to get some witnesses here. We, of course, had no problem with that. Then it got transferred from one Solicitor to another Solicitor and they had to do some additional work which didn't even happen until this past November after it had been pending for three years, Your Honor, so at this time we would ask for a continuance based on all those factors, the fact that we have not asked for a continuance before. We have been very patient with the Solicitor's Office when it comes to getting their witnesses here as well as any additional evidence they needed processed or anything which was done as late as November.

THE COURT: All right. Ms. Cavanaugh.

MS. CAVANAUGH: Thank you, Your Honor. As Ms. Good stated, this case has been pending since August of 2012.

12

This was assigned to another Solicitor in our office who left to go to the Greenville office. I received the case in November of 2015. The case, I know nothing about what was previously discussed regarding dockets before December of 2015, however, when I received the case, I was made aware that it was on the trial docket for December 14th. I wanted to make sure that everything was - that we were going to be able to call it in December. I did realize at that time that there were some swabs that were not tested at SLED. I wanted those tested before we proceeded to trial so I called Ms. Good in November and I told her we were not going to be able to go forward because I wanted to get those tested. We mutually agreed on a date in early January that it would be called on March 14th. I sent a trial notice to Ms. Good and Mr. Miller on January 6th, notifying them that this would be the trial date.

We have flown three witnesses in, one the victim and her sister and her mother. The sister lives in California. We have flown Breana in from California. We have flown Complainant in from Virginia and Ms. Miller, Tammy Miller from Florida. So we are prepared to go to trial on this. I did not learn of anything related to Mr. -- It's my understanding that Mr. Miller does not have any previous history of any sort of back pain. I could be

mistaken about that but I have never been made aware of that. Ms. Good did come to me on Friday morning to tell me that there was something major going on with his back but that she did not have concrete information from a doctor as far as the severity of that issue or that any sort of emergency surgery was needed.

Today when we met back in chambers with Your Honor, she did provide us with the little bit of documentation that her client was able to provide to her regarding what his current issue is and medications that he's currently on. I do, while not to minimize his pain, I do think that the timing is extremely inconvenient for this trial. It happened -- I don't even know exactly what caused the severe back pain, but all of it started occurring last week, the week before trial. So we think that the continuance, because there is nothing from a doctor that states that he needs emergency back surgery, that he cannot stand trial this week.

In addition to the case law, while there is nothing specific that we can find on point related to pain medication, McLaughlin v. State of South Carolina which was a 2002 Supreme Court case did hold that antiseizure medication did not render the defendant incompetent to stand trial. Also, I think the standard under State v. Welk which is a 2002 South Carolina Supreme Court case

14

outlines the standard of whether the defendant has the present ability. Just as long as he has the present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational understanding of the proceedings against him which he has had for the past three and a half years, that he is able to stand trial and that the defendant bears the burden of proving his lack of competence by the preponderance of the evidence.

THE COURT: All right.

MS. CAVANAUGH: So I just think that the timing is extremely inconvenient for this issue to surface.

THE COURT: All right. Ms. Good, other than this court's exhibit that appears to be an e-mail from Scott Kerns to Julie Taylor, I, of course, have no idea who Scott Kerns is. I assume Julie Taylor, it says on the very top, and I don't know who - there is no foundation. Ms. Taylor, I assume isn't here. That's his doctor?

MS. GOOD: Correct, Your Honor. She was the doctor he went to see. He subsequently has been to Palmetto where he had an appointment that was set up for tomorrow at Carolina Neurosurgery which is in Charlotte, I believe. I have spoken to his aunt. She may be able to give a little bit more.

THE COURT: Do you have any affidavits from a

15

doctor?

MS. GOOD: No, I don't. No, I don't, Your Honor.

THE COURT: Okay. All right. Anything other than this exhibit which, I mean, again it's an e-mail that has handwritten on it James Miller and it has a numerical list up to five that states things like this is an inflammatory response and can cause pain, facets, DJD, can cause pain. There is compression on a nerve root that's described as right-sided radiculopathy. Other than these five findings, is there anything that you have about his medical health that would prevent him from having a trial today?

MS. GOOD: No, ma'am, Your Honor. Just the fact that he's on these two medications and he's set to go see a neurosurgeon.

THE COURT: Okay. All right. The motion for continuance is denied. This case has been pending since 2012. I understand that the defendant is in pain and we will take breaks as necessary during the trial. I myself recently had surgery. We'll need to take breaks and so we will do our best to accommodate Mr. Miller with regard to his back pain, but that's no reason to continue this trial. I'll hear the next pretrial motion.

MS. GOOD: Do you want to do the defense or the State first?

and it was appropriate for the investigator to continue on with the interrogation so I will allow that statement in.

However, I agree with Ms. Good's argument that it needs to be redacted for the jury with regard to the defendant's request for an attorney or mention of an attorney so that he's not prejudiced by asking for an attorney. I understand that the State has already made that redaction. Ms. Good, have you had a chance to review that?

MS. GOOD: I have not but she has given it to me, Your Honor.

THE COURT: There will be time. If there is an issue with it, please make sure we know of that as soon as possible. All right. And we have additional pretrial motions. We'll go with the State since we are kind of checking through the list that the State has. You had a motion regarding the expert?

MS. CAVANAUGH: Yes, Your Honor. We anticipated that she would file the motion to exclude any expert testimony related to this case in the field of child abuse assessment and Dr. Allison Foster is going to be our expert in this case and she is a completely blind witness. She's never met Complainant, the victim, in this case. She has never reviewed any of The CARE House

interviews or even seen those recordings so she has had no direct interaction with this case. We believe that the case law is in support of still being able to use an expert in child abuse assessment as long as they are, in fact, separated from the case and a blind expert and certainly not a forensic interviewer.

State v. Weaverling is the first case that we believe that is the sentinel case on the matter which allows expert testimony in the field of sexual abuse, Your Honor, and just the different range of responses and the factors that play into victims of sexual abuse. Since Kromah and the other cases that have come down since Kromah, State v. Berry and State v. Brown are both Courts of Appeal cases and they have also reiterated and cited Weaverling and have both holdings related to expert testimony being allowed in these types of cases are admissible as long as they are not the individuals who are the forensic interviewers or have been qualified in the field of forensic interviewer. We would only be asking to qualify her as an expert in child abuse assessment, certainly not in forensic interviewing. And we believe the cases State v. Brown and State v. Berry which have been decided after State v. Kromah still allow for this type of testimony in these cases.

THE COURT: All right. Ms. Good.

MS. GOOD: Thank you, Your Honor. While under State v. Brown and State v. Berry, I think this case is a little bit different in that in the State's motion they have under number 5 Dr. Foster is going to be testifying based upon familiarity with the concepts and characteristics including one, CSC, two, helplessness, three entrapment and accommodation, four, dialyzed disclosure. This is essential, Your Honor, testifying as to child sexual abuse accommodation syndrome which has five factors. The first four are the four that I just mentioned. It's my argument, Your Honor, that this is different from State v. Berry. That in State v. Berry they were testifying as it related to posttraumatic stress disorder which is a recognized disorder that's tested clinically and is in the medical book.

In this case she is essentially without using the words child sexual abuse accommodation syndrome is testifying to that and in that case, Your Honor, I don't believe that syndrome qualifies under Daubert as to what she can testify to as it's not peer reviewed, it's not done in a clinical setting to determine how these different things affect children and I would ask that there be some type of proffered testimony or something before this be determined whether she can testify to it as to whether that's what she's testifying to, how it's

determined and that sort of thing.

THE COURT: Okay. Well, in the way that I have seen this issue maybe we need to compartmentalize it. At this point the question is whether Dr. Foster can testify about, be qualified as an expert in child sexual abuse and the State is making me aware that she was not the forensic interviewer and I understand why the State brought this motion. I think State versus Anderson, I think, is that new case from the Supreme Court where the Supreme Court acknowledged that there is such a thing as a child abuse expert but warned that the practice be used in Circuit Court for the expert to be someone who has not interviewed the child. That that needs to be separated. I think the State is letting the Court know that that's what's going on in this case.

So I think it's a little premature for me to make a ruling with regard to whether or not I'm going to qualify Ms. Foster as an expert and whether or not whatever syndrome she may testify about, I don't know whether she is or isn't going to testify about a syndrome, whether it's reliable and whether her qualifications are sufficient. So I think we still have to go through the regular qualifying an expert. We're going to have to have proffered testimony for that. So at this point I think it's good that we had this discussion so that we

all know what cases apply. I don't think anybody is blind to this area of the law. It's been a hot topic with the Supreme Court and we will be very careful not to overstep the bounds. It sounds to me like the State is following the directions of the Supreme Court and I can't make any ruling specifically until I hear specifically what Dr. Foster intends to testify about so we will proffer her testimony before we let the jury hear it and I'll make a ruling at that point.

MS. GOOD: And I would just ask Your Honor if that's the case that they not be allowed to describe or to mention her in opening statement. In case your ruling were to be in favor of the defense I wouldn't want something, while it's not testimony or evidence, I just wouldn't want that. I believe it's prejudicial if they hear it and it's ultimately not allowed.

THE COURT: Okay. What say you, Ms. Cavanaugh? Do you plan to mention Dr. Foster in your opening statement?

MS. CAVANAUGH: No, Your Honor, we don't.

THE COURT: Okay. Then it's not a problem. Great. Any other matters to be taken up now?

MS. CAVANAUGH: Your Honor, that's it other than to renew our reciprocal Rule 5 which we served on the defense earlier this year and then also to sequester any potential -- It's my understanding she might not have any

witnesses but to sequester any potential defense witnesses.

MS. GOOD: Your Honor, regarding reciprocal Rule 5, we have turned over everything we intend to use in our case in chief. As to sequestering witnesses, at this time I don't have any witnesses to sequester at least from the defense.

THE COURT: All right. So we'll move onto defense's pretrial motions.

MS. GOOD: Thank you, Your Honor. As we stated in chambers I do need to renew our Brady and Rule 5 material motions. I did meet with Ms. Cavanaugh and Ms. Senn on Friday morning and we went through both of our notebooks to make sure that I had everything that they have and at this point I do believe that they have turned everything over but in case that something else would come up.

THE COURT: You're protected for the record.

MS. GOOD: Right. We also moved to sequester witnesses, Your Honor. We ask that only witness that remain in the courtroom would be the alleged victim [redacted] I believe is her last name now as well as the lead investigator on the case. We do believe that everybody else should be sequestered at this point. She is of age, Your Honor. I believe she is 19 or 20 at this point so I don't believe the family members

need to be with her. We would ask to sequester all the witnesses.

THE COURT: All right. Ms. Cavanaugh?

MS. CAVANAUGH: Yes, Your Honor, as long as our lead investigator and, of course, the victim can stay in. We have the victim advocate that can remain present with her during her testimony. We don't mind sequestering the mother and the sister until they testify.

THE COURT: All right. The motion for sequestration is granted. That is typical in a criminal case. We sequester witnesses other than the lead investigator and the victim. We will allow the victim's advocate to be with the victim. And is there any, if anything after occurs, but after the witness testifies, is there going to be any objection to that witness then remaining in the courtroom?

MS. GOOD: No, ma'am.

THE COURT: Great. All right.

MS. GOOD: Next I have a motion in limine in order to prevent the State to referring to South Carolina code section 17-23-175 which essentially is that a victim in a criminal sexual conduct case need not be corroborated. We believe that this case is basically a he said/she said case, Your Honor. We believe by being allowed to mention that statute while it is a statute and it's law, it

brings extra attention to her testimony in saying that they do not - basically it's an inference that they don't have to prove her case other than them. We would ask that they not be allowed to go into this, Your Honor, and that the jury not be instructed. It is in the discretion of the judge.

THE COURT: Ms. Cavanaugh.

MS. CAVANAUGH: Yes, Your Honor. I believe the no corroboration statute is actually 63-66-57, but what we are going to ask is that that be charged to the jury. There are four cases at least that have addressed the issue and have left it to the court's discretion. State v. Schumpert, State v. Rafield, State v. Orozco and State v. Hill. All of those cases have held that as long as that charge is read in conjunction with other the standard charges such as the State has the burden of proof and we have to prove our case beyond reasonable doubt, that the credibility of the witnesses are in, that's in the jury's discretion. All of those cases that I have cited have held that it is certainly the law that applies to these cases and that the charge, that it is in the trial judge's discretion as to whether to charge that and it is certainly not reversible error if the trial judge chooses to charge that.

So we would ask that that be not only charged at the

end of this trial but also since it is the law on the case as long as we couch it in terms of the other, in terms of what you have to charge in addition to 16-36-57 that we at least be allowed to address it in opening and closing as long as undue emphasis is not placed on that particular statute given that it is the law on the case.

THE COURT: All right. On this my feeling as a trial judge, and again this is a discretionary call, certainly wouldn't be reversible error if I were to charge this and not emphasize it, but my practice has been not to charge that statute. I think it gives the impression that -- I think it's hard not to emphasize it when reading a charge and I have trouble crafting a charge that I feel does not emphasize or insinuate that the victim has more credibility than anyone else on the witness stand and no witness' testimony has to be corroborated for a jury to believe that witness.

So as a judge I will not instruct the jury on that statute. However, I will not prevent the State from arguing what is the law of our state and that is that a victim's testimony does not have to be corroborated. I just believe it's difficult to charge that without making it seem as if the burden of proof has shifted, and as the judge I would want to be very careful to keep the burden of proof on the State. But I, of course, will allow the

State to argue what is the statute passed by our legislature in the state.

MS. CAVANAUGH: Thank you, Your Honor.

MS. GOOD: Thank you, Your Honor. Next I have a motion in limine to prevent any state's expert witness to give an opinion on the truthfulness of the victim. Basically the only two that we'll with is Dr. Foster later when we deal with her proffer. The only one I would be concerned with otherwise would be Sally Williamson from The CARE House, Your Honor. I believe she was the forensic interviewer. I believe it's my understanding that they understand that they can't testify as to compelling that sort of thing, but also I want to get into the issue, I don't believe that they would be allowed to testify that based on their interview with the child this is what their recommendations were, that they believe the child, if the child needs counseling, that sort of thing. I believe that is actually addressed in the new case law that has come about. So that would be my argument on that, Your Honor.

THE COURT: Ms. Cavanaugh.

MS. CAVANAUGH: And we certainly agree. We will not seek to get the opinion of either Ms. Williamson or Dr. Foster as to the truth of the matter asserted and we certainly won't ask her whether she found -- We agree

with everything she asked. We don't intend on doing that including not asking for what the referrals were in this case.

THE COURT: All right.

MS. GOOD: Thank you, Your Honor. Next we have a motion in limine, Your Honor, to prevent the State from mentioning any references of potential miscarriages of the victim. It's mentioned several times through statements as well when she went to the hospital at one point. She believes she might have had a miscarriage as well as I believe in her physical with Dr. Luberoff at The ARC. We don't believe there is any basis any of this. She never went to the doctor. There's never been any miscarriages confirmed. I believe it would be very prejudicial for the jurors to believe she was pregnant at some point and had miscarriages if there is nothing to show that this actually occurred.

MS. CAVANAUGH: Your Honor, and I did -- Oh.

THE COURT: Go ahead.

MS. CAVANAUGH: I did address that with the victim and she did indicate to me that she's never been seen by a doctor that has officially told her that she's had a miscarriage. She has made those -- She just had very irregular periods a couple times and they were late and there were things that she read about miscarriages that

she was nervous that it happened to her. So she has not been -- She's never had a doctor say that, yes, you had a miscarriage, but she was very concerned over the course of that year during the sexual abuse that something was very off with a couple of her periods. So that was just her belief about what could have happened to her.

THE COURT: All right. Well, I'm going to allow the victim to testify about the sexual abuse. With regard to whether or not she had a miscarriage because she herself was just speculating about whether or not it happened or not and there is a danger of undo prejudice doesn't seem probative as to the issue, that's not - she's not - that's not a factor in this case and I'm going to exclude that testimony about any sort of miscarriage.

MS. CAVANAUGH: Your Honor, just a little bit further down that line, there was one specific time where she told the defendant that she had a, that her period was late. She didn't say anything about a miscarriage, but she did say, dad, my period is late. And his response to her was, well -- And I'll just disclose this to Ms. Good -- if it continues to be late, let me know and we're gonna go take care of that. So that is related.

THE COURT: That makes it more probative when she talks about speaking to her father about missing a period

and the undo prejudice is lessened because there is not this emotional factor of a fetus dying. And what say you to that, Ms. Good?

MS. GOOD: I would say obviously as to that, I mean, if that's a conversation, I mean, of course, we would say the conversation never happened. But assuming she testified to that, I don't see the problem with her testifying that that is a conversation that they had, but not go into the fact that she believes she actually had a miscarriage and lost the baby, that sort of thing.

THE COURT: I agree. Ms. Cavanaugh, just so it's clear, she can testify as to any conversations she had with the defendant regarding miscarriage or that she might be pregnant but not speak about any sort of loss of a child when there is nothing other than speculation of that happening.

MS. CAVANAUGH: Yes, Your Honor, I understand.

MS. GOOD: Finally, Your Honor, I have a motion in limine to prevent the State witnesses mentioning the defendant's alleged drug abuse. Ms. Cavanaugh has given me several statements during investigation speaking with the victim and the victim's mother and other family members that basically their intention is that Mr. Miller was consistently partying and on tons of drugs, doing all these sort of things and I believe that's very

prejudicial to the jury as there is nothing to show that he was actually on drugs. That those are outside collateral issues that are prejudicial to him as well as not relevant to this case at all and that it's going to be used to basically make the jury emotional and not like him regarding these prior bad acts that can't even be proved. So we would ask that they not be able to go into extensive history of drug history for Mr. Miller and that he was basically high on cocaine or whatever that they are saying he's on all the time.

THE COURT: Okay. Ms. Cavanaugh.

MS. CAVANAUGH: Yes, Your Honor. We have discussed this thoroughly. We do agree that there is really no legal argument that we can make that basically correlates the drugs. We concede that we will not bring up the drug use during our direct examination of our witnesses. Depending on what comes out in cross, you know, we reserve.

THE COURT: The defense could open the door to that.

MS. CAVANAUGH: Right. But we have discussed that looking at the case law. Really the drug abuse over that period or over his life we agree that that really is not probative of sexual abuse. However, there is one memory from the victim that relates to his admission that he

used a pill the first time that he actually sexually assaulted her. He said, I'm so sorry. I wouldn't have done this. I was drinking and I combined it with a pill that made me do this to you. So we believe that that is relevant and probative because it relates to a specific memory that she has of the first time that he ever sexually assaulted her. So that statement we believe is admissible regarding that one time that he took a pill when he said that to her.

THE COURT: And based on her memory it was the combination of drinking and taking that pill that caused him to --

MS. CAVANAUGH: That's the reason he gave her as to why he did that to her.

THE COURT: Okay.

MS. CAVANAUGH: And then we also have a neighbor of the Millers. Martha Penrod is going to testify. She -- Basically the relevance of her testimony is that she observed several occasions of Mr. Miler and Complainant their interactions with each other just really bothered her. Some of her observations she just did not think that it was appropriate for father/daughter touching and so she has several memories of that. She also says that there were two times where she actually made comments to him related to what she had seen as far as the touching goes.

And that was only after, he was drinking both of those occasions. It was at night. They had been - they were arguing over something, property dispute related and it escalated to the point where she said something about, well, at least I'm not sleeping with my daughter. And so the context of those two conversations were that he had been drinking that evening and they had been in an argument and so it escalated up to that point. So I think that that is different from what Ms. Good is trying to prohibit because it just relates - it goes towards - it's probative of her observations of what she observed of the interactions of the defendant and his daughter. It also just gives a context of how their argument escalated to the point of her saying that to him.

THE COURT: All right. The drinking isn't a prior bad act.

MS. CAVANAUGH: No. No. I just wanted to make -- She mentioned partying in part of her motion in limine so I just wanted to give specific examples and we do think that's admissible.

THE COURT: Okay. Well, I agree that any mention of any addiction to drugs or drug abuse by the defendant would be excluded unless there is some more probative value than I've heard. It sounds to me like the State is conceding that this would not a prior bad act that's

allowed. And I will, however, because there is specific memory from the victim that the defendant essentially admitted that he had sexually assaulted her and gave the reason for it being a mixture of alcohol and a pill, I will allow her to testify as to that specific memory. Anything else?

MS. GOOD: That's it for the defense, Your Honor.

THE COURT: All right. Well, as you heard me tell the jury I would like to start this case promptly tomorrow morning at 9:30. I will be here probably around 8:45 or so in the morning. I think I have got a matter to deal with at 9:00. If I'm needed for anything tomorrow morning, I will be available to y'all. Otherwise, y'all have a good night and we will see you tomorrow for trial.

MS, CAVANAUGH: Thank you, Your Honor.

MS. GOOD: Thank you, Your Honor.

(Whereupon, trial was adjourned for the evening at 3:30 p.m.)

March 15th, 2016

THE COURT: All right. Anything from the State or defense before we bring in the jury this morning?

MS. GOOD: At this time, Your Honor, I would like to renew my motion for a continuance. Mr. Miller has been in the emergency room all night in Columbia. He still has not been seen. He got there at 9:00 last night and he indicated to me this morning he was still there, had not been seen. I said that he needed to come or else there would be a bench warrant or we would start the trial without him. You know, at this point I'm concerned, one, the medication he's on again as well as the fact he's had zero sleep because he's been in the ER all night so I would request a continuance.

THE COURT: All right. And do you have any affidavit from a doctor?

MS. GOOD: I do not, Your Honor. I have his name where he was in the ER, but I don't have anything. And his aunt had indicated to me, too, that they would not give him verification until he had seen a doctor. Since he had still not been seen by that time he had to leave and came back here. I don't have anything from the doctor.

THE COURT: All right. Your motion for continuance is denied. Anything from the State?

MS. CAVANAUGH: No, Your Honor.

THE COURT: All right. Let's bring in the jury.

(Whereupon, the jury returned to the courtroom at 9:35 a.m.)

MS. GOOD: May we approach, Your Honor?

THE COURT: Yes.

(Side bar off the record.)

THE COURT: All right. Sir, in the gray khakis, can you tell me your name? At the end.

JOHNNIE STOVER: My name is Johnnie Stover.

THE COURT: Okay. Mr. Stover, I'm going to ask you to be the foreperson for this jury. You happen to be sitting in that seat and that's where I like my foreperson to sit so you either drew the small straw or the good straw. I'm not sure how you feel about it. Everybody on the jury will have an equal vote. It just helps to have someone who can sort of start the discussion. Also you will be responsible for signing the ultimate verdict. I'll give you more instructions at the end of the trial.

Good morning, ladies and gentlemen. I hope you enjoyed your breakfast this morning. I appreciate you all coming on time. You did a great job. It's just a few minutes after 9:30 and we are getting started. If we keep this up, we're gonna be right on track for this case

to run along very smoothly so I really appreciate that.

Madam Clerk, please swear in the jury.

(Whereupon, the jury was sworn by the Clerk of Court at 9:40 a.m.)

THE COURT: The case that we are about to try is the case of the State versus James Wayne Miller. Before we begin this trial, I want to tell you that this trial will probably be different from what you might expect. Many people do not have the chance to attend actual court sessions as you are doing now and may think from watching television or movies or reading books that trials are .

always full of high drama and intense action and that may be true in this case, but this trial is not for entertainment. It's a fundamental part of our democracy, a search for the truth in an effort to make sure that justice is done between the parties before this court.

Searching for the truth and making sure that justice is done is often slow, deliberate and repetitive. The opposite of what you may have seen on TV or read in books. This courtroom is a place of honor dedicated to the protection and preservation of citizens' rights through what many have called the greatest justice system in the world. The attorneys appearing before you are advocates for the parties, but first and foremost they are officers of this court sworn to uphold the integrity

and fairness of our judicial system and to help you in the search for the truth. You should expect them to be professional, competent and ethical in the representation of their clients' interests. You are also expected to be professional, reasonable and ethical. Thank you for accepting this important responsibility of jury service and for your contribution to our judicial system today.

What I will now say is intended to serve as an introduction to the trial of this case. These remarks are not a charge on the law in this case. I will instruct you on the law at the end of trial before you retire to consider the verdict. This is merely an explanation of the procedure that we will follow in the trial of this case so that you may better understand what may be happening.

The defendant is charged by way of indictments filed in this court with the crime of criminal sexual conduct in the second degree and incest, the elements of which will be explained to you later. The indictment is simply the charge by which the case is brought into court and it is not in any sense evidence of any of the allegations it contains. The defendant has pled not guilty to these indictments. The State, therefore, has the burden of proving the elements in the indictment beyond a reasonable doubt and it will be your duty, ladies and

gentlemen, to decide whether the State has met that burden.

Your purpose as jurors is to find and determine the facts. You are the sole judge of the facts. If at any time I make a comment regarding the facts, you must disregard it. You are to determine the facts from the testimony you hear and the other evidence introduced in court. It is up to you to determine the inferences which you feel may be properly drawn from the evidence.

On the other hand with equal emphasis the same law that makes you the judges of the facts makes me the judge of the law. The law as given by the Court is the only law you may consider. You must accept and follow it even though you may disagree with it. I cannot tell you what the facts are and you cannot disagree with me about what the law is or should be. Your job is to take the law as I give it to you and apply it to the facts as you find them from the testimony of the witnesses and any other evidence that's introduced. After doing that, you will render your verdict, a verdict under the solemn oath that you just took as jurors.

Until I tell you that you may begin to deliberate, you must not discuss this case with anyone including your fellow jurors, friends, family members and anyone involved in the case. You must decide this case based

solely on the evidence presented here in this courtroom. This means that during the trial you must not conduct any independent research about the case. Please do not try to find out information from any source outside this courtroom. You may not use computers, cell phones or other tools of technology with communication capabilities at any time while you are in the courtroom or during your deliberations. During your breaks for meals or overnight, if necessary, you may use these devices. However, you must not use them to communicate with anyone about the case until the case is over.

During the trial do not read, listen to or watch any news reports about this case. You must not consider anything you may have read or heard about the case outside the courtroom whether before or during the trial. Information on television, radio or the Internet or from other sources might be wrong or incomplete. In our judicial system it is important that you are not influenced by anything or anyone outside of this courtroom. If you become aware of another juror's violation of these instructions, please inform me immediately. It is important that you keep an open mind and not decide any issue in the case until all of the evidence has been presented, the parties have made closing arguments and I have instructed you on the law in

the case.

In just a moment the Solicitor will make what is called an opening statement in which the Solicitor will explain to you the issues in this case or at least what she thinks the issues are. The attorney for the defendant may also make an opening statement, although she is not required to do so. What the attorneys tell you during their opening statements is not evidence in this case. It is only their contention as to what the issues are. From time to time during the trial you may hear one of the lawyers say something like, "Your Honor, I believe we have a question of law or a matter of law to discuss with you." Or they may ask to approach the bench. Or sometimes I myself might find it necessary to excuse you from the courtroom for a short while so the attorneys and I can discuss a matter of law. The reason for this is because you are the judges of the facts in this case and sometimes when I'm discussing a matter of law, it may be necessary for me to make some comment as to the facts in connection with the ruling whether or not a particular law applies. I'm not supposed to tell you what I think the facts are in this case so I will excuse you from the courtroom while these discussions take place so that in no way will you be influenced by anything that I may say or do in connection with the facts.

In determining what the true facts are in this case you must decide whether or not the testimony of the witnesses is believable. It will be my responsibility to rule as a matter of law as to whether certain testimony is admissible at all or not, but once that testimony is admitted whether or not you believe it is completely up to you. You have a right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means it's your duty to pay close attention to these witnesses, to observe the witnesses, to listen to the witnesses and to pay close attention to the attorneys and to the Court.

It's your added duty, Mr. Foreperson, to preside in the jury room and be the jury's spokesperson here in court. It will also be your duty to write the verdict, but I'll give you further instructions at the conclusion of the case.

In order to preserve everyone's rights, I'll give the parties an opportunity to object to anything I said. Madam Solicitor?

MS. CAVANAUGH: No objections from the State.

THE COURT: Ms. Good?

MS. GOOD: No objections.

THE COURT: All right. We will now begin the trial. Madam Solicitor.

MS. SENN: Ladies and gentlemen, this case is about a man who sexually abused his teenage daughter for more than a year. In the summer of 2011 Complainant who just turned 16 years old, she was with her father James, her mother Tammy, her twin sister Breana and three younger siblings. She was bright, very intelligent. She was a little bit of a tomboy. She liked to be outside. She was very responsible. So responsible that she went to work with her father James almost every day to help support her family. James was the bread winner who was very unstable. He was emotionally volatile, moody, high highs and low lows. Couldn't hold down a job. He moved his family 20 times often abruptly and in the middle of the night and in the summer of 2011 while the Millers were on vacation in Camden, James convinced Tammy to move to Camden because he needed a fresh start.

It was agreed that Complainant would stay behind with James in a camper and fix up the house that they had rented on the lake.

THE COURT: Ms. Senn, could you please speak up a little bit. I think some of the jurors are having a hard time hearing you.

MS. SENN: Yes. Thank you, Your Honor. I apologize.

It was agreed that Complainant and James would stay

behind in Camden in the camper on a friend's property while they fixed up the house that they had rented. Tammy took the rest of the children back to Summerville to pack up their things. In the middle of the night while [redacted], 16 year old [redacted] was staying in this camper with her dad in a rural area with no one else around she woke up to her father performing oral sex on her. Frightened and disgusted, she ran to the bathroom. Later that night James came back to finish what he started. He pinned [redacted] down and forced her to have sexual intercourse with him. Her father, the man she had grown up with, who she trusted, who she hoped would one day walk her down the aisle, forced her to have sex with him over and over again over the next 13 months. If I can't have you, no one will. That's what James would say to [redacted] after he was finished raping her while he had a gun holstered to his belt.

When the family was living in Camden, they noticed that she was different. She was quiet, reclusive. She was angry. They couldn't figure out what was going on. She was scared to tell them. At 16 years old she felt responsible for the existence of her family. After 13 months of her father forcing her to have sex with him and threatening her, after 13 months of living with the secrecy, the shame and the fear [redacted] finally told her

mother Tammy that James had been touching her.

When deputies arrived at the scene at the Miller house, James didn't know what they were there for. Without anyone telling him that they were there for, when he saw the deputies, he began to empty his pockets, take off his belt, remove his holster and put his hands behind his head and walk towards the deputies. The deputies would later hear him say, whatever she said happened, happened. James later went and gave an interview where he made a statement. That interview is on video. I believe that video will speak for itself.

The defense is going to stand up and say that the State's case is weak because James' semen was not found in items tested. But, ladies and gentlemen, just because it wasn't found, doesn't mean it never existed there.

I, Karlen Senn, along with my co-counsel Kathryn Cavanaugh represent the State of South Carolina. You're here because James has been charged with incest and criminal sexual conduct second degree. The judge is going to tell you the law and it's the State's responsibility to prove that James Miller is guilty beyond a reasonable doubt. But listen carefully. Beyond a reasonable doubt does not mean that the State must prove he's guilty beyond all doubt.

Incest is a crime against kinship. It is illegal in

South Carolina for a man to have sex with his daughter. That's fairly easy to understand. Criminal sexual conduct in the second degree is bit more complicated. It is illegal for an actor to use aggravated coercion to accomplish sexual battery. Aggravated coercion is defined as, it means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person if the victim reasonably believes that the actor has the present ability to carry out the threat or threaten to retaliate in the future by the infliction of physical harm, kidnapping or extortion under circumstances of aggravation against the victim or any other person.

Sexual battery means intercourse, cunnilingus, fellatio, anal intercourse or any intrusion however slight of any person's body or any object into the genital or anal openings of another person's body except if such intrusion is accomplished for medically or recognized treatment or diagnostic purposes.

I apologize in advance that these subjects are difficult to listen to, uncomfortable to talk about, but your job here is extremely important. You have all been found to be qualified. You have been selected and you have just taken an oath and all that we ask that you do is that you listen carefully and that you consider all

the evidence and once the judge tells you to deliberate, we ask that you find James Miller guilty of incest and criminal sexual conduct in the second degree.

THE COURT: Ms. Good.

MS. GOOD: Good morning. Ms. Senn just got up here and told you about a whole bunch of awful subjects and I'm not going to stand here and say that they aren't awful subjects and that you don't have an easy job on your hands because you don't. However, those awful subjects is what she wants you to focus on. Never judge a book by its cover. As you start getting into this case and hearing testimony from this stand and seeing the evidence that the State has, you're going to see that they don't have the evidence to prove Mr. Miller did any of this.

What we say to you today, ladies and gentlemen, is that none of this happened. You're going to hear from witnesses who have reason to lie, have motives to want to get away from Mr. Miller that have nothing to do with criminal sexual conduct or incest in any way. You're going to hear about Tammy Miller who is his wife who wanted out. You're going to hear about how she interjects herself into this investigation. She is the one who called law enforcement a week and a half, almost two weeks later and says, hey, I think I found some DNA.

Why don't you come check on it. You're going to see how she has tried to line everything up along with her daughter so that they could get away and do what they wanted to do and move on with their life in the way that they wanted to move on with their life. Not live by his rules and under his control.

Ladies and gentlemen, the State has the burden to prove to you beyond a reasonable doubt, and that means a reasonable person hesitates to act when finding somebody guilty. You're going to see all they have are these witnesses who have reason and motive. You're not going to see any DNA evidence. And while Ms. Senn says just because it's not there, doesn't mean it never was there, in a home where Mr. Miller lived and supposedly raped Complainant over and over again as well as having sexual intercourse with his wife it's nowhere whatsoever, in spite of the fact that she says, hey, come here. I think I got some DNA right here for you.

You will see a medical exam for Complainant that doesn't show anything. You will see an investigation with the defendant's statements that they are saying he claims he could have potentially done this. I want you to watch those statements, ladies and gentlemen. Nowhere does he ever say that he did this. He denies it from day one. I want you to hear how everything happens from the

time it transpired and [redacted] conduct over the course of that year and after she discloses this.

I'm not going to sit up here and talk to you forever because I want you to hear from these witnesses. I want you to determine their credibility because that is your job.

My name is Anna Good. It's a privilege for me to represent my client James Miller. At the end, after you have heard all the evidence, both the defense and the State, we're gonna come back and ask you to find him not guilty. Thank you.

THE COURT: All right. The State can call their first witness.

MS. CAVANAUGH: May it please the Court. The State calls Corporal Brooks Houser.

Thereupon,

CORPORAL BROOKS HOUSER

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: Lonnie Brooks Houser.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Good morning, Corporal Houser.

A. Good morning.

Q. Where are you employed?

A. I'm employed at the Elgin police department.

Q. How long have you been with the Elgin police department?

A. One month.

Q. Where were you employed previous to the Elgin police department?

A. Kershaw County Sheriff's Department.

Q. How long were you with the Kershaw County Sheriff's Department?

A. Almost 11 years.

Q. And what positions did you hold with the Kershaw County Sheriff's Department?

A. Of course, initially I was a patrol deputy, was promoted in 2011 to corporal supervisor, then promoted further in 2013 to investigator. I have also been a school resource officer as well.

Q. You say you were promoted to corporal in 2011?

A. Yes.

Q. And in August what were some of your duties as a corporal?

A. Well, basically as a corporal I still had basic duties as a patrol deputy, but I was first line supervisor in the chain of command. I still responded to calls just like a regular road deputy at the time.

Q. Okay. And on August 11 of 2012 were you still a corporal at that point?

A. Yes.

Q. Did you respond to a call that afternoon around 1:20?

A. Yes.

Q. What was the nature of that call?

A. It came out to responding units as a disturbance.

Q. Okay.

A. It was a disturbance, but CAD had it as a disturbance, but it came out as a mother had found out recently that her husband had forced their daughter to have sexual intercourse with him.

Q. Okay. And what location did you respond to in relation to this call?

A. We responded to [redacted] in Camden, Kershaw County, South Carolina.

Q. And once you arrived at the location, what time did you actual arrive that afternoon?

A. At 1:41 p.m.

Q. And what was that location? Was it -- What was your understanding of that home?

A. I'm sorry.

Q. Is that where the Millers lived?

A. Yes.

Q. Okay. Were you the only officer that responded that afternoon?

A. No.

Q. Who else responded?

A. Deputy Justin Scott and Deputy Cody Wilson.

Q. Upon arrival what did you first observe? Who did you first come in contact with?

A. Ms. Tammy Miller, the complainant which is the victim's mother.

Q. Where was she when you first spoke to her?

A. In the driveway on the left side of the house.

Q. How did she appear to you at that time?

A. She was highly upset, hysterical, crying.

Q. Was anybody around Tammy when you first saw her?

A. No.

Q. At that point what did she relay to you?

MS. GOOD: Objection, Your Honor. Hearsay.

THE COURT: All right. Ms. Cavanaugh.

MS. CAVANAUGH: Your Honor, we're not asking this for the truth of the matter. It's just to explain the course of his investigation.

THE COURT: Any response?

MS. GOOD: Your Honor, I mean, I'm not sure what his answer is going to be, but I'm sure it's going to be what the daughter related to her which would be double hearsay

which would go to the truth of the matter asserted, what the daughter said.

THE COURT: Repeat your question to him so I can understand what your question was.

MS. CAVANAUGH: Upon arrival, what did Tammy the complainant relay to him.

THE COURT: Okay. And you are arguing the purpose for which you are seeking that information is not for the truth of the matter. What would the purpose be?

MS. CAVANAUGH: Yes, Your Honor. To allow him to discuss the course of his investigation. I believe State v. Rice allows this type of testimony from the responding officer.

THE COURT: Objection is overruled. You may answer that question.

BY THE WITNESS:

A. Again, when Ms. Miller approached me in the driveway, she was upset, hysterical. She stated to me that her daughter [redacted] told her that her father Mr. James Miller had forced her to have sexual intercourse with him several times over the past year.

BY MS. CAVANAUGH:

Q. Okay. And you said she said it was her daughter?

A. Yes.

Q. And what was her daughter's name?

A. Complainant

Q. And where was Complainant when you were talking to Tammy. Did you see where Complainant was?

A. She was on the dock that extended out into the lake.

Q. Did you notice anybody else outside of the home like other children or anybody else at that point?

A. No.

Q. Was James outside when you first began speaking with Tammy?

A. Not at first.

Q. Did you eventually see James?

A. Yes.

Q. When was the first time that you saw James?

A. Moments after speaking with Tammy I noticed James walk onto the dock and start talking to Complainant his daughter.

Q. As soon as you saw that occurring, you had basic information about what the complaint was at that time, correct?

A. Yes.

Q. What did you do once you saw James down by the dock?

A. Myself along with other units that were on scene Deputy Scott and Deputy Wilson, we approached Mr. Miller and our effort was at that time to separate him from his daughter

and to detain him.

Q. Okay. And what did you observe James doing at the point that you all were walking down towards the dock?

A. Well, when he saw us approach, he began to walk towards us and then he began to unhook his belt and take everything out of his pockets and he turned around and placed his hands behind his head. And also, I mean, we never even said a word to him prior to him doing this. This was without any commands of any type.

Q. So what you're saying is he had no idea why y'all were there?

A. Correct.

Q. And you said he took off his belt, he emptied his pockets and he held out his wrists?

A. Yes.

Q. Upon him doing that, what was your next step?

A. At that point we escorted him to my patrol car and placed him in the back seat and he was detained. He was not free to leave. At that point I called for the on-call investigator which was Investigator Justin Dill to see about further investigation, whether or not Investigator Dill needed to speak with him or any type of interviews needed to take place. Investigator Dill told me --

MS. GOOD: Objection, Your Honor. Hearsay.

MS. CAVANAUGH: I'll rephrase my question.

BY MS. CAVANAUGH:

Q. You said you spoke to Investigator Dill?

A. Yes.

Q. He was the on-call investigator at that point?

A. Yes.

Q. What did you do with James at that point after he spoke to Investigator Dill?

A. I advised him of his Miranda Rights and asked him if he wanted to make any statements or wanted to tell his side of the story.

Q. At this point again had you explained to him or any other responding officers, explained to him why you were there?

A. No.

Q. So after you advised him of his Miranda Rights, what did he say to you?

A. At that point again after he understood his Miranda Rights, he stated, whatever she says, that's what happened. If she said it, it's not a lie.

Q. Now, as a responding officer is it your - is it one of your duties to get every single detail from James at that point?

A. Well, at that point, uhm, you know, we don't - we try to get, you know, the initial information. Uhm, further investigation is usually left up to the on-call or another

officer.

Q. Was he, in fact, transported to the Sheriff's Office?

A. He was.

Q. Okay. To speak with Investigator Dill?

A. Yes.

Q. Now, before he was taken to the Sheriff's Office, you said you separated him from everybody at the house, correct?

A. Correct.

Q. Where was he, uhm, placed while you all were still speaking with the victim and her mother?

A. He remained in the back seat of the patrol car. He was supervised by another officer and the vehicle was running as well as the air conditioning.

Q. Because it was in August?

A. Absolutely.

Q. And did you speak to Complainant and her mother?

A. I did.

Q. Where did you speak to them?

A. Inside the house, the living room.

Q. So separated from where James was?

A. Yes. Sight and sound separated.

Q. Okay. And, uhm, you said you arrived around 1:40 that afternoon?

A. Yes.

Q. What time was James actually transported to the Sheriff's Office?

A. Pardon me just a second.

Q. And just so the jury is aware, what are you referring to?

A. The dispatch CAD report.

Q. These are just notes taken from that day by the officers?

A. Yes, and by the dispatchers who logged the information in from time of arrival and certain things.

Q. And part of your duties in this case is also to make an incident report?

A. Yes.

Q. Did you also write the statement?

A. I did.

Q. Okay.

A. It appears that Mr. Miller was transported to the Sheriff's Department at 2:22. Or am I reading that right?

Q. Was it about 3:00?

A. Yeah. Okay. 3:00.

Q. Okay. Did you take him to the Sheriff's Office or was that someone else?

A. It was another officer.

Q. Now, I'm going to take you back to the actual, when

you said you first saw Tammy.

A. Okay.

(Whereupon, State's Exhibits #3 through #5 marked for identification.)

BY MS. CAVANAUGH:

Q. I'll show you these photographs, State's 3, 4, and 5 and ask you if you recognize these?

A. Yes, I do.

Q. Okay. And what do those photographs actually depict?

A. That's the location where we responded that day.

Q. So [redacted]?

A. Yes.

MS. CAVANAUGH: Your Honor, at this time I would ask that State's Exhibit 3, 4, and 5 be admitted into evidence.

THE COURT: Any objection?

MS. GOOD: No objection.

THE COURT: They're so admitted.

BY MS. CAVANAUGH:

Q. Corporal Houser, do you remember anything about the driveway of the home?

A. Yes.

Q. Was it a long driveway?

A. It wasn't too particularly long, no, but it does

extend a little further than what the photograph shows, a little bit more out this way.

Q. So where did you park your vehicle?

A. I believe I was up on the upper part on the shoulder of the road, the gravel road upper part around this area here (indicating.)

MS. CAVANAUGH: Okay. And I'm going to ask, may the witness step closer to the jury, Your Honor?

THE COURT: Yes.

BY MS. CAVANAUGH:

Q. So show the jury again where you parked your vehicle.

A. I was parked more around this area here. May not be shown in the photo but right around this area (indicating.)

Q. And where did you first see Tammy Miller that afternoon?

A. It was in the driveway around where we parked at in the driveway, this part.

Q. And do you see the dock in that picture?

A. Yes.

Q. Is it further down from where you first met Tammy?

A. Yes.

Q. Okay.

THE COURT: Just for the record, what photo are you referring to?

MS. CAVANAUGH: State's Exhibit 4.

THE COURT: Thank you.

BY MS. CAVANAUGH:

Q. And then in State's Exhibit 5, is this the actual dock that you mentioned previously?

A. Yes.

Q. Is that where Complainant was?

A. Yes.

Q. So going back to State's Exhibit 5 again, where was the first time that you saw James?

A. By that time we saw him walking to the dock. At first though he was - we seen him come almost out of - I don't know exactly where he was coming from, but through the backyard and onto the dock.

Q. Okay. You can have a seat. Thank you, Corporal Houser.

A. (Witness complies.)

Q. Now, you spoke about how Tammy appeared and seemed that day. And can you say that again?

A. She was very upset and crying and hysterical.

Q. Okay. And you had an opportunity to speak to Complainant

A. I did.

Q. And how did she -- What was her demeanor?

A. Uhm, not as, I guess, quite verbally upset but very

much distressed.

Q. Okay. And did you ask Complainant to give you a statement, a written statement?

A. Yes.

Q. And how did you - what did you ask her? Was it a question and answer statement?

A. It wasn't. Generally my, you know, when I ask for a written voluntary statement, I tell whoever is giving the statement to write in good detail their side of what happened and to make sure that whatever they say is truthful.

Q. And did you -- But it wasn't like this question and answer, a long drawn out statement?

A. No. It wasn't.

Q. And this case was going to be turned over to an investigator, right?

A. Yes.

Q. And did you do - did you ask Tammy to do the same thing?

A. Yes.

Q. Okay. Did she, did Complainant indicate to you when the sexual assaults began?

A. She did.

Q. When was that?

A. Uhm, Complainant stated that the incidents began around mid July of last year. By last year, since this was 2012,

last year would have been 2011.

Q. Did she indicate to you where the sexual assaults occurred?

A. Yes. She stated that the sexual assault occurred while they were staying in the camper.

Q. And any other locations after the camper?

A. Uhm, also again another incident she had described that occurred when they moved into the new house.

Q. What time did you actually leave the home that afternoon?

A. I believe its logged at 4:25 p.m.

Q. Where did you go after you left the Miller home?

A. I don't recall exactly where I went right after that, but I know that it was within about an hour and a half until our end of shift and with the report with this magnitude I definitely was going to be working on it that evening.

Q. Okay. So did you go back to the Sheriff's Office?

A. Yes.

Q. And was the case handed over to Investigator Dill?

A. Yes.

Q. And Corporal Houser, the person who you took to detain that afternoon, what was the name of that person?

A. James Miller.

Q. And is he in this courtroom?

A. He is.

Q. Can you point him out for the jury?

A. The gentleman in the dark blue hooded sweatshirt.

MS. CAVANAUGH: Your Honor, let the record reflect that he's identified James Miller.

THE COURT: So reflected.

BY MS. CAVANAUGH:

Q. And again, what did he state to you that afternoon?

A. Uhm, he stated, uhm, whatever she says, that's what happened. If she says it, it's not a lie.

Q. And you mentioned that he walked towards y'all. Was he in a wheelchair at that point?

A. No.

Q. After you went back to the Sheriff's Office, was that the extent of your involvement in this case?

A. Yes. After I finished the report and turned all of my report and my statements over to the investigator, that was all of my involvement.

MS. CAVANAUGH: Thank you, Corporal Houser. Please answer any questions from the defense.

CROSS EXAMINATION

BY MS. GOOD:

Q. Corporal Houser, you had no idea who she is when he says whatever she says, do you?

A. I can't - I can't actually state for certain. No, I

cannot.

Q. So he could have been talking about Complainant He could have been talking about Tammy? He could have been talking about any person that was there; is that correct?

A. That's possible.

Q. You said that you arrived on scene about 1:41 p.m. and you met with Tammy Miller first, correct?

A. Yes.

Q. Where was Complainant at that time?

A. I don't Complainant ? I'm sorry. She was on the dock.

Q. So Tammy was not with Complainant when you showed up?

A. No.

Q. Okay. So Complainant was by herself?

A. At that point, yes.

Q. Where was Tammy when you showed up? Was she in the house? Was she outside? Where was she?

A. She was outside in the driveway.

Q. Okay. So she was there waiting for you?

A. Yes.

Q. When you got the CAD call, did it indicate where the defendant was, where Mr. Miller was? Whether he was at home? Whether he was away or anything?

A. No.

Q. Okay. You stated -- Do you have the pictures?

I want to show you State's Exhibit 3. Tammy you said was right about here when you met with her and Complainant was down here on the dock?

A. Yes.

Q. Where did you first see Mr. Miller?

A. Coming through the backyard.

Q. So right here?

A. No. Not there. Probably more towards around the back of the house.

Q. Can you point to it kind of?

A. The best I can. He's probably more around like on the other side of the house but I don't know if he was in the house or if he was in the woods.

Q. At that point you were aware that he was the potential suspect?

A. Correct.

Q. About how far from where he was to the end of the dock?

A. Maybe 50 yards.

Q. Okay. As soon as you saw him, what did you do?

A. Oh, at that time myself and the other deputies, we went to go separate him from Complainant and detain him.

Q. Did you call out to him in any way while he was walking down to the dock?

A. We did not.

Q. So you allowed him to walk all the way down to the dock to the end to where Britly was?

A. At that point, you know, we're still talking with Tammy and he comes out of nowhere so we responded accordingly.

Q. How long did it take you to get from where you were in the driveway with Tammy down to the dock?

A. Less than a minute.

Q. Okay. Were you in full uniform?

A. I was.

Q. Was Officer Scott and Officer Wilson also in uniform?

A. Yes.

Q. Did you have guns on you?

A. Yes.

Q. Tasers?

A. Yes.

Q. You all three were going down at the same time?

A. Yes.

Q. All right. You stated that you then detained him and you have no idea what he thought about why you were there, do you?

A. I'm sorry.

Q. You have no idea what Mr. Miller was thinking about why you were there, do you?

A. No.

Q. So you don't know why he took his belt off or anything?

A. I can't testify to that. No.

Q. You stated you then put him in your patrol car. Your patrol car has a video, correct?

A. I'm - I can't remember if it did or not honestly.

Q. If it had a video, would you have been running your video --

A. Yes.

Q. -- to show any statements that would have been made while Mr. Miller was in that vehicle?

A. Yes.

Q. But you don't remember if you had one or not, correct?

A. I can't remember.

Q. When you gave him his rights, how did you give him his rights?

A. Verbally.

Q. How do you determine what those rights are when you give them to him?

A. How do I determine what they are?

Q. Do you read them from something or do you just do them off the top of your head?

A. No. I have them, you know, standard Miranda

Rights.

Q. And at that point that's when he says whoever she is, and you don't know who she is, correct?

A. I can't be certain.

Q. How long was he in the car approximately?

A. Maybe 45 minutes. 30, 45 minutes.

Q. You stated earlier here in your testimony that the air conditioning was on, correct?

A. Yes.

Q. In fact, yesterday didn't you testify that you weren't sure if it was on? You assume it was?

A. Of it being in August I would assume yes.

Q. But your testimony is different today than it was yesterday, correct?

A. Apparently.

Q. Okay. And he was transferred. You talked to Complainant before or after he left the scene?

A. He was still on scene, I believe, but he was separated.

Q. Where did you speak with her?

A. Inside the house.

Q. So she came up from the dock?

A. Yes.

Q. You said she was not as verbally upset as the mother was?

A. No.

Q. You said you got a written statement from her and you tell people when they do a written statement to be as detailed as possible, correct?

A. Yes.

Q. What you just testified she only told you about two times that he allegedly assaulted her?

A. The two different locations.

Q. Okay. And that's what she told you that day?

A. Yes.

Q. And she wrote that on scene about only a page and a half, correct?

A. Correct.

Q. Those are the only two times she told you about that day?

A. Pardon me a minute.

Q. Check your notes.

A. There's more incidents described but only two different locations.

MS. GOOD: No further questions.

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Corporal Houser, Ms. Good just asked you, she said it only happened twice. I would like to point you to the bottom of the first page of her statement.

A. Right.

Q. Can you read that one sentence?

A. From starting at "the next"?

Q. "When."

A. "When we moved into our new house to finish working on it, he had sex with me constantly."

Q. Okay. That's fine. Thank you. So it was more than just twice, correct?

A. Correct.

Q. And again when you went towards the dock, were your guns drawn?

A. No.

Q. Were your Tasers out?

A. No.

Q. What was his response as soon as he started walking towards y'all?

A. He started unhooking his belt and taking everything out of his pockets and then placed his hands behind his head.

Q. And in any way did you indicate to him that you were there specifically for him --

A. No.

Q. -- to arrest him?

A. No.

Q. And that was his response when he saw you?

A. Yes.
Q. And it's after that what did he say to you?
A. He said that whatever she says, that's what happened. If she said it, it's not a lie.
MS. CAVANAUGH: Thank you. No further questions.
THE COURT: Corporal, you may step down. Thank you very much.
MS. SENN: The State calls Justin Scott.
Thereupon,
DEPUTY JUSTIN SCOTT
after having been first duly sworn, testified as follows,
THE CLERK: Please have a seat. After you're seated, please state your full name for the record.
THE WITNESS: Charles Justin Scott.
DIRECT EXAMINATION
BY MS. SENN:
Q. Good morning, Deputy Scott. How are you?
A. Good.
Q. What do you do?
A. I work for the Kershaw County Sheriff's Department. Been there for about six years.
Q. Do you have any other law enforcement experience?
A. Just with, all with Kershaw County Sheriff's Department. That's all I have ever done.
Q. Were you working in your present capacity in August

of 2012?

A. Yes, ma'am, I was.

Q. Okay. Did you have an occasion to become involved in this case?

A. Yes, ma'am, I did.

Q. What did dispatch tell you before you arrived on scene?

MS. GOOD: Objection, Your Honor. Hearsay.

MS. SENN: Your Honor, again --

THE COURT: Not offered for the truth of the matter asserted?

MS. SENN: Yes, Your Honor.

THE COURT: Overruled. Go ahead and answer that question.

BY THE WITNESS:

A. Say that again please.

BY MS. SENN:

Q. Yes. What did dispatch tell you before you arrived on scene?

A. It was a possible incest complaint.

Q. And so were you the first to arrive on the scene?

A. No, ma'am, I wasn't.

Q. What was your role? When you arrived, what was your role?

A. Uhm, Deputy Houser had arrived first. He was the

contact officer. I was there just basically there for his back up and to assist him in his investigation.

Q. When you arrived on the scene, what did you see?

A. Well, I didn't see Deputy Houser when I first arrived because he was actually around the back, but when I got around there, he was talking with the victim's mother. I believe it was Tammy.

Q. Did you see Complainant

A. Yes, ma'am. She was, uhm, down at a dock. It's a pretty long dock. She was sitting at the end of it.

Q. Once you approached Tammy and Deputy Houser, what did Tammy tell you?

MS. GOOD: Objection, Your Honor. Hearsay.

THE COURT: Ms. Senn.

MS. SENN: Again, it's not for the truth of the matter asserted but to explain his investigation.

THE COURT: Overruled. You may answer the question. And, Ms. Senn, if you will repeat the question for him.

BY MS. SENN:

Q. When you approached Deputy Houser and Tammy Miller, what did you hear Tammy tell Deputy Houser?

A. Uhm, that James and his daughter Complainant, James had been having basically a sexual relationship with his daughter, uhm, but I guess they had already talked a few minutes because I didn't arrive there for a few minutes after so I kind of got

the last part of the story but I knew, you know, some of the things that she had said that happened so I kind of had a general idea of kind of what was going on.

Q. What time did you arrive on the scene?

A. I may not have the same one. It's not showing up on here.

MS. SENN: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. SENN:

Q. So you're saying that you arrived within a few minutes of Deputy Houser?

A. Yes, ma'am.

Q. Okay. So when did you first see James Miller?

A. Uhm, I didn't see him until after I arrived and I went around back, located Deputy Houser, uhm, and I was only there for a few minutes and then, uhm, I saw James. He come from the side that we actually parked our cars at but I didn't see where he come from other than I know he come from the left side of the house.

Q. So where was he when you first saw him?

A. Uhm, he was walking from the left side of the house down towards the victim [redacted] Complainant

Q. Explain the layout of that dock. Do you just walk out of the house and go straight down? Are there steps?

A. No. It's a real steep hill going onto the dock and

then the dock, of course, is straight out but the backyard is real steep.

Q. Okay. So did you see James speak to Complainant on the dock?

A. Uhm, he had approached her but before he approached her, I didn't see him until he was actually, you know, close to the dock already and knowing what I knew or knowing what the victim's mother Tammy had already told us, I didn't want the victim and the possible suspect to interact, you know, for her safety, the case that was going on so that's when I went down there.

Q. So you walked down there by yourself or with other deputies?

A. No. Deputy Wilson went down there with me.

Q. Okay. Were your guns drawn?

A. No, ma'am.

Q. Explain again what your intention was in going down to the dock?

A. I just - I didn't - knowing what I knew, what the victim's mother Tammy had told me, I didn't want the suspect to approach the victim. I didn't know what would happen when he did so for the safety of the victim and to keep the suspect from, you know, getting close to or start talking to the victim, I wanted to separate him from her.

Q. Okay. So what happened next once you started

walking down to the end of the dock?

A. By the time that, like I said, by the time I realized that he was actually going down there, he already made it close to the dock, uhm, so I went down there. Just walked down there. As I was walking down there to get him to bring him back up there he, uhm, he had already made contact with her and was pretty close to her already, beside her. Uhm, he turns around and takes his belt off and takes things out of his pockets and puts his hands behind his head and I just walked up to him and he turned around and puts his hands behind his back.

Q. Okay. About how many seconds were James and Complainant on the dock alone?

A. It wasn't long because by the time I realized, like I said, by the time I realized that he was going to her, I started making my way that way also.

Q. Did you ever speak to James before you got to the end of the dock?

A. No. I just walked down there and just basically just to get him away from her.

Q. Did you ever tell him to empty his pockets and put his hands behind his head?

A. I never said nothing to him. He done that from a distance away as I was walking up to him.

Q. Okay. So then what happened next after he was

detained on the dock?

A. Uhm, he was detained. We walked him back up to the one of the patrol cars. I can't remember whose patrol car he was actually put in. At that point in time based on what we had been told and, you know, everything that was going on, the totality of everything that was going on we go ahead and read him his Miranda Rights in the back seat of the car.

Q. Did you read him his rights?

A. No, ma'am.

Q. Okay. But you were present for them?

A. I was right beside the officers that were, the officer that read him his rights.

Q. Did James seem to understand his rights?

A. Yes, ma'am.

Q. Did he say anything at that point?

A. Uhm, after, uhm, his Miranda Rights were read to him, I asked him, uhm, was there any, you know, try to get his side of the story and I asked him, you know, if there was anything he would like to say and he basically said, whatever she said is what happened. Whatever she said is not a lie.

Q. At that point had you told James what he was being accused of?

A. No, ma'am.

Q. Had anyone told James what he was being accused of?

A. No, ma'am.

MS. SENN: Please answer any questions that the defense has.

CROSS EXAMINATION

BY MS. GOOD:

Q. Good morning, officer?

A. Good morning.

Q. You stated that when you got there, Deputy Houser or Corporal Houser was already there, correct?

A. I believe it was Corporal Houser, yes, ma'am.

Q. He was speaking with Tammy?

A. Yes, ma'am.

Q. Did you see Complainant anywhere at that point?

A. She was down there at the dock.

Q. So she wasn't with Tammy?

A. No, ma'am.

Q. And you stated when you saw James going down towards the dock, you started going down there, correct?

A. Yes, ma'am.

Q. Were you in front, middle, back? Who all went with you?

A. It was just me and Deputy Wilson that I can recall that went with me.

Q. So you don't remember Corporal Houser being with you; is that correct?

A. You talking about being on the scene?
Q. No. Going down to the dock?
A. No. I don't remember him going down there.
Q. Okay. So it was you and Deputy Wilson. How fast were you going down to the dock?
A. Not fast.
Q. Were you moving quickly?
A. No. That is a steep hill. I wasn't trying to run down there.
Q. So you weren't that concerned about Mr. Miller getting to Complainant then?
A. I was concerned but I didn't feel like I needed to sprint down there.
Q. When you went down there, did you call for him in any way? Say, hey, Mr. Miller, come up here?
A. No, ma'am.
Q. When you walked down there, were you in full uniform?
A. Yes, ma'am.
Q. You had a gun?
A. Yes, ma'am.
Q. Was your hand on your gun just in case he tried to do something?
A. No.
Q. Okay. I'm going to show you what's marked as

State's Exhibit 4. Do you recognize this?

A. You're talking about this area right here?

Q. Yes.

A. This is close to where we parked at.

Q. Where was Mr. Miller when you first saw him?

A. When I first saw him, he was making his way down here close to the dock down here. I wasn't actually paying attention, you know, to back this way. I just happened to look down at the victim and he was already near the dock.

Q. Did she see him coming? Do you know if she turned around and saw him?

A. I don't recall if she saw him coming.

Q. What was her demeanor at the time?

A. I was not close to the victim.

Q. When you got down there, you were close to her, correct, to the dock?

A. He walked back toward me.

Q. Okay. So he walked back from the dock towards you?

A. Mm-hmm.

Q. All right. And you stated that after you detained him, you put him in the car, correct?

A. Yes, ma'am.

Q. And you were there when his rights were read and he made a statement regarding "she"?

A. Yes, ma'am.

Q. You don't know who "she" is, do you?

A. No, ma'am.

Q. And isn't -- You have been doing this for six years, correct?

A. Yes, ma'am.

Q. And after you come upon an incident, are you always asked to write a statement of some sort as to what your involvement was, like an incident report or just a statement in general so that anybody can remember?

A. I just - any time we go on a call and there's a crime that's happened, we do incident reports but we don't always write statements. The deputy doesn't always write a statement.

Q. In this case you wrote a statement; is that correct?

A. Yes, ma'am.

Q. When you go through training, isn't your training to make sure you're very specific about everything because as with this case we're here three and a half years later and you want to make sure you remember everything?

A. Yes, ma'am.

Q. And, in fact, in your statement that you wrote that night you wrote down nothing about Mr. Miller making any statements, did you?

A. Give me one second please.
Q. Sure.
No, ma'am, I didn't write that in my statement.
MS. GOOD: No further questions, Your Honor.
THE COURT: All right. Any redirect.

REDIRECT EXAMINATION

BY MS. SENN:

Q. Deputy Scott, when did you write your statement?
A. It would have been that same day. The time was at 3:35.
Q. What day did you say you wrote your statement?
A. It would have been the same day of the incident which was August 11th, 2012.
Q. Okay. What date does your statement have on it at the top?
A. August the 12th, 2012.
Q. So you wrote the statement the day after the arrest was made?
A. Yes, ma'am.
Q. Okay. When you were writing your statement, when you write a statement, how specific are you usually?
A. Usually I'm pretty specific but I do recall about this statement right here. Uhm --
Q. So sorry to cut you off but because something is not in your statement, does that mean it didn't happen?

A. No, ma'am, it don't.
Q. So do you remember Mr. Miller --
A. I do remember. Everything I testified to is what I remember.
Q. So you remember him saying whatever she said happened happened?
A. Yes, ma'am, I do.
MS. SENN: Okay. Thank you. No further questions.
THE COURT: All right. You may step down. Thank you, sir.
MS. SENN: The State calls Deputy Cody Wilson.
Thereupon,
DEPUTY CODY WILSON
after having been first duly sworn, testified as follows,
THE CLERK: Please have a seat. After you're seated, please state your full name for the record.
MS. GOOD: Your Honor, may we approach?
THE COURT: Yes.
(Side bar off the record.)
THE COURT: Go ahead.
DIRECT EXAMINATION
BY MS. SENN:
Q. Thank you. Deputy Wilson, it's pretty self explanatory. What do you do?

A. I'm a patrol deputy with the Kershaw County Sheriff's Department, answer routine calls, work simple investigations. That kind of thing.

Q. How long have you been with the Sheriff's Department?

A. Not quite five years.

Q. Were you employed in your present capacity in August of 2013?

A. Yes, ma'am, I was.

Q. Okay. How did you become involved in this case?

A. I was dispatched to the call with the other three or four units that responded out there.

Q. When you arrived on scene, what did you observe?

A. When I arrived on scene, I observed the complainant. I believe she met us somewhere around the side of the residence.

Q. Who was the complainant?

A. The complainant was Complainant mother. I'm not sure of her first name.

Q. So you made contact with the victim's mother and then what happened?

A. Uhm, at that time, uhm, I observed, uhm, the defendant, uhm, along with his daughter Complainant uhm, were on the dock. She was sitting on the corner of the dock. He was probably less than five feet away from her, uhm, talking with

her at that time.

Q. What did you do at that point?

A. Uhm, at that time, uhm, we started to, uhm, myself along with the other deputies, uhm, moved down the hill. Uhm, it's a pretty steep incline going down there. Uhm, we approached them.

Q. What did you observe James do when you were approaching him?

A. Uhm, when we approached him, uhm, observed him, uhm, first take off his belt, start to remove everything from his pockets, uhm, and he also placed his hands above his head, uhm, and actually both hands on the back of his head.

Q. Did you or the other deputies tell James to empty his pockets and put his hands behind his head?

A. Uhm, no, ma'am.

Q. Did you tell him what he was being accused of?

A. Uhm, no, ma'am.

Q. After James was detained, what happened next?

A. Uhm, I believe we, the subjects were separated, uhm, actually, uhm, the defendant, uhm, he was, uhm, he was never advised that he was under arrest of any kind. Uhm, just kind of wanted to separate them. Uhm, he was taken to a patrol car so we could kind of figure out what was going on, what the situation was.

Q. Was James Miller read his Miranda Rights?

A. Uhm, yes, ma'am, I believe he was.
Q. Did you read those rights?
A. No, ma'am.
Q. But you heard them read?
A. Yes, ma'am.
Q. Did he act as though he understood his rights?
A. Yes, ma'am.
Q. Did you hear James say anything while you were putting him in the patrol car?
A. Yes, ma'am. Actually while he was walking to the patrol car, uhm, he uttered out, uhm, to his wife, uhm, it's not how it was and for her to understand.
Q. Okay. What did you do from that point until you left the scene?
A. Uhm, from that point, uhm, I assisted inside, uhm, with the victim and along with the complainant, uhm, and as far as the defendant I didn't really assist in any other way after that.
Q. Okay. Did he make a statement in this case?
A. Yes, ma'am.
Q. What day did you complete that statement?
A. It was the same day.
MS. SENN: Thank you. Please answer any questions that the defense has.

CROSS EXAMINATION

BY MS. GOOD:

Q. Good morning.

A. Good morning.

Q. When you arrived, who was already on scene?

A. Uhm, I believe, uhm, Corporal Houser at that time, uhm, I believe was the initial responding officer and, uhm, I believe, uhm, Deputy Scott as well.

Q. Were you standing with all of them when you first saw James?

A. Uhm, yes, ma'am.

Q. Who called your attention to James? Did you see him first?

A. Uhm, I'm not exactly sure who seen him first. I think it might have been at the same time. We all just kind of seen him down there.

Q. But when you saw him, you said he was pretty much next to Complainant on the dock, correct?

A. Right.

Q. And he was speaking with her?

A. Yes.

Q. What was her demeanor? What was she doing?

A. Uhm, she seemed to have her face down and like I said, she was looking what appeared to be towards the water --

Q. So she just sat there?

A. -- at the edge of the dock. Yes, as far as I could

tell.

Q. Where was Tammy this whole time?

A. I'm, uhm, not exactly sure where she was. At this time I was kind of focusing my attention down towards the dock.

Q. But when you got there, Tammy was up there and not with Complainant; is that correct?

A. Right. She was up at the house.

Q. You stated all three of you went down there to the dock?

A. Uhm, yes, ma'am.

Q. When you were bringing him back, you stated he was not under arrest but was he in handcuffs?

A. Uhm, I don't recall whether he was in handcuffs or not.

Q. When he made the statement, you have to understand, it wasn't like that, you have no idea what he was talking about, do you?

A. Uhm, at that time, no, ma'am. Not really. He just uttered out statements.

Q. Okay. And after he was in the car, you stated you went in the house and was dealing with the alleged victim and the complainant, the mother?

A. Yes, ma'am.

Q. What was your involvement there?

A. Uhm, just as far as just assisting in anything I could assist with. Uhm, just kind of standing by inside the house, uhm, in case Corporal Houser or Deputy Scott needed my assistance for anything.

Q. Did you talk to anybody?

A. Uhm, no, ma'am. I don't really recall talking to anybody. Nothing of any substance.

Q. And did you see the victim and Tammy Miller gave statement?

A. Uhm, yes, ma'am.

Q. Were they next to each other when they were doing that?

A. Uhm, I don't recall if they were or not.

Q. So you don't remember if they were in separate rooms or if they were together?

A. Uhm, no, ma'am.

MS. GOOD: No further questions, Your Honor.

THE COURT: Any redirect?

MS. SENN: Yes.

REDIRECT EXAMINATION

BY MS. SENN:

Q. Deputy Scott, when you approached the defendant on the dock, you didn't tell him that he was under arrest?

A. No, ma'am.

Q. And when you were putting him in the patrol car, you

knew the allegations of what he was being accused of?

A. Yes, ma'am.

Q. But did he?

A. Uhm, I'm assuming he did, yes, ma'am.

Q. Did you ever tell him what he was being accused of?

A. No, ma'am.

Q. Did Officer or Corporal Houser or Deputy Scott tell him what he was accused of?

A. Uhm, no, ma'am, not that I'm aware of.

MS. SENN: Okay. Thank you. No further questions.

THE COURT: All right. Thank you. You may step down. Thank you very much. All right. It's almost 11:00. Let's take a quick ten minute break. It's about 10:50 now so let's be back in the courtroom at 11:00, take a comfort break and we'll resume the trial at that point. Again please do not discuss this case until I instruct you that you can start deliberating. You can talk to each other about anything but this case. Thank you.

(Whereupon, the jury entered the jury room.)

(Short recess.)

(Whereupon, State's Exhibits #6 through #25 marked for identification.)

(Whereupon, the jury returned to the courtroom at 11:10 a.m.)

THE COURT: All right. Welcome back, ladies and gentlemen. Madam Solicitor, you may call your next witness.

MS. CAVANAUGH: The State calls Deputy Tom Hathaway.

Thereupon,

DEPUTY THOMAS SHERWOOD HATHAWAY

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: Thomas Sherwood Hathaway.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Is it sergeant now?

A. Yes, ma'am.

Q. Sergeant Hathaway, where are you employed?

A. Kershaw County Sheriff's Office.

Q. How long have you been employed with the Sheriff's Office?

A. Approximately five years.

Q. Your position now is sergeant?

A. That's correct.

Q. And what are some of your duties and responsibilities in your role at the Sheriff's Department?

A. Right now I work with our DUI task force that also does interdiction and drug enforcement.

Q. Back in August of 2012 were you with the Sheriff's Department?

A. Yes, ma'am.

Q. What was your role specifically on August 11, 2012 with the Sheriff's Department?

A. My role at that point I was a road deputy. I was dispatched to the scene to transport a defendant back to the Sheriff's Office.

Q. Okay. Just to back up a little bit, when you say you were dispatched to the scene, what scene was that?

A. The scene was up on, I believe it was Turkey, yes, Wild Turkey Road.

Q. You said, you indicated what your role was. What was your role at that point?

A. My role was to assist and also to transport.

Q. Okay. What time did you actually arrive at [redacted]?

A. I arrived just a little after 3:00. 3:03 to be exact.

Q. Were other deputies already on scene at that point?

A. That's correct.

Q. What did you do upon arrival?

A. When I arrived on scene, I got out with the other deputies. We talked for a few moments. At that point the defendant was in the back of Corporal -- I'm trying to think of his name -- Brooks' car. At that time I did get out of my car. I talked with them. He was in the back of the car. And then shortly thereafter he was placed in the back of my car and transported back to the Sheriff's Office.

Q. Okay. Did you take -- When you say the suspect, is he in the courtroom today?

A. Yes, ma'am.

Q. Can you point him out for the jury?

A. Right over here.

Q. What's he wearing?

A. He's wearing a pull over with a blue "H" on the front of it.

Q. And, uhm, when you first approached him in Corporal Houser's car, do you remember whether the air conditioner was on in that car?

A. I don't remember if the air conditioner was on in that car. I know it was warm out there. The air conditioner was on in my car. The defendant didn't appear to be uncomfortable in any way so I would have to say it most likely was.

Q. About how long were you on the scene before you took him to the Sheriff's Office?

A. Approximately ten minutes.

Q. When you were at Wild Turkey Lane, did you hear him, him being James, the defendant, did you hear him say anything?

A. I overheard him say several times whatever she said. Whatever she said.

Q. When you took him to the Sheriff's Office, what time did you say that was?

A. I departed the scene at 3:14.

Q. Did you have any conversations with Mr. Miller about the case in that transport?

A. No, ma'am.

Q. Did you ask him anything about the case whatsoever?

A. No, ma'am.

Q. What time did you arrive at the Sheriff's Office?

A. Arrived at the Sheriff's Office at 3:35.

Q. Who did you meet at the Sheriff's Office at that time?

A. That was Investigator Dill.

Q. Who is Investigator Dill?

A. He was the on-call investigator.

Q. Okay. Was Mr. Miller -- Did Investigator Dill take over with Mr. Miller at that point?

A. He took over at that point, yes, ma'am.

Q. What did you do once Investigator Dill took over?

A. I was there at the Sheriff's Office. I had some other duties that I needed to take care of at that point.

Q. Okay. What did you do -- Did you have any further interaction with James?

A. Not while he was being interviewed, no, ma'am.

Q. Okay. Did you at some point take him to the detention center?

A. Yes, ma'am. I was instructed at that time, it was approximately 4:02, to take the defendant to the detention center.

Q. That was a little under 30 minutes later?

A. That's correct.

Q. When you arrived at the detention center, did he indicate to you at that point that he wanted to speak to Investigator Dill?

A. That is correct.

Q. From your transport from the Sheriff's Office to the jail, did you have any discussions with him about the case?

A. No, ma'am.

Q. Did you ask him anything at all related to the allegations?

A. No, ma'am.

Q. Did you notify Investigator Dill that he wanted to speak to him?

A. I did.

Q. What time was that?

A. That was shortly after I arrived at the distribution center which was 4:10.

Q. The distribution center?

A. I'm sorry. At the detention center.

Q. Okay. So 4:10 you notified Investigator Dill that he wanted to speak to him?

A. Approximately, yes, ma'am.

Q. Did you take him back to the Sheriff's Office?

A. No, ma'am.

Q. Did Investigator Dill come pick him up?

A. That's my understanding, yes, ma'am.

Q. And again, the person that you heard at Wild Turkey Lane saying whatever she says is true, whatever she says is true, can you point him out in the courtroom?

A. (Indicating.)

MS. CAVANAUGH: Your Honor, let the record reflect that he has identified Mr. Miller.

THE COURT: So reflected.

MS. CAVANAUGH: Thank you, Sergeant Hathaway.

CROSS EXAMINATION

BY MS. GOOD:

Q. Just a couple questions. You stated when you heard him say whatever she said, was he in your vehicle at that

point or at the scene?

A. No, ma'am. It was at the scene.

Q. Okay. So he never --

A. He was not in my vehicle.

Q. So he never said that in your vehicle?

A. No, ma'am.

Q. And you have no idea who she is, do you?

A. No, ma'am.

Q. And you said you don't remember if the air was on in Corporal Houser's car?

A. No, ma'am. I did not get into his car so I wouldn't know that.

MS. GOOD: No further questions, Your Honor.

THE COURT: All right.

MS. CAVANAUGH: One quick question.

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Sergeant Hathaway, did he appear uncomfortable to you at that time?

A. Yes, ma'am.

Q. I'm sorry?

A. Yes, he did appear comfortable.

Q. Comfortable?

A. Yes, ma'am.

Q. Not uncomfortable?

A. No. Comfortable.

MS. CAVANAUGH: Thank you.

THE COURT: Thank you. You may step down. You may call your next witness.

MS. CAVANAUGH: The State calls Complainant

Thereupon,

Complainant

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: Complainant.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Complaina how old are you?

A. 20.

Q. Where do you live right now?

A. Virginia.

Q. Who do you live with in Virginia?

A. My husband.

Q. What is your husband's name?

A. Tyler.

Q. What's his last name?

A. Complainant

Q. How long have y'all been married?

A. Almost a year.

Q. What do you do?
A. I go to school and work part-time.
Q. What are you studying right now?
A. Personal training.
Q. What does Tyler do?
A. He is active duty military.
Q. What branch?
A. Marine Corps.
Q. How long have you lived in Virginia?
A. Five or six months.
Q. I'm gonna ask you to scoot a little closer to the microphone and speak up, okay, Complainant
A. Five or six months.
Q. Where did you -- So you didn't grow up in Virginia?
A. No.
Q. Where did you grow up?
A. A few different towns around South Carolina.
Q. What are those towns?
A. Charleston, Summerville and Camden.
Q. Do you have any brothers and sisters?
A. Yes.
Q. Who are they?
A. I have a twin sister Breana and three younger siblings.

Q. You said three younger siblings?
A. Yes.
Q. And what are their names?
A. Xavier, Emma and Collin.
Q. How old are they?
A. Nine, 12 and 14.
Q. So who is the youngest?
A. Xavier.
Q. How old is Emma?
A. 12.
Q. So Collin is the oldest?
A. Yes, ma'am.
Q. And you all are six years apart, you and Collin?
A. Yes.
Q. Who are your parents?
A. Tammy and James.
Q. And were they married throughout your childhood?
A. Yes.
Q. You said you have a twin Breana. Is she a fraternal twin or identical twin?
A. Identical.
Q. Where does she live now?
A. She lives in California.
Q. What took her to California?
A. Her husband is active duty. He's in the Navy.

Q. So how long has she lived in California?
A. Uhm, I'm not sure. Almost a year maybe.
Q. Are you and Breana close?
A. Yes.
Q. So you said you lived in several different towns in South Carolina. Where were you born?
A. North Carolina.
Q. Do you know how long you lived in North Carolina?
A. I don't.
Q. Do you know about how old you were when you moved to South Carolina?
A. I don't remember.
Q. Were you young?
A. Yes.
Q. Okay. Do you remember where you went to elementary school?
A. I don't remember. It was a couple different ones.
Q. Okay. So did y'all, did your family move often during your childhood?
A. Yes.
Q. Can you estimate how many times you moved?
A. Around 20.
Q. So from the time that you were born until 18, 19, around 20 times?
A. Yes.

Q. Were you eventually home schooled?

A. Yes.

Q. When did that start?

A. Uhm, we became home schooled a couple times. I can't remember exactly what grades, but we went back and forth between home schooling and public school.

Q. Do you remember what time -- What about all through high school. Were you in public school during high school?

A. We were not.

Q. So were you home schooled during high school?

A. Yes.

Q. What about middle school?

A. I believe we went to one or two grades in middle school and home schooled the other.

Q. So from essentially that last grade in middle school about eighth grade on you were home schooled?

A. Yes.

Q. Who did most of your -- Who taught you most of your subjects and went through your assignments and everything with you?

A. My mom.

Q. Did she work during your childhood?

A. Not that I can remember.

Q. What about your father James, did he work?

A. He did.

Q. What type of work did he do?
A. He was in construction.
Q. So that involved manual labor?
A. Yes.
Q. What type of construction projects would he work on?
A. All sorts. He built homes, remodeled. Along those lines.
Q. So you can see that he's in a wheelchair today. Throughout your childhood was he in a wheelchair?
A. Never.
Q. Going back to you and your twin sister Breana, even though y'all are twins, did y'all have a lot of the same interests and activities?
A. We did not.
Q. How would you describe y'alls differences?
A. She enjoyed being inside and drawing and helping my mom with the kids and I preferred to be outside, uhm, and doing physical work and playing outside.
Q. So would you describe yourself as a tomboy?
A. Yes.
Q. Okay. Did you like to hunt?
A. Yes.
Q. Did you fish?
A. Yes.

Q. Who taught you how to do those things?
A. James.
Q. And what about -- So Breana was more of an inside child?
A. Yes.
Q. Was she, would you say she was closer with your mom or your growing up?
A. Uhm, probably my mom.
Q. What about you? Did that change over time?
A. Occasionally it did, but for the most part I was closest with James.
Q. Okay. Did you ever go to work with him?
A. I did. Almost every day.
Q. So when did that start?
A. I can't remember what age, uhm, but I worked with my dad for a few years, I think.
Q. During high school?
A. Yes.
Q. Before -- When did you move to Camden?
A. We moved to Camden in 2011.
Q. That summer?
A. Yes.
Q. So before you moved to Camden, did you go to job sites with him and projects with him before you moved to Camden?

A. I did.

Q. Did he teach you how to help him with the projects?

A. Yes.

Q. So what all types of remodeling and work did you know how to do?

A. We reroofed a lot of roofs, tile. Just along those lines.

Q. Okay. So you said you went with him often to his job sites. What about how would that work with your home schooling?

A. When I would go during the day, I would finish my school in the evening and sometimes I would stay home and do school.

Q. So when did you -- You said you moved to Camden around the summer of 2011?

A. Yes.

Q. Can you describe how that decision was made? What were you all doing when you learned that you were going to be moving to Camden?

A. We were on vacation around the Fourth of July, I think, and we all stayed at a friend's house. We had a camper and we were there for the week. We decided that it would be a good idea to move to Camden to get a fresh start.

Q. So that decision was made while y'all were in Camden

on vacation?

A. Yes.

Q. To your knowledge, was there any discussions prior to that vacation of moving?

A. No.

Q. And you said you were on vacation in a camper. Can you describe, was it a big camper?

A. It was a medium to large camper that had a pull out in the front and a couch and table, they all folded down into beds and there was a bunk bed in the back so we all could fit.

Q. How many days were you and your, approximately days, were you and your family together in that camper on vacation?

A. Approximately a week.

Q. Okay. Describe the -- Do you remember who slept where in the camper on vacation?

A. My mom and dad slept in the front. I believe I slept on the couch and my twin and Emma slept on the table which was turned into a bed and the boys slept in the bunk beds.

Q. Where was the camper parked?

A. In a friend's backyard.

Q. Which friend was that?

A. Mike Norwood.

Q. Where they family friends?
A. Yes.
Q. Did they have children?
A. They did.
Q. So your siblings played with those kids?
A. Yes.
Q. Okay. What happened once a decision was made that you all were going to move there?
A. We decided -- We found a house. It needed a little bit of work. We decided that my mom was going to take my sister and the little kids back home to pack and me and my dad would stay behind and fix the house.
Q. When you say "back home", where did your mom take the rest of the kids?
A. I think Summerville is where we lived.
Q. And you stayed behind with your dad James?
A. Yes.
Q. And at that time did that seem unusual that you were the to be the one to stay behind?
A. No.
Q. Why was it not unusual?
A. Because I was always the one with him helping him work.
Q. Did you want to stay behind?
A. Uhm, I did, uhm, but I did want to say good-bye to

my friends before we moved because I knew it would be a while.

Q. Did you have that opportunity?

A. No.

Q. But the fact that you stayed with James to help, you knew how to do that, right?

A. Yes.

Q. And did you fight your mom or your dad on that decision at all?

A. I did not.

Q. So was the house that y'all found, was it already furnished?

A. It was.

Q. What type of work still needed to be done?

A. There was a few minor things with the house. I can't remember exactly, but there was a lot of yard work. It was real overgrown. We had to fix the dock, I think.

Q. Was the house on the lake?

A. Yes.

Q. Is that -- What lake was that?

A. Lake Wateree.

Q. Okay. So when your mom and your siblings left and you stayed behind, did something happened?

A. Yes.

Q. And what happened to you while you were alone with

James during that period of time?

A. Oh, we ended up moving the camper to Mike Norwood's boat shop.

Q. Speak up just a little bit.

A. We had moved our camper to Mike Norwood's boat shop to keep it there so we could stay in the camper while the house was being ready to move in. One night I was tired and I wanted to go to bed and he was out of the camper by the fire with a buddy. I don't remember who it was. Uhm, they were drinking and just talking and I had went to bed, fallen asleep and I don't remember what time it was, but a few hours, had to have been a few hours because I had fallen asleep, I had woken up to him performing oral sex on me.

Q. Okay. And when you say that he was performing oral sex on you, what was he doing specifically?

A. He - he was - he had his mouth on me.

Q. What did you do when you woke up to that?

A. Uhm, when I woke up, he had my legs and I couldn't move. I ended up pushing him off and I ran back to the bathroom in the camper.

Q. And what part of the camper were you sleeping in that night?

A. When I had fallen asleep, I was in the front bed because he said I could have the full bed in the front and he would sleep on the couch.

Q. Okay. So there's a bathroom in the back?
A. Yes.
Q. Did you say anything to him when you woke up?
A. I did. I said he was disgusting and I was really upset and I ran to the bathroom.
Q. Did you do anything to try to get him to stop?
A. Uhm, I started pushing him off of me.
Q. And you went to the bathroom?
A. Yes.
Q. What happened after you went to the bathroom? Can you estimate how long you stayed there?
A. Uhm, approximately 15 minutes. Uhm, I was really scared. I didn't know what just happened. I was confused and I remember thinking that I was just going to act like it never happened and in the morning, because I didn't have a phone at the time so I couldn't call anybody and we were there. There was nowhere to go. So I was going to wait until the morning and just take his phone and call my mom. Uhm, he ended up coming back to the bathroom, knocked on the door and said he was sorry. He didn't know what just happened. It was an accident. Please come back to bed. It will never happen again. And I ended up opening the door and I went to the couch because I was not going to get back in the bed and I laid there maybe about 20 minutes and he was standing there just saying he was sorry. He didn't mean to. He didn't know

what he was doing. It just happened. And I can't recall why but for some reason he said that he was going to stay on the couch this time and that I could go back to sleep and that he was sorry. So I did. I got back in the bed and I shut the little door. It didn't lock. It slid shut and I laid there for a while before I fell back asleep and I had woken up again and he was on top of me trying to have sex with me.

Q. And so when you say -- Had you been able to fall back to sleep at that point?

A. I wasn't fully asleep. I was dozing in and out a bit. I was afraid to fall sleep but I was extremely tired. We worked all day so I couldn't stay awake fully.

Q. So when you say you woke up to him trying to have sex with you, was he actually in you at that point?

A. He had taken my shorts off and he - he had - he had held my hips and he was trying to penetrate me.

Q. So what did you do when you woke up for the second time that night to him doing that?

A. I immediately tried to push him off and I got really upset. I started crying and told him to stop. I was pushing him. I was hitting him and he would not let me get up.

Q. And did he - was he able to have sex with you?

A. Yes.

Q. Did you try to get up?

A. I did. I did.

Q. Were you able to?

A. I was not.

Q. Did he say anything to you while he was raping you that night?

A. He - he said he needed to finish what he started.

Q. So after that happened, what did you do after that?

A. He had finished and he had gotten up and walked back to the bathroom. I don't know what he did. And I laid there crying. I couldn't go anywhere. I couldn't run to the bathroom. It was done. I didn't know what to do so I laid there crying the rest of the night and he fell back to sleep like nothing had ever happened. And at this point I still wanted to get his phone and call my mom to try and get help but by the time the morning came he had gotten up, gotten ready for work, went outside and I went to the bathroom, gotten dressed like everything was okay. I didn't want to act upset. I didn't want him to think that I was going to say anything at that moment because I didn't know what would happen. I walked outside and he was waiting at his truck and he had grabbed my arm and he began telling me that if I ever said anything, the family would be ruined. It would be gone forever. We would be on the streets. We would be nothing without him. And he just kept on repeating that. And at the time we were very sheltered. We didn't have anybody. I

didn't know better. I had no reason not to believe him because my family was all I had so I ended up telling him I wasn't going to say anything if he promised it would never happen again. It was just a mistake. But I can't say anything because the family would be ruined. They would be gone and I wouldn't have anybody ever and so he went on that day like nothing ever happened.

Q. Did he try to - did he blame anything for why he did that that particular night?

A. He did. He said he was drinking and took a pill and he couldn't control himself.

Q. So when he was telling you that the family would be ruined, that y'all would be essentially on the streets without him if you told, did he say that in a threatening manner?

A. He did.

Q. Did he touch you or hit you or anything when he was saying this?

A. He didn't hit me but he had a hold of my arm.

Q. Okay. So how did you feel the rest of that day?

A. I was very sick. I didn't want to be around him. I couldn't look at him. I just stayed away the whole day. While he was working outside, I stayed inside and just trying to figure out what exactly I needed to do.

Q. Okay. At about -- So at that point after he said that to you while he was grabbing your arm, were you still -

what was your plan as far as were you going to tell your mom? What were you thinking along those lines?

A. I wasn't going to say anything because I was scared of losing my family.

Q. Did it happen again before your mom and your siblings came back to Camden?

A. It did.

Q. And do you remember the next time it happened?

A. That night.

Q. Where did that occur?

A. At the house we were moving into.

Q. Okay. So you said earlier the house was already furnished, it just needed some cleaning up?

A. Yes.

Q. So you all moved in that night. Where did it happen in the house the second time?

A. Uhm, I - I - I think upstairs. I believe there was a bed upstairs and a couch downstairs and there was a few other random pieces of furniture in the house but I believe it was upstairs.

Q. And again that particular night did you do anything to try to get him off?

A. I did.

Q. What did you try to do?

A. I pushed him. I tried to get him off me. I was

yelling at him and he just acted like I wasn't doing anything and he just held me down and he just got what he wanted.

Q. You're small now. You were 16 at this point?

A. Yes.

Q. Do you remember what your size was? Were you small then?

A. Yes.

Q. Okay. So about how long were you and James together before your mom and your siblings came back to Camden?

A. Approximately two weeks, I think.

Q. Did it occur more than those two times over that two week period?

A. Yes.

Q. And did you - were they -- Where did they occur?

A. In the house.

Q. Throughout that two week period did you continue to try to fight him off?

A. I did.

Q. And was he still - did he still say anything to you either while he was doing it or after he was doing it?

A. Every time after he would repeat what he said to me the first time, that the family would be ruined and I wouldn't have anybody.

Q. Did you believe him?

A. I did.

Q. While your mom and your siblings were in Summerville over that two week period you said you didn't have a phone?

A. Right.

Q. Did James have a phone?

A. He did.

Q. Were you able -- Do you remember speaking to your mom over that two week period?

A. Maybe one or two times.

Q. Okay. Were you looking forward to your mom and your siblings coming back?

A. Yes.

Q. Why were you excited about that?

A. I was hoping that as soon as they got there it would stop.

Q. Because prior to the camper and prior to the move to Camden, had this ever occurred?

A. No.

Q. And prior to the camper, were you with your family?

A. Yes.

Q. Your entire family?

A. Yes.

Q. So you were hoping that things would go back to normal?

A. Yes.

Q. Did he say anything as far as giving you a warning or anything like that before your family came back?

A. He just - he wanted to reassure himself that I wasn't going to tell them and he just continued the same threats of me losing my family.

Q. So you made the decision not to tell your family at that point?

A. Yes.

Q. Did the rapes stop when they came back?

A. They did not.

Q. When your mom and siblings came and moved in, how were the bedrooms arranged?

A. There was a master bedroom downstairs. My mom and dad took that bedroom. Me and my twin took the big upstairs bedroom and my little sister had her own room and the two boys shared a room upstairs.

Q. So the master bedroom is downstairs?

A. Yes.

Q. And that was where your mom and James were going to sleep?

A. Yes.

Q. And then you and Breana were going to share a room upstairs?

A. Yes.

Q. I'm sorry. Did you say your little sister had her

own room?

A. Yes.

Q. And the boys had their room?

A. Correct.

Q. How long did that, were those the room assignments?

A. Approximately a month or two. I can't remember exactly.

Q. Okay. And while you shared a room with Breana did anything happen?

A. Yes.

Q. Okay. Can you describe what happened while you were sharing a room with Breana?

A. He would continue to come in the room occasionally. It did happen a few times while she was asleep in the same room. We had separate beds at the time. It was a large room.

Q. And he would do it to you then?

A. Yes.

Q. Before the move -- Let me ask you this: Did he, when you shared a room with Breana, did he ever sleep in the same bed?

A. No.

Q. So he would come in at night and then leave?

A. Yes.

Q. How were you and Breana -- Were you and Breana getting along at this point?

A. We were off and on.

Q. Y'all were 16?

A. Yeah. We were going through our sister phase. We argued a lot.

Q. Okay. Over any big things or was it just little small sister fights?

A. Sister fights about clothes or shoes and just things like that.

Q. Okay. Because y'all weren't getting along so well did you stay in the same room?

A. We did not.

Q. So eventually y'all got different rooms?

A. We did.

Q. Okay. Tell me about that.

A. Uhm, they had - my dad and my mom had gotten tired of us arguing all the time and my dad said it would be a good idea if we just separated rooms so we wouldn't be together all the time and so my little sister moved in with Breana to the big room and I took over my little sister's bedroom.

Q. Okay. I'm going to show you some pictures. I'm going to show you what's marked as State's Exhibit 15, 16, 17, 18, 19, 20, and 22. Glance through those and tell me if you recognize these pictures. Take your time.

A. (Witness complies.) I do.

Q. Do these pictures depict the stairs and the upstairs of your home?

A. Yes.

MS. CAVANAUGH: Your Honor, I have already shown these to the defense lawyer. At this time I would ask that 15 through 20 be admitted as well as 22.

THE COURT: Any objection?

MS. GOOD: No objection.

THE COURT: All right. They are so admitted.

BY MS. CAVANAUGH:

Q. These are the stairs. Where do these stairs lead up?

A. The upstairs bedrooms. There's a bedroom to this side and two bedrooms to this side.

Q. Okay. And is this the entrance to one of the bedrooms?

A. Yes. That was my sister Breana. That was her bedroom.

THE COURT: Make sure the alternate jurors can see that as well.

BY MS. CAVANAUGH:

Q. And that is the one that she moved into when you all switched rooms?

A. No. When we switched rooms, she shared a room that

was next to mine. It was the bigger bedroom.

Q. Okay. So this was her room and she shared it with Emma though?

A. No. We changed rooms again after this room change.

Q. Okay.

A. So that was towards the end of everything Breana had gotten her own room.

Q. I got you. Did you ever stay in this room?

A. No.

Q. And which bedroom is this?

A. Breana's.

Q. So the same bedroom that we just looked at.

A. Yes.

Q. And I'm showing you what's marked as State's Exhibit 20. What room is that in the house?

A. That is the big bedroom that my twin sister Breana and Emma shared when I got my own room.

Q. Okay. State's exhibit 18, 19, and 22, are these all pictures of your room?

A. Yes.

Q. State's Exhibit 22, is that your bed?

A. It is.

Q. This is the bedroom that you moved into by yourself, right?

A. Yes.

Q. Again State's Exhibit 18 with the encyclopaedias, is that your bedroom?

A. Yes.

Q. Is that the entrance to your bedroom?

A. Yes.

Q. And all of those rooms are upstairs?

A. Yes.

Q. Okay. So approximately how long between the time that you moved into the house until you told your mom what had been happening did you have your own room?

A. Uhm, when we switched rooms?

Q. Did you have your own room for a period of time?

A. Yes.

Q. And about how long was that?

A. I had my own room for the rest of the year.

Q. So would you say more than six months?

A. Yes.

Q. Once you got your own room, what started happening?

A. He slept in my bed every night.

Q. So he began to sleep in your room?

A. Yes.

Q. Did your mom know that he was coming upstairs?

A. She did.

Q. And did she - was she upset about that?
A. She was confused but he had said because he could sleep in my bed because he fell asleep easier. My bed is more comfortable than hers.
Q. And did she grow to be frustrated about this?
A. Very.
Q. Did you see them arguing about this very thing?
A. Uhm, maybe once or twice, but they kept their arguments in private.
Q. When he would come and sleep in your bedroom, what would he do while he was in there?
A. He would continue to rape me.
Q. Okay. Did you eventually stop fighting him off?
A. I did.
Q. And about how long into him sexually assaulting you did you stop fighting?
A. Several months.
Q. To be clear, when you stopped fighting, did you want him to be having sex with you?
A. No.
Q. Why did you stop fighting?
A. I was tired. I felt trapped. I felt like it was my obligation to do, to just lay there because if - if days that went by and he didn't get what he wanted, he would take out his anger on the family and I felt like it was my fault.

Q. So when you wouldn't let him do it -- So there were times that you wouldn't let him and he wouldn't do it?

A. Yes.

Q. Did you see a change in his behavior on those days?

A. I did.

Q. Can you explain that change?

A. He - he would walk around really angry. He would raise his voice at the kids. He would get mad at them for no reason. He would get mad at my mom and he just treated them like they should not be treated.

Q. And would he -- Was that different from when you would just let him go ahead and assault you?

A. Yes.

Q. Now, you testified that him coming in your room sleeping at night was a new thing, new to Camden and him beginning to rape you was new to Camden. Did he start to carry anything around his waist?

A. He did.

Q. What was that?

A. He began carrying a gun.

Q. Before he started raping you, did he ever have a gun?

A. No.

Q. Did you ever see a gun on his person before this

started happening?

A. No.

Q. Did he wear it every day?

A. Yes.

Q. Did you continue to go work with him?

A. I did.

Q. And just like you did before he started raping you?

A. Yes.

Q. Why did you continue to go to work with him?

A. I didn't have a choice not to.

Q. Can you explain that?

A. Uhm, he needed help. He didn't have anybody to work for him. He had his own business and I was the only one there to help so it was my place to continue to go and help to help provide for the family.

Q. So it was you didn't have a choice?

A. Correct.

Q. You were 16?

A. Yes.

Q. You lived in the home with him. Did your mom, at this point did your mom know what was going on?

A. No.

Q. Did you ever tell her that you didn't want to go with him?

A. Sometimes.

Q. What would her response be?

A. She would shrug it off and just say that I'll be home soon. It will be okay. Just go to work and you will be home.

Q. These job sites that you would go to, were they houses?

A. Most of them.

Q. Were they empty houses?

A. Uhm, sometimes.

Q. Would he rape you in these houses?

A. He would.

Q. Was that during the day?

A. Yes.

Q. Do you remember some of the times that he would do that at the houses?

A. I do.

Q. Was there -- Would it be different than when he would go into your bedroom at night?

A. No.

Q. Would the houses be furnished?

A. Yes.

Q. So would he use the people's furniture to do this?

A. Occasionally.

Q. Occasionally what else would he do?

A. Take me in the bathroom.

Q. Were there times when people were present at the homes that y'all were working on?

A. Yes.

Q. And would he rape you when the people were home?

A. He would.

Q. How many times do you remember that happening?

A. Uhm, only a few times.

Q. Do you have a specific memory of one of those times?

A. I do.

Q. Can you tell me about that? Tell the jury about that.

A. We were working on Mike Norwood's mom's house reroofing it and she was upstairs. We don't know what she was doing. She was home. He just walked in the house and locked the bathroom door.

Q. Do you remember anything specific about what he did to you in the bathroom that day?

A. He just pulled my pants off and bent me over and got what he wanted and left.

Q. So when you say bent you over, did he bend you over anything?

A. The counter.

Q. The bathroom counter?

A. Yes.

Q. So was he behind you?

A. Yes.

Q. Speaking of being behind you, did he ever try to have anything other than vaginal sex with you? Did he ever try to put it in other areas?

A. He attempted to.

Q. Was he successful in doing that?

A. No.

Q. Why not?

A. I - I had already become so passive at this point because I was scared of what would have happened if I said no, uhm, and I had gotten to a certain point and I just, if I was going to allow this, I can't - I can't allow anything else.

Q. So you did enough for him not to be able to have anal sex with you?

A. Correct.

Q. Other than the time in the bathroom when Ms. Norwood -- How old was Ms. Norwood?

A. I can't recall. She was elderly.

Q. When she was upstairs and he did that to you in the bathroom, is there another time that you remember where somebody was at a job that y'all were working on?

A. I don't think it was a different location. I think it happened two or three times in that same house.

Q. When he would come into your room or when he would rape you at the job site, for instance, when you knew Ms. Norwood was upstairs, did you think about screaming?

A. I did.

Q. What caused you not to scream?

A. I was scared of what could have happened.

Q. Now, you said that he always carried a gun. Did he ever directly threaten you with that gun?

A. Not directly.

Q. Where would the gun be when he would rape you during this period of time?

A. He had a gun holster that was attached to his belt so it was always around his waist.

Q. So would he -- I mean, would he pull his -- How -- Would he pull -- What would he do with his pants when he would rape you?

A. Most of the time he would just slide them down a little but.

Q. So the gun was always right below his waist?

A. It was.

Q. You said he never threatened you with it directly. Did it still scare you that that gun was there?

A. I was very scared.

Q. Other than him saying to you, you know, this is going to ruin the family, you're going to be homeless if you

tell, did he ever make any other threats to you?

A. He did.

Q. Do you remember what those were?

A. He would always say if he can't have me, nobody can.

Q. How did that statement make you feel?

A. Personally it scared me a lot more because I took it as if he really can't have me and nobody can have me, then I would just - I would be gone.

Q. You were home schooled. Your mom did most of your teaching?

A. Yes.

Q. Were there times during the day at your house that you and James were alone?

A. Yes.

Q. Can you describe how that would occur?

A. We had a large family so they would have to make grocery store runs often. I never was really allowed to go. My dad made my mom take my sister and all the kids with her.

Q. And so she would go to the grocery store and she would take your younger siblings?

A. Yes.

Q. Would Breana go?

A. Yes.

Q. And, I mean, was she told to go? Did she want to

go?

A. She wanted to go.

Q. So you were left behind. Did you want to go with them?

A. I did.

Q. Did you get to go with them?

A. No.

Q. Why not?

A. Because he said he needed my help. My mom would say stay and help him. We'll be right back.

Q. Again, she didn't know that he had been touching you or --

A. No.

Q. -- sexually assaulting you at this point?

A. No.

Q. When they would go on errands and you would be left alone, would he use some of those opportunities to rape you?

A. He would.

Q. Did you all have a long driveway?

A. We did.

Q. Was it paved?

A. We had two separate driveways actually. There was a gravel driveway I guess would be in front of the house and there was a long dirt driveway going to the back of the house where the lake is.

Q. Okay. I'm going to show you what's marked as State's exhibit 3 and 4. This road right here, would you consider that part of the driveway?

A. No.

Q. Okay. So where does the driveway begin?

A. The first driveway, there's a car right here, that's a gravel driveway that goes, I guess, I don't know if it's the front or back. It goes around and you parked beside the house.

Q. Okay. So would you say the front of the house faces the lake?

A. Yes.

Q. So the back of the house faces the road?

A. Correct.

Q. Okay. Where would your mom -- Was there one car or two cars?

A. One.

Q. Where would she typically park the car?

A. It would be on the dirt driveway towards the front of the house.

Q. So when cars approach, can you hear them when you're inside?

A. You can hear them and see them through the kitchen window.

Q. So when he would -- When your mom and your siblings

would go on errands and he would sexually assault you inside the home, where would he do that mostly inside when they were on errands?

A. Everywhere. Just depended on where I was at the time.

Q. If a car came, could you hear the car from inside?

A. Yes.

Q. Was there ever a time that your mom came home early?

A. Yes.

Q. Do you remember a specific time?

A. I do.

Q. Can you describe that?

A. She had just left for the grocery store. He waited until the truck was gone out of the driveway and couldn't see it anymore and I was on the couch and he started assaulting me on the couch and we heard the truck come in and heard a door shut and he jumped up and got in the shower and just acted like he was taking a shower.

Q. So you were left on the couch?

A. Yes.

Q. Were your pants up or down at that point?

A. They were halfway. There was a blanket that he threw over me so I just stayed on the couch like I was watching TV.

Q. And he jumped up and ran to the shower?
A. Yes.
Q. So he heard your mom coming before she actually came inside?
A. He did.
Q. Were there days when he would rape you more than once?
A. Yes.
Q. How often would that occur when he would do it multiple times during the day?
A. Some days it would be several and some days it wouldn't be at all.
Q. That was over the course of the year?
A. Yes.
Q. Did he ever cause you, did that ever cause you pain, physical pain down there?
A. Yes.
Q. And would it impact how you were able to move or walk?
A. Occasionally I would get sores and bruises from him.
Q. How were you able to keep the soreness or how were you going to hide the pain from your mom?
A. Just acted like I had cramps and I just wanted to lay down.

Q. What about, you said he caused bruises. How would he cause -- What would he do to cause bruises?

A. There would be bruises on my arms and on my inner thighs.

Q. What caused the bruises on your arms?

A. His hands.

Q. From holding you down?

A. Yes.

Q. And what about the bruises on your, the inside of your thighs?

A. From his hips.

Q. How did you hide those bruises?

A. I just wore pants and baggy clothes to cover them up and the ones that were showing he would ask if they were from him and I would say I don't know and he would just laugh and say I just fell. And that's what he said, I just fell.

Q. So he would ask you if those bruises were from him?

A. Yes.

Q. And he laughed?

A. Yes.

Q. Now, the bruises that you speak of, were those there everyday?

A. Sometimes.

Q. But not the entire year?

A. Right.

Q. So there would be times you had to cover them up and times that you didn't?

A. Right.

Q. When he would rape you, did he try -- I mean, was it a long drawn out intimate interaction?

A. No.

Q. How long would these last?

A. Not long. Maybe a minute or two.

Q. Did he ever try to make it intimate or romantic?

A. A few times.

Q. When was that, towards the beginning?

A. Uhm, I can't remember exactly.

Q. Okay. But did he eventually -- Most of the time would you say they were that way or not?

A. No.

Q. So most of the time they were quick?

A. Yes.

Q. Did he ever rape you when other people -- I know you mentioned the job sites, but apart from the job sites would he ever do this -- Let me ask you this: Besides putting his penis in your vagina, did he touch you in any other way?

A. He tried to occasionally.

Q. Would he use his fingers?

A. Yes.

Q. Where would he put his fingers?
A. Inside of me.
Q. Okay. Would he touch your breasts?
A. Yes.
Q. What about your back area, your bottom?
A. Occasionally.
Q. Would he do any of these things when other people were around like your family?
A. They would be in the area for say, I mean, if it was summer, we were always swimming and laying in the sun. While my mom and the kids were out swimming occasionally he would drag me up to the house and do it then.
Q. Do you remember what room he would do it when they were out by the lake?
A. Not exactly. Just depending on the day.
Q. Would he have a view of the lake from where he would do it?
A. Sometimes.
Q. Did you ever go out of town with him by yourself?
A. I did.
Q. Where did you all go?
A. We took a trip to Kannapolis.
Q. Where is Kannapolis?
A. I believe North Carolina. We had bought another truck prior to going and the engine, I believe, blew up and he

was going to get it fixed and so we took it to Kannapolis to get a new engine.

Q. Did you stay overnight?

A. We did.

Q. Where did you stay?

A. It was at a hotel.

Q. Okay. Did he do anything to you at the hotel?

A. He did.

Q. Do you remember anything about that hotel like where it was or what was around it?

A. Uhm, I remember it was right by the - there was a race car track in the area. It was near that.

Q. Did you -- I mean, had you already gone through puberty by the time you were 16?

A. Yes.

Q. So you had already started your period?

A. Yes.

Q. Would he use condoms?

A. He did briefly a few months in then stopped.

Q. So when he first started though did he wear those?

A. No.

Q. What caused him to start using the condoms for that brief period?

A. He had mentioned that it feels too good and he just can't help himself sometimes.

Q. But did you say anything to him to cause him to start wearing condoms?

A. I don't remember.

Q. Was your period late one time?

A. Yes.

Q. Did you tell him that?

A. I did.

Q. What was his response to you when you told him that?

A. He said if you don't start in a few days, we'll go take care of it.

Q. So after that he began to wear condoms?

A. Briefly.

Q. But he stopped?

A. Yes.

Q. Did he tell you why he stopped?

A. No.

Q. Did he ejaculate in you?

A. Uhm, maybe a few times he might have.

Q. What did he usually do though?

A. He would pull out and go off to the side or let it go on me.

Q. And would he clean it up?

A. Immediately he would get a towel and wipe everything up and go throw it in the laundry room.

Q. So you said, would he do that almost every time?
A. Yes.
Q. So, for instance, at a job site what would he - would he try to clean it up then?
A. Yes.
Q. What would he use?
A. Most of the time toilet paper because we were in the restroom.
Q. Were there times that you were on your period that he would still rape you?
A. Yes.
Q. So he didn't care if you were on your period?
A. He didn't care.
Q. Were there places that you would go to try to escape him?
A. Yes.
Q. Where?
A. I would go out to the dock because it was in the open. I felt like I was safe out there.
Q. When you refer to the dock, I'll show you what's marked as State's Exhibit 5. Is this the dock that you are speaking of?
A. Yes.
Q. So you would go out to try to get away from him on the dock?

A. Yes.
Q. Did you have neighbors?
A. We did.
Q. Who are your neighbors?
A. The Penrods.
Q. Who lived in the house with the Penrods? Do you remember their first names?
A. Martha Penrod was the wife. They had daughters, grown daughters and I believe one of their daughters lived with them. They had a couple people living there but I don't remember all of their names.
Q. You said Martha Penrod. How old is Martha?
A. I didn't know at the time. She's maybe in her 50's or '60s.
Q. Did she have a porch?
A. She did.
Q. Can you see that porch from the dock?
A. You can.
Q. So the porch has a view to the dock?
A. Yes.
Q. Would she spend a lot of time on that porch?
A. She would.
Q. Is that part of the reason you went to the dock sometimes?
A. Yes. I knew she would be out there so I knew eyes -

eyes were going to be looking so I felt more safe.

Q. So did you go anywhere else besides the dock to try to get away from him?

A. Not normally. That was the only place in the open.

Q. Did you all have a hammock in the backyard?

A. We did.

Q. Did he -- Did you lay in the hammock often?

A. I did.

Q. Would he ever lay with you?

A. Yes.

Q. Were there times that anything happened to you even when you would go to the dock?

A. Occasionally he would smack my butt or just hug on me and rub on me.

Q. Did anything ever happen in the water?

A. Yes.

Q. So did he try -- Did he touch you in the lake?

A. Yes.

Q. Can you describe -- How many times did that happen that you remember?

A. I can remember just once.

Q. Can you describe that particular time?

A. I can't remember what time it was, but it was just him and I were at the house and the neighbors were gone in

their boat for the day. They had just left. He saw them leave and I was in the water and he pulled me under the dock and raped me in the water.

Q. When you say the neighbors had just left in the boat, the Penrods?

A. Yes.

Q. Was Martha with them that day?

A. I believe so.

Q. Did y'all have a boat?

A. We did.

Q. Did you all go in the boat as a family?

A. We did.

Q. What kind of boat was it?

A. We had a pontoon boat.

Q. Would you ever go on the boat by yourself with James?

A. Yes.

Q. And would anything happen out on the boat?

A. Yes.

Q. How many times -- Do you know how many times that happened?

A. We went fishing a lot in the evenings but it happened every time we went out.

Q. Would it just be you that would go fishing?

A. Yes.

Q. Didn't your brothers want to go?
A. They did.
Q. Would he take them?
A. No.
Q. Why?
A. Uhm, they were littler, made too much noise he said and he wanted to get some dinner for tomorrow night so he just took me.
Q. So he wouldn't let his sons go with y'all?
A. No.
Q. Or at least sometimes he wouldn't?
A. Right.
Q. Did you ever -- Did you think about running away?
A. All the time.
Q. Did you ever?
A. No.
Q. Did you have anywhere to go?
A. I didn't.
Q. What about -- You said -- Did he -- Other than that first time that you remember about oral sex, did he continue to perform oral sex on you, too?
A. He tried occasionally but I just - I couldn't.
Q. Was it easier for you to fight him off when he tried to do that?
A. It was.

Q. Did he ever show you any type of pornography or anything like that?

A. He did.

Q. When would he show you that?

A. In the evenings when we were alone.

Q. Where was your family when he would show you those?

A. I can't remember. I don't remember.

Q. Now, you were 16 throughout this time. Were you and Breana allowed to date?

A. No.

Q. What was the rule regarding you and Breana being allowed to date?

A. We just were too young for boys and not allowed to talk to them, not allowed to look at them without thinking that we were doing something wrong so we just -- We didn't know anybody anyway.

Q. Because you were home schooled?

A. Right.

Q. Did you have any girlfriends?

A. We had a few that lived in Summerville.

Q. Would they visit you all?

A. Uhm, they visited once or twice.

Q. Were you allowed to go visit them?

A. No.

Q. What about Breana?

A. No.

Q. Did he act controlling in any way with your girlfriends?

A. Very. He - every time we talked on the phone, he would be right there listening. He would go through our messages, go through searches on the computer just to make sure that we didn't - that we weren't faking girl names for boys and so he would always keep a close eye on us.

Q. And did he -- You said you had -- Who were some of your -- How many close girlfriends did you have during that period?

A. Two.

Q. What were their names?

A. Carol Ann and Erica.

Q. Carol Ann?

A. Yes.

Q. And Erica?

A. Mm-hmm.

Q. Where did they live?

A. Summerville.

Q. You said he was controlling even with your girlfriends. Did he ever do anything to try to mess up or control even relationships with your girlfriends?

A. He did. He was worried that I was going to talk to

them and tell them. He eventually --

Q. How did you know that he was worried that you were going to tell them?

A. Uhm, by the time this happened it's been a lot. It's been going on and my attitude started to change. I was angry all the time. I was depressed. I couldn't control what I said and I just - I was really upset and he knew. He knew how upset I was and he was just getting really paranoid that I was going to tell somebody.

Q. So would he say things directly to you about not telling your girlfriends?

A. Yes.

Q. And so you were getting ready to say something about what he did one time before I interrupted you. Can you explain that?

A. Yes. One of my friends Carol Ann, he went online and found a porn video that looked similar to my friend and tried to convince me that she was doing porn and I couldn't talk to her anymore.

Q. So, I mean, was it even her in the video?

A. No. It didn't look anything like her.

Q. How did he use that to keep you from being friends with her?

A. Because he could. He was my dad. He could say no. I didn't have a choice.

Q. So did he tell your mom that Carol Ann was in a porn video?

A. Yes. He convinced her that she was so like maybe she shouldn't be talking to her because she didn't know anything. She just agreed with him.

Q. And that wasn't even her?

A. Right.

Q. What about Erica? Did he do anything to mess up your relationship with Erica?

A. I can't remember specifics. He just -- He didn't like her mom and so they were on drugs and stuff and he didn't want us hanging out with her so we just kind of fell apart.

Q. Did he ever do anything to make sure that you didn't tell Erica what was going on?

A. Uhm, he just never gave me a chance to be alone with her. She actually visited one time and he was - he had convinced my mom that me and her were doing stuff in my bedroom and so he put a tape recorder under my bed so he could listen to what we were doing and what we were saying.

Q. How did you find out about that tape recorder?

A. We found it.

Q. Did he -- Did you -- Did anybody confront him about the tape recorder?

A. I can't remember. I think I found out from my mom that she had came to me and she was like look, he --

MS. GOOD: Objection, Your Honor. Hearsay.

THE COURT: All right. Sustained.

BY MS. CAVANAUGH:

Q. Did James ever give you or your siblings any gifts?

A. He did.

Q. What type of gifts?

A. He gave me and my twin sister, uhm, rings, promise rings.

Q. Was that when y'all lived in Camden?

A. Yes.

Q. Do you remember the circumstances around when he gave you the promise rings? What were y'all doing?

A. We all went out to lunch, me and my sister and James. We were sitting down and he said I'll be right back. He ran out of the restaurant and came back a few minutes later with the rings.

Q. Did he say anything when he gave you those rings?

A. He said that they were promise rings to stay pure until marriage.

Q. And he gave you both these rings?

A. He did.

Q. You all were in front of each other when he gave you the rings?

A. We were side by side. He was in between us.

Q. Now, did your family have friends that you would hang out with as families?

A. Yes. He had met some new friends, the Harrelsons.

Q. The Harrelsons?

A. Yes.

Q. Where did they live?

A. They lived a few miles away. They had a farm.

Q. Did they have children?

A. They did.

Q. How many?

A. I think seven.

Q. Do you remember all of their names?

A. I don't.

Q. Do you remember the age range of the children?

A. Uhm, they had, I think three of them were under the age of 10 and there was maybe an 11, 12, and 13 year old. I can't remember their ages exactly.

Q. Were they boys and girls?

A. Yes.

Q. Okay. Were your parents friends with their parents?

A. Yes.

Q. Would they come to your house?

A. Uhm, the majority of the time we would go to their house.

Q. What was their house like? What kind of things were there to do there?

A. They had a lot of land. They had horses. Lots of things to do. Four wheelers. It was nice going over there.

Q. You said they had horses, too?

A. Yes.

Q. Were you ever alone by yourself with any of those kids?

A. No.

Q. Did your dad James, did he ever say anything to you about you hanging out with those children?

A. He did.

Q. What was that?

A. There was their eldest son, I can't remember if he was 13 or 14, and since he was the eldest he got along better with my sister and I, and he didn't like us hanging out with him and there were so many kids nobody was ever alone because we were always together. He just didn't think it was appropriate for us to be talking to him.

Q. And how old was this little boy?

A. 13 or 14.

Q. He felt that way even though y'all were mostly around other people?

A. Yes.

Q. Was there anything whatsoever romantic about you and

Henry?

A. No.

Q. What about Breana and Henry?

A. No.

Q. Okay. So I'm going to take you towards the end, towards July, August of 2012.

A. Okay.

Q. When is your birthday?

A. [redacted]

Q. So most of the summer of 2012 how old were you?

A. 17.

Q. Okay. Did you start to notice a change in your behavior towards around the summer?

A. I did.

Q. Can you describe that?

A. I became very distant. I wouldn't talk to anybody and if they talked to me, I would just get mad and argue and walk away. I was just so emotionally confused. I didn't know what to do anymore so I just kept to myself and stayed away from everybody.

Q. Why did you -- Why were you feeling this way?

A. I started to feel helpless. I felt like this was going to last forever and that I would never have a life.

Q. Did your mom -- Was he continuing to sleep in your room?

A. Yes.

Q. Did your mom do anything to try to prevent that from happening?

A. She ended up moving her bed upstairs and she went in the big bedroom upstairs next to mine.

Q. So she moved her bed from the master bedroom upstairs?

A. Yes.

Q. So I'm going to show what's been introduced as exhibit 20. Is that the big room that she moved into?

A. Yes.

Q. Which bed was hers?

A. I believe this one.

Q. Okay. So she physically moved her bed from the master bedroom downstairs?

A. Yes.

Q. Why did she do this?

A. To try to get him to come back to her bed.

Q. Okay. So you said you started feeling helpless around the summer of 2012?

A. Yes.

Q. This is after the year that he's been raping you?

A. Yes.

Q. Did you eventually tell your mom?

A. I did.

Q. Did you also get sick during the summer?
A. I did.
Q. What was your condition? What did you have?
A. I had gotten mono.
Q. How did that make you feel? I mean, were you tired?
A. I was stuck in bed for a few weeks.
Q. Did he continue to rape you while you had mono?
A. He was very touchy but I can't remember him ever doing it while I was sick.
Q. Okay. Did he ever try to check for symptoms or anything like that?
A. He did. He was rubbing on me and said he found a lump in one of my breasts and he didn't know how to tell my mom because he knew that he shouldn't have been rubbing on me anyway and he ended up telling her. He said it was no big deal. That I had come to him about it asking him to feel it and that's what he told her.
Q. You said you felt helpless and it started to just get overwhelming. Did you feel like you had pressure on you?
A. Yes.
Q. What kind of pressure?
A. Uhm, I just -- I was -- I was so scared of losing my family and I felt like if I were to run away, that they would

be ruined. If I were to say anything, they would be ruined. And I just -- I didn't know what to do.

Q. Do you remember the last time that he raped you or that he tried to?

A. Uhm, not specifically. Uhm, I believe it was maybe a week or two before I finally said anything.

Q. So going to that day, what was going on that day that you told your mom? Describe how the day was progressing. What were the plans?

A. Uhm, well, that evening there was plans to go to the Harrelsons to ride horses and my mom and dad were arguing. I don't know what about. But my mom had came into my bedroom and she continued to say that --

MS. GOOD: Objection, Your Honor. Hearsay.

MS. CAVANAUGH: I'll rephrase the question.

THE COURT: Thank you. Your objection is sustained.

Thank you, Ms. Cavanaugh. Rephrase the question.

BY MS. CAVANAUGH:

Q. What was the plan originally?

A. To go to the Harrelsons.

Q. And at some point did that plan change?

A. Yes.

Q. Were you allowed to go to the Harrelsons that night?

A. No.

Q. Did James say anything to you about why you couldn't go?

A. No.

Q. But you were just told that you couldn't go?

A. Right.

Q. And were you upset?

A. I was very.

Q. Why were you upset?

A. Uhm, because he had convinced my mother of the facts that he was - not the facts, but what he thought was going on. That made me feel like she was always going to - that she was never gonna catch it. That she was never gonna be there because he was so manipulative he got his way and he did and that's why I was upset is because she was convinced of what was going on with the Harrelsons.

Q. And you said earlier that he was jealous of the little 13 year old boy, right?

A. He was extremely jealous.

Q. Was Breana going to be able to go?

A. Yes.

Q. Was anybody going to stay back with you that day?

A. No.

Q. What about James, was he going to stay back with you?

A. No.

Q. So what did you do when you found out that you weren't allowed to go?

A. I - I ran outside and stood at the end of the dock and I just cried. I was out there for a few hours just trying to figure out what to do. I was debating on just walking away. I was debating on jumping in the water and just ending it there because I was desperate at this point.

Q. Did your mom come out to the dock?

A. She did.

Q. And over the course of this year without saying specifically what she was asking you, did she appear worried about your change in behavior?

A. Yes.

Q. Did she try to ask you what was going on?

A. She did.

Q. Were you able to tell her over the course of that year?

A. No.

Q. Did you tell her that afternoon?

A. Yes.

Q. And what did you say?

A. She asked me what was wrong. That I couldn't be this upset over not being allowed to go over there and my first response was I can't tell you because I knew if I said that, she wouldn't leave me alone because then she would know

something was wrong.

Q. And you wanted her to stay?

A. Yes. I wanted to tell her so bad. After a few minutes I calmed down and I told her that he has been touching me and it's been going on for a while.

Q. What was her reaction when you said that?

A. She just started crying and she hugged me and she just - she was really angry and upset and then she just, she just wanted to go up there and just take over herself. And I said we need you. I need you. And she ended up, she had a phone on her and from my understanding she called --

MS. GOOD: Objection, Your Honor.

THE COURT: Sustained.

BY MS. CAVANAUGH:

Q. She had - she had her phone?

A. Yes.

Q. And did she call -- Was she in front of you?

A. She had walked away so that she was not in view of the door.

Q. What door are you talking about?

A. The door facing the lake because he was watching.

Q. Okay. From the dock where you were could you see him?

A. Yes.

Q. Okay. That particular day did he have, did he carry

his gun?

A. He had it on him earlier that morning.

Q. Did you stay out on the dock?

A. Yes.

Q. Did you say anything to -- You said that you told her what had been happening. Did you give her significant detail at that point?

A. No.

Q. But you told her enough --

A. Yes.

Q. -- for her to know what had been happening?

A. Yes.

Q. After you told her, did you say anything else about -- I mean, you said she was hysterical, right?

A. Yes.

Q. What was your concern at that point?

A. I didn't know - I didn't know what was going to happen. I didn't know if he, he knew, you know, that I had told her. I didn't know if he knew. I didn't know if he had his gun on him at this point. I didn't know what was going to happen.

Q. So what did you say to your mom after you told her?

A. I just -- That I needed her and that she just has to stay with us.

Q. Okay. And did you stay on the dock?
A. I did.
Q. And she walked away?
A. She did.
Q. Before she walked away, did she calm down?
A. Yes.
Q. Had you told James or given him any indication that you were telling that day?
A. No.
Q. What happened after she walked up towards the house?
A. Uhm --
Q. Did you stay on the dock?
A. I stayed on the dock.
Q. Did the police come?
A. They did.
Q. Did you see when they arrived?
A. I did not see when they arrived.
Q. When was the first time that you noticed that the police were there?
A. When I turned around, I heard footsteps on the dock and he was walking down towards me.
Q. Who is "he"?
A. James.
Q. So is that the first time you saw the police?

A. Yes.

Q. Where were they, as he's walking down the dock -- I'll show you real quickly --

MS. CAVANAUGH: May the witness stand up, Your Honor?

THE COURT: She may.

BY MS. CAVANAUGH:

Q. State's Exhibit number 5, where were you sitting?

A. I was standing here.

Q. Okay. And when you turned around, where was he?

A. He was up right somewhere (indicating.)

Q. And at that point had the police reached -- Where were the police when you turned around?

A. They were climbing the stairs. It was steep. They were on the first flight coming down.

Q. Okay. You can sit back down.

A. (Witness complies.)

Q. Did James have the opportunity -- Did he say anything to you before the police got down there?

A. He did.

Q. What did he say?

A. He - he saw them walking down and he leaned down and he said, I wish you would have warned me so I could have said bye to the kids, and that was it.

Q. Did you say anything to him after he said that?

A. I was - I was - I was crying so hard I couldn't catch my breath. I didn't say anything.

Q. Did you tell him that you told your mom?

A. No.

Q. After he said that to you, what did you see him do next?

A. He just - he began emptying his pockets, took off his rings, his wallet and his belt and he - he, once he took those off, I looked out at the lake. I didn't turn around to see what they were going to do. I just, I turned away.

Q. Did you ever hear the police tell him why they were there?

A. I didn't hear anybody talk about anything.

Q. Okay. When did you come off the dock?

A. Uhm, I think I was down there for another five to ten minutes. I can't remember exactly how long I was down there. One of the deputies or two of them, I can't remember how many or who, came down, asked me to come up and wait in the living room.

Q. Did you have any further interaction with James at that point?

A. No.

Q. Were you asked to give a statement?

A. Yes.

Q. Was the deputy sitting there asking you questions?

A. He asked -- I can't remember what questions but I remember being asked a few questions.

Q. Okay. So when you gave that statement, did you know what to write? I mean, did he tell you - did he give you any indication as far as what you were supposed to write?

A. I had no idea.

Q. What was your understanding as far as what you were supposed to do with the paper that he handed you?

A. Uhm, to write down what had been happening. But at this point there was so much information and I didn't know what to say so I thought that they wanted to know about the first time and I felt that's what they wanted so that's all I gave them.

Q. So you wrote about the first time?

A. Yes.

Q. And did you say -- Did you give the general concept of what had been happening?

A. Yes.

Q. Did you say that it had occurred constantly?

A. Yes.

Q. And did you give the location of some of the times that it occurred?

A. I think so.

Q. Okay. How would you describe your -- How did you feel? How was your emotional state that afternoon?

A. I felt like I was in shock.

Q. And again this is the first time that you had ever told anybody about what had been happening?

A. Yes.

Q. Did you go -- Where did you go? Did you go to the Sheriff's Office or anywhere after that day?

A. I can't remember if we did. I believe we stayed at the house.

Q. Okay. Did you go to the hospital a couple days later?

A. Yes.

Q. And was that in Kershaw?

A. Uhm, I think so.

Q. Do you remember what type of -- Did they perform tests or anything like that there?

A. Uhm, I - I can't remember what exactly they did.

Q. But was it related to -- I mean, did you go there because of what had been happening to you?

A. Yes.

Q. Uhm, did you go to see another doctor in Columbia?

A. I did.

Q. And was that a couple of days later?

A. I believe so.

Q. What kind of exam did you have at the doctor in Columbia?

A. It was a pap smear and I believe she did a little bit of blood work.

Q. And so did you have to take your clothes off and everything?

A. Yes.

Q. Was that the first exam you have ever had like that?

A. Yes.

Q. Was that pap smear performed at the doctor the first time?

A. I don't think so.

Q. Okay. Did you also go to a place in Laurens?

A. Yes.

Q. Do you remember the name of that place?

A. The CARE House.

Q. And did you know why you were going there?

A. I knew I was going to talk to somebody. That's all I knew.

Q. Okay. Did you, in fact, talk to someone at The CARE House?

A. I did.

Q. About how long -- What did you talk to her about?

A. We - we - we discussed what had been happening. Uhm --

Q. Related to?

A. Related to James.

Q. Okay. And about how long did you spend at The CARE House?

A. We were there a long while. I think I was maybe talking to her an hour, maybe more. I can't remember exactly but I know we were talking for a good bit.

Q. Okay. And to the best of your ability, did you tell her everything that had been going on over the course of that year?

A. Yes.

Q. Now, the person, the father person James, is he in the courtroom today?

A. He is.

Q. And can you point out and describe what he's wearing?

A. He's right there. He's wearing a blue sweatshirt.

Q. And is this the first time --

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

THE COURT: So reflected.

BY MS. CAVANAUGH:

Q. Is this the first time that you have seen him since that day on the dock?

A. Yes.

Q. Did he attempt -- Did he contact you after he was

arrested that day?

A. No.

Q. Okay. Do you know if he tried to?

A. I don't know.

Q. Okay. Complainant did you want to have sex with your father over that period?

A. No.

Q. Did you -- Did he ever try to hit you or display any sort of direct violence against you?

A. No.

Q. But you were still scared of him?

A. Yes.

Q. And why were you so scared?

A. He was very moody. You never knew if he was going to be happy. You never knew if he was going to be mad. And you just didn't know what he was going to do or say next. So it was easier to go along with it than to say no and deal with the consequences.

Q. And the gun that was always around his waist, before he started sexually assaulting you, did he carry a gun?

A. No.

Q. Is there a gun in the house?

A. Yes.

Q. Before?

A. No. Not before.

MS. CAVANAUGH: Be the Court's indulgence. Thank you, Complainant. Answer any questions from Ms. Good.

THE COURT: Ms. Good, before we go into cross examination, it is now ten to one. We're going to take a lunch break and come back for your cross examination. Let's get back here at - let's get back here at 2:10. That should give you plenty of time to go out and grab some lunch and get back here by 2:10. Thank you. And Remember, don't discuss this case in the meantime. Thank you very much.

(Whereupon, the jury was released for lunch recess.)

THE COURT: Complainant you're off the stand and taking a lunch break. You're still under oath so you cannot talk to anyone about your testimony. You can't talk to your lawyers about your testimony. You can't talk to your mother, your sister. Talk to no one. You can talk about other things during lunch. Just don't talk about your testimony. And we'll get you back on the stand after lunch for cross examination. One other thing I want to make sure that we're all clear on is the jury is now sworn, the trial has started, so the defendant remains in custody throughout the trial.

All right. We will be back at 2:10.

MS. GOOD: Your Honor, just real quickly, what is the plan for scheduling today so I can make sure for

child care purposes.

THE COURT: Sure. So we'll be doing cross examination. Do we have other witnesses after Ms. Complainant I know the expert is tomorrow morning, I think.

MS. CAVANAUGH: Yes, Your Honor. So this afternoon we intended to call Complainant mother this afternoon, Tammy Miller Blessing is her name and then Investigator Knafelc, Complainant sister as well as two people from SLED, so we - and then also Dr. Luberoff.

THE COURT: So you all have plenty of witnesses for this afternoon. I'm just going to have to do a cut off time. I, too, have child care issues so we will probably stop at the latest about 5:30.

MS. CAVANAUGH: Just to be clear when you said he's taken into custody, that starts now?

THE COURT: Yes.

MS. GOOD: Do they have lunch for him?

THE COURT: I'm sorry.

MS. GOOD: Do they have lunch for him?

THE COURT: I need to ask that question to the -- Do we have someone from the jail here? Someone will have to bring him lunch then. Okay. We are at lunch break then.

(Luncheon recess.)

BAILIFF: All rise.

THE COURT: Thank you. Please be seated. Anything before we bring the jury in?

MS. CAVANAUGH: Yes, Your Honor. Our next witness is Complainant mother Tammy so just to bring back up the pretrial ruling regarding any mention of the defendant's drug abuse history based on - and during our preparation of the case obviously that was discussed in the context of their relationship. It's my understanding from Tammy that when she used drugs, it was with the defendant so I just want to prevent --

THE COURT: Okay. Well, as I ruled yesterday the drug use of the defendant is not allowed unless the defense opens the door to that testimony so if it becomes an issue based on the opening the door argument, which I think is where you're going.

MS. CAVANAUGH: Yes. I was just trying to prevent any sort of surprise.

THE COURT: Surprise to anyone.

MS. CAVANAUGH: Yes.

THE COURT: Okay. I think I understand that. Ms. Good, do you understand that as well?

MS. GOOD: Yes.

THE COURT: All right. Let's bring the jury back in please. Thank you.

(Whereupon, the jury returned to the courtroom at

2:15 p.m.)

THE COURT: All right. Welcome back everyone. I hope you enjoyed your lunch, and we will resume the trial with Ms. Good on cross examining Complainant

CROSS EXAMINATION

BY MS. GOOD:

Q. Good afternoon. You stated you grew up doing a lot with your dad, correct?

A. Correct.

Q. He taught you how to hunt and fish?

A. Yes.

Q. How old were you when you started hunting with him?

A. I don't remember.

Q. Approximately?

A. Uhm, we were always outside so it's kind of hard to say what age because we were always outside doing things so I don't know exactly what age.

Q. But is was before July of 2011 or whatever? Well before any of the alleged sexual assaults?

A. Yes.

Q. And what did you all hunt?

A. Uhm, I - I don't know. I mean, it was like I said, we were always outside doing things. I don't remember.

Q. So did you go hunting with your father or not?

A. We -- I think maybe once we went hunting for deer but other than that I can't remember.

Q. And you used a gun to hunt for deer?

A. Uhm, I never shot it but...

Q. But your dad had one?

A. Mm-hmm.

Q. Yet you testified earlier that you never saw your dad with a gun before July of 2011 when the sexual assaults started?

A. I don't remember saying that he never held one because it never was mentioned about hunting or carrying weapons during hunting before.

Q. But he did have weapons in the home before 2011?

A. No. He did not.

Q. So what gun did he use to hunt with?

A. I don't know.

Q. So you don't know where you went hunting, what you hunted for or where the gun came from?

A. I don't remember. I was younger.

Q. How much younger? You say you didn't know how young you were. How much younger.

A. I don't -- I don't know.

THE COURT: Let's make sure we wait for each other. Answer the question before we ask another question. Thank you.

BY MS. GOOD:

Q. So you can't remember any of those details from your childhood?

A. Not specifically.

Q. You can't remember where you went to elementary school either, can you?

A. I can't.

Q. Do you remember who your elementary school teachers were?

A. No.

Q. Do you remember any of your teachers?

A. Not specifically.

Q. You stated y'all were here on vacation, correct?

A. Correct.

Q. In Camden and everybody was staying in the camper?

A. Correct.

Q. And you made the statement when you were testifying we decided to move to Camden. Who is "we"? Who made that decision?

A. My parents.

Q. So were you part of that decision?

A. Not at the moment, but in general they come to us and made sure that it was okay so that's why I refer to them as we, the family.

Q. So your mother was part of that decision?

A. Yes.
Q. And your dad was the only one who worked, correct?
A. Correct.
Q. He was the only one that did anything for the family to bring money in?
A. Right.
Q. And you stated he worked construction, right?
A. Yes.
Q. So those jobs are kind of all over the place?
A. Yes.
Q. So you had to move continuously because of him being the only one that worked, correct?
A. Correct.
Q. So it wasn't that he couldn't hold a job. It was that he had to go to different places for these jobs so that he could work?
A. From my understanding was that he had to go to new places to find more work or different work.
Q. And you stated the first time that this happened your father was outside with friends, right?
A. A friend.
Q. A friend. Do you remember his name?
A. I don't.
Q. Okay. And you stated that ultimately he came in. You didn't have a phone. You couldn't call for help or

anything, right?

A. Correct.

Q. At what age did you get a phone?

A. Me and my sister began sharing a phone I think maybe a few months after moving to Camden. I can't remember exactly.

Q. So when you all made the decision to move to Camden, you're not aware if you had a phone or not or sharing at the time with your sister, correct?

A. Whenever we did get a phone, we did share it. We never had our own.

Q. Do you remember exactly when you got your phone with your sister?

A. I don't.

Q. And do you remember the night of this first allegation in the camper, you stated you just woke up and he was having oral sex with you. What were you wearing that night to bed?

A. I was wearing some pajama shorts and a T-shirt.

Q. You didn't feel him taking shorts off or underwear off?

A. I did not.

Q. You stated you dozed back off after that. Just, you were not fully asleep because you just couldn't sleep because of this traumatic event which had just happened, correct?

A. Correct.

Q. Yet again you didn't feel anybody taking your pants off or do anything to be having sex with you before you woke up?

A. Uhm, it happened so fast. I woke up to it as it was happening.

Q. But your pants were already off, correct?

A. No. They were back on.

Q. So earlier you testified when you woke up that second time, he had already taken your pants off. Were they on or were they off when you woke up?

A. When I woke up, they were half way down.

Q. And you didn't feel him come into the room or --

A. I did not.

Q. -- begin to take your pants off?

A. I did not hear him come into the room. Like I said, it happened so fast. He just did it. There was no a minute here, a minute there to figure out exactly what was happening and what was going on.

Q. But you didn't feel him at all prior to that?

A. Not until he was holding me.

Q. And you stated that the second time it happened you think it was upstairs, correct, at the new house where y'all were working?

A. The second time after the first night?

Q. Yes.

A. Yes.

Q. And you spoke with your mom several times on the phone. You said you only spoke to her once or twice. Did you speak with your sister during that time?

A. I can't remember.

Q. Do you remember anybody else you spoke to at that time other than your mother one or two times?

A. I can't remember. It might have been maybe Mike Norwood because we were still in the area. I think he might have come out to help a few times.

Q. And you stated when y'all ultimately moved into the house, you and Breana shared a room, correct, because y'all were close?

A. Yes.

Q. Before your sibling rivalries started I guess?

A. Right.

Q. And that she slept in the same room with you, correct?

A. Correct.

Q. I'm going to show you what's marked as State's 20. Is that the room that y'all were in at that time?

A. Yes.

Q. Which bed was yours?

A. Well, none of that was actually in there. We had

two separate beds.

Q. Okay. And where were they in kind of relation to these?

A. She had a futon along the back wall and we had some like a shelf and a dresser kind of separating the middle and I had a full size bed right here by the windows.

Q. Okay. All right. And you stated that your father would always tell you you're going to destroy the family if you say something, right?

A. He - he said that the family would be gone and would disappear and everything would be ruined.

Q. And he was very concerned about anybody in the family finding out, correct?

A. Yes.

Q. Yet he would come into the room and do this to you with your sister right next to you?

A. She was asleep.

Q. How do you know she was asleep?

A. I don't.

Q. How would he know she was asleep? Does she snore?

A. No.

Q. Does she talk in her sleep?

A. She doesn't.

Q. So nobody would know that she's asleep if she's over there being quiet, correct?

A. Correct.

Q. And then ultimately you separated from Breana. Is it Breana or Breana?

A. Breana.

Q. Breana. And you had your own room. I guess you took Emma's room --

A. Yes.

Q. -- is that right? And your dad would sleep in the bed with you every single night?

A. Almost every single night.

Q. And when did your mom first realize he was sleeping in the bed every single night?

A. She knew that he was because he wasn't in her bed so she knew that he was in my bed so the first night she knew.

Q. And you only heard them argue about that twice?

A. Once or twice. They kept their arguments in private.

Q. So they may have argued more about it but you don't know?

A. I don't know.

Q. But your mother was definitely aware that your father was sleeping in the same room with you every single night for one year?

A. Almost every single night. She knew.

Q. But she never questioned you about it?

A. A few times she would ask is everything okay and I would just cover up with what he told me to say about it. And I would say it's more comfortable in that bed and he sleeps better in that bed and that's what I always said.

Q. And this entire time that this was happening you were not worried that he might be doing this to your other sisters?

A. I was.

Q. And you didn't want to say anything to protect them?

A. He had said that he would never do it to one of them as long as he had me so I was always around so, I mean, it wasn't like -- He was always with me. He never had a chance to do anything to her a majority of the time.

Q. And you stated, when did he get the gun?

A. I can't remember the exact date but he got it within maybe a month or two of living in Camden.

Q. Do you know how he got the gun?

A. I don't.

Q. So you don't know who bought him the gun?

A. I don't know.

Q. And were you all around horses a lot?

A. Not at the beginning, no. The last maybe two and a half months we were around horses.

Q. Okay. And when you were around the horses, were you

out in the woods a lot?

A. Uhm, not really. Uhm, the horses weren't through the woods. They had a little road that went to it. Uhm, everything was open.

Q. Okay. You stated, too, that it happened several times at job sites?

A. Correct.

Q. And people were around, correct?

A. There was one time at Mike Norwood's mother's house and she was upstairs.

Q. Yet he was still worried about people in the family finding out?

A. Yes.

Q. But he did it with somebody else in the home?

A. Yes.

Q. And you stated he touched you multiple times while you were out on the dock?

A. Correct.

Q. Where people could see?

A. Right.

Q. And he still was saying I'm worried about the family when he's out in public doing stuff?

A. I guess he would - could take that risk. I don't know.

Q. And when you first told your mother, you stated you

just told her he had been touching you, correct?

A. I - I - that's what I can remember is telling her that.

Q. I mean, it was very vague. You were just saying --

A. It is vague.

Q. -- something happened?

A. Yes.

Q. And then when is the next time you spoke to somebody about it?

A. Whenever one of the deputies came down to get me and I went back upstairs.

Q. Okay. So that was Houser, I guess?

A. I can't - I don't know who it was. I can't remember.

Q. And that's basically the one and a half page statement you wrote?

A. Correct.

Q. And do you remember what he told you about writing that statement?

A. No, ma'am.

Q. Do you remember what you told Investigator Houser about that statement. Not Investigator Houser. Corporal Houser?

A. Not specifically. I can't remember the questions that were asked that day.

Q. So you don't remember telling him that it only happened several times?

A. Several times within -- That can go both ways because whenever he asked, I was too overwhelmed and, yes, it happened several times that I put in my statement and it was constant. I, at the time I answered, you know, to the best of my ability. I didn't know what to say.

Q. Earlier you just testified it happened hundreds and hundreds of times, correct?

A. It happened a lot. I don't know a number.

Q. But on that day when you first disclosed it, you said only several?

A. Several meaning it could be a lot or it could be a few.

Q. When you use the word several in everyday language, what do you mean by "several"?

A. Could have been a few.

Q. So what's a few? One or two? Three or four?

A. Maybe.

Q. Several is 500? 600? I mean, wouldn't the connotation several mean only several times, five or six times?

A. I didn't know how to answer his questions at the time. I was very, very emotional.

Q. After Houser left or Houser walks out, I don't know

how many were there at the time with you, after they left, what happened then?

A. Uhm, I can't remember exactly what happened. Uhm, I can't remember if we stayed at the house the rest of the day or if we went somewhere. I can't remember.

Q. So you remember all these details about all this stuff but you can't remember the most important day when you finally told somebody and you were free from all this happening to you?

A. I didn't know I was free yet. I didn't know he was going to be gone.

Q. You didn't know the police took him away in the car?

A. They could have brought him back. He could have been let go. I didn't know.

Q. But you don't remember anything from that day other than you just told somebody something and you don't remember what you told them, what questions they asked you or anything, correct?

A. It's a blur. I don't remember.

Q. And you stated that it would happen several times when your mother would go to the grocery store, correct?

A. It would happen when she did go but it may not have happened several times while she was gone.

Q. I just meant several like if she went to the grocery store?

A. Right.
Q. You stated you all had one car, correct?
A. I believe so.
Q. What kind of car was that?
A. Uhm, a Chevy Silverado, I think.
Q. Was it two door? Four door? Do you remember?
A. Four door.
Q. How many seats were in it?
A. Six.
Q. How many siblings do you have?
A. We have, there's five of us so four.
Q. Okay. So if y'all ever had to go somewhere as a family, y'all crammed into this truck?
A. Uhm, yeah, but we very rarely did anything altogether.
Q. If your dad had to work, how would he get to work? How would y'all go?
A. His truck.
Q. And you would leave your mom there without a car?
A. Yeah. That's what I can remember.
Q. And you stated towards the end when it started to slow down is because you were sick and you had mono, correct?
A. Correct.
Q. How long did you have mono for?

A. A few weeks.

Q. And you stated he was very touchy feely with you and always around you?

A. He was.

Q. Still sleeping in the same bed with you?

A. I can't remember if he did while I was sick.

Q. And did your dad ever get mono to the best of your knowledge while you were with him?

A. No.

Q. And you stated that when he would ejaculate, sometimes you would be down on the couch downstairs, correct?

A. Yes.

Q. In your bed sometimes?

A. Mm-hmm.

Q. Everywhere in the house is what you testified to, correct?

A. Correct.

Q. And sometimes when he ejaculated, he would come off to the side?

A. Yes.

Q. About how many times do you think that occurred?

A. I couldn't tell you.

Q. And he never used a condom or he did this several times where you testified --

A. He did a few times, yes, but he never did use one all the time.

Q. And you stated you would get bruises. Y'all live by the lake, correct?

A. Correct.

Q. What would you wear when you would go swimming?

A. Uhm, we had to wear board shorts and swim shirts.

Q. So you wouldn't wear a bathing suit?

A. Occasionally we would, but if we had company over or we were going somewhere on the boat, we would have to stay covered up.

Q. So your sister wouldn't constantly tell you to put extra clothes on?

A. My sister wouldn't.

Q. You stated you went out of town with him to Kannapolis. You liked going out of town with him, correct?

A. I used to.

Q. You were excited to go to Kannapolis, weren't you?

A. I was not.

Q. Do you have a Facebook page, Complainant

A. I - I used to. I don't have one currently.

Q. And, in fact, you used that Facebook page and you were friends with your father on Facebook, correct?

A. At the time probably.

Q. And didn't your father post about going to

Kannapolis and you stated that you were happy to go?

A. I can't remember. And even if I were to say that, what else am I going to say? I don't want to go? I'm not happy?

Q. You wouldn't have to post anything on Facebook about it, would you?

A. Friends and family are on there. They knew.

Q. But you wouldn't have to say anything, would you?

A. They knew I was going.

Q. At the time your name was Complainant; is that correct?

A. Correct.

Q. Let me show you this and see if it refreshes your memory. Do you recall writing about Kannapolis, that you were excited to go?

A. Is this a status or a message?

Q. It's what your father posted about going to Kannapolis.

A. Right here?

Q. Yes, the comments.

A. I remember this.

Q. So you did state that you were excited to go?

A. I did.

Q. Yet you testified earlier that you did not want to go and you were not excited about it at all, correct?

A. Deep down personally I knew what was going to happen, but like I said, I couldn't act that way.

Q. You were talking about wanting to run away, correct, because you were depressed and upset?

A. Yes.

Q. When you came to the doctor here in Columbia, did she talk to you for a little bit about medical history background?

A. Uhm, what doctor in Columbia?

Q. Dr. Luberoff.

A. The ARC or The CARE House?

Q. The ARC.

A. The ARC?

Q. Mm-hmm.

A. Uhm, I can't remember.

Q. So you don't remember telling her that you didn't have any behavioral changes?

A. I - I was scared. I don't know. I don't know.

Q. That was several weeks later, correct? Your dad was already in jail.

A. He was.

Q. Hadn't gotten out?

A. It was.

Q. So there was no reason to be scared at that point, correct?

A. I didn't - I didn't know what to tell her. I mean, I -- I don't know.

Q. And you stated these gifts, these promise rings, he gave one to your sister, too, right?

A. He did.

Q. It wasn't just to you?

A. Correct.

Q. And he made it very clear as one of his rules he didn't want you or Breana dating boys, correct? It wasn't just you?

A. Correct.

Q. And, in fact, prior to you disclosing on the day down at the dock with your mother, you were upset because of this Henry fellow, correct?

A. No.

Q. Didn't your father just tell you that he had caught you the night before and he didn't want you dating this Henry boy?

A. I wasn't dating him.

Q. You didn't like your dad's rules, did you?

A. I thought he was a bit overbearing about them because we weren't allowed to go anywhere. We were very sheltered and it was nice to get out of the house and go hang out with the family and be kids again.

Q. You said you were sheltered. Your sister was

sheltered also, correct?

A. Correct.

Q. All of the children?

A. Correct.

Q. And you told this on August 11th, correct?

A. Correct.

Q. When did you and your mother move to Florida?

A. I don't remember exactly.

Q. It was within a couple weeks, correct?

A. It had to have been.

Q. And this is August 11th. When did you get your driver's license?

A. I had gotten it maybe a week prior to leaving.

Q. So after your dad was out of the picture, you were able to get your driver's license?

A. I had my permit. I just had to go and get the actual license.

Q. In fact, also after your dad was out of the picture, you got a nose ring within a couple of days, correct?

A. Because we weren't allowed to have one, my mom wanted to do something nice.

Q. So your dad didn't allow that, but you got one as soon as he was gone, right?

A. (No response.)

Q. Same thing with the tattoo?

A. I didn't get a tattoo.

Q. But you wanted to get one, correct?

A. Uhm, I can't say yes or no. It was a thought.

Q. And as soon as you got down to Florida you got a boyfriend, didn't you?

A. Not immediately.

Q. How long afterwards?

A. A couple months.

Q. It wasn't earlier than that? Who is Zack?

A. My cousin.

Q. And you got to go to Frankie's Fun Park a couple days with Zack and Taylor after your dad was out of the picture, didn't you?

A. I - I can't remember.

Q. Basically you got to start to do a whole bunch of fun things as soon as your dad was gone, didn't you?

A. Because we were able to.

Q. Because his rules weren't in place anymore, were they?

A. They weren't because he wasn't there.

Q. After you gave your first statement to Investigator Houser that day, the one in the house and then they left, when is the next time you spoke to somebody about this?

A. Uhm, I can't remember who I went to first. Uhm, I don't know if it was The ARC or The CARE House but it was

within a few days.

Q. Did you speak to your mother at all about it?

A. We spoke briefly.

Q. What's briefly?

A. I didn't feel like it was necessary to tell her the details.

Q. Did you ever tell her the details?

A. No.

Q. Did you ever tell anybody the details other than the person at The CARE House?

A. Uhm, I have talked to my sister. I talked to her a long time afterwards just because she was wanting, she was wanting to know.

Q. When you say your sister, that's Breana?

A. Breana, yes.

Q. Not Emma.

A. Yes.

Q. So you never told your mother anywhere he would have ejaculated on the floor or the couch or anywhere?

A. No.

Q. The day down at the dock when your dad came down there, how far away was he from you when the police got down there?

A. Uhm, he was right beside me. I was sitting down and he was standing up.

Q. And isn't it true that you stated to him if I could take it back, I would and kept repeating that to him before the cops got there?

A. I did not.

Q. You're denying today that you ever said that?

A. Yes.

Q. Complainant when you all moved to Florida, who did you move in with?

MS. CAVANAUGH: Objection, Your Honor. This Florida is outside the scope of anything that she testified to.

THE COURT: I'll allow her to answer that.

BY MS. GOOD:

Q. Who did you move in with?

A. Melissa, one of my mom's friends.

Q. One of your mom's friends?

A. Yes.

Q. And did somebody end up moving in after that with your mother?

A. I can't remember.

Q. Do you remember a guy named Jason?

A. He didn't move into Melissa's house.

Q. He didn't move in? I'm sorry. I didn't hear you.

A. He didn't move into Melissa's house.

Q. Okay. But your mom started dating him when y'all moved to Florida?

A. It was several, several months after from what I remember and understand.

MS. GOOD: Okay. No further questions, Your Honor.

THE COURT: Any redirect.

MS. CAVANAUGH: Yes, Your Honor. Just a few questions.

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Complainant just to be clear, in State's Exhibit number 20, this is the room that you and Breana shared when you first moved to the home?

A. Yes.

Q. And is that how the room was when you all shared that room?

A. No.

Q. Okay. And how did you describe that room?

A. She had a futon against the wall away from the windows. We had dressers and shelves kind of like a little mini separation and then I had a full size by the windows.

Q. So y'alls beds were on the opposite sides of the room?

A. Yes.

Q. And there was some furniture separating the beds?

A. Yes.

Q. She also, Ms. Good also asked you about what you put in your first statement or narrative that you wrote when Corporal Houser was at the house and she said that you only said several times or a few times?

A. Right.

Q. I'm going to -- Is this the statement that you wrote at that time?

A. Yes.

Q. Can you read that last sentence as far as what you said about how many times it happened?

A. "When we moved into our new house to finish working on it, he had sex with me constant."

Q. And she also asked you about when he would ejaculate on the floor. And what did he do after he ejaculated?

A. He wiped it up and put the dirty towel in the laundry room to be washed.

Q. Then she also asked you about the bruises and you living at the lake?

A. Yes.

Q. What type of bathing suit were you required to wear?

A. Whenever there was company over or we were going somewhere, we had to wear board shorts and swim shirts.

Q. Did those cover up the areas that you had bruises on?

A. They did.

Q. Would you ever -- Would you wear any other types of bathing suits when you had bruises?

A. Not when I had bruises.

Q. Why was that?

A. Because I didn't want them showing.

MS. CAVANAUGH: Thank you.

THE COURT: All right. Thank you, Ms. Complainant You may step down. Solicitor, you may call your next witness.

MS. CAVANAUGH: The State calls Tammy Blessing.

Thereupon,

TAMMY LYNN PRICE

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: Tammy Price.

THE COURT: State your last name, ma'am, again.

THE WITNESS: It's Price. I'm remarried. It was Miller.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. I apologize for that, Tammy. Good afternoon, Tammy.

A. Hello.

Q. Where do you currently live?

A. Pensacola, Florida.
Q. How long have you lived in Florida?
A. Almost four years.
Q. And where did you live prior to moving to Florida?
A. Camden, South Carolina. Here.
Q. Do you have children?
A. Yes, ma'am. Five.
Q. Five children. And what are their names?
A. Breana Miller, Complainant Collin M. [redacted], Emma M. and Xavier M. [redacted].
Q. How old are your children?
A. Uhm, the two oldest are the twins and are 20. Then my son is 14, my daughter is 12 and I have a nine year old son, too.
Q. Do they -- Who lives with you in Florida now?
A. Me and my new husband and the three smaller children.
Q. And when did you get remarried?
A. Last June.
Q. Who is the father of your children, Tammy?
A. James Miller.
Q. Were you married to James Miller?
A. Yes, ma'am.
Q. How long were you married to James?
A. About 20 years.

Q. When did y'all meet?

A. Third grade.

Q. When did you start -- When would you say you first became a couple?

A. Uhm, we were boyfriend and girlfriend in third, fourth, fifth. Didn't really become a couple until I was about 14.

Q. How old were you when you married James?

A. 16.

Q. How old were you when you had your eldest daughters, the twins?

A. I had just turned 17.

Q. When you married James, where did you live with him?

A. Uhm, we lived with my parents in the beginning because I had the twins and they wanted to make sure that we could take care of them.

Q. So he lived with you and your parents for a little while?

A. Mm-hmm.

Q. What year were Complainant and Breana born?

A. '95.

Q. How long did you live with your parents and James?

A. Six months with my parents.

Q. Then where did you move after that?

A. Uhm, we lived in, I believe it was Monroe, North Carolina. We moved into an apartment on our own.

Q. So when did you have -- When did you have Collin?

A. I had Collin in 2002.

Q. How much younger is he than the twins?

A. Uhm, the girls were born in '95 so seven years.

Q. How long did you all live in Monroe, North Carolina?

A. Uhm, I believe we lived there for about a year.

Q. Then where did you move after that?

A. Uhm, we bought a house in the next little city over. I don't even remember. Beacon Hills or something.

Q. Do you know what year you moved to South Carolina?

A. Uhm, I was either 19 or 20, so I'm 38. I don't know. I mean, it was --

Q. So a couple years after --

A. Right.

Q. -- North Carolina?

A. Yeah.

Q. Okay.

A. Probably '98, '99. Something like that.

Q. Once you moved to South Carolina is that where the family stayed in South Carolina?

A. Mm-hmm.

THE COURT: Ma'am, can you just say yes or no.

THE WITNESS: Yes, ma'am. I'm sorry.

BY MS. CAVANAUGH:

Q. What type of -- Were you employed during the marriage?

A. No, ma'am.

Q. Was James employed?

A. Yes, ma'am.

Q. What type of work did you do?

A. Construction.

Q. Was that -- Did he do construction throughout your marriage?

A. Yes, ma'am.

Q. So did construction involve a lot of manual labor?

A. Yes, ma'am.

Q. Was he in a wheelchair during this marriage?

A. No, ma'am.

Q. Where did your children go to school?

A. I home schooled them for most of their lives.

Q. Were they all home schooled?

A. Yes, ma'am.

Q. When did the oldest children start being home schooled?

A. Uhm, the oldest children started when they were in kindergarten, uhm, and then I briefly put them in sixth grade for about half a year because they wanted to go really, really

bad. Uhm, we did that. They didn't like it and really wanted to be home and we really wanted them to be home again anyway so we decided that they needed to be home.

Q. How many times would you say that y'all moved over the course of your marriage?

A. Uhm, in the 20 years that we were together I would say at least 29, 30 times.

Q. Was that due to James looking for work and finding work or at least partially related to that?

A. Yes, ma'am.

Q. Did that also play into why you wanted to home school your children as well?

A. Yes, ma'am.

Q. I know you were married for a long time but how would you describe at least in the early years your relationship with James? Did y'all have a good loving marriage?

A. Yes, ma'am. I loved him very, very, very much. Uhm, we were always together.

Q. And was he basically your only boyfriend ever essentially?

A. I mean, I had had a few before that but nothing ever serious.

Q. But y'all met when you were in third grade?

A. Yes, ma'am.

Q. And you got married when you were 16?
A. (Witness nodding head.)
Q. How did he interact with your children when they were younger?
A. Uhm, sometimes it was really good and sometimes it wasn't.
Q. And what do you mean by -- How was the change observed by you? What do you mean by that as far as the differences as far as they are concerned?
A. He would have highs and lows. He would play with the kids and have fun and we would do stuff and then there would be days when he was on the couch and nobody could bother him.
Q. So it was obvious when he didn't want to be bothered?
A. Yes, ma'am.
Q. Did he ever physically abuse the kids or hit the kids or anything like that?
A. Other than spanking, he's never hit them, no, ma'am.
Q. As the twins grew up, did he have - was his relationship with Breana different from Complainant
A. Growing up, no, ma'am.
Q. What about as they became teenagers?
A. It started to change, yes, ma'am.

Q. Can you describe how that started to change?
A. Uhm --
Q. Let me interrupt you. Even before you moved to Camden?
A. No, ma'am. It didn't change until after we moved to Camden.
Q. Okay. So what -- How would you describe Breana's personality?
A. Very passive, quiet. A follower.
Q. Breana?
A. Mm-hmm. Yes, ma'am.
Q. Was she -- What kind of activities did she enjoy?
A. Drawing and painting.
Q. And did she like to do inside activities or outside activities?
A. She's more inside with me. She would cook, clean, help with the kids, help with the school work, draw.
Q. Was that different from what Complainant liked to do?
A. Yes, ma'am.
Q. What kind of activities did Complainant enjoy?
A. Uhm, anything outside. Anything. Climbing trees, skinning foxes. Just anything outside.
Q. Literally skinning foxes?
A. Literally, yes, ma'am.
Q. Did she also -- Who would she -- Did she also learn

how to do some of the work that James did?

A. Yes, ma'am.

Q. What did he teach her how to do?

A. Uhm, everything. She could probably build a house from the ground up if you let her. She could do tile, cut tile, cut wood, measure and put down laminate flooring.

Q. And was that something that she enjoyed?

A. Yes, ma'am.

Q. Is that something that Breana enjoyed?

A. No, ma'am.

Q. You testified that y'all moved over 20 times. Did you eventually, did you move to Camden in the summer of 2011?

A. Yes, ma'am.

Q. When was that decision made?

A. We were here for the Fourth of July visiting some friends. We lived here before so we still had friends here and we just decided to move again.

Q. Who were the friends? What were their last names?

A. Norwood.

Q. So you were here. Were you visiting them?

A. Yes, ma'am.

Q. So was there any discussions about moving prior to that vacation?

A. No, ma'am.

Q. How did you find the house that y'all moved to?

A. Uhm, actually they found it by boat. We were out on the water and it looked empty and I think the Norwoods knew the person that owned it or something along those lines. I wasn't there like the first time that he found it but I know it was by boat. Then they drove over there and talked to the owner and he was trying to sell it and decided to let us rent it.

Q. Okay. So was that house ready to move in?

A. Uhm, the inside was except it had some furniture still from the previous owner because they used it as a lake house. Uhm, the outside needed a lot of work. The trees were blocking the view and so forth.

Q. So what happened after the decision was made that that was the house that you were going to move into?

A. Uhm, we decided that Complainant would stay with her father James in the camper and then me and Breana and the other children would go home to pack and as soon as we were done packing he would come and get us and we would move.

Q. So did y'all stay in the camper while you were on vacation?

A. Yes, ma'am.

Q. How did you get back to Summerville?

A. Uhm, he drove the truck. He left the camper at the house, the Norwood's house and took us to our house in

Summerville.

Q. At the time did it seem unusual that Complainant was the one who stayed behind?

A. No, ma'am.

Q. And again why was that?

A. Uhm, because at that time she started working with her father more and just started doing things more with him than normal really over that vacation. She skied. They were just -- I don't know. They started to bond a little bit differently over that vacation and it really wasn't a --

Q. At that point did she already know how to do some remodeling and construction work?

A. Yes, ma'am. Because either I was with him or she was with him. He never went to work alone.

Q. When you went back to Summerville, how did you maintain contact? Did you talk to James or Complainant over that period?

A. Yes, ma'am.

Q. About how long -- What was the plan as far as how long you were going to be in Summerville?

A. Uhm, the plan was approximately two weeks that we probably would need to pack. It was my end that was the issue.

Q. Did you speak to Complainant or James over that two week period?

A. I talked to Complainant more than I talked to James.

Q. Who had the phone? To your recollection who had the phone? Who had a phone?

A. He had a phone. She did not have a cell phone.

Q. At some point over that two week period did you become concerned?

A. Yes, ma'am.

Q. Was that after a conversation you had with Complainant

A. Yes, ma'am.

Q. Without saying what she actually told you, why did you become worried? How did she sound?

A. Uhm, not normal. She was very quiet and just asking me questions. That's just not her normal character.

Q. After that conversation, what did you do?

A. I told Breana we needed to hurry up and get the house packed and we needed to go. So we had the house packed within two days after that phone call.

Q. Did you let James know that you were ready early?

A. Yes, ma'am.

Q. And did he come get you early?

A. No, ma'am.

Q. Did he give you any reason why he wouldn't come get you?

A. I -- He -- I had a hard time getting in touch with him a lot. Uhm, he kept saying there was no service and when

I would talk to him, he just wasn't ready. Things weren't ready at the house.

Q. Did he come and get the family?

A. Yes, ma'am.

Q. After two weeks?

A. (Witness nodding head.) Yes, ma'am.

Q. What were the initial room -- How was the room -- Who shared what room initially in the house?

A. Downstairs was the master bedroom. Uhm, then upstairs there were three bedrooms and Complainant and Breana shared the big room and then my youngest daughter had her own room and then the boys shared the third bedroom.

Q. Did that change?

A. Yes, ma'am.

Q. How did it change?

A. Uhm, I don't recall how long into us being there but I believe it was about a month or so, uhm, they ended up changing rooms. Complainant got her own room and Emma went in with Breana. Which Breana and Complainant were not get along that well so at that time, you know, I just thought, okay. Well, they're teenagers and they need to kind of separate.

Q. So was there ever any big huge issue between Breana and Complainant

A. There wasn't a huge issue but ever since we moved there was definitely something. They weren't - they weren't

as close as they were.

Q. So Complainant was the one -- Who decided that Complainant got her own room instead of Breana?

A. Uhm, I'm honestly not sure who decided that.

Q. Okay. You stated the master bedroom is downstairs?

A. Yes, ma'am.

Q. Is that the room that James slept in?

A. No, ma'am.

Q. Before y'all moved to Camden, did y'all share a bed?

A. Yes, ma'am.

Q. Throughout your marriage before Camden did y'all share a bed?

A. Yes, ma'am.

Q. So is it fair to say it was unusual that he stopped sleeping in the master bedroom?

A. Yes, ma'am.

Q. How did you know that he wasn't sleeping in the bedroom?

A. He wasn't in there with me. He was on the couch at first.

Q. At first?

A. Yes, ma'am.

Q. And what do you mean by "at first"?

A. Uhm, he started on the couch and then over a little

period of time I would find him in her bedroom in her bed and would pull him out.

Q. So you would try to physically remove him from the bed?

A. Yes, ma'am.

Q. When you would go up there, what was he doing at night up there?

A. Sleeping.

Q. In the same bed?

A. Yes, ma'am.

Q. Did this concern you?

A. Yes, ma'am.

Q. How old is Complainant at this time?

A. Uhm, 16.

Q. Did you confront James about it?

A. Yes, ma'am.

Q. And what did you say to him about it?

A. Uhm, I told him that it was very inappropriate and he cannot be sleeping in her bed. She's not ten anymore, you know, and she's a grown woman and you can't sleep in her bed. You can't lay in her bed, period, not just sleep.

Q. Did you ever catch him laying in Breana's bed?

A. No, ma'am.

Q. So it was only Complainant

A. Yes, ma'am.

Q. What reason did he give as to why, at least initially, why he was sleeping in her bed?

A. Uhm, he didn't really give a reason. Uhm, just made me feel like trash for even insinuating that he would do anything with his daughter. Uhm, that was sick. You know, him and her are just close and then I'm jealous because they're close.

Q. Did he say anything about the bed, y'alls bed as far as the comfort level?

A. Yes, ma'am.

Q. What did he say about that?

A. The day we moved in he was tossing and turning on the bed and, uhm, got up and told me that he just couldn't sleep on that bed even though that was the bed that he supposedly slept in the whole time I was gone because I asked him where he was sleeping.

Q. So he first said it was uncomfortable for him in that particular bed?

A. Yes, ma'am.

Q. After he told you that as the reason for sleeping in another bed, what did you do?

A. I changed beds.

Q. What do you mean you changed beds?

A. I took one bed out and swapped it for the one that he kept -- When Complainant and Breana were sharing the room, he

would go into that room and lay in Complainant bed, not at night but during the day because that was the bed he liked. So I swapped the beds from, I took Complainant bed and put it in which we slept in the first few nights because we didn't have the downstairs bed yet. Does that make sense?

Q. Yes.

A. Okay.

Q. So why did you switch out beds?

A. Because he wouldn't sleep in the first bed. He said it was uncomfortable and he kept going and laying down during the day and taking naps or whatever in Complainant bed not necessarily with her but just laying there in that bed.

Q. Okay. So after you changed the beds, did he then begin to sleep in the same bed with you?

A. No, ma'am.

Q. So did you confront him about it then?

A. Yes, ma'am.

Q. What response did he give you then?

A. Uhm, excuses. I've had too much to drink or this couch is more comfortable. Uhm, you know, I'm not ready to go to bed, then he would sleep on the couch. That's when I was upstairs the first week that we moved in.

Q. So basically the reason he gave you changed when you tried to fix the first problem?

A. Yes, ma'am.

Q. How would you describe y'alls -- Did you have any issues with your sexual relationship prior to the move to Camden?

A. No, ma'am.

Q. Did you have a healthy sex life?

A. Yes, ma'am.

Q. How often would you have sex with your husband?

A. Almost every day.

Q. Did that change when you moved to Camden?

A. Yes, ma'am.

Q. How?

A. The night I got there, you know, I just, you know, I took it for granted that that's what we would do and he couldn't and I didn't know why. He kept saying it was the alcohol, but the alcohol has never made him not touch me or anything, you know. And it just, every night it was the same, you know, excuse so I don't honestly even remember from the time I moved in when the first time we actually had sex was. I don't remember.

Q. How long did you live in Camden before you found out what was happening with Complainant

A. Uhm, it was a little over a year.

Q. Can you estimate how many times you all had sex during that period?

A. Maybe two or three times.

Q. Did you try?

A. Yes, ma'am.

Q. Did you blame yourself?

A. Yes, ma'am.

Q. What else changed about James' behavior once y'all moved to Camden? Did he start carrying anything that he didn't have previously?

A. Yes, ma'am. He, uhm, kept a gun on him at all times.

Q. Was this a new behavior?

A. Yes, ma'am.

Q. Once you moved -- How would you describe your relationship with Complainant prior to moving to Camden?

A. Uhm, I mean, we were close. Uhm, me and Breana were a lot closer always because Breana liked the same things I liked. Uhm, you know, we were close. We were mother and daughter. I love her. We did stuff. Uhm, I think we had a pretty good relationship. She would talk to me, you know?

Q. Did you notice any changes once you moved into the house on the lake in Camden?

A. Yes, ma'am.

Q. Describe those types of changes?

A. Uhm, from the very first day we got there I just felt like something was off. Uhm, she didn't look at me. I think for a couple days really she didn't even make eye

contact with me. She got to where she kind of stopped talking to me a lot. She was very withdrawn. Uhm, she avoided me, uhm, and was just quiet and extremely moody. Like we always were walking on egg shells around her. It wasn't me and the little children because she could just flip out. You know, just get mad.

Q. And that was a new behavior?

A. Yes, ma'am.

Q. And she was also 16?

A. Yes, ma'am.

Q. Did Breana have those same types of changes when y'all moved to Camden?

A. No, ma'am.

Q. So in your opinion as her mother it was more than her just being 16?

A. Yes, ma'am.

Q. Did you try to ask her what was going on?

A. Yes, ma'am. I asked her many times like what's wrong with you? You know, what's going on? And she would say nothing and walk away.

Q. Did you ever try to over the course before that day did you ever try to dig a little deeper?

A. Yes, ma'am. There was two to three times that I sat her down and asked her what was going on and told her that it's not right that he's laying in her bed and I feel like

there's something going on and, you know, I can't fix it if she doesn't tell me. I can't do anything. I did that two or three times.

Q. And what would she say when you would try to go a little bit deeper?

A. Uhm, she would not look at me. She would always look away and say, mom, you know, no, and that was basically the end of the conversation.

Q. You already mentioned that you switched the beds out. Did you try to do anything else to remedy him sleeping in her bed?

A. Yes, ma'am.

Q. What did you do?

A. I took the master bed that was downstairs that I slept in alone and I moved it upstairs. I gave Breana her own room and I took the room beside Complainant room with the two boys and the girl.

(Whereupon, State's exhibit #26 and #27 marked for identification.)

BY MS. CAVANAUGH:

Q. I show you what's marked as State's Exhibit 26 and 27 and ask you if you recognize these photographs?

A. Yes, ma'am.

Q. What do those photographs depict?

A. Uhm, the first one is the downstairs master bedroom

that I destroyed and I took the master bed upstairs. The second picture is the upstairs where I slept with three children and turned that room into just a junk room to move everything out of the way.

MS. CAVANAUGH: Your Honor, at this time I would ask that State's Exhibit 26 and 27 be admitted.

THE COURT: Any objection?

MS. GOOD: No objection.

THE COURT: They're so admitted.

BY MS. CAVANAUGH:

Q. So is there a bed in what used to be the master bedroom?

A. No, ma'am.

Q. And is this the picture of the big room?

A. Yes, ma'am.

Q. Is that the room that you said you moved your bed into?

A. Yes, ma'am.

Q. And the house is a little -- Well, the master bedroom is a little bit messy. Can you explain that?

A. Uhm --

Q. Was that how it always looked as far as the --

A. I mean, it was -- Our house was always cluttered, uhm, but I believe those pictures were taken after, uhm, he was taken away and at that point I didn't do anything for a

few weeks and we started going through stuff because we knew we were going to have to move so I didn't really clean anymore.

Q. But that is the master bedroom?

A. Yes, ma'am.

Q. With your bed?

A. Yes, ma'am.

Q. Going back to the home schooling, who taught the children? Who gave them their education?

A. Me.

Q. That was your role?

A. Yes, ma'am.

Q. When did you do that?

A. Uhm, during the day. Sometimes in the evenings. Mainly during the day.

Q. So you were often with Complainant during the day?

A. Yes, ma'am. When we weren't working, that's when we did our school work.

Q. And the other children, too?

A. Yes, ma'am.

Q. Were there opportunities that James was with Complainant by herself during the day?

A. Oh, yes, ma'am.

Q. Can you expand on that for us?

A. Uhm, before we moved, primarily it was me that went

to work with him. She did go. Occasionally we all three went sometimes. Breana would stay with the little kids. Uhm, and then after we moved, I think I maybe went to work with him a handful of times. Not very often. It was primarily Complainant that went and I had to stay home.

Q. What about the errands? Would you go to the grocery store?

A. Yes, ma'am.

Q. Did you go by yourself?

A. No, ma'am.

Q. Why not?

A. I just always took the children.

Q. What about Breana, did she go with you?

A. Most of the time, yes, to help me because I had the children.

Q. Did Complainant go with you?

A. Uhm, not really. No, ma'am.

Q. I mean, there were probably times that she did?

A. Yes, ma'am. Yeah, there's been a few. But primarily when I would go, like, it would be like, Complainant, you want to go to the store? And then, you know, my husband would be like, well, no. We're Gonna build this or we're gonna go fishing or we're gonna go swimming or we're gonna, you know, whatever, and that just kind of became the norm.

Q. But he didn't do that with Breana?

A. No, ma'am.

Q. What about, do you have any sisters?

A. Yes, ma'am.

Q. Okay. Did you visit your sisters?

A. Uhm, I have one sister and, yes, I did visit her I think twice.

Q. During that year period?

A. Yes, ma'am.

Q. On those occasions who did you take with you?

A. Breana and the children, the small children, all three of the small children.

Q. Not Complainant though?

A. No, ma'am.

Q. We talked about him seemingly constantly sleeping in her bed. Did you ever observe any other things that James did that made you feel uncomfortable?

A. Uhm, there was a couple, I think three different instances towards the end that really, really made me realize that there was something not right, something going on. Uhm, one time I walked up -- This is probably the last time that he was ever in her bed -- I walked upstairs and they were both laying there and I pulled the cover back and her leg, he had her leg wrapped around him from behind. It wasn't in the front or anything, but it was from behind and I freaked out. Uhm, I actually left the house for about 30 minutes trying to

figure out what I was going to do. You know? I talked to her again. Talk to him. He made me think that I was absolutely nuts. Uhm, couldn't get anything out of her. Didn't know what to do. Felt like if I called the police and neither one of them were saying anything, that I'm crazy. And I thought that I was going crazy for a long time.

Uhm, The second time was she got really sick and she had mono and he came to me, before we knew what she had it, he came to me and said that she had a lump on the side of her breast. And I was like, how do you know she has a lump on the side of her breast? He said, oh, well, I had the, you know, the warm rag on her, the cool rag on her and I accidentally maybe pushed on it or something and I felt there was a lump. Uhm, I went up and felt and sure enough her lymph nodes were swollen so we went to the emergency room. So that was -- You know, and I asked her about that, too. I was like, you know, what happened? And she was sick. She was like I don't know. You know, nothing. She had a fever of like 104 so she wasn't in any shape to be telling me anything. Uhm, and then as she was recovering and this was all a good month and a half before all this came out that all this stuff took place, uhm, we were on the boat and she was laying on the back of the pontoon boat laying out in the sun and he walked over to her and undid her bathing suit top and I immediately freaked out again and went and buckled it and told him if he ever does something like

that again, that I was going to leave because that was very - you don't undo your daughter's top, period.

Q. You mentioned undoing her top. Did you ever notice bruises on Complainant

A. Uhm, I have seen a couple. Uhm, most of the time though even during the summer Complainant would wear sweat pants and she'd pull them up to like around her knees and she would have on a tank top and a sweat jacket when she was inside. Uhm, when she was outside when it was hot obviously she wasn't dressed that way. So but yes, I have seen bruises on her.

Q. Did you ever ask her about the bruises?

A. Uhm --

Q. First where did you see those?

A. Uhm, on her arms and on her legs.

Q. Lower?

A. Her, you know, her thighs.

Q. Okay.

A. You know, I don't really recall if I specifically said where did those bruises come from? You know, because even my sons have bruises, you know. It wasn't -- At that time it wasn't like this huge red flag that said -- You know what I mean? My mind wasn't there so I didn't really -- I don't think I said anything about it.

Q. Okay. Were Complainant and Breana allowed to date?

A. No, ma'am.

Q. Whose rule was that?

A. Uhm, their father's.

Q. Okay. What about girlfriends? Did they have a lot of girlfriends?

A. No, ma'am. They each had one.

Q. Okay. Do you know -- I mean, they were home schooled?

A. Yes.

Q. Do you know other reasons why they might not have had many girlfriends?

A. Uhm, they were not allowed to go spend the night places so it kind of dampens your personal life. People get tired of coming to the same house over and over if you can't go to their house.

Q. Did y'all have a family that you hung out with as a family like?

A. In Camden?

Q. Yes.

A. Yes, ma'am.

Q. Who were they?

A. The Harrelsons and the Norwoods.

Q. What type of activities would y'all do together?

A. Uhm, go out on the lake tubing, fishing. We would go to their house. They had like a little farm which was our thing. Uhm, ride horses, which was amazing and just hang

out.

Q. Was the whole family involved?

A. Yes, ma'am.

Q. And their whole family?

A. Yes, ma'am.

Q. What about the neighbors? Did you have neighbors at the lake house?

A. Yes, ma'am, one.

Q. What were their names?

A. Uhm, their last name is Penrod. I do not know - I do not remember what the husband's name was, but the wife was Martha and then they had a daughter who I don't remember her name and then she had three children that were about the age of the twins and I don't remember their names either.

Q. Did their kids play together sometimes?

A. Sometimes.

Q. How did you get along with Martha Penrod?

A. Uhm, it was touchy. Uhm, she didn't seem to care for us for some reason too much and, uhm, I spoke to her. We were cordial. Uhm, she was never like nasty to me or mean but there was some issues between our family and her.

Q. I'm going to take you to August 11th, 2012. What was happening earlier that day? What was the plan for the day?

A. Uhm, we were all going to go to the Harrelsons. We

had just got Breana a horse, Complainant and Breana but mainly Breana. It was her horse. She wanted one and we found a free one and they delivered it so we allowed her to get a horse to keep at the Harrelsons because they had two horses already so we were going to go to their house and cookout and let the kids ride the horses, play.

Q. And the Harrelsons, did they have -- How many kids were in that family?

A. Uhm, I believe they had five also.

Q. How many -- Do they have sons and daughters?

A. Yes, ma'am. Their ages were, uhm, I think at the time six was the youngest, and then the oldest was 12 or 13.

Q. Who was the oldest?

A. Henry.

Q. Were there any issues related to Henry?

A. Uhm, as far as I'm concerned no, but there was between Henry and Complainant father.

Q. What was the issue?

A. Uhm, he kept saying that he thought that she was messing with him.

Q. How old was Henry?

A. He was 12 or 13.

Q. Can you describe Henry?

A. Uhm, he was probably about four foot tall, freckles, braces, a little country, little sweet little boy. Just a

little boy. That's how I would describe him, a little boy. He had not hit puberty yet. No, ma'am.

Q. So were you concerned about Henry whatsoever?

A. Not whatsoever.

Q. So that particular day you said y'all were going to go to the Harrelsons. Did the plans change at some point during that day?

A. Yes, ma'am.

Q. What had changed?

A. Uhm, Complainant and her father got into some type of little scuffle or argument. I'm not exactly sure to this day what was said, uhm, but then he came in and said that she's not going and she's not allowed to ever go there again.

Q. Was Breana going?

A. Yes, ma'am.

Q. And the other children were going?

A. They were supposed to but I said that if Complainant can't go, none of the kids are going and we would go alone and leave the kids at home.

Q. What was his response to that?

A. Uhm, he agreed to that.

Q. So what happened? Did you go to the Harrelsons that day?

A. Excuse me.

Q. Did you go to the Harrelsons that day?

A. No, ma'am.

Q. Okay. What did you do at some point that afternoon? Where was Complainant

A. Uhm, at this point she was on the end of our dock, uhm, sitting down like holding her knees at the very, very end of our dock. She was upset. I could tell she was upset. Uhm, he was in the house laying on the couch. Uhm, I got up. I noticed she was out there. Uhm, I said I was going to go talk to her. He got up and he grabbed my arms and said, you know, leave her alone. She'll be all right. And I said no. And I went down to speak with my daughter and find out what was wrong. I knew she was upset because they couldn't go but, you know, I knew there was something more than that and I went down to the end of the dock.

Q. You said he grabbed you and said don't go. Was he carrying a gun that day?

A. Yes, ma'am.

Q. Around his waist?

A. Yes, ma'am.

Q. Did you go down to the dock?

A. Yes, ma'am.

Q. What did you observe about Complainant when you went to the dock?

A. Uhm, she was sitting at the end of the dock kind of rocking and crying like she couldn't even breathe and I leaned

down. I said, what is wrong? I said, is he touching you? And she said everyday. And I stood up and I said I was going to kill him. And she grabbed my arm and she said no because we need you and I immediately like stopped. I sucked it up and I looked up at the house and he's standing at the door. We had a glass door with nothing in the way, you know, like a solid glass door and he's standing there staring at me at the end of the dock. I'm walking around the dock trying to stop crying and not let him know that I'm upset. And I said, all right. I'll be right back. Uhm, and I started walking up the dock and once I got to where he couldn't see me, I called my sister to tell her to call the police.

Q. You called your sister?

A. Yes, ma'am.

Q. Why didn't you just call 911?

A. Because I was afraid. I didn't have time to have 911 on my phone. I didn't have time to explain to them where I lived, what was going on. Uhm, I felt like it was a matter of life and death. I knew if he got my phone, he would know that I called 911 and he would know that she had told me and that it finally had come out.

Q. What was -- Was there an issue with your phone before? Were you concerned that he would go through your phone?

A. Yes, ma'am.

Q. Had he done that before?

A. Yes, ma'am.

Q. What did you tell your sister?

A. Uhm, I told her that he had been touching her and she needed to call the police and tell them to get here immediately because either he was fixing to die or I was fixing to die or we were all fixing to die. Somebody was probably fixing to die if he found out I knew. And I hung up and proceeded to go inside my house.

Q. When you say that somebody was gonna die, can you -- Did he ever physically harm you?

A. He's never physically harmed me, no, ma'am.

Q. Can you explain where that fear came from that day?

A. I was always worried, uhm, with him wearing a gun because he was always so unstable as far as emotionally and, you know, he's happy. He's mad. He's sad. He's happy. You know, like all over the place. Uhm, and he had always said if I can't have you, no one can. He's made comments before about, you know, he would never go to jail. And he's made comments about suicide before, uhm, so that's why I was afraid.

Q. You were afraid?

A. Yes, ma'am.

Q. Is it fair to say that the emotions were high that

day?

A. Absolutely. Yes.

Q. Had you spoken to your sister before about any concerns related to him sleeping in Complainant bed?

A. Yes, ma'am.

Q. So she was already aware of this?

A. Yes, ma'am.

Q. Okay. After you called your sister and told her to call 911, what did you do?

A. I proceeded to go inside and act like nothing was wrong. I asked him if he was, you know, about ready to go. What we were going to do. Just have a conversation because I know that he thought that if I knew, I would flip out and I didn't do that so I went inside and made sure everything was fine and at that point he laid back down on the couch. Uhm, I sat down beside him for a couple minutes and touched him because I knew what was fixing to happen and I knew my world was fixing to get taken from me. Then I heard the cop cars so I looked out the window. I saw that they were here, uhm, and I told him, I said, oh, the police are here. We lost a gun previously like two weeks ago. He was riding a horse and I guess it fell out of his holster and I called to report it missing and they never did come out to get the serial numbers so when they pulled up, I told him, oh, they're finally here to get the serial numbers. I proceeded to go outside with the

gun box acting like that's what I was gonna do. So you want me to continue?

Q. So you went outside?

A. Yes, ma'am. I went outside to meet the police.

Q. Where was Breana and the younger kids at this point?

A. Uhm, she was upstairs. I had -- I don't remember when that me and her saw each other. I believe James Miller was laying on the couch at one point and I grabbed her and I said he's been touching her. Take the little children upstairs. The police are coming and she immediately grabbed the children and took them upstairs.

Q. Okay. Do you remember if you said that specifically?

A. I am - I can't say for a hundred percent that's my exact words, but I did tell her that he was doing something to her, uhm, and that she needed to take the children upstairs so they didn't see what was fixing to happen.

Q. When you talked to her and asked her to take the kids upstairs, was he anywhere near you?

A. No, ma'am.

Q. Where was he?

A. He was on the couch.

Q. So the police came and you went outside?

A. Yes, ma'am.

Q. With the gun box?

A. Yes, ma'am.

Q. Did he say anything to you before you went outside?

A. No, ma'am.

Q. What did you do? Where did you talk to the police?

A. Uhm, to the right of the house there's like a hill. There's our driveway and there's like a little hill.

Q. When you're talking about the right of the house or the left of the house, are you saying as if you are looking from the driveway or from the lake?

A. If the lake is behind you and you're looking at the house, to the right because to the left would be the neighbor, to right would be the driveway.

Q. I'm going to show you what's already been admitted as State's Exhibit number 4. What area are you referring to?

A. Uhm, I was literally like right over here. You can see from that window. I saw the police and this is the driveway. It goes that way so I was probably right about here (indicating.)

Q. Okay. What did you tell them when they came?

A. I just started crying and I said that my daughter just told me that her father has been touching her and I just

like collapsed on the ground.

Q. So you were upset?

A. Yes, ma'am.

Q. And how else did you feel?

A. Hurt, scared, disgusted, pissed off.

Q. Why do you think you collapsed?

A. I just couldn't believe it was really happening. I knew that something was not right for a long, long time.

Q. Earlier when you mentioned that he was staring out of the, staring out of the window watching you talking to Complainant let me show you what's marked as State's Exhibit 9. Do you recognize that?

A. Yes, ma'am. That's our front door.

Q. Is that what you are referring to?

A. Yes, ma'am.

MS. CAVANAUGH: Your Honor, at this time I would ask that State's exhibit number 9 be admitted into evidence.

THE COURT: Any objection?

MS. GOOD: No objection.

THE COURT: It's so admitted.

MS. CAVANAUGH: Thank you.

BY MS. CAVANAUGH:

Q. So that was the window?

A. Yes, ma'am. It had blinds in the door but you could raise and lower them and they were usually raised. There I

think they're actually lowered, but most of the time we keep them raised so we could see the lake.

Q. Okay. When you went outside to talk to the police, did James go with you?

A. No, ma'am.

Q. When was the next time that you saw James?

A. I saw him taking off down to my daughter Complainant

Q. And that was after the police were there?

A. Yes, ma'am.

Q. What did you do when you saw him going down towards the dock?

A. I started freaking out and telling them they better hurry up and get down there because I thought he was going to kill her.

Q. Did you know whether or not he had the gun on him at that time?

A. I thought that he did because he had it him five minutes ago, three minutes ago even.

Q. So you didn't know?

A. I had no idea.

Q. Did they go down there after him?

A. They did. Not as quickly as I liked but they did.

Q. When they went down there, where did you stay?

A. I stayed on the ground crying.

Q. Did you see anything on the dock as far as what he

was doing?

A. Yes, ma'am.

Q. What did you see?

A. Uhm, the officers got I think a little bit more than half way down there when I saw him walking up the dock taking his gun holster -- there was no gun -- but his gun holster and his belt off, taking the stuff out of his pockets setting it in the chair and then he put his hands behind his head and proceeded to walk towards them.

Q. Were you within hearing distance of where the officers and James were at that point?

A. No, ma'am.

Q. Did they walk towards you our toward where you were?

A. With him?

Q. Yes.

A. Yes, ma'am. Once they -- Well, when they pulled up, they told me they couldn't just arrest him and that's what made me collapse initially. I was like, oh, my, God. He's not going to admit that he did it so you can't leave him with us because he's gonna kill us. Once they put the handcuffs on him, I felt better, and then they started walking up towards me with him with the handcuffs on.

Q. And so did he say anything to you when he was walking by you?

A. Yes, ma'am.

Q. What did he say?

A. He said it wasn't all his fault and he asked me for one last kiss.

Q. He said it wasn't all his fault?

A. Yes, ma'am.

Q. At this point had you told him why the police were there --

A. No, ma'am.

Q. -- other than what you had said earlier about the gun?

A. No, ma'am. He thought, initially he thought they were there for the gun.

Q. Did Corporal Houser take you and Complainant inside?

A. Uhm, one of them did. I don't know which one. I don't remember. But yes, ma'am. Once they put him in the car, one of the officers asked us if we could go inside.

Q. Were you asked to give a statement?

A. Yes, ma'am.

Q. Was it something that he sat there and asked you like a question and answer session?

A. No, ma'am.

Q. What type --

A. He give me a piece of paper with a pen and said we need a statement. And I was like, right now? Really? I

didn't know what to say. I didn't know how to write it and I just threw something down.

Q. And at this point had Complainant told you anything else besides what she said on the dock?

A. No, ma'am.

Q. So you gave them the information that you had at that time?

A. Yes, ma'am.

Q. And then your other observations over the course of that period, the year?

A. Repeat that please.

Q. Did you also just give a little but more about your concerns over that year?

A. I believe so. I have not reread my statement. I really don't know what I said. I was like mentally not there.

Q. Okay. When you gave your written statement, were you and Complainant together?

A. Uhm, I know I was sitting in the living room on the couch and I don't remember if she was outside doing hers or if she was in the living room as well. I know there was an officer standing there with us but I don't remember where she was.

Q. Did you have any conversations whatsoever about what you were going to put in yours and what she was going to put

in hers?

A. No, ma'am.

Q. Did you take her to a doctor?

A. Yes, ma'am.

Q. Did you -- How many?

A. Uhm, gosh, I know we went to two different places. Uhm, and I don't remember if it was just a forensic interview. I know we went to The CARE House. Uhm, then there was another place that they told me I needed to take her.

Q. Okay. Did you do that?

A. Yes, ma'am.

Q. Did you also take her to the hospital in Kershaw?

A. I don't remember.

Q. Was James arrested that afternoon?

A. Yes, ma'am.

Q. And did he make any -- Did you have any further interaction with law enforcement that afternoon?

A. I don't believe so.

Q. At some point did you speak to -- Uhm, did you know whether this was going to be assigned to an investigator?

A. Yes, ma'am.

Q. At some point did you speak to an investigator?

A. Yes, ma'am.

Q. Who did you speak to?

A. Uhm, his last name I believe starts with a K.

Q. Investigator Knafelc?

A. Yes, ma'am.

Q. Do you remember anything about speaking to him?

A. Uhm, I do. I remember how nice he was and how he made us feel safe.

Q. Okay. Did you reach out to him several days later, uhm, about anything, any concerns about the house?

A. Uhm, gosh, I don't remember.

Q. Did you have more conversations with Complainant about the sexual assaults after he was arrested?

A. Yes, ma'am.

Q. Okay. Did you learn more details as far as about where it might have occurred?

A. Yes, ma'am.

Q. Did she tell you where?

A. Yes, ma'am.

Q. Where did she say it happened?

A. Uhm, it happened in the truck. It happened in my bed. It happened on the couch. It happened in the house next door because we had both houses, her room and other places in Camden.

Q. So did you reach out to the investigator after you learned where?

A. Yes, ma'am.

Q. And why did you do that?

A. Uhm, because I wanted them to come and look for evidence.

Q. And did they come out to your house?

A. Yes, ma'am.

Q. You said that Complainant told you where the sexual assaults occurred. Did she tell you, uhm, what time frame they occurred? When they occurred?

A. Uhm, what do you mean? Like time of day?

Q. When it started?

A. Uhm, I mean, it started the two weeks that we were separated, uhm, and it happened a lot. We didn't get into too much detail because obviously it was a very uncomfortable situation for both of us to talk about.

Q. Did she indicate to you when it ended?

A. Uhm, I believe it was at least a month before it came out. I believe it was about the time frame because things started getting really, really weird between the two of them.

Q. After he was arrested that day, did you have any further contact with James?

A. Briefly, yes, ma'am.

Q. Can you describe that contact?

A. He kept calling the house and calling the house and calling the house, uhm, and I would answer like an idiot and, uhm, he would say, you know, just make it go away. I'll leave

you guys alone. You know, I'll pay you whatever you want. Just, you know, I'll leave you alone. Just make it go away is what he would say.

Q. Did he ask to speak to Complainant

A. Yes, ma'am.

Q. Did you let him talk to Complainant?

A. I did put her on the phone I think once. I thought that if I did that, that he would say I'm sorry.

Q. So that's why you did it?

A. Yes, ma'am. Something that would hopefully give her some type of closure and also kind of put the nail in the coffin, I guess.

Q. Was that the only time that he actually called you?

A. Yes, ma'am. After - after those few phone calls that first two days I think it was, because it got to where the phone was constantly ringing and constantly ringing and I wasn't answering it anymore. Once I knew that he was not, you know, he wasn't --

Q. Right. Did you go see him at the jail after that?

A. Yes, ma'am, I did.

Q. Why did you do that?

A. Uhm, I had a title to a vehicle, uhm, that I needed him to sign so that I could sell it. The registration was in my name but the title was in his.

Q. Did he do it?

A. No, ma'am.

Q. Did he say anything to you after you tried to get him to sign over the title?

A. Uhm, he had his Bible in his hand and told me that he had found God. I had recently been saved and we've had some conversations about that. So he did that and, uhm, told me I wasn't being the wife I'm supposed to be because apparently somebody told him to read Proverbs and he was very distraught trying to rip off his clothes. And at one point I did kind of chuckle at him because he was acting ridiculous and he snapped at me real quick and I just, I realized that I'm not doing this and, uhm, I turned around and said I love you and I walked away.

Q. Okay. Did you -- How long did you stay in Camden after --

A. That happened?

Q. -- that day?

A. Uhm, August, September. We moved less than two months later. More like a month and a half later once I got everything sold because I had no car. I had no money. I had no job so I had to sell everything that we had to try to get away.

Q. Because James was the source of income for y'alls family, right?

A. Yes, ma'am.

Q. Where did you move after Camden?

A. Pensacola, Florida.

Q. What did you do when you moved to Pensacola, Florida?

A. Uhm, I got a house. Uhm, I got a job at State Farm. I was doing car insurance for a little while, then I challenged the board and got my life, health and annuities license, then I started working for a global insurance company. Uhm, I did so well that within eight weeks they promoted me to territory manager. I took care of everything from Alabama to Tallahassee. I did that for almost two years and then the traveling just, it took its toll on me, flying to Chicago, flying to Charlotte, flying here and flying there, driving to Tallahassee. Uhm, I wasn't around as much as I should be so I quit and I challenged the board to get my CNA and I now --

Q. When you say challenged, what do you mean?

A. Uhm, that means that I believe I'm smart enough to study and challenge the board without going to school and pass the state exam.

Q. Is that something that is like Florida terminology?

A. Uhm, I don't know if they do it in ever state. I was just told that it can happen and when I did my life,

health and annuities, I made the highest score of anybody in 20 years. And I made a hundred on my CNA state exam which they were very impressed.

Q. Okay. So you took steps to improve your life and provide for your family?

A. Yes, ma'am.

Q. Did the children move with you initially?

A. Yes, ma'am.

Q. Okay. How long did they live, uhm, with you in Pensacola, Florida?

A. Uhm, the whole time we have been there which has been -- Oh, you're talking about the twins or all of them?

Q. Well, the younger kids, are they still with you?

A. Yes, ma'am. The younger kids are still with me.

Q. What about the twins?

A. The twins, uhm, Breana, my sister ended up talking me into sending Breana to her because she was in a bad relationship. The boy was cheating on her and, uhm, my sister made me believe that if I didn't do it, I would lose her so I sent her to my sister's probably, I don't know, maybe six months after we moved down there. Uh, I sent her there. Uhm, Complainant remained with me until -- That was the last time Breana lived with me because she got very upset with me. And Complainant lived with me until, gosh, 2014 when she moved out and got her own little apartment, she and her fiance.

Q. Okay. When you said that Breana got upset with you, again what was your understanding as to why she was upset with you?

A. Well, what happened was, uhm, when I sent her, I sent her with two of the other children. Uhm, I was working a lot. I was struggling. I really couldn't afford to put the kids in after school care. They were in school. I couldn't afford after school care. Uhm, my sister said they need a break. Just let me have them all, you know, all except my son Collin so she took three of them. Uhm, and then once she got there, my sister started telling Breana --

MS. GOOD: Objection, Your Honor.

THE COURT: Sustained.

BY MS. CAVANAUGH:

Q. Just in general was she upset with you about a boyfriend?

A. She was upset with me about a boyfriend and, uhm, we weren't allowed to talk anymore. Let's just say that.

Q. Okay. You weren't allowed to talk to Breana?

A. No, ma'am.

Q. Why not? Who told you that you weren't allowed to talk to Breana?

A. My sister said that she didn't want to talk to me. She told me that.

Q. Okay. Is y'alls relationship okay now?

A. It's much, much, much better than what it was. It's still not one hundred percent. This has been hard on all of us. But yeah, we talk. We text. We call regularly so it's - it's good.

Q. And are both the twins married now?

A. Yes, ma'am.

Q. Where do they live?

A. Breana lives in California and Complainant lives in Virginia.

Q. Since the day that you described going to see him when you were trying to get him to sign over the title, have you seen him since?

A. No, ma'am.

Q. Is this the first day since that day three and a half years ago?

A. Yes, ma'am.

Q. What about contact? Has he made any contact with you since then?

A. No, ma'am.

Q. And can you point out to the jury who your former husband is?

A. (Indicating.)

Q. What's he wearing?

A. Blue sweatshirt.

MS. CAVANAUGH: Your Honor, let the record reflect

she has identified the defendant.

THE COURT: It so reflects.

BY MS. CAVANAUGH:

Q. Have you since remarried?

A. Yes, ma'am.

Q. Okay. When did you say you got remarried?

A. June 6th of this past year or last year. It will be a year this June.

Q. What's your husband's name?

A. Jason.

Q. What's his last name?

A. Price.

Q. Does he have kids?

A. Uhm, he does. They don't live with us. They are older.

Q. Do your younger siblings live with y'all?

A. Yes, ma'am.

MS. CAVANAUGH: Thank you, Tammy.

THE COURT: All right. Before we get into cross examination, we have been hearing testimony for over an hour and a half so we're gonna take a ten minute break. It is 3:50 now. Be back in the courtroom at 4:00. And I again tell the jurors not to speak about the case when you're back there in the jury room. Thank you.

(Short recess.)

BAILIFF: All rise.

THE COURT: Thank you. Before the jury comes in, I remind you that you remain under oath. All right. Go ahead and bring in the jury.

(Whereupon, the jury returned to the courtroom at 4:15 p.m.)

THE COURT: All right. We'll resume with the cross examination of Ms. Price. Ms. Good.

CROSS EXAMINATION

BY MS. GOOD:

Q. Good afternoon, Ms. Price.

A. Good afternoon.

Q. How many guns were in the home?

A. Uhm, approximately four or five.

Q. And did Complainant have a gun?

A. Uhm, she had a, some type of hunting rifle.

Q. So there were guns in the home long before July of 2011?

A. No, ma'am. That gun was purchased after July.

Q. Complainant gun was?

A. Yes, ma'am.

Q. When was it purchased?

A. Uhm, it would have been probably around March. When my mother passed away, I got a settlement and that's when, uhm, the majority of the guns were purchased. There were two

prior.

Q. And the two prior, who bought those guns?

MS. CAVANAUGH: Objection. Can we approach briefly?

THE COURT: Sure.

(Side bar off the record.)

BY MS. CAVANAUGH:

Q. Prior to July of 2011, how many guns were in the home?

A. Zero.

Q. When was the first gun purchased?

A. I'm not a hundred percent sure but I believe it was the end of July, beginning of August.

Q. And who had that gun?

A. He did.

Q. And this gun that was lost, when did that gun get lost?

A. Uhm, that gun got lost about two weeks before the police came to the house.

Q. When was that gun bought though?

A. Oh, it was bought, uhm, in March.

Q. Okay. So between July and March how many guns were in the home?

A. Two.

Q. What was the second gun?

A. Uhm, one of them was a Ruger nine millimeter.

Q. Whose gun was that? Which one was he carrying on him?

A. He carried - well, he carried one and I don't remember the name of it. And he carried a Smith and Wesson. I honestly don't know. I know there was one Ruger.

Q. So he carried two guns?

A. Sometimes, yes, ma'am.

Q. How often did he have a gun on him?

A. He had a gun on him everyday.

Q. So where was the other one the entire time?

A. Uhm, we bought a safe and the other, all the ammo and the other rifle was in the safe.

Q. Okay. Do you know if Complainant was aware that that gun was in the home?

A. Which gun?

Q. The one that stayed in the safe.

A. Yes, ma'am.

Q. Yes, you are aware, or yes, she knew?

A. I mean, there was a gun safe so, yes, she knows there's guns in the safe.

Q. Okay.

A. Yes, ma'am.

Q. And you're familiar with how a criminal sexual conduct investigation goes, correct?

A. I'm familiar with what?

Q. How a criminal sexual conduct investigation goes?
A. Somewhat.
Q. That's because you have been through it before with your son?
A. Yes, ma'am.
Q. And that was prior to any of this coming out with Complainant
A. Yes, ma'am.
Q. And, in fact, you put your father away in jail for that, correct?
A. Uhm, no, ma'am, I did not.
Q. He is in prison, correct?
A. Uhm, he is in prison and I did call the police.
Q. When was that? What year was that?
A. That was 2006.
Q. You stated you home schooled the children, correct?
A. Yes, ma'am.
Q. When did the twins go into elementary school that one time?
A. They went to sixth grade, uhm, elementary school.
Q. Were they public schooled?
A. They were in public school for half of sixth grade so that would have been, I think, 2007.
Q. Okay. So they were only in public school for half

of a year?

A. Yes, ma'am.

Q. And you did the home schooling?

A. Yes, ma'am.

Q. What was your education level?

A. Uhm, high school. I have got a diploma.

Q. And when you were home schooling, how often would y'all be together during the day?

A. Uhm, it varied.

Q. Explain a regular day for me.

A. Uhm, it depended on the week. Uhm, we could be together three days a week or we could be together five days a week or seven days a week or sometimes two days a week.

Q. So you didn't have a set schedule with home schooling?

A. No, ma'am.

Q. But it's fair to say that you were close to all of your children because you were home schooling them every day, correct?

A. Yes, ma'am.

Q. Because you stayed at home?

A. Well, I was at home when I wasn't at work with him.

Q. Essentially you were a stay at home mom?

A. Essentially, yes, ma'am, I was a stay at home mom.

Q. All right. And you were the primary care giver for all of them coming up, correct?

A. Yes, ma'am.

Q. So you knew their behaviors?

A. Yes, ma'am.

Q. You knew what they liked to do or didn't like to do?

A. Yes, ma'am.

Q. And you stated earlier that Complainant was the outgoing one. Breana --

A. Breana.

Q. Breana. I'm sorry. Breana was the passive one?

A. Yes, ma'am.

Q. And she liked to draw and kind of keep to herself?

A. Yes, ma'am.

Q. Who were you closer with, Complainant or Breana?

A. I was close with both of them, uhm, but Breana was with me more because she helped with the dishes more. She helped cooking more. She helped with her younger siblings more. But I was very close with both of them.

Q. And you stated when y'all decided to move to Camden, you used the word "we" when you testified.

A. Mm-hmm.

Q. It was yours and James' decision?

A. Well, not exactly. Uhm, he said let's move. Fresh

start. More work, you know, and we -- I say we because I didn't say, oh, no, no, no.

Q. And the children wanted to move, too, correct?

A. Yes, ma'am.

Q. Uhm, so those two weeks you said you talked while James was up here with Complainant working on the new house. Uhm, how often did you talk to Complainant

A. Uhm, I probably talked to her not every day. I tried to contact her every day. Uhm, I would probably say I talked to her, gosh, I really don't remember how many times.

Q. Was it more than twice? More than five times? More than ten times?

A. I wouldn't say more than five times, no, ma'am.

Q. So about five times you think you talked to her?

A. I know more than twice. I know that.

Q. And you stated that you became concerned at that time, right?

A. Yes, ma'am.

Q. And that you wanted to hustle back?

A. Yes, ma'am.

Q. That didn't cause you concern to think that something might be going on if you wanted to hustle back?

A. Between him and her?

Q. Yes.

A. No, ma'am.

Q. So you didn't think to do anything at that point if you were that concerned?

A. I finished packing my house and told him to come get us.

Q. Then when you got back, you said you never had sex with him again but about eight times. Did that concern you?

A. I didn't say eight times. I said two to three.

Q. I'm sorry. Two to three.

A. And, yes, ma'am, it did concern me.

Q. At that point you never got worried and said I need to talk to somebody or send her to somebody?

A. I couldn't have sent her to anybody.

Q. Couldn't send her to a counselor?

A. No.

Q. Because this isn't the first time you have gone through this process?

A. Yes. No, ma'am. No. We have no friends other than the two. The Harrelsons. And the Norwood family wasn't even really around at all. We don't -- I wouldn't have been allowed to do that, to get her counseling. But it wasn't her. It was us that I thought at that point. I thought it was me.

Q. But you testified earlier that you were worried about her voice when you spoke with her on the phone during those two weeks. Were you not concerned then?

A. That day, yes, I was concerned.

Q. Immediately when he moved back, he was not sleeping in bed with you anymore, correct?

A. Correct.

Q. And he moved into the bed with Complainant, correct?

A. Uhm, I wouldn't say he moved into the bed with her. I would constantly find him. He would say I'm going to sleep on the couch and I wouldn't sleep and then I would get up and go upstairs because he wouldn't be on the couch.

Q. And at that point that didn't cause you concern?

A. Yes, ma'am, it did cause me concern.

Q. Did you ask her at that point?

A. Uhm, I asked her in the beginning, yes, ma'am.

Q. And it didn't continuously concern you?

A. Yes, it continuously concerned me.

Q. Yet you did nothing about it, correct?

A. Well, I feel like I did everything that was in my power. Without somebody telling me something I felt like I had no choice but to try to figure it out. I didn't know what was going on. I was extremely confused. Uhm, he made me feel like I was going crazy and I thought for a while I was.

Q. And then towards the end you said there was several things that caused you concern. Uhm, the first being that you went up there and her leg was wrapped around him and you freaked out, correct?

A. Yes, ma'am.
Q. You said you left the house?
A. Yes, ma'am.
Q. You left all your children in the house with him?
A. Yes, ma'am.
Q. Thinking that something might have been going on?
A. I still at that point could not believe that something like that could be going on. It was inappropriate, but at that point I still could not even fathom that he was having sex with her.
Q. And the second thing was the mono. How long did she have mono?
A. She was sick for two to four weeks.
Q. And those two to four weeks did he have contact with her?
A. Yes, ma'am.
Q. And did he ever get sick?
A. No, ma'am.
Q. And you said you saw a couple of bruises on her arms and legs. What kind of bathing suit was she wearing?
A. She would always wear a two piece.
Q. Two piece?
A. Yes, ma'am.
Q. When you say two piece, do you mean a bikini?
A. Yes, ma'am.

Q. And you would see these on her while she was wearing a bikini during the summer or spring months?

A. Occasionally, yes, ma'am. May I answer that further?

Q. Yes.

A. Because her and her dad, they did like to wrestle sometimes and sometimes, you know, he would gooch her leg. So every time I would see bruises on her that's immediately what I would even think about.

Q. But when she would go outside when it was hot, she would wear a bikini?

A. Sometimes, yes, ma'am.

Q. You stated the day that she came forward to you that she was in an argument with her father?

A. A spat is what I would say.

Q. Over this boy Henry about everybody going to the Harrelsons?

A. It had nothing to do with Henry.

Q. Earlier you testified that she wasn't allowed to go.

A. She wasn't allowed to go to their house, but it had nothing to do with Henry.

Q. Why wasn't she allowed to go to their house?

A. Because she would not stay right beside of him at all times. She wanted to go play with the other children.

Q. Including Henry?

A. Including Henry, yes, ma'am. Uhm, they sat and talked on the swing. I mean, they did have conversations. Uhm, they were friends. Nothing more than that. But the last time we went, she would not stay beside of him when the other kids were out playing and that's what caused him not to let her go.

Q. You testified earlier that you had a discussion with him that she wasn't allowed to go over there anymore, correct?

A. Yeah. I did not say that she was not allowed.

Q. Right.

A. But yes, we had - he said that she is no longer to go to that house.

Q. And he actually agreed to go with you that day, correct?

A. He agreed to go with me. I agreed to go with him. We were supposed to go.

Q. So you were going to go together?

A. Yes, ma'am.

Q. And when y'all determined to go together, what did he do next? Did he go take a shower?

A. I believe he was already dressed.

Q. Okay. So you don't remember going into the shower to tell him that they were coming about the lost gun?

A. No, ma'am. He was laying on the couch and I told

him that.

Q. When did you tell him that? Was it after you came back up from the dock?

A. Yes, ma'am.

Q. So he was no longer standing at the door at that time?

A. No. When I came up from the dock, as soon as he saw me, he turned around and he was not at the door and he went and laid down and I went inside. He said, like, what's going on?

Q. That's when you told him that they were coming about the gun?

A. I didn't -- No. No. No. Hold on. Hold on. You're putting words in my mouth here. Hold on. After she told me, I called my sister. I walked back up. He was standing in the door. Then he moved and then I walked in. I had never told him they were coming for the gun until they pulled up.

Q. That's when you --

A. Yes, ma'am.

Q. You said you went outside. You said at some point you collapsed on the ground?

A. Yes, ma'am.

Q. And you told the deputies to go down and get him from the dock?

A. Yes, ma'am. Before he got to the dock.

Q. And at the time when Complainant told you, you left her down on the dock by herself?

A. Yes, ma'am.

Q. Why did you leave her by herself?

A. I couldn't stay down there because he would know.

Q. Why would he know if you consistently talk to your daughter?

A. Because I was not allowed to consistently talk with my daughter. Every time I would try to talk with her, he would either be at the door or he would be around.

Q. And you stated in earlier testimony that the cops told you that they couldn't just arrest him, but they did that anyway, correct?

A. Yes, ma'am. They said that they could not just arrest him. That he would have to, uhm, admit to what he done.

Q. And you stated that Complainant just said down at the dock, all she said to you was he's touched me every day, correct?

A. I said is he touching you? And she said every day.

Q. And that's all she said?

A. That's all I remember.

Q. And did you talk to her again about it before giving

your statement to law enforcement that day, that written statement?

A. I honestly do not remember.

Q. In fact, in your written statement, you actually put a lot more detail into what you said she said to you that day, correct?

A. Obviously.

Q. So what you testified to earlier was not the truth when it came to what she told you?

A. Uhm, that's what she told me on the dock, yes, ma'am.

Q. Just that he touched her, that's it?

A. I said is he touching you? And she said every day.

Q. And you stated you were not next to her when she gave her statement. You're not sure but you don't remember her giving her statement in the house that day, correct?

A. Uhm, I know that I verbally did not hear her. If she was sitting there writing her statement on the other couch, that is a possibility. I do not remember that.

Q. That's what I mean. You're not sure what she said that day, correct?

A. Repeat that please.

Q. You're not sure what she said to the officers that day?

A. Correct.
Q. You ultimately took her to The CARE House?
A. Yes, ma'am.
Q. And you took her to another doctor, correct?
A. Yes, ma'am.
Q. Between the time you took her to The CARE House and the time she disclosed to you, did you speak with her about the case?
A. Uhm, we have had a few conversations about some of the stuff that was going on.
Q. And she gave you details?
A. Not explicit details. It was a very uncomfortable situation for both of us but we did - she was opening up a little bit with me and we did have a couple discussions.
Q. You say a couple. About how many times do you think you talked to her? Two? Three?
A. I don't know. You know, I don't know.
Q. That was between when she told you on the dock and when she went to The CARE House you think?
A. I think.
Q. And after The CARE House, did she talk to you about what happened?
A. I don't think too much in detail. Uhm, I just know she was very upset and I don't remember.
Q. And you said you had some conversations and contact

with Investigator Knafelc. In fact, didn't you call him to tell him to come check some spots in the house?

A. Yes, ma'am, I did.

Q. And how would you know where to look in the house?

A. Because it was something that Complainant, I asked her, you know. Like where was this happening? When was this happening?

Q. So your testimony is that you and Complainant spoke about it and Complainant told you all these details?

A. Uhm, some details. That's what I said. We didn't like get into graphic details, no. But did we get into where and when and how did this happen? Yes, ma'am, we did.

Q. When they came out, did you instruct them where to go?

A. I told them where her room was. There was one spot that she told them - she told me that it was in the house next door and I don't remember if I'm the one that said she said it happened next door, too, to go look over there but it was too old.

Q. And you said he would continue calling from the jail. You actually put Complainant on the phone with him?

A. I did one time, yes, ma'am.

Q. That didn't concern you that you're gonna put your daughter who he's allegedly assaulted over and over again for the past year on the phone?

A. Uhm, my reasoning for doing it was, one, hoping that he would apologize or, two, hope that he would say, well, he was sorry. Say something that I know that we wouldn't be here today.

Q. This was after he was arrested, correct?

A. Yes, ma'am.

Q. How long did that conversation last between him and Complainant [redacted]

A. Not long.

Q. 30 seconds? A minute?

A. Probably a minute, yeah. 30 seconds. It wasn't - it wasn't long.

Q. And after he was arrested, you stated you moved to Florida, correct?

A. Yes, ma'am.

Q. Who did you move in with in Florida?

A. Uhm, I moved in -- I got my own house. I didn't move in with anybody.

Q. You didn't move in with some friends when you first moved down there?

A. I spent two nights -- I still had my stuff in the truck and I found a house within two days so no, ma'am, I did not live with them.

Q. What were their names?

A. Melissa and Ryan Albrook.

Q. And how did you get money to move into a new house?

A. I sold everything that we owned.

Q. And when did you get a divorce from Mr. Miller?

A. The papers finally got signed, I think, the beginning of last year.

Q. When did you file for divorce?

A. Uhm, I filed six to eight months before that.

Q. So this happened in 2012. You filed in approximately 2014, two years later?

A. Yes, ma'am. Yes, ma'am.

Q. And you're now married, correct?

A. Yes, ma'am.

Q. To Jason Price?

A. Yes, ma'am.

Q. When did you first start dating Jason Price?

A. About two months after I moved down there.

Q. So while you were married to Mr. Miller?

A. Yes, ma'am.

Q. Did Mr. Price move in with you?

A. Yes, ma'am.

Q. And while you were living with Mr. Price and still married to Mr. Miller, you continued to get money by filing joint taxes?

A. No, ma'am. I filed joint taxes for that first year.

Mr. Price did not move in until after the beginning of the next year. He did not move in immediately.

Q. And before you moved, when you were staying here, y'all were still in that home on Wild Turkey, correct?

A. Yes, ma'am.

Q. And at that time you said you had friends, the Norwoods and the Harrelsons, correct?

A. We did until all this happened.

Q. Okay. And who is Mark Stokes?

A. Uhm, that is a son of the Norwood's neighbors.

Q. How old is he?

A. 24 then maybe. I'm not --

Q. About 24 at that time?

A. I think so.

Q. Didn't he spend the night at the house with y'all after this happened?

A. Yes, ma'am, he did.

Q. When you took Complainant to the doctor here in Columbia, The ARC doctor, did you fill out a questionnaire or speak with the doctor?

A. Uhm, I'm sure I did. Yes, ma'am.

Q. About the background of Complainant just so she has a medical background?

A. Yes, ma'am.

Q. What's going on?

A. Mm-hmm.

Q. Isn't it true that day you told her there had been no behavioral changes?

A. I do not remember.

MS. GOOD: Okay. No further questions, Your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Did Tammy -- Did your family have health insurance during this period?

A. No, ma'am.

Q. Does counseling cost money?

A. Yes, ma'am.

Q. Who made the money in y'alls household?

A. Mr. Miller.

Q. And would he be the one to pay for counseling if you were to take Complainant there?

A. Yes, ma'am.

Q. And did he agree or allow you to try to take Complainant to counseling?

A. No, ma'am.

MS. CAVANAUGH: Thank you.

THE COURT: All right. You may step down. Ms. Cavanaugh, it's now 4:40. I don't know if you have a short witness or otherwise I don't want to keep this jury

much past 5:00 so I just want to see what you have, if you have anybody to go quickly or we may just go ahead and stop for the day and resume tomorrow morning.

MS. CAVANAUGH: Yes, Your Honor. Dr. Luberoff is here and she has to go this afternoon and that would be the only witness I intend on calling this afternoon.

THE COURT. Okay. Let's go ahead and call her. Like I said it's 4:40. I'm not going to keep the jury past 5:30. So let's get her done within that amount of time. Go ahead and call your next witness.

MS. CAVANAUGH: Thank you, Your Honor. The State calls Dr. Susan Luberoff.

Thereupon,

SUSAN LUBEROFF, M.D.

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: Susan Breeland Luberoff.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Dr. Luberoff, what is your profession?

A. I'm a pediatrician.

Q. How long have you been a pediatrician?

A. I graduated from medical school in 1983.

Q. Where did you attend medical school?

A. I was in the third class to graduate from the Medical School in Columbia, the University of South Carolina School of Medicine.

Q. Where did you attend your undergraduate schooling?

A. University of South Carolina.

Q. Okay. And can you describe the type of training that you went through in order to become a pediatrician?

A. So when I finished medical school, I did a three year residency at Children's Hospital in Richland Memorial in pediatrics and since then I have been a pediatrician. I have worked in various settings in pediatrics. Pediatrics clinic at Richland Hospital. I was in private practice in Columbia for a while. I worked a little bit in rural pediatrics in Hartsville, but the largest amount of my time has been in the field of child abuse pediatrics which is a subspecialty that was just established about five years ago.

Q. So even though the field that you just mentioned, child abuse pediatrics, even though it was just established you said five years ago, did you still have training and education in that area?

A. Yes. In the end of 1989 I actually started working in that field. I went away to Denver to the Kemp National Center on Child Abuse for a six week scholar and residence program in the summertime. There wasn't really formal long term training in child abuse at that time. I have attended

numerous workshops and specific training over my career in the different areas of child abuse pediatrics and the American Academy of Pediatrics established it as a subspecialty and developed a board exam for that subspecialty which was first offered in 2011. So it's a boarded, what we call a boarded subspecialty like pediatric cardiology is a boarded subspecialty. You take a separate board exam in cardiology to be a pediatric cardiologist. Child abuse pediatrics is the newest boarded subspecialty in pediatrics.

MS. CAVANAUGH: Your Honor, at this time I would ask that Dr. Susan Luberoff be qualified as an expert in the area of child abuse pediatrics.

THE COURT: All right. Any objection?

MS. GOOD: No objection.

THE COURT: All right. She is so qualified.

BY MS. CAVANAUGH:

Q. Where are you currently employed, Dr. Luberoff?

A. I'm with the University of South Carolina School of Medicine Department of Pediatrics and I'm stationed at the Assessment and Resource Center which is a clinic that evaluates children where there's a concern for physical or sexual abuse or neglect. I do the medical part of the evaluation for children that come through that clinic.

Q. And what type of examinations do you perform at the Assessment and Resource Center?

A. Children come there for a number of different kinds of worries about abuse like physical abuse or sexual abuse or severe neglect, medical neglect and so on. So when we examine a child there regardless of what they were sent for we examine for all kinds of abuse. So the exam actually entails a very careful look at all of the child, skin, looking for any kind of injuries, any evidence of neglect. We do a careful examination of the genitalia. Look inside the mouth. We can often find if there's neglect in the mouth. Look at the weight and height. Listen to the heart. Look at the ears. It's basically a very careful complete physical examination but with particular attention to the skin, the genitalia and areas that sometimes show evidence of abuse or neglect.

Q. And how many of these types of exams can you estimate that you have performed over the course of your career?

A. Uhm, probably close to 10,000.

Q. And I didn't ask you this before, but have you been qualified as an expert before in any court?

A. I have.

Q. Approximately how many times?

A. I stopped counting many years ago at a hundred.

Q. Did you actually perform an exam on Complainant

A. I did.

Q. And what day did you perform that exam?

A. I believe August 17th of 2012. Is it okay if I refer to my notes?

Q. Of course.

A. Yes. That's correct.

Q. Okay. And was this at the Assessment and Resource Center?

A. It was.

Q. What type of room do you conduct your exam in?

A. It's an examination room that's specifically set up for this. We have the regular things that you would expect in a normal examination room like a stethoscope to listen to the heart, the instruments to look at the eyes and ears and so on. We also have a specific piece of equipment called a colposcope that essentially is a pair of binoculars with a very bright light so that we can get a really good look at the genital area. Some of what we are looking at is kind of recessed and it just gives us a good light source to magnify things and see things very carefully. The room is set up for children so it has a comfortable chair for the child to sit in prior to the exam, an examination table that allows me to move around to all the different sides of the child, put the child's feet in stirrups if I need to do that for part of the exam.

Q. And what type of agencies typically refer the children to the Assessment and Resource Center?

A. Typically DSS or law enforcement refer children to

us. Occasionally another agency, but usually law enforcement or DSS because usually there is an investigation going on about a concern.

Q. With Complainant who actually referred Complainant to the Assessment and Resource Center?

A. Detective Steve Knafelc with the Kershaw County Sheriff's Office.

Q. Were you the first doctor that she saw after the allegations came out?

A. No.

Q. Where did she go before you?

A. She had been seen at the Kershaw County Health Center or the Kershaw County emergency room. It's a Kershaw facility on August the 14th so about three days before I saw her.

Q. And were blood tests drawn during that first examination?

A. Uhm, no. No blood tests were done during that first examination. She had a urine test done.

Q. Okay. Was that for purposes of detecting a pregnancy?

A. They did a urine pregnancy test and they also did what's called a urinalysis which essentially looks to see if there is any sign of infection in the urine and they did a culture of that urine also looking for infection.

Q. And did they perform the full gynecological exam that you performed?

A. No. According to that record they were aware that she had an appointment already with us and they deferred that part of her exam for me.

Q. Okay. Prior to your examination, were you aware of what type of abuse was alleged for Complainant to be referred to y'all to The ARC?

A. I was.

Q. What type of abuse was that?

A. Sexual abuse.

Q. Okay. And where did you get that information from?

A. Uhm, from the detective that had referred her.

Q. Okay. Before you actually start your physical exam of Complainant, is anyone else in the room with you when you're doing that?

A. During the exam?

Q. Yes.

A. Yes.

Q. Who is in the room with you?

A. Before the child has an exam, we have an employee called a child life specialist who is a specialist in explaining things to children and in understanding children's developmental comprehension of what they are being told. She

actually goes over the exam with the child in advance so she explains everything that's going to happen, shows the child all of the equipment that we are going to use like the light to look in the ears, the stethoscope, the colposcope because it has a little bit of a sound to it so she turns it on and let's the child hear it so that none of that will be frightening during the exam. She explains the positions that I'm going to need for the child to be in and then she assesses the child's understanding all of that. And the exams that we do it's very, very important that we get a really good cooperative child in order for us to see everything that we need to see adequately. So I'm actually not even, according to our protocol I'm not allowed to come in and start the exam until the child life specialist determines that the child understands and is comfortable and understands what I'm gonna need for her to do and so that child life specialist had done that part with Complainant and then the child life specialist stays in the room usually. And then I also have a nurse that comes in so there were two people present besides me for Complainant exam.

Q. Okay. And did you obtain a previous medical history as well on Complainant

A. Yes.

Q. Did you also see that she had been diagnosed with mononucleosis, I'll just say mono, that she had been diagnosed

with mono prior to the exam?

A. I think it was a couple of weeks before the exam. That's the information that I have, yes.

Q. Okay. Once you obtained the basic medical background, I shouldn't say basic, but the detailed medical background, did you start your exam?

A. Yes, I did.

Q. And what did you -- How did you begin that exam? What did you do?

A. I always start with the hands. It's a very non threatening part to start with. So I looked at her hands, her arms, her feet, her legs, and then I would have had her lie down on her back to examine her abdomen or her belly, and then I would have done her genital examination. Children of her age are given a choice of what position to do that in. They can do it by putting their feet up in the stirrups like a women would do at the gynecologist or by putting the soles of their feet together with their knees out to the side. Either way gives me a good view of the genital area. So we did her genital exam using the colposcope for a good light source and magnification. Then I examined her back, her ears, her heart, her eyes, her mouth, her scalp. We do the genital exam kind of in the middle of the examination so that if it ends up being embarrassing to the child, the child has sometime after that to do parts that are more familiar so they can get past

being embarrassed and she tolerated the whole thing fine.

Q. And specifically related to your examination of the genital area, what were the results of your examination?

A. Uhm, Complainant chose to have her feet in the stirrups for her examination which gave me a good look at the outside genitalia. Then to see the more interior parts I have to actually move the labia or the lips to the side so that I can see the hymen and the beginning of the vagina. She didn't have any discharge or rash that concerned me. I got a good look at her hymen and part of the vaginal wall and her anal area as well.

Q. Okay. Did you note any injuries on her hymen?

A. She did have a finding on her hymen that can be the result of trauma or injury to the hymen and I made a note of that.

Q. And as far as you describing your examination of the hymen and different -- I mean, would a diagram assist you with that?

A. That would be really helpful for me.

MS. CAVANAUGH: Okay. Your Honor, may Dr. Luberoff step off the stand?

THE COURT: She may.

BY THE WITNESS:

Q. Now, I'm not an artist, but this helps me to explain about the hymen, where it is and what I saw. So Complainant is on

her back for the examination and her feet are up in stirrups so this would be her right thigh and her left thigh and her buttocks. The labia or lips are pulled to the side. I do that with my hands and then the vaginal area is visible at that point. The hymen is a piece of tissue that surrounds part of the opening of the vagina. It comes in different shapes. Complainant was round. It was circular. It has an opening in it. Almost all girls are born with an opening already in their hymens. This allows when they become old enough to have a period it allows for the menstrual blood to get out. Before they are old enough to have a period there is secretions in the vagina and the uterus all the time all day long and so the secretions have to get out and so there's an opening in most girls hymen. If there's not an opening, that's a problem and we have to fix that. So she had an opening in her hymen.

Hymens in young girls look really different than in girls after they have gotten to puberty. In young girls you can almost see light through that hymen. It looks real thin. At puberty it grows a lot and gets thicker and thicker and thicker until it's really about as thick as my thumb is so you can't see through it anymore and while it's growing, it also grows on its surface area so that before puberty if you were to look at the opening in the hymen when the labia or lips are pulled to the side, it looks sort of round like that with sort

of smooth edges. But after puberty, after it's done all the growing it's going to do, this ends up folding in on itself so it ends up being sort of scalloped looking or folded looking.

So to be able to see all of the surface of that hymen we actually have to take a Q-tip and run that along the edge to unfold all the bits of it and make sure that we're seeing everything that we need to see.

So Complainant hymen actually had -- I can't draw the folds and the findings so I'm just going to put the findings down here and I'm going to simplify the folds of her hymen. When I stretched it all out, instead of being smooth all the way around, she actually had a notch or a V shaped defect down in the 7:00 position of her hymen. If you're looking at this like a clock, where this is 12:00 and down at the bottom towards the anus is 6:00, it was at about 7:00 and that notch in the hymen went through the hymenal tissue almost but not quite completely down to the wall of the vagina. So when I separated the two edges of that, I could see the vagina floor all through it. There was a little bit of hymen still left at the base or the bottom of the notch before the wall of the vagina.

Q. Okay. What is the significance of the notch at that 7:00 point on her vaginal opening?

A. If we see an interruption in the hymen that goes all the way to the vaginal wall, all the way through the hymen and

to the vaginal wall, then that's actually diagnostic of penetrating trauma to the vagina. Complainant interruption wasn't all the way to the vaginal wall so all by itself it doesn't a hundred percent mean that it's from trauma and that's when we put the history with what we are actually seeing. Uhm, this finding on Complainant is likely the result of penetrating trauma to her vaginal area, to her hymen.

Q. And when you say penetrating trauma, what do you mean by trauma?

A. Injury. A tear whose edges did not find each other in the healing process so it left a V shaped defect.

Q. And is that finding along with her history consistent with sexual abuse?

A. It is.

Q. Is it consistent with chronic sexual abuse?

A. It's consistent with a healed injury. Uhm, that finding alone wouldn't give any indication as to, for example, how many times it had happened. It was completely healed. When injuries happen there and they finish healing, they usually finish healing within a matter of days or up to two weeks so it was at least a couple of weeks old but it could have been years old. Once it's finished healing, it's finished healing.

Q. But it is consistent with penetrating injury?

A. It is.

MS. CAVANAUGH: No further questions. Answer any questions from Ms. Good.

CROSS EXAMINATION

BY MS. GOOD:

Q. Good afternoon, Dr. Luberoff.

A. Good afternoon.

Q. You can't say with any certainty that there was any penetrating trauma, correct?

A. Based on just the finding without any history I would not be able to diagnose a penetrating trauma just with that finding.

Q. In this type of finding, a notch at the 7:00 mark, in fact, that could be caused in different ways, correct? What's considered a penetrating trauma?

A. Force applied to that area that causes an injury.

Q. Does something actually have to go into that area?

A. If it's an injury, something has to go into that area, yes, to cause the injury.

Q. Could it be caused by skiing or wake boarding?

A. There have been injuries to vagina from skiing or wake boarding but they're deeper injuries. Also they involve the vagina beyond the hymen. This only involved the hymen.

Q. So this could have come from a skiing injury?

A. This would not be consistent with any of the published accounts of skiing injuries, no.

Q. And you said that you get a medical history prior to Complainant coming to see you, correct?

A. At the time of the visit.

Q. And what do you call it, the child - not - the child life specialist?

A. Yes.

Q. They ask her questions?

A. Uhm, no. They are not asking her questions. They're explaining the exam.

Q. But when you go to do your report, you get information to make sure you understand everything that's going on, correct?

A. I use whatever information is available to me at that time, yes.

Q. And all of that is important to you, correct?

A. It is.

Q. And, in fact, wasn't it reported to you that she had had no behavioral changes?

A. Yes.

Q. And you also diagnosed her with mono, correct?

A. No. She had been diagnosed with mono prior.

Q. Are you familiar with mono?

A. I am.

Q. Can you explain to the jury a little bit about mono and how contagious it could potentially be?

A. Mono is short for mononucleosis which is a viral infection. In lay terms it's called the kissing disease. It's spread by contact with secretions most commonly saliva so it tends to be spread from person to person that has close contact and it's an infection that affects the throat. It can also affect other body systems.

Q. When you did your initial look over of Complainant, her hands, her head, her belly, her legs, did you notice any bruises?

A. Let me just refresh my memory. I don't recall there being any significant bruises. No. The only skin injury I noted was some small scars on her forearms that she said was laser surgery to remove some warts.

Q. How did Complainant seem during this evaluation?

A. Uhm, she was cooperative. She was fine. She was able to participate effectively during the exam.

Q. She wasn't crying or upset?

A. No. She wasn't.

Q. And based on your examination without any history or anything else you cannot state that she was abused, can you?

A. Based just on the examination, no.

MS. GOOD: No further questions, Your Honor.

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Again, Dr. Luberoff based on the history that was

provided to you regarding -- First of all, again why was she referred to the Assessment and Resource Center?

A. For a concern of sexual abuse.

Q. And you obtained the history regarding these sexual abuse allegations?

A. Yes.

Q. And based on that history combined with that injury what is that consistent with?

A. Sexual abuse. I did make a diagnosis of sexual abuse.

MS. CAVANAUGH: Thank you.

THE COURT: Thank you, doctor. You may step down.

Thank you. If I could have the lawyers up here for one second to discuss the schedule for tomorrow briefly.

(Side bar off the record.)

THE COURT: All right. Ladies and gentlemen of the jury, we are going to start at the same time tomorrow morning which is 9:30. Just like this morning, I ask you to be here at 9:15 so that we can start promptly at 9:30. Thank you for your service. Again for this evening no talking to family, friends. No independent research on the case. Just go, enjoy being home and enjoy dinner and we'll see you tomorrow morning at 9:15. Thank you.

(Whereupon, the jury was excused for the evening at 5:10 p.m.)

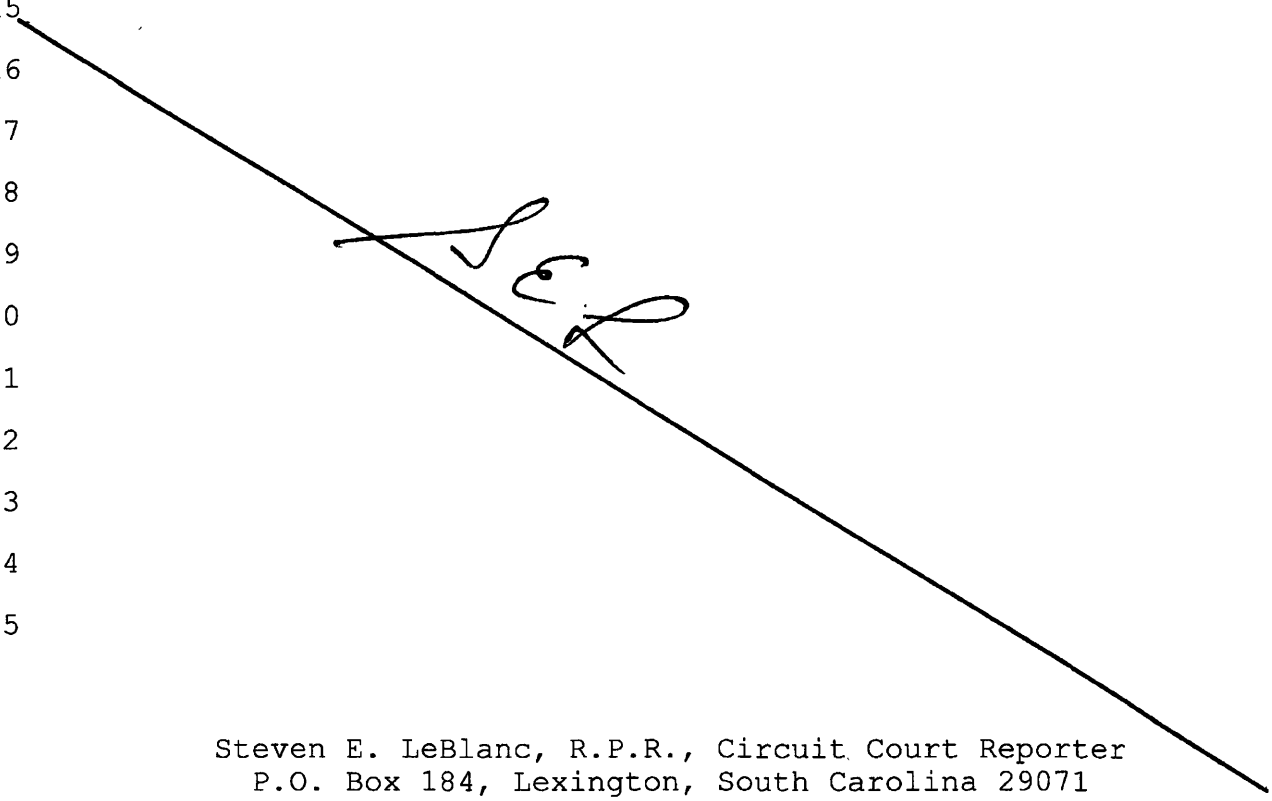
THE COURT: All right. We will be adjourned for the day.

MS. GOOD: Your Honor, I would like to make a motion at this time to allow Mr. Miller to stay out on bond during the pendency of the trial. This has been pending for three and a half years. When he did bond out, he's been on electronic monitoring and off electronic monitoring and despite all the back issues and everything he's had he's still been here. He's never missed a court date or anything so we would ask that he remain out.

THE COURT: Your motion is denied. Thank you.

MS. CAVANAUGH: Thank you.

(Whereupon, court adjourned for the day at 5:15 p.m.)



March 16, 2016

BAILIFF: All rise.

THE COURT: Good morning. Thank you. Please be seated. Are we getting the defendant or doing something else?

MS. GOOD: I didn't know if you had something else or not first.

THE COURT: I think I have -- Is this for probation? I don't see anybody else here for probation. I think maybe we might be doing that during lunch perhaps. Maybe not. My understanding was that we were doing the probation violations at lunch time, during lunch break. I don't see anybody from the Solicitor's Office for that purpose so I think it's fine from my perspective if he wants to stay and watch the trial until lunch time or whatever y'all want to do.

MS. GOOD: I'm sorry. Just so -- Can I ask that you instruct the jury that he has nothing to do with this case whatsoever? I just don't want there to be any confusion with them wondering why --

THE COURT: Sure. Absolutely. No problem. All right. Anything from either the State or the defense before we bring in the jury?

MS. GOOD: Not from the defense, Your Honor.

THE COURT: Okay.

MS. CAVANAUGH: No, Your Honor.

THE COURT: You may bring in the jury, please.

(Whereupon, the jury returned to the courtroom at 9:35 a.m.)

THE COURT: Good morning, ladies and gentlemen. You all continue to impress me with your punctuality in the mornings and I thank you for that. Before we begin today I want to make so there is no confusion. We have an inmate sitting over here. He has nothing to do with the case before you. I like to do a lot of things while I'm holding court and so when we are on breaks or a lunch break, I do other things and so I just wanted to make sure if you happen to notice someone new in the courtroom, that you didn't think that that had anything to do with the case in front so just in the case you were curious I thought I would just let you know that beforehand. So with that being said, we will go ahead and not waste any time and start back with the case.

Madam Solicitor, you may call your next witness.

MS. SENN: The State calls Breana Keeter.

Thereupon,

BREANA KEETER

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: Breana Keeter.

DIRECT EXAMINATION

BY MS. SENN:

Q. Good morning. How are you?

A. Good.

Q. Are you nervous today?

A. Yes.

Q. Okay.

THE COURT: And can you be sure to speak up. It's sometimes hard to hear in this big cavernous courtroom.

THE WITNESS: Yes.

BY MS. SENN:

Q. How do you know the defendant in this case?

A. Uh, he is my dad.

Q. Okay. So you're sisters with Complainant

A. Yes.

Q. Are you her twin?

A. Yes, ma'am.

Q. Where do you live now?

A. I live in California.

Q. What took you to California?

A. My husband.

Q. What does he do?

A. He is in the U.S. Navy.

Q. How long have you been in California?

A. Uh, for about eight months now.
Q. Before that, where did you live?
A. I lived in Pensacola, Florida.
Q. Before that, where did you live?
A. I lived in South Carolina.
Q. Did you grow up in South Carolina?
A. For the most part.
Q. Where did you live?
A. Uh, we lived in Camden, South Carolina. We lived in Summerville. A few different locations.
Q. Did you move fairly often?
A. Yes.
Q. Where did you go to school growing up?
A. Uhm, we were on and off with public schools and we were home schooled most of the time.
Q. Do you remember when you began home schooling?
A. Uhm, it was on and off.
Q. Throughout high school?
A. Yes.
Q. You were home schooled throughout high school?
A. Yes.
Q. Can you describe your relationship with James Miller growing up?
A. Uhm, it was different. Our relationship was always different than my other siblings, I guess.

Q. What do you attribute that to?

A. I don't know.

Q. What about you and Complainant Y'all are twins. Were you very close growing up?

A. Sometimes.

Q. What about you and your mother, were you close with your mother growing up?

A. Very.

Q. Were you closer with your mother than you were with your father?

A. Yes.

Q. Describe your personalty.

A. I'm very soft spoken. Uhm, kind of passive sometimes. I don't really stand up for myself when I should. Uhm, just very go with the flow kind of person.

Q. How would you describe Complainant personality?

A. Uhm, she's very head strong. Very stubborn. She's a go-getter.

Q. Do you remember going on vacation in Camden in the summer of 2011?

A. Yes.

Q. What do you remember about that trip?

A. Uhm, we went to stay, uhm, on a lake with our friends and we were there for two weeks.

Q. Did anything significant happen while you were

there?

A. I don't know.

Q. Did you decide to move to Camden?

A. Yes.

Q. Whose decision was that?

A. Uhm, my father's.

Q. Okay. Did Complainant and James stay behind in Camden?

A. Yes, ma'am.

Q. Where did you go?

A. Me and my mom and my siblings moved back to Summerville, South Carolina.

Q. What were you doing there?

A. Uhm, we were packing our house.

Q. Do you remember about how long you stayed in Summerville before y'all moved to Camden?

A. At least a few weeks.

Q. Okay. So your understanding was that Complainant was going to stay with James and you were going to go with your mother; is that correct?

A. Yes.

Q. Do you remember what Complainant and James were doing in Camden before you got there?

A. Uh, they were fixing up the house that we had just got on the lake.

Q. Okay. And did they stay at the house the whole

time?

A. Uhm, we also had a camper that they were staying in.

Q. Okay.

THE COURT: If you could just speak up a little bit. I think people are having a hard time hearing you.

THE WITNESS: Okay.

BY MS. SENN:

Q. Can you describe, once you moved to Camden, can you describe the lay out of the room, of the house?

A. Of the entire house?

Q. Yes. Sorry.

A. Uhm, it was a two story house. Uhm, when you first walked in, you had a living room and the other side was the kitchen and behind the kitchen was a bedroom, master bedroom, then a bathroom. As soon as you opened the door the staircase is straight ahead and when you walk up, there is a small hallway. Uhm, on the left side there were two bedrooms. Uhm, on the front bedroom there is another bathroom and then to the right of the stairs there is another bedroom and a bathroom.

Q. So there are three bedrooms upstairs and one bedroom downstairs?

A. Yes, ma'am.

Q. And who did you share a room with in the beginning?

A. In the beginning I shared one with my sister

Complainant

Q. Okay. And all growing up who had you shared a room with?

A. Complainant

Q. Okay. So when you and Complainant moved into the room, can you describe the layout of your room with Complainant

A. Uh, yes. Our room was upstairs to the left. We had a balcony in our room. Uhm, we always had separate sides of the room. We would divide it. We had a bathroom and a closet towards the other side of the room so it was separate from the room itself.

Q. What about the beds? Where were the beds located?

A. Uhm, my bed was located towards the window by the lake on one side of the room and hers was on the other side of the room by the door leading out to the hallway.

Q. So you had beds on opposite sides of the room and you said that you had, it was separated somewhat?

A. Yes. Yeah. We had a slight divider like a three way divider to divide our two beds.

Q. And why was that?

A. I'm not sure.

Q. And then at that point in time were you and Complainant getting along?

A. No.

Q. No? Were you fighting? Were you arguing?

A. We were just always arguing.

Q. Was it bickering like sisterly fights?

A. I don't know.

Q. Do you remember any of the disagreements that you had?

A. No.

Q. You just remember being kind of frustrated with one another?

A. Yes. We were always aggravated with each other.

Q. Okay. So when you first moved into the house, you and Complainant shared a room. Did that change?

A. Yes. She - shortly after she got her own room.

Q. When did that change happen?

A. Uhm, I want to say a few weeks into getting the house when we were sharing the room.

Q. Do you remember whose decision that was?

A. Uhm, I don't know.

Q. Do you know why Complainant got her own room?

A. I'm guessing because we weren't getting along.

Q. So where did you go from there?

A. Uhm, I actually stayed in that room and she is the one who moved out of the room that we were sharing together.

Q. Okay. Once you and your family moved to Camden, did you notice anything different about Complainant demeanor?

A. Yes.

Q. What did you notice?

A. Uhm, she was always angry almost.

Q. It's okay. Take your time.

A. She seemed off. She seemed different. She wasn't the same.

Q. Did she seem like she wanted to be alone?

A. She seemed very distant.

Q. Okay. Do you remember ever talking to her about that?

A. (Witness shaking head.)

Q. No?

A. No.

Q. So during the day, what was your average day when you lived in Camden? What did you do during the day?

A. Uh, during the day I would go outside and play with my younger siblings or I would sit in my room and I would draw or paint usually by myself or with my younger siblings.

Q. What did Complainant do?

A. Uhm, she was either with my dad working, uhm, with him mostly.

Q. So they, your dad and Complainant spent a lot of time together?

A. Yes.

Q. What exactly were they doing?

A. Uhm, he was in construction so when he had work, he

would take her with him to help him work on whatever he was doing.

Q. Why didn't you go?

A. Uhm, I wasn't needed all the time and I just didn't really want to, I guess.

Q. You would prefer to stay at home with your mother and the rest of the children?

A. Yes.

Q. Okay. So did Complainant and James spend a lot of time alone?

A. Yes.

Q. Okay. Did you ever notice any differences in the way that James treated you versus the way he treated your sister Complainant

A. Yes.

Q. Can you describe some of those?

A. Uhm, it's like he was choosing favorites almost. Uhm, I was never his first choice for anything. There was a lot more attention towards her than me.

Q. Uhm, when you were growing up, was your father, was he controlling? Was he affectionate? Can you kind of describe him?

A. He's - he's always been controlling, uhm, and affectionate.

Q. Did you notice any differences with that between you

and Complainant

A. Uhm, I'm not sure what you mean.

Q. Like was he more controlling over Complainant or was he more affectionate with you or --

A. Growing up?

Q. Mm-hmm.

A. I don't remember.

Q. Okay. Do you remember James carrying a gun?

A. Yes.

Q. And how would he carry it?

A. He would carry it in a holster on his side.

Q. When did that start?

A. It started when we moved to Camden.

Q. Did you ever notice it before -- Did you ever notice him carry a gun before Camden?

A. No.

Q. Okay. Did you ever notice that James was sleeping --

MS. GOOD: Objection, Your Honor. Leading at this point.

THE COURT: I haven't heard the question. Finish your question and then I'll make a determination.

BY MS. SENN:

Q. Did you notice that James was sleeping in Complainant bed?

A. Yes.

MS. SENN: I can rephrase it.

THE COURT: Okay. I'm going to sustain the objection, but strike that from the record and I tell the jury not to pay any attention to the answer that the witness just gave. And, Ms. Senn, you can rephrase your question.

BY MS. SENN:

Q. Where did James sleep?

A. In my sister's bedroom.

Q. Did you see that?

A. Yes.

Q. Did James ever sleep with anyone other than Complainant

A. My mother.

Q. Did he sleep in your bed?

A. No.

Q. What did you think about the fact that Complainant and James were sleeping in the same bed?

A. I thought it was weird.

Q. Did you ever say anything about that?

A. No.

Q. Was there anything that you felt was inappropriate between James and Complainant

A. Yes.

Q. Can you tell the jury what you thought was inappropriate?

A. Uhm, there was one time when I had came into our living room and they were both laying on the couch. My dad was behind her and they had a comforter, like a big blanket over them, uhm, and the blanket was all the way up to their necks and for some reason the way they were positioned, when I saw that, my heart kind of dropped. I felt just real uncomfortable with how they were laying together. Uhm, afterwards I had carried on with what I was doing because I didn't know how to act or say anything to my dad about how they were laying on the couch.

Q. Can you describe how they were laying? Were they facing each other?

A. No. It's like they were spooning. Like he was behind her holding her from behind and they were facing in the same direction.

Q. And just to clarify, you said that their bodies were covered?

A. Their bodies were covered with a blanket all the way up to their faces.

Q. Did you -- Did Complainant wear anything unusual --

A. Yes.

Q. -- for the season? Or what do you mean?

A. During the summers she would occasionally wear jeans

and long sleeve shirts during 80 degree days. She stayed covered a lot.

Q. What about you?

A. Normally if it was hot, I would wear shorts and a tank top.

Q. Do you ever remember a time that James made you feel uncomfortable?

A. Yes.

Q. When did that occur?

MS. GOOD: May we approach, Your Honor?

THE COURT: Sure.

(Side bar off the record.)

BY MS. SENN:

Q. Did your father James ever give you and Complainant rings?

A. Yes.

Q. Can you describe that event?

A. Uhm, he took us out for the day. Uhm, he took us out to lunch and me and my sister, we were all sitting at the restaurant. We had got our drinks and he had disappeared off somewhere. He came back shortly with, uhm, two jewelry boxes and they both had matching promise rings in them.

Q. When you say promise rings, what did that mean?

A. I don't remember what the meaning was behind it.

Q. But you got one and Complainant got one?

A. Yes, ma'am.

Q. And how did he give them to you?

A. He gave me mine and then he gave my sister hers.

Q. Was there any difference in the way --

A. He put hers on her hand and not on mine.

Q. So he took hers out of the box or can you describe that? Go into more detail.

A. He took his time with hers. He took it out of the box and he had said the promise. I don't remember what the promise was, but there was more time spent with her promise ring than there was with mine.

Q. But you both got rings, right?

A. Yes.

Q. But you just noticed that he spent more time giving Complainant her ring?

A. Yes, ma'am.

Q. Do you remember the Harrelsons?

A. Yes.

Q. How many kids did they have?

A. Six. Five or six. I'm not sure.

Q. How did you know them?

A. Uhm, we met them one night. We had a bonfire and they also. Both of us were staying on the lake and we had heard a commotion a few houses down from ours and they also had a fire, and me, my did and my sister walked over there to

introduce ourselves that night.

Q. So you said they had six children. What were the ages, do you remember?

A. Uhm, the oldest I want to say was 14 at the time. Uhm, next was 12 and I don't remember the younger ones.

Q. Do you remember any of their names?

A. Uhm, Henry, John, Sarah, and I don't know the other ones.

Q. How old was Henry?

A. Henry was 14.

Q. Okay. Were you all close with the children?

A. Uhm, we played together. We played manhunt in the woods and such. We were friends.

Q. How often would you see them?

A. Uhm, maybe a couple times a week to hang out.

Q. Would you ever go over to their house?

A. Yes.

Q. What kind of things would you do there?

A. We would ride horses. We would take walks in the woods. We would just play because they had a lot of land.

Q. Did Complainant play with them as well?

A. Yes.

Q. Who did Complainant play with?

A. Uhm, we would mostly all play together.

Q. Did you ever see anything romantic between Complainant

and Henry?

A. No.

Q. You said that you were always together with their kids?

A. For the most part, yes.

Q. Okay. Taking you back to August of 2012, what do you remember about Complainant on the day that she disclosed to your mother?

A. Uhm, I'm not sure what you mean.

Q. Did she act differently than she normally did?

A. Complainant

Q. Mm-hmm.

A. Yes.

Q. What do you mean?

A. She was very - she was just very off. She was real uptight and emotional.

Q. Did you know why she was upset?

A. No.

Q. Did Complainant ever leave the house?

A. Yes.

Q. Where did she go?

A. She walked down to our dock.

Q. Did your mom, did you see your mom go down to the dock?

A. Yes.

Q. What happened next?

A. Uhm, they stayed down there talking for a little while. Uhm, after a certain period of time I believe I walked out, too, walk down there to see what was going on.

Q. Sorry to stop you. Could you see them from the house?

A. Yes.

Q. How could you see them?

A. I could see them out of our, uhm, our door and then to the kitchen we had a big window and you could also see them through both of those ways.

Q. So you walked outside?

A. Yes.

Q. What happened after that?

A. I started walking and my mom started walking out as well, uhm, and she had this panicked look on her face, uhm, and I asked her what was wrong with Complainant and she, she was in shock, but she didn't know how to word it to me, uhm, and she had told me that --

MS. GOOD: Objection, Your Honor. Hearsay.

THE COURT: Sustained. Don't say what somebody told you.

MS. SENN: I'll rephrase.

BY MS. SENN:

Q. Let me back you up a little bit. What was Complainant

doing on the dock?

A. She was upset. She was, I guess, taking a moment of her time to be alone.

Q. Okay. So you saw your mother when you were going down to the dock and she was coming up. And did you know what was going on?

A. No.

Q. Okay. What did you do after that?

A. After I walked down?

Q. Mm-hmm.

A. I asked her what was going on.

Q. Okay. And then after she told you what was going on, don't say what she said, but what did you do?

A. I went back in the house and I grabbed my three other siblings and I went upstairs and shut the door.

Q. Okay. Did you see the police cars arrive at your house?

A. I don't remember.

Q. Okay. So you were upstairs?

A. Yes.

Q. Could you hear -- Did you have -- What kind of driveway did you have?

A. Uhm, it was a dirt driveway. There was two parts of it. When you first saw the house, they were right next to each other and then the driveways kind of wrapped around the

house like a tear drop almost.

Q. Did you know why the deputies were there?

A. Yes.

Q. Okay. Did you talk to any of the deputies?

A. No.

Q. Where did you stay during that, while they were there?

A. I stayed upstairs with the kids.

Q. Over the course of the next few days what happened?

A. Uhm, I really don't remember.

Q. Did you ever go to The CARE House?

A. Yes.

Q. What did you do there?

A. Uhm, we talked with, uhm, someone.

Q. Did you and Complainant talk about what had happened with her and James?

A. Very briefly.

Q. When did that occur?

A. Uhm, I want to say a few months after.

Q. That was after your interview at The CARE House?

A. Yes.

Q. Okay. Did she tell you when the abuse began?

A. It began the night, uhm, that we had left back to pack up our home in Summerville.

Q. So the night she was in the camper?
A. Yes.
Q. Okay. Did she ever tell you where it happened aside from the camper?
A. She -- Mm-hmm. Yes.
Q. Where?
A. Uhm, at our home. At job sites that they were working on. Uhm, those two places that I know.
Q. Did she say when the abuse stopped?
A. It stopped the day that he was arrested.
Q. How long did you stay in Camden after James was arrested?
A. I don't remember.
Q. Where did you go from there?
A. From there I went to stay with my aunt with the three younger siblings.
Q. Where was that?
A. It was in Harleyville, South Carolina.
Q. Did you move anywhere after that?
A. We moved to Pensacola, Florida.
Q. How long did you stay there?
A. For about three months myself.
Q. Have you spoken to James since his arrest?
A. Yes.
Q. When was that?

A. It was about three or four months after I had moved to Florida I had went back to South Carolina.

Q. Who were you with in South Carolina?

A. My aunt.

Q. Which aunt?

A. My mom's sister.

Q. Is that the one in Harleyville?

A. Yes.

Q. Okay. So you said that you spoke to James. Did you talk to him over the telephone or --

A. I don't recall speaking on the telephone with him.

Q. So you saw him in person?

A. Yes.

Q. Where was that?

A. It was at my aunt's house in Harleyville.

Q. Did you invite him there?

A. I don't remember.

Q. Did you want to see him?

A. I don't remember how I felt about the entire thing.

Q. How old were you when this happened?

A. I was 17.

Q. Okay. Did you ever attend any kind of court --

A. Yes.

Q. -- where your dad was the defendant? Okay. What

happened there?

A. It was his bond hearing and he got out on bond.

Q. Why did you go?

A. Uhm, I was put in a very awkward situation with my aunt in Harleyville. I - I don't - I don't know why I went.

Q. Did you speak on his behalf?

A. No.

Q. Were you comfortable being there?

A. Not at all.

Q. Did you see James anymore after that?

A. Yes.

Q. When? Describe that, please.

A. Uhm, a few weeks I think after the bond he and my, one of my other aunts had came to pick me up from my aunt's house in Harleyville. Uhm, I don't remember the reasoning behind it. Uhm, I don't remember the question. I'm sorry.

Q. I was asking you to describe the next time you saw James.

A. When I saw him, when he picked me up, it was heart breaking. I was so uncomfortable. I didn't feel safe. Uhm, and then I just, my heart was about to beat out of my chest. I don't know what, how it came about to where he was standing in front of me.

Q. So did you want to spend time with him?

A. No, but I did.

Q. Did you ask to spend time with him?
A. I don't remember.
Q. But how did it make you feel?
A. Very uncomfortable.
Q. Have you seen him anymore since then?
A. I don't think so.
MS. SENN: No further questions, Your Honor.
THE COURT: All right. Ms. Good.

CROSS EXAMINATION

BY MS. GOOD:

Q. Breana, you actually have had contact with your dad in the past month, haven't you?
A. Yes, ma'am.
Q. You were sending him e-mails and texts?
A. No e-mails.
Q. Didn't you send him e-mails and pictures of your siblings?
A. I don't remember.
Q. You don't remember if you sent him an e-mail or not?
A. I have never sent him an e-mail before.
Q. Just a second ago you said you don't remember if you sent him an e-mail. You don't remember or you didn't?
A. I remember texting him, yes. I do not remember e-mailing him.

Q. So you never e-mailed him pictures of Collin or any of your other siblings?

A. I have never e-mailed him before.

Q. And you stated growing up y'all had a lot of rules. Can you explain what those rules were?

A. Uhm, growing up we weren't to have boyfriends. Our friends were limited. Uhm, it was strict.

Q. Okay. And who made all those rules?

A. Uhm, my parents.

Q. It wasn't just Complainan who wasn't allowed a boyfriend. You weren't allowed a boyfriend either, correct?

A. Correct.

Q. And I assume she was still a lot younger, but your little sister neither, correct?

A. Yes.

Q. And she was what, 11?

A. She's younger than 11.

Q. And when he gave y'all rings, he gave both of you rings, correct?

A. Correct.

Q. Not just Complainant

A. Yes.

Q. Growing up when you were going to school, about how many public schools do you remember going to?

A. I don't remember.

Q. Do you remember any of your teachers?
A. No.
Q. Your mother was one of your teachers, correct?
A. Correct.
Q. How often would y'all do school with your mother?
A. Everyday.
Q. And how long would school last?
A. Uhm, until we finished our school work for the day.
Q. Approximately about how long would that be on average?
A. Five or six hours.
Q. And would y'all start early in the morning?
A. We would start when we got up and ate breakfast. There was no time since we were home schooled.
Q. And all of y'all would be together when you were being home schooled?
A. Yes, ma'am.
Q. So you were together approximately 9:00 to 3:00 everyday?
A. For the most part.
Q. And you were with Complainant that entire time, correct?
A. For the most part.
Q. When would she go to work with your dad if y'all

were in school?

A. During the day. She would either do school at different times, when she would get home or she would do it the next day when she stayed home from work with him.

Q. And you stated that y'all slept in the same room together and James would sleep with your sister, correct?

A. Mm-hmm.

Q. You also stated he slept with your mom, too, right?

A. Yes.

Q. How often would he sleep with your mom?

A. I don't remember.

Q. And you said one time you saw them laying on the couch together. Is the living room downstairs?

A. Yes.

Q. Everybody walks through the living room?

A. Yes.

Q. So anybody who walked in there could have seen them on the couch?

A. Yes.

Q. They weren't trying to hide that they were laying on the couch?

A. No.

Q. And during the summer, y'all lived on the lake, correct?

A. Correct.
Q. Would y'all go swimming or skiing?
A. Yes.
Q. When y'all went swimming or skiing or tubing, what would y'all wear?
A. Board shorts and tank tops.
Q. Did Complainant ever wear a bikini?
A. We would wear one if we were sunbathing, but we would never be allowed to walk around in one.
Q. But she would wear a bikini?
A. For sunbathing, yes.
Q. Did you ever notice any bruises on her?
A. If she wore a bikini, no.
Q. And how many guns were in the home?
A. Uhm, a few. I don't remember how many.
Q. Did Complainant have a gun?
A. She did.
Q. And your little brother Collin had a gun?
A. I don't remember if he did.
Q. Your mom had a gun?
A. I'm not sure.
Q. James had a gun?
A. He did have a gun.
Q. But you're sure Complainant had a gun, too, correct?
A. Yes.

Q. What did she use that gun for?
A. For hunting.
Q. How often would she go hunting?
A. Not very often.
Q. Do you remember when she first went hunting?
A. No.
Q. And who would she go hunting with?
A. My father and his friends.
Q. Did they go more than once? More than five? More than ten times? Do you remember?
A. I don't remember.
Q. And the day all of this happened you stated you saw Complainant on the dock?
A. Yes.
Q. And how long had she been down there?
A. Uhm, I want to say an hour or two. She was down there for a little bit.
Q. Where was your dad this whole time?
A. He was in the house.
Q. Did you ever see him go down there?
A. I don't remember.
Q. Do you remember meeting with the Solicitor and somebody else to discuss this case or talk to them on the phone?
A. Uhm, I don't remember.

Q. You don't remember speaking with them in January of this year?

A. Oh, yes. Yes.

Q. Do you remember telling them that James went down to talk to Complainant on the dock?

A. Uhm, I don't remember.

Q. And later you said your mom went down there and then you went down there also, correct?

A. Not all the way down.

Q. How far did you get down?

A. I got down to the middle between the first dock and the dirt leading to the dock.

Q. You said at some point you were standing in the door looking down there?

A. Mm-hmm.

THE COURT: Just so I can interrupt you. You just said mm-hmm. Say yes or no for the record because he has to type everything.

THE WITNESS: Yes.

THE COURT: Thank you.

BY MS. GOOD:

Q. Where was your dad?

A. Uhm, in the house.

Q. Do you remember what he was doing in the house?

A. I don't remember.

Q. Was he standing at the door with you?
A. I saw him standing at the door several times, I think.
Q. And at any point did he take a shower?
A. I don't remember.
Q. When you went back in the house, you used the computer, correct?
A. Correct.
Q. You didn't go straight to your brothers and sisters?
A. Uhm, I don't remember the time frame of everything.
Q. About how long did you use the computer?
A. I don't remember.
Q. And your mom came in the house and you went upstairs with the kids. Where did she leave Complainant
A. Complainant stayed on the dock.
Q. So she left her down there --
A. Yes.
Q. -- by herself? And after all this happened, your mom sent you and the siblings down to Summerville; is that correct?
A. Yes.
Q. And about how long after that day did you go down to Summerville?

A. I don't remember.
Q. Were you still here when you went to The CARE House?
A. I believe so. I don't remember.
Q. So you were here approximately about a week, is that about right?
A. I'm not sure.
Q. Do you remember anybody staying at the house with y'all?
A. Uhm, I don't remember.
Q. Do you know a man named Mark Stokes?
A. I know that name, yes.
Q. Do you remember him staying at the house?
A. I don't remember.
Q. And how long were you in Summerville with your aunt --
A. I really don't --
Q. -- before your mother came?
A. I'm not sure.
Q. And that's your mom's sister, correct?
A. Correct.
Q. And after your mom came back, you moved to Florida with your mom, right?
A. Yes.
Q. And how long were you in Florida with her?

A. For about three months.
Q. And where did y'all live in Florida?
A. We lived with -- When we first got there, we lived with our friends that were in Florida already.
Q. How long did you live with them?
A. I want to say three weeks to a month. I'm not entirely sure.
Q. And then where did you move?
A. We got our own house, uhm, five minutes down the road from their house.
Q. Who lived with you there?
A. My sister, my mom, my three younger siblings.
Q. What about her boyfriend Jason Price, when did he move in?
A. I don't remember.
Q. But he moved in with you down in Florida?
A. I don't remember when he did.
Q. But he did move in with you?
A. I'm not sure.
Q. You don't know if he lived with you or not?
A. I don't remember.
Q. And then you moved back with your mom's aunt in Harleyville, correct?
A. Yes.
Q. And your mom's sister let James come to the house?

A. Yes.

Q. And you said you don't remember if you invited him to the house or not. Wouldn't you remember if you invited your dad to the house where all these allegations were thrown around?

A. I was really confused at that time. We were sheltered as children. I was super confused. I was 17. I really don't remember.

Q. But you're 20 now, right?

A. Correct.

Q. And you don't remember if you sent an e-mail to your dad a month ago?

A. I never sent an e-mail to him.

Q. How many text have you sent to him?

A. There was probably 10 or 11 text between us.

Q. You initiated the text, correct?

A. No. He text my phone first.

Q. How did he get your phone number?

A. I was trying to call Columbia to figure out when this trial was because I live so far away and I couldn't just up and leave and I left a message with somebody and whoever held the message gave my father my phone number.

Q. And you didn't think to talk to your sister or your mother to find out when the trial would be?

A. They weren't sure so I was trying to figure it out

for myself because I needed to know.

Q. After all this happened, you said you actually talked to Complainan about it, correct?

A. About?

Q. What she said happened.

A. The?

Q. Allegations.

A. Oh, yes.

Q. Sorry. The allegations.

A. Yes.

Q. About how many times did you talk to her?

A. I'm not sure.

Q. More than once?

A. Might have been.

Q. And she gave you some of the details about it?

A. No details. I don't know the details about it.

Q. Then how do you know where it happened, when it happened?

A. Those are the few things that she did tell me.

Q. So you think you probably had two or three conversations with her about it?

A. Just about.

Q. Okay. And was that before or after y'all went to The CARE House?

A. That was after.

Q. Did you ever talk to your mom about it?
A. I don't remember if I did.
Q. So you don't remember if you talked to your mom about all this stuff about your dad?
A. I really don't remember.
Q. When y'all went to Florida, what was Complainant demeanor like?
A. She was healing. Uhm, she -- Honestly I don't remember. We were still trying to patch everything together from what had just happened to our family.
Q. How long after James was arrested did she get a nose ring?
A. I really don't remember.
Q. Was it fairly soon?
A. I don't think so.
Q. You don't think it was about two weeks after?
A. I don't think it was that soon but I'm not sure.
MS. GOOD: No further questions, Your Honor.

REDIRECT EXAMINATION

BY MS. SENN:

Q. Breana, you just said that the day that Complainant disclosed that you went back inside after you saw your mom coming up. You said that your mom was shocked?
A. Very shocked.
Q. And then you said that you went back inside and used

the computer?

A. I don't remember if I used the computer or not. I do remember getting the kids and going upstairs shortly after that.

Q. Did your mother tell you to act normal?

A. She did mention to try to not act like she had just told me that.

Q. So with that information you went back inside and you either used the computer or what did you do?

A. I - I might have used the computer to act normal but I really don't remember how that went about.

Q. And just to be clear, did you initiate contact with James about a month ago?

A. No.

Q. Did you want to contact him?

A. I did not want to contact him.

Q. Did you give him your phone number?

A. No. And I gave no one permission to give him my phone number.

MS. SENN: Thank you, Your Honor. No further questions.

MS. GOOD: I have one, Your Honor.

THE COURT: Go ahead.

RECROSS EXAMINATION

BY MS. GOOD:

Q. You said that you did not want to have contact with your dad about a month ago but you continued to text him back and forth, correct?

A. Correct.

MS. GOOD: No further questions.

THE COURT: All right. Thank you. You may step down. All right. The State can call their next witness.

MS. CAVANAUGH: The State calls Melissa Skipper.

Thereupon

MELISSA SKIPPER WALLACE

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: My name is Melissa Skipper Wallace.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Ms. Wallace, where are you employed?

A. I'm employed by the South Carolina Law Enforcement Division which is commonly known as SLED.

Q. How long have you been with SLED?

A. About 11 years.

Q. And what is your position currently at SLED?

A. I'm currently assigned to the Piedmont region with investigative services.

Q. Back in 2012 what was your position with SLED?

A. At that time I was assigned to the crime scene and latent print department within the forensic laboratory of SLED.

Q. In your role with the crime scene unit at SLED, what were some of your responsibilities?

A. I responded to and processed crime scenes in all 46 counties of the state when we were requested by state, local or federal agencies. I also processed evidence collected from those scenes as well as evidence submitted to the laboratory for latent fingerprints, fingerprint comparisons, footwear comparisons, tire tread comparisons, blood stain pattern analysis and crime scene reconstruction.

Q. So when you would be called to process scenes, what type of processing would you do at crime scenes?

A. It would depend on the case and what was requested of us, but generally speaking we took photographs, we took notes, we documented the scene, collected evidence.

Q. When you would collect evidence, how would you collect evidence? Like in what form do you collect evidence? Were there different forms of evidence as far as swabs sometimes or actual physical items?

A. Yes, ma'am.

Q. In August of 2012 did you become involved in the investigation against James Miller?

A. I did.

Q. And who actually made contact with you about this investigation?

A. Chief Deputy Marvin Brown with the Kershaw County Sheriff's Office.

Q. What were you asked to do with this investigation?

A. Myself and another agent were asked to come and process the residence of Mr. Miller the following day.

Q. And was it your understanding that there was a search warrant obtained for that evidence?

A. They were in the process of working on that.

Q. Where was that residence located?

A. If I can refer to my notes.

Q. Of course.

A. The address I have is [redacted], Camden.

Q. Is that in Kershaw County?

A. Yes, ma'am.

Q. What day did you actually -- What day were you notified that you needed to go to that home?

A. That was on August 23rd, 2012.

Q. What day did you actually go to process the house?

A. On the 24th.

Q. When you arrived at the house, did you go with anyone else from SLED?

A. Agent Hezel (phonetic) also in the crime scene unit.

Q. Who else was at the house when you arrived?

A. Lieutenant Knafelc with Kershaw County as well as Investigator Justin Dill, Kershaw County.

Q. Is Detective Knafelc right here?

A. Yes.

Q. You said Justin Dill was also there?

A. Yes, ma'am.

Q. Upon arrival did you first speak with the investigators involved in the case?

A. We did.

Q. And once you got the information from Lieutenant Knafelc -- Before I get to that, what did you take with you to process the scene that day? What type of equipment?

A. Uhm, we keep, at that time we kept equipment in our trucks that we regularly used. It was - we had cameras, measuring devices, latent print kits, uhm, alternate light sources. There was a lot of different equipment. Actual hand tools. Things like that.

Q. Okay. So those items that you just mentioned, that equipment is normally in your truck?

A. It was, yes.

Q. So after you spoke with Lieutenant Knafelc, before you spoke with him, did you have any specific information

about the case?

A. We were given some background information, uhm, and what we were to be searching for. We were advised it was a sexual assault type case. They were particularly looking for bodily fluids or seminal fluids inside the residence. We understood that there were family members that were involved.

Q. As far as -- So you were aware that it was the suspect's home, correct?

A. Correct.

Q. So, uhm, would you expect like his fingerprints to be throughout that home?

A. Yes.

Q. So that wasn't really something that you collected that day?

A. No.

Q. Because that would be normal for his prints to be in that home anyway?

A. That's correct.

Q. Okay. Uhm, did you - how did you begin processing that home?

A. As with every crime scene processing, we started by documenting the scene as it was when we arrived by taking photographs. Photographs include the exterior of the residence as well as the interior of the residence. We would

walk around the outside of the house and take photographs of the outside of the house 360 degrees. Once we entered the house, we did the same thing with each room.

Q. Where specifically -- Uhm, so you took photographs throughout the home?

A. That's correct.

Q. And after you photographed the house, uhm, what else did you do?

A. I drew a diagram, wrote some notes about information that was provided as well as of how we were processing the scene. Then we proceeded to use alternate light source or a UV light to look for bodily fluids.

Q. Describe the alternate light source that you are referring to. What does it look like?

A. The kit that I had at that time had individual flashlights for different wave lengths and there were appropriate filters that you use with those lights. Uhm, ultraviolet light or alternate light sources, it's light that's outside of the normal vision that you see everyday so that just helps you see things and can be used for trace evidence for locating fingerprints, for bodily fluids, things like that that are outside that normal spectrum of light that we see and it helps to visualize those things that we can't see normally.

Q. Okay. And when you talk about -- Uhm, you said it

can pick up on fingerprints?

A. Yes.

Q. And also bodily fluids?

A. That's correct.

Q. When you speak of bodily fluids, what type of fluids are you speaking of?

A. Saliva, urine, semen, vaginal secretions. Those types of things.

Q. Okay. So when using that light source, did you go all throughout the home with the light source?

A. We did not.

Q. What areas -- How did you know which areas to actually, uhm, use the light source in?

A. Based on the information provided the day before, once we arrived there were certain areas within the house that they were particularly interested in. One area being the victim's bedroom, another area being the sofa in the living room so those are the areas that we initially focused on.

Q. Okay. Did you also, uhm, focus in the master bedroom as well?

A. Yes. During the course of the process and on the scene, we decided we would go ahead and search the master bedroom of the residence as well.

Q. When you say, uhm, they gave you the information, are you referring to investigators in the case?

A. That's correct.

Q. You said you made a diagram of the home. Uhm, why, why did you make the diagram?

A. Uhm, it makes it a little bit easier for others to see and understand the layout of the residence and also makes it easier for me as well. It's just to orient the house. It's sometimes a little hard to do with just photographs, birds eye view you can see where the rooms are in relationship to each other.

Q. Do you also label that diagram as far as which room is which?

A. Sometimes.

Q. Okay. Then when you collect the evidence, do you also label what room you collect the evidence from like in the actual bags?

A. Yes. Usually.

Q. And there's a diagram to assist with that later on?

A. Yes.

Q. And you said that Agent Hezel? Hezel, is that correct?

A. That's correct.

Q. Attended the processing with you. What was her role in this?

A. I was the lead agent for this case. She was

there to assist me. Generally in that type situation the assisting agent takes the photographs and things like that. Those photographs were taken in my presence.

Q. So she took the photographs?

A. That's correct.

Q. But you were there and you saw the home while she was taking the photographs?

A. That's correct.

Q. When you actually used the light, did you actually - did the light, I guess, detect any sort of possible bodily fluid?

A. It did. When you're searching with those lights, what you are looking for is something to fluoresce or luminesce. That means to glow a white color. Those are the areas we are looking for with those lights with the appropriate filters in place. Those are the areas that would be of interest to collect.

Q. When you say the appropriate filters in place, what do you mean by the filters?

A. For the kit that I had in particular there were goggles, there were colored goggles, red, yellow and orange. Each one of the lights had on them which filter you were supposed to use so you may use a blue light and have orange glasses that you need to wear in order to see that luminescence or fluorescence.

Q. So did, uhm, did the light source, uhm, illuminate any particular areas in the home that afternoon?

A. There were some areas, yes.

Q. Did you notate which areas detected potential of a bodily fluid?

A. Uhm, we noted areas that fluoresced.

Q. Okay. So you can't say with certainty that it was definitely bodily fluid, it's just the light source reacted?

A. That's correct.

Q. Okay. And so when it reacts, what does that mean to you?

A. To me that indicates that an area that I need to collect or collect that item of evidence, submit it to the laboratory and have DNA conduct an analysis on it to determine what that was.

Q. So it indicates to you that there was a potential for bodily fluid to be there?

A. That's correct.

Q. But not certainty that that's what it's illuminating on?

A. That's correct.

Q. So along those same lines it certainly doesn't mean that there's going to be DNA where it illuminates?

A. That's correct.

Q. Going back to where your light source actually

illuminated on, can you describe slowly since we're gonna be showing pictures, too, which areas of the home your light reacted?

A. Yes.

Q. Okay. In your report do you actually have the order that you went through the house or is that just necessarily in chronological order?

A. It's not.

Q. So let's just start with the first room that's actually notated on your report.

A. The first room will be the victim's bedroom. We collected a pillow from the victim's bed, a pillow case from the victim's bed, a set of swabs from the carpet to the right of the victim's door, a set of swabs from the carpet in front of the dresser in the victim's bedroom.

MS. CAVANAUGH: Okay. I'll ask you to just hold on for a second.

(Whereupon, State's exhibits #28 through #34 marked for identification.)

BY MS. CAVANAUGH:

Q. I'll show you State's 28 through 34 and ask you if you recognize those photographs?

A. Yes, I do.

Q. And do those photographs depict the victim's bedroom as you saw it that particular afternoon?

A. They do.

MS. CAVANAUGH: Your Honor, at this time I would like to admit State's exhibits 28 through 34 into evidence.

THE COURT: Any objection?

MS. GOOD: No, ma'am.

THE COURT: They are so admitted. If you want her to step down to go closer to the jury, that's great.

MS. CAVANAUGH: Sure.

BY MS. CAVANAUGH:

Q. Agent Skipper -- Or I'm sorry. Agent Wallace, come down here for me. What does this particular photograph depict?

A. State's exhibit 28 is a photograph of the victim's bed and the victim's bedroom.

Q. Before you actually -- What is the process of taking photographs? Do you - before you zoom in, do you try to take a bigger picture of the actual bedroom?

A. Yes. You take general photographs, a range of photographs generally overall to get as much information on the photograph as possible. Mid range would be a little bit closer up photograph, and then close up is obviously a full frame picture of that particular item.

Q. And this particular photograph, what is that a picture of?

A. State's exhibit 29 is a close up photograph of a pillow from that bed.

Q. Does there appear to be a stain on that pillow?

A. There is some type of white stain on that pillow, yes.

Q. And that particular stain is actually visible to the naked eye?

A. It was.

Q. So that wasn't necessarily detected by the ALS?

A. Correct.

Q. And is this also a pillow in the bedroom?

A. State's exhibit 30 is a photograph of that same bedroom from the doorway. There is a pillow laying on the bed.

Q. As well as this particular photograph, what does that depict?

A. State's exhibit 31, that's a close up photograph of the pillow and the pillow case from that bed.

Q. And there appear to be pen markings on the pillow case. What are those pen markings from?

A. Those are marks that we made after we had searched with that alternate light source.

Q. So would that be the area that your light illuminated on?

A. That's correct.

Q. State's exhibit 32 is also the victim's bedroom?

A. Yes, it is. That's a photograph of the floor next to the bed.

Q. Again are those markings that you made on the carpet there?

A. They are. Those were made so that we can actually photograph and document where those areas of luminescence were found.

Q. And State's exhibit 33, is that also the carpet of the victim's bedroom?

A. Yes. That's behind the door.

Q. And are there pen markings on that particular carpet?

A. Yes, ma'am.

Q. And finally State's exhibit 34, is that also a photograph of the carpet in the victim's bedroom?

A. It is.

Q. And beside the camouflaged hat, are those markings that you made as well?

A. They are.

Q. Thank you. You may sit down, Agent Wallace.

A. (Witness complies.)

Q. Now, again just because the light luminesced -- Is that the correct term?

A. Yes, ma'am.

Q. -- on the areas that you made markings on, does that necessarily mean that that is definitely bodily fluid?

A. No, it doesn't.

Q. Does that necessarily mean that those are areas where DNA could be located?

A. No, it doesn't.

Q. Once you took - once you made the markings on the carpet, what did you do with those particular areas?

A. We swabbed those to collect a sample of it.

Q. You stated that you also collected certain items, physical items of evidence from the victim's bedroom?

A. We did.

Q. And what were those?

A. There was a pillow from the bed and a pillow case from the bed.

Q. So can you explain why you would take whole items such as those versus swabs from a certain area?

A. Generally speaking I would swab areas that would either cause severe damage or something that wasn't easily transportable. In this case like a pillow and a pillow case, it was easy to package up and carry it with me. I didn't necessarily want to cut up carpet and tear up the residence.

Q. Did you also use the light source in other areas of the home?

A. We did, yes.

Q. What other rooms did you also use the light source in?

A. In the master bedroom and the sofa in the living room.

Q. I'm going to show you what's already admitted into evidence as State's exhibit 26. Is that the master bedroom of the home that day? It's hard to tell.

A. I'm not sure.

Q. Okay. That's fine. Did your light source illuminate on any areas in the master bedroom?

A. Yes.

Q. And did you collect swabs from those particular areas?

A. Yes, ma'am.

Q. What areas in the master bedroom did the light react?

A. Uhm, there was, of course, some areas from the futon mattress in the master bedroom. Swabs were collected from three different places on that futon mattress as well as a large body pillow from that bedroom.

Q. So going back to your -- I apologize. I realize why you are confused now. Going back to your diagram where did you indicate that the master bedroom was?

A. It was upstairs next to the victim's bedroom.

Q. Upstairs, not downstairs?

A. That's correct.

Q. I'm showing you what's State's 27 and introduced in evidence. Is this the master bedroom that you notated on your diagram?

A. Yes.

Q. Okay. And again that particular room was upstairs?

A. Correct.

(Whereupon, State's exhibits #35 through #37 marked for identification.)

BY MS. CAVANAUGH:

Q. I'm showing you what's not been admitted into evidence yet, State's exhibits 35, 36, and 37. Do you recognize those photographs?

A. Yes, I do.

Q. And what do those depict?

A. Those are photographs from that master bedroom of the futon mattress and the body pillow.

MS. CAVANAUGH: Your Honor, at this time I would ask State's exhibits 35 through 37 be admitted into evidence.

THE COURT: Any objection?

MS. GOOD: No, Your Honor.

THE COURT: They are so admitted.

BY MS. CAVANAUGH:

Q. Agent Wallace, stand close to the jury. So did your light source detect any, did it react in the master bedroom?

A. It did.

Q. And what does this depict?

A. Uhm, State's 35 is a general photograph of that futon mattress.

Q. Is this a closer photograph of that mattress?

A. It is. It also includes markings for the areas that we saw fluorescence or luminescence under the lights.

Q. And if you look closer, you can actually see those particular spots with the naked eye as well, right?

A. Correct.

Q. 37, is that also the master bedroom?

A. It was.

Q. Is that another marking?

A. That's another marking on that pillow.

Q. Please have a seat. Thank you.

A. (Witness complies.)

Q. Did you - what did you collect from those particular areas in the master bedroom? Were they swabs or were there actual items of evidence?

A. They were swabs.

Q. And within the pen mark that you put on those areas?

A. That's correct.

Q. And again some of those you can actually see with the naked eye; is that right?

A. Yes, ma'am.

Q. Once again just because it reacted does that necessarily mean that it is going to be bodily fluid?

A. No, it does not.

Q. Does it mean there is going to be DNA there?

A. No, it does not.

Q. Finally, did you also process the living room and use the light source in the living room?

A. We did for the couch.

(Whereupon, State's exhibits #38 through #41 marked for identification.)

BY MS. CAVANAUGH:

Q. I'll show you what's marked as State's exhibit 38 through 41 and ask you if you recognize those pictures?

A. I do.

Q. What do those pictures depict?

A. Those are photographs of the couch in the living room. They include markings for areas that luminesced or fluoresced and some close ups as well.

MS. CAVANAUGH: Your Honor, at this time I ask that State's exhibits 38 through 41 be admitted into evidence.

THE COURT: Any objection?

MS. GOOD: No objection.

THE COURT: All right. They are so admitted.

BY MS. CAVANAUGH:

Q. One more time I'm gonna ask you to stand up.

A. (Witness complies.)

Q. Is this the couch in the living room?

A. State's 38 is a photograph of the couch in the living room.

Q. And State's 39, is that also the same couch?

A. It is. It's a closer photograph of the cushion and the back of the couch.

Q. Are those markings that you made on the couch and the pillow?

A. They are.

Q. And does State's exhibit 40 show a different pillow as well as the other pillow that we just saw?

A. It does.

Q. And are those markings that you made as well?

A. They are.

Q. State's exhibit 41, is that also a pillow from the living room couch?

A. It is. It's just a closer view of one of the pillows.

Q. I see you made a number 1 and a number 2 on that particular pillow. What does that indicate? Or am I just --

A. That should just be a number 2. It's just a reference so that I know when I'm making my notes and logging the evidence in I can differentiate where the different areas were on the couch.

Q. Thank you. Please sit back down.

A. (Witness complies.)

Q. And as far as, did you note whether your light reacted -- You said you use different filters depending on, uhm, what does it depend on as far as which glasses you use?

A. Different wave lengths require different filters so depending on the wave length of that particular light we would use the appropriate filter and set of glasses to go with it so that we can see those areas of luminescence.

Q. And in your report do you indicate which filter you actually used?

A. I do not.

Q. Okay. And again with that couch you made markings where the light source reacted?

A. I did.

Q. And does that mean there was bodily fluid on that particular couch?

A. That has to be tested in the lab for DNA.

Q. Okay. And the same thing, you don't necessarily know whether that means if there is DNA there either?

A. Correct.

Q. When you actually collect the swabs, how do you package those?

A. The swabs actually come in a pair of two. They are sterile. We moisten them and we collect the sample and then they are placed in an individual envelope, allowed to dry and then they're sealed and packaged and submitted to the appropriate department within the lab.

Q. Okay. Did you take the items of evidence back to SLED or were those transferred to someone at the Kershaw Sheriff's Department?

A. There were two items that were maintained by the Sheriff's Office. The rest were transported by myself and submitted by myself to the lab.

Q. Did you also obtain a buccal swab from Complainant that afternoon?

A. Yes.

Q. What was your purpose in doing that?

A. That was to have a standard for comparison in the event there was DNA found. That way the DNA department would have something to compare the evidence to.

Q. Do you remember whether Complainant or anyone else was at the home that afternoon?

A. There were other people there. I don't remember exactly who was there.

Q. Did you communicate with those other people at the

house during your investigation?

A. I don't remember. I may have instructed on how to provide those buccal swabs but I don't remember communicating with anybody.

Q. But is it fair to say that most of your interaction was with the investigators on the scene?

A. That's correct.

Q. And then, of course, Agent Hezel who was taking the photographs as well?

A. Yes, ma'am.

Q. Did you provide Lieutenant Knafelc a copy of the photographs at that time or a later date?

A. They were provided at a later date but yes, they were provided.

Q. Agent Wallace, was that the extent of your involvement in this case?

A. It was.

MS. CAVANAUGH: Thank you. Answer any questions from the defense.

CROSS EXAMINATION

BY MS. GOOD:

Q. Good morning, Agent Wallace.

A. Good morning.

Q. You stated you got the original call on August 23rd of 2012, correct?

A. Yes, ma'am.

Q. And at that time a search warrant had not been done yet?

A. It was my understanding that they were obtaining a search warrant.

Q. So once they got the search warrant, that's when you went on the 24th?

A. We scheduled for the following day, yes, ma'am.

Q. And who is in charge of getting a search warrant, is that you or someone else?

A. Someone else.

Q. In this case do you know who obtained the search warrant?

A. I don't remember.

Q. When you arrived at the scene, you spoke with Investigator Knafelc. That's where you got your information from. You don't know where his information came from but that's where you got your background, correct?

A. From him and Investigator Dill.

Q. Dill, yes. When you arrived at the home, you said Investigator Knafelc was there, Dill, and do you remember how many other people were there?

A. I don't.

Q. But the occupants of the house were there?

A. At least some of them, yes.

Q. Do you remember if it was more than two or just one or two or do you just not remember? That's fine if you don't.

A. I don't remember.

Q. But you do remember some of the people who lived there were there?

A. Yes, ma'am.

Q. And were you aware of when the alleged sexual assaults occurred or when they were reported?

A. No, ma'am.

Q. Prior to you arriving at the home, you don't know what occurred at the home, correct?

A. That's correct.

Q. When you arrived, was the scene secure?

A. Well, there were occupants inside the residence but the investigators were there.

Q. And you used, I guess -- Explain to me a little bit more about this blue light, the alternate light source?

A. It's not necessarily blue. That's just one of the colors.

Q. Sorry.

A. It's an alternate light source. It's light that's outside the normal vision spectrum.

Q. And what all does it pick up?

A. Trace evidence which could include hairs and fibers, latent fingerprints, bodily fluids. Those are primarily

things that are searchable.

Q. And you stated earlier on your direct that just because it lights up, doesn't mean that there is bodily fluid, correct?

A. Correct.

Q. What other things can light up?

A. Sometimes detergents, cleaning products. Things like that.

Q. So when you flagged the light source, you have no idea what kind of fluid is there, correct?

A. That's correct.

Q. If it's detergent. If it's a bodily fluid, saliva or what, correct?

A. That's correct.

Q. And you swabbed and did the light source over the places that Knafelc told you, correct?

A. The rooms, yes, the areas.

Q. That was the victim's bedroom, the master bedroom and the living room couch?

A. Yes, ma'am.

Q. Once you get these swabs, you take them to SLED, correct?

A. Yes, ma'am.

Q. At that point it's up to somebody else to do the DNA? You have nothing to do with that; is that correct?

A. That's correct.
Q. That's the end of your involvement?
A. Yes, ma'am.
MS. GOOD: No further questions.
THE COURT: Any redirect.
MS. CAVANAUGH: None, Your Honor.
THE COURT: All right. Thank you very much. You may step down. It is now about 11:00. We've been going for almost an hour and a half. This is a good time to take a ten minute break. We'll get back on the record at 10 after 11. I ask everybody on the jury not to speak about the case when you're back in the jury room just as my instruction has been throughout this trial.
(Whereupon, the jury entered the jury room.)
THE COURT: Can we address scheduling?
MS. CAVANAUGH: We have the serologist or the analyst here and then we also have, of course, Investigator Steve Knafelc and one other lay witness that should be fairly short. Dr. Foster and then Investigator Dill will be the longer witnesses. And then, of course, we still have the proffer of Dr. Foster. So I didn't want them to wait here for longer than they needed to so I just wanted to see what your thinking was.
THE COURT: Sure. Let's get in as much as we can until about 1:00. We have got lunch coming in for the

jurors. We will be able to eat lunch but I want to respect y'all so you can get a bite to eat. You're the ones who are on your feet all day. We'll give you time to get some lunch as well. Do you want to do the proffer right after lunch to give the jurors a little longer for lunch?

MS. CAVANAUGH: I would like to do the proffer. She was gonna be here right around 11:45 so I'm thinking we can do that.

THE COURT: What about if we try to do it at 12:30? I'll send the jury out at 12:30 for lunch. Their lunch probably won't arrive until about 1:00, but they'll be back there. They won't have to wait that long until lunch gets here. Lunch will be hot when it arrives. We can be working on the proffer and we just need to make sure, I want to make sure y'all have lunch. I remember being on the other side of the bench and skipping lunch and it was not a good recipe for being a good advocate for your clients. We'll make sure you get to eat. Let's plan on that. I don't know how long your witnesses are going to take so you take that in mind that it's going to be ten after 11 when we get back on the record so we can try to stop around 12:30 to take that proffer, okay? Or whatever we decide on. She's going to be here at 11:45 you said?

MS. CAVANAUGH: Yes.

THE COURT: Okay. So yes, 12:30.

(Short recess.)

BAILIFF: All rise.

THE COURT: Thank you. Please be seated. Let's bring the jury back in.

(Whereupon, the jury returned to the courtroom at 11:25.)

THE COURT: Madam Solicitor.

MS. SENN: The State calls Courtney Thompson.

Thereupon,

COURTNEY THOMPSON

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: My name is Courtney Thompson.

DIRECT EXAMINATION

BY MS. SENN:

Q. Good morning, Ms. Thompson. How are you?

A. I'm good. How are you?

Q. I'm well. What do you do?

A. I'm a forensic serologist in the DNA case work department.

Q. Where are you employed?

A. I'm employed at the South Carolina Law Enforcement

Division also referred to as SLED.

Q. How long have you been with SLED?

A. I have been at SLED for approximately three and a half years.

Q. Before you were at SLED, do you have any other relevant experience?

A. I have a degree from the Southern Wesleyan University in forensic science and biology.

Q. Do you have any education specific to your field?

A. Besides my Bachelor's degree from Southern Wesleyan University, I have also completed graduate level course work from the University of Florida in biological evidence screening and serology.

Q. Have you ever had any training in your field?

A. Yes. I was trained inhouse at SLED under a court qualified analyst who taught me proper evidence handling, chain of custody, test preparation and evidence examination as well as report writing and courtroom testimony training.

Q. Have you ever testified as an expert before?

A. Yes, I have.

Q. How many times?

A. Approximately four times.

Q. Where was that?

A. I have been qualified as a witness before in Darlington County and in Allendale County and in Lee County.

MS. SENN: Your Honor, the State moves to qualify Courtney as an expert in the field of serology.

THE COURT: You said what field?

MS. SENN: Expert in the field of serology.

THE COURT: Any objection?

MS. GOOD: No, ma'am.

THE COURT: She will be so qualified.

MS. SENN: Thank you.

BY MS. SENN:

Q. Ms. Thompson, can you please explain what serology is?

A. Forensic serology is the identification of various types of body fluids through different types of testing.

Q. So when you say body fluids, what do you mean?

A. Typically we test blood, semen, and saliva.

Q. When you say that you're testing that, what is the significance of any results that you get?

A. Those body fluids are significant to the DNA department because they are good sources of DNA.

Q. Did you have an occasion to examine evidence that was submitted in this case?

A. Yes, I have.

Q. Where did you receive that evidence? From what department?

A. I received that evidence from the evidence control

department which is located in the forensics laboratory at SLED.

Q. What evidence did you examine?

A. In this particular case I happened to examine a pillow from the victim's bed, a pillow case from the victim's bed, as well as several swabs from around the area of the victim's residence.

Q. What were you testing those items for?

A. I was screening them for the presence of semen.

Q. So walk me through this testing process. What are the tests that are available to test for the presence of semen?

A. For larger items of evidence such as the pillow and pillow case which I examined we have a test that is a quick chemical test. It's good for screening larger items of evidence. It screens for a component found in very high concentrations in male seminal fluid. Additionally, for smaller items of evidence such as the swabs that I also screened we have another type of test that also looks for another component found in very high concentrations in male seminal fluid. Additionally, all of the items that I tested -- I'm sorry. I misspoke. All of the swabs that I tested in this case I happen to also perform a microscopic examination on to try and identify the presence of sperm cells.

Q. Okay. So you said that you did some testing on a

pillow and pillow case. Which of those types of testing did you do on the pillow and pillow case?

A. For that type of testing I did what is called a presumptive test. It's a chemical test that is good for screening larger items of evidence. It is a test that in the presence of this particular component will turn a different color which can be an indicator to me that there could possibly be semen present and that I should do additional screening.

Q. You said that's a presumptive test. Can you explain that?

A. Yes. Presumptive essentially means that it can indicate the possibility that semen is present, but it does not confirm it so additional testing is required if that test is positive.

Q. If the test is negative, what do you do from that point?

A. At that point our testing will stop and we consider the item that we are screening to be negative for the presence of semen.

Q. Okay. Did you arrive at any conclusion on the test that you conducted with respect to the pillow case and pillow specifically?

A. Yes. Uhm, for the pillow and the pillow case my screening for semen in those cases was negative.

Q. Is your conclusion within the bounds of reasonable scientific probability?

A. Uhm, yes.

Q. So can you explain your conclusion one more time for the jury with regard to the pillow and pillow case?

A. For the pillow and pillow case my screening for the presence of semen was negative.

Q. Okay. And you said that you performed some testing on some swabs?

A. That is correct.

Q. And again what were you looking for in those swabs?

A. The presence of semen as well.

Q. What test did you perform on the swabs?

A. We have another type of test that I mentioned earlier that screens for a component found in very high concentrations of semen and this test runs very similarly to a pregnancy test. A sample is placed on this particular test that looks like a pregnancy test and as the liquid sample migrates up a strip of paper similar to the pregnancy test, a certain number of lines can indicate a positive result and a certain number of lines indicate a negative result. After we complete that testing, we will do a microscopic examination of that sample to try and identify any sperm cells that might be present.

Q. So with the swabs that you tested what was the result of that test?

A. For both the chemical test that I performed as well as the microscopic examination they were both negative.

Q. Okay. And again is that conclusion within the bounds of reasonable scientific probability?

A. Yes, it is.

Q. Okay. Does that conclusion allow you to say that semen was never present in those areas?

A. I cannot make any conclusions as to that. What I can say is that the items that I examined were negative for semen.

Q. Okay. What other factors could give you a negative result?

A. There are various other things that could possibly degrade a semen sample. Uhm, things like cleaners as well as the length of which the stain had been potentially deposited and then left there. So basically wear and tear on a particular area or item can all lead to the degradation of a semen stain.

Q. Can I back you up for a second? Can you explain what degradation is?

A. Yes. I'm happy to explain it. That basically means that the stain that is there is breaking down and it is becoming, is less likely that our screening tests and anything

that we are going to be looking for is going to still be available. Because it is a biological fluid in our body eventually it does break down and our testing cannot exactly pick up everything once that sample starts to wear away and be less concentrated.

Q. So once semen begins to degrade it will not yield a positive result in the test that you perform?

A. That's a possibility, yes.

Q. Okay. So you said that a cleaning agent could degrade something. Could you go into more detail about that? What kind of cleaning agents do you mean?

A. Anything that is considered a household cleaner like bleach, detergents, strong caustic chemicals. Things that you might clean your floors or bathrooms with. Things like that.

Q. So when you say detergents, do you mean laundry detergent?

A. That or maybe perhaps like soaps that you would wash your dishes with or your hands with. Things like that that have antibacterial components in it.

Q. Could washing a pillow case cause semen to degrade?

A. It could, yes.

Q. Could washing a pillow cause semen to degrade?

A. It could, yes.

Q. Would wiping semen up off of a surface, could that potentially cause semen to degrade?

A. It could definitely aide in removing a large majority of the sample. It would not necessarily breakdown the semen but it could potentially remove a lot of what would possibly have been there.

Q. You said earlier that repeated use could degrade a sample. What do you mean by repeated use?

A. For example, there were some swabs that were submitted that were from the carpet and because most carpet is walked on quite frequently, something like that could potentially wear away a possible sample just from everyday use and wear and tear.

Q. What about vacuuming, could that cause semen to degrade?

A. It could potentially remove some of the sample, yes.

Q. Ms. Thompson, can you say with reasonable scientific certainty that James Miller's semen was never present on any of the items that you tested for?

A. I can only say that the items that I screened, yes, were negative for any semen at all.

Q. But can you say that semen was never present on those items?

A. I cannot say that because I only tested them in the

state that they arrived to me so...

MS. SENN: No further questions. Answer any questions the defense may have.

THE COURT: Ms. Good.

CROSS EXAMINATION

BY MS. GOOD:

Q. Ms. Thompson, you stated there are several different tests to use to detect semen; is that correct?

A. That's correct.

Q. That's to ensure that the appropriate tests are used for the appropriate types of material or whatever you're testing at that time?

A. That's correct.

Q. You used multiple types of testing in this case, correct?

A. I did.

Q. With the different multiple types that you used to a reasonable scientific probability you found all of those samples to be negative for semen, correct?

A. That is correct.

Q. And if there had been even a little bit of semen there on the sample that you had that you were able to test it would have showed up, correct?

A. There is a possibility of that. Our tests our very sensitive and specific so they are typically able to detect

lower levels of semen but we cannot quantify how much semen would need to be present in order for our samples to be testing positive.

Q. And what was the date that you were asked to perform your test on these samples?

A. The way that evidence flows into our laboratory is after it is submitted to our evidence control department, it is placed onto a what we call case assignment table and this is done by our case coordinator in our department and the way that cases are worked is that they are worked based off of the time they are submitted so essentially chronologically.

Q. Do you know when this one was submitted?

A. I can reference my chain of custody. Is that okay?

Q. That's fine. Go ahead.

A. From my chain of custody it appears that this case was initially submitted on August 24th of 2012.

Q. And then it was initially sent back from there, correct?

A. That is correct. On December 12th of 2012 it was returned.

Q. And then when did you do your test on these? When were they returned to SLED for you to do your test?

A. They were returned to SLED on December 2nd, 2015 and I started my analysis on these items on December 9th of 2015.

Q. So you received them approximately three months ago?

A. That is correct.

Q. Within two weeks you were doing the tests on them, correct?

A. That is correct.

Q. And that's the first time that you had any contact with them was December of 2015, correct?

A. Yes. That's correct.

MS. GOOD: No further questions.

THE COURT: Any redirect?

MS. SENN: Yes.

REDIRECT EXAMINATION

BY MS. SENN:

Q. Ms. Thompson, you testified a minute ago that someone else schedules the testing; is that correct?

A. That is correct.

Q. So you are not responsible for scheduling testing in any way, shape or form?

A. No. We cannot hand pick cases. They just are given to us and assigned to us based off of when they come in and when they are submitted. We are not allowed to typically give priority over one or the other.

Q. Is it fair to say that the SLED lab has a significant backlog of cases?

A. That is a fair assumption to make, yes.

Q. Do you know how many counties SLED is responsible for testing materials in?

A. I do not know the exact county, but we can service every county in the State of South Carolina.

Q. Do you know the exact number of that?

A. I do not have that number off the top of my head. I'm not sure.

Q. But every county in the State; is that correct?

A. That is correct. That is the function of our department is to service every county.

MS. SENN: Thank you. No further questions.

MS. GOOD: Just a couple.

THE COURT: Go ahead.

RECROSS EXAMINATION

BY MS. GOOD:

Q. So are you aware of when these swabs or samples were actually sent to SLED to be tested and requested to be tested?

A. Yes. I am aware of when that occurred.

Q. And when was that?

A. That would have been whenever they were returned, whenever they were resubmitted to SLED, December 2nd of 2015.

Q. So is that when they were actually submitted to SLED

to be --

A. That was when they were resubmitted to SLED and that was when I started my testing on them.

MS. GOOD: No further questions.

THE COURT: Thank you. You may step down. The State may call their next witness.

MS. SENN: The State calls Martha Penrod.

Thereupon,

MARTHA PENROD

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: Martha David Penrod.

DIRECT EXAMINATION

BY MS. SENN:

Q. Good morning, Ms. Penrod. How are you?

A. I'm fine. Thank you.

Q. Are you nervous today?

A. Very much so.

Q. Ms. Penrod, what do you do?

A. I'm retired.

Q. Before that, what was your career?

A. I taught school for 29 years.

Q. 29 years. Where did you teach?

A. Uhm, here in Kershaw County. I taught at Lugoff

Elgin Middle School and Stover Middle School.

Q. You say you taught middle school. What grade specifically?

A. Eighth grade.

Q. Where do you live, Ms. Penrod?

A. 1791 Wild Turkey Road out at Wateree Lake.

Q. How do you know the defendant in this case?

A. Uhm, they moved into the house next door to us out at the lake.

Q. Ms. Penrod, do you remember when you first met the Miller family?

A. Uhm, I believe it was in July of 2011 and, uhm, they came, I believe they came up on a pontoon and parked next door, docked next door and they came up looking at the house next door and my husband and I went out to meet them at that time.

Q. What, did you go out there and just introduced yourselves?

A. Gosh, you know, I don't know. I believe we introduced ourselves. It was kind of like they were - he was saying that they were going to rent the house next door.

Q. When was the next time that you saw James Miller?

A. I don't know the exact time. It might have been a week. Might have been two weeks, but James and Complainant came to the house next door and they came down to work and get it

ready for the family. They were there for about a week or two weeks.

Q. Were they alone?

A. They were alone.

Q. Okay. Do you remember when the rest of the family moved in?

A. I can't -- I don't recall. It was shortly after that.

Q. That's fine. Do you know whether Complainant and James worked together?

A. Yeah. Complainant worked with her dad. She went off everyday to work with her dad and Breana was the motherly type. She was the cook. She was the artistic type. She stayed at home.

Q. Okay. So did you get to know the Millers very well while they lived in Camden?

A. The children and Tammy, you know, got to know. They were with - my grandchildren played with Xavier and Collin and Emma and I had twin granddaughters at the house at the time, too, and they got to know Breana and Complainant.

Q. Okay. And you said earlier that Complainant would go to work with her dad. Is there anything else you remember about Complainant?

A. Complainant could seem like she could do just about anything.

Q. Did you ever see her do anything unusual?

A. Oh, yeah. I think it was Complainant that skinned the fox. She was just very outgoing and, well, not particularly outgoing but very - very much into nature and things like that, yeah.

Q. You said she skinned a fox?

A. Yeah.

Q. Okay. Can you describe your house in relation to the Miller's house?

A. Fairly close. It was - the house was fairly close. It was a house that was put up on a lot that already had a house on it.

Q. Are you next door neighbors? Were you next door neighbors with the Millers?

A. Yes. We were right next door, yeah.

Q. Were you outside very often?

A. I was out a lot because I had my daughter and four grandchildren living at the house.

Q. So what were you doing when you were outside?

A. Uhm, usually watching them or else we would take them out on the boat or work in the yard.

(Whereupon, State's exhibits #42 through #45 marked for identification.)

MS. SENN: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. SENN:

Q. I'll show you what's marked as State's exhibit 42 through 45. Do you recognize those?

A. That's our deck, yeah.

Q. Look through all of them please.

A. (Witness complies.)

Q. Do you recognize them?

A. Yeah.

Q. Okay.

A. Mm-hmm.

Q. What do they show?

A. This one shows standing on my deck looking down and seeing the deck, the dock next door.

Q. What about the rest?

A. This is showing the house but the house that the Millers were living in was in between our house and this other house and this is our deck looking out over the lake.

Q. What about the next one?

A. This one looks like this is standing on the Miller's porch and that's the garden that Tammy had.

Q. What about the final one?

A. This one is standing on my deck, my deck looking down on the Miller's dock.

MS. SENN: Your Honor, I move to introduce exhibits 42 through 45 into evidence.

THE COURT: I'll give the defense attorney a chance to look at those and see if she has any objection.

MS. GOOD: No objection.

THE COURT: All right. They are so admitted.

MS. SENN: May the witness step off the witness stand?

THE COURT: She may. Please step down towards the jury.

BY MS. SENN:

Q. I'll get you to show the jury what's in these pictures. I'll reorganize them quickly. Keep your voice up, okay? What is this a picture of?

THE COURT: And can you identify what exhibit you're looking at, too.

MS. SENN: Yes, Your Honor. This is State's exhibit number 42.

BY THE WITNESS:

A. Uhm, this is my deck. Uhm, this house right back here is another, it's like an abandoned house on the other lot and the Miller's house is in between our house and that house and that's looking out on the lake over in that direction over towards their house.

Q. What about State's exhibit number 43, what is that?

A. This picture was taken off of the Miller's porch.

That's looking down in their yard with the garden and they had a deck right here.

Q. And this is a small sign. What does that say?

A. Beware of dog - or it's a little blurred. Looks like beware of dog.

Q. Did you put that up?

A. Oh, no.

Q. Do you know who put that up?

A. James.

Q. Can you tell the jury what is in State's exhibit number 44?

A. This is off of my deck, my yard and then this is the Miller's dock.

Q. So how would you describe your view of the Miller's dock? Is it obstructed by anything?

A. No. We let - we let these trees grow up over the past four years. These real thin trees, we let them grow up. No. We needed to be able to see because the children played together and they would be in the water and --

Q. And this fence right here, who put that up?

A. James put that fence up probably about three months before he left.

Q. So it wasn't there the whole time he was there?

A. No. There was no fence there.

Q. Again, this is State's exhibit 45. Can you tell the

jury what's in this picture?

A. This is again standing off my deck and that's the dock, the Miller's dock.

Q. Thank you. Take your seat.

A. (Witness complies.)

Q. Ms. Penrod, you said that you saw the Millers a good bit. Did you observe anything that you thought was unusual about James?

A. Uh, I don't quite know what you're asking me.

Q. Did you ever notice anything unusual between Complainant and James?

A. Yes.

Q. What did you notice?

A. Uhm, a couple of times their behavior in the water, in the lake, uhm --

Q. Can you describe that for the jury?

A. Uhm, facing each other his arms around her, uhm, pulling her in close, playing with her, you know, just --

Q. And you said that was in the water?

A. -- splashing water.

Q. That was in the water?

A. Yeah.

Q. Is there anything else that you observed that you thought was unusual at the time?

A. Uhm, together, uhm, on the hammock.

Q. Where was that hammock?

A. The hammock was right - it was in one of the pictures. It shows two trees. The hammock was right there.

Q. You're talking about State's exhibit number 45?

A. Here. The hammock was right here.

Q. State's exhibit 43. Show the jury really quickly.

A. The hammock was right on these two trees. The fence wasn't there, and that's my house.

Q. Thank you. And where were you when you saw James and Complainant on the hammock?

A. I was either in the yard or I was on the deck checking on the kids.

Q. But you had a clear view of them?

A. Yes. I was able to see them.

Q. What did you see?

A. On the hammock?

Q. Yes.

A. They were just kind of snuggling.

Q. Were their heads together or were they facing each other?

A. You know, I think they were spooning.

Q. Okay. And you thought that that behavior was unusual?

A. I thought it was, yes.

Q. Was there anything else that you observed between

Britly and James that made you concerned?

A. Uhm, I saw them down on the dock and they were sitting on the dock, their legs were hanging over the dock and he had his arm around her and he had her pulled over on his chest and they were sitting side by side and then all of a sudden, I don't know, she had her head down, down. You know, I don't know if she was crying. I don't know what was going on. But then I saw him take his leg, and it's hard to do that, and swing it around her back so that he could slide up and he had his leg around her back and had her closer to him.

Q. So she was between his legs?

A. Yes.

Q. Was he doing anything at that point?

A. I went in.

Q. Where were you standing?

A. I - I - I was either in the yard or I was on the deck - on the dock - the deck.

Q. Just so we are clear, Complainant is a twin. Can you identify Complainant ?

A. Gosh, it's been four years. They're so grown up. Uhm, Complainant I think Complainant is the one sitting on this side.

Q. On the left of her twin?

A. Yes. Breana. Yes. On the left of Breana.

MS. CAVANAUGH: Your Honor, can the record reflect

she has identified Complainant.

THE COURT: Let the record reflect that she has identified Complainant.

BY MS. SENN:

Q. Did you ever observe James acting differently towards Complainant than towards the other Miller children?

A. He just always seemed to be around Complainant, but I saw him play ball with the kids. He did interact with the other kids but his attention seemed more focused on her, but then she worked with him all the time.

Q. You said his attention seemed more focused on Complainant

A. Mm-hmm.

Q. Okay. And after the family moved in, can you describe your relationship with James Miller?

A. Uhm, it got a little more difficult with James. We had -- Tammy and the kids were wonderful. There were no problems with Tammy and the kids. Uhm, James was fine until his buddies started hanging out and they started drinking all the time.

Q. Did you ever have any disagreements with James?

A. We had to ask a number of times if they would keep the music down because we had children, grandchildren that went to school in the morning and had to get up early and needed to sleep and so we had to talk to him about the noise.

And then we actually sat down with Tammy and James over at our house for about 45 minutes, I think, and we had just asked them, uhm, to be aware of the noise. Uhm, that we were having problems with the drinking and the partying and the noise.

Q. And you said that they were playing music and your grandchildren had to get up early the next morning. What time was it that you had an issue? What time of day was it?

A. Well, we had asked - we had worked out a time with James that the partying during the week, weeknights, I think we asked that the music, you know, would end or be turned down around 10:00 during the week days, but James would turn it up so loud that you could hear and actually feel the bass. It was like the bass vibrated the house it was so loud.

Q. After you sat down with James and Tammy, did they abide by whatever standard you set for the music?

A. For a little while, yes. But they would have, you know, people that would come over and they would - the people would be partying also.

Q. Did you ever have any confrontations with James Miller?

A. Yes.

Q. Can you describe -- How many times?

A. I think -- Oh, I don't know. I think I had two confrontations with him by myself.

Q. Can you tell me what was happening?

A. The one time I had just come home and getting ready to drive down my driveway and he and some of his friends had put up a post and a chain across the driveway so I couldn't drive down and, uhm, I had a confrontation with him then.

Q. What did you say?

A. Well, I just told him that he couldn't do it. That that road had been there and it was illegal for him to block the driveway. Even though we had put in another driveway on the other side of our house, we used both of those driveways.

Q. Did the confrontation escalate or did it end there?

A. I didn't -- I had -- I had -- I confronted him in front of his buddies, you know, and there were people there and so he argued back and I don't recall what all was said. Uhm, I know that -- Shall I say what I said to him? I don't remember everything that I said. I remember how I ended the conversation.

Q. How did you end the conversation?

A. I ended the conversation by saying, uhm, and I know you're sleeping with your daughter.

Q. You said I know that you're sleeping with your daughter?

A. Yes.

Q. What was James' reaction to that?

A. He was shocked. I mean, he just looked surprised and that kind of ended the conversation.

Q. Was anyone else around?

A. Yes.

Q. Who?

A. His friends were there. Uhm, I don't remember if the girls, the girls were there or out there. I don't remember. I thought Tammy was out there. I thought her sister was there at that time. But, you know, I just -- I don't remember. Four years.

Q. That's fine.

A. But there were other people there when I said it.

Q. Was there another confrontation or what that the only one?

A. No. There was another confrontation and I think that was when he put the fence up and he was putting a gate in so that, you know, because he had to take the chain off. He couldn't block the driveway. But he put the fence up and then he was putting a gate up. He said that all we had to do was get out and open the gate and then close it. We said no, you can't do that. It's our road.

Q. How did that confrontation end?

A. It ended the same way. I said I know you're sleeping with your daughter.

Q. Was anyone around that time?

A. I don't recall if anyone was there at that time.

Q. How did James react to you saying that a second time?

A. I don't think he said anything after that.

Q. And even after -- What time of year did those confrontations take place, the first one and the second one?

A. Those were closer to the spring of 2012.

Q. Around this time of year?

A. Yeah. Everything was kind of coming to an end.

Q. After those confrontations, did you and James remain cordial or how was your relationship?

A. Uhm, I don't think there was a lot of conversation. You know, when James wasn't drinking and when he didn't have his buddies around, you could talk to him.

Q. Okay. So under what circumstances was James a nuisance to you?

A. When he was drinking and he had his friends.

Q. Okay.

A. His buddies.

Q. I want to take you back to the event on the hammock. Did you often see people on the hammock?

A. The kids always played on the hammock. Xavier and Emma and Collin always played on the hammock. I think that was the first time that I had seen James.

Q. So you never saw James on the hammock with any of

the other Miller children?

A. Oh, no, I can't say that. I'm not sure. I don't recall seeing James on the hammock.

Q. Okay. And back to the event that took place on the dock, you testified that when you saw James with his legs around Complainant you went inside. Why did you go inside?

A. It seemed very private and I didn't want to see it.

Q. Okay. What part of James' body was touching Complainant

A. Uhm, her side would have been in between his legs. One leg was around her back and one leg was hanging down on the dock.

Q. So would that be his genitalia?

A. Yeah, I guess you could say that.

MS. SENN: Thank you, Your Honor.

THE COURT: Thank you. Ms. Good.

MS. GOOD: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. GOOD:

Q. Good morning, Ms. Penrod.

A. Good morning.

Q. You still live on Wild Turkey Lane, correct?

A. Pardon.

Q. You still live on Wild Turkey next door to where

they were, right?

A. Yes.

Q. And you just testified James was a nuisance to you, correct?

A. No. I don't think I said a nuisance. I said the only time that he bothered us is when, that it ever bothered us was when he was drinking and partying and playing the loud music.

Q. So they had friends over?

A. Mm-hmm. Yes.

Q. How often did they have friends over?

A. Uhm, gosh, toward the end of 2012 it was, it seemed like there were always people there.

Q. Okay. Would Tammy be outside also with them?

A. Uhm, she would be in and out.

Q. You said the girls were outside some, too?

A. The kids were always outside playing.

Q. You stated that you always saw the kids out playing because you were always outside also?

A. No. I was in and out because I had grandchildren living with me.

Q. So you were outside a lot --

A. I was in and out, yes.

Q. -- watching grandchildren. And during the summer and the spring your grandchildren went swimming?

A. Mm-hmm.

Q. Did Complainan and Breana and all of their children go swimming?

A. Yeah, they would swim too.

Q. What would they wear when they were swimming?

A. Uhm, Xavier always had a life jacket on. Uhm, my youngest grandchildren had to wear life jackets also. And I'm not sure about Emma or Collin, but Xavier always had a life jacket on.

Q. What about Complainant and Breana?

A. No. I don't think they wore life jackets. To swim? No.

Q. Did they wear swim suits?

A. Yeah.

Q. What kind of swim suits were they wearing?

A. Two piece.

Q. Bikinis?

A. I believe they were two piece bathing suits.

Q. Did you ever notice any bruises or anything on Complainant

A. I was never -- I don't ever remember being close enough to see any bruises. I was never -- Let me rephrase that. I was never -- I did not swim and so I also tried to stay out of the sun so I was never that close to them when they were in bathing suits. I usually saw the girls in

clothing.

Q. I'll show you State's 44. This is your porch?

A. Yes, it is.

Q. And that's the dock?

A. Yes.

Q. About how far is your porch from the dock?

A. Oh, gosh, I have never measured so, uhm --

Q. Is it farther than this (indicating)?

A. I think a little further probably.

Q. Tell me when to stop.

A. About that. Yeah. Let me see. Maybe a little further.

Q. (Indicating.)

A. Yeah. About like that, I think.

Q. About here (indicating)?

A. Yeah.

Q. And how is your eyesight, Ms. Penrod? Do you wear glasses?

A. I wear magnifying. I wear just the reading glasses. Magnifying glasses for reading from the Dollar Store, not prescription.

Q. How did you know from your porch down to the dock that it was Complainant and not Breana?

A. Well, I guess I figured that it was Complainan because she was always with him.

Q. So you don't know if it was Complainant

A. And she - their hair was not the same color. Their -- Well.

Q. Okay. And the conversations, altercations you got into with Mr. Miller where you said, well, I just know you're sleeping with your daughter, you said Tammy was around one of those times?

A. I thought so.

Q. And was she close enough where she would have heard you?

A. I was -- I was closer to James and I believe, uhm, Tammy and I thought it was her sister or there was another woman, they were coming out of the door so I was from about here to that door so she could have heard, yes.

Q. And you said she was with her sister and another person?

A. No. She was with another woman.

Q. Another woman?

A. I'm not sure if it was her sister or not or if it was the wife of one of the buddies.

Q. Okay. And when did you see Complainant on the dock with James? Do you remember what time of the year it was?

A. No, I don't.

Q. Okay. In this picture, when do you believe this picture was probably taken?

A. That was just taken.

Q. Recently?

A. Yeah.

Q. There's no leaves on the trees?

A. No leaves on the trees. All of these trees here, all these young trees, those we let grow up since for the past four years. We let them grow.

Q. Just so --

A. So they were not there at the time. It was just --

Q. All these big trees were there though?

A. Just these trees, big trees. These little tiny trees we let them grow. We call them trash trees, but we let them go ahead and grow.

Q. When these trees have leaves on them, can you see out towards the lake down by the dock clearly?

A. You can still see the dock, yes. You have to shift but you can still see it. If I wanted to go out with everything in full bloom in the middle of the summer and I wanted to see if anyone was on their dock, I could shift on my porch and see the dock.

Q. You said several times you saw James with [redacted] Complainant It was outside?

A. Yeah.

Q. Was there other people around?

A. There were always kids around.

Q. So it was out in public where anybody could see?

A. Yeah. Other people saw. Now, I don't know about the dock. When they were down on the dock, I don't know if anyone else was out there.

Q. And in August when the police came to their home, were you there that day?

A. I was there that day.

Q. When did you find out about the allegations that were made and everything that was going on?

A. I - we really didn't even know what was going on. Uhm, just all the cars pulled up and, uhm, I don't know who told us what was going on at that time but I had a conversation. After he was arrested, I had a conversation with Tammy and --

Q. So you found out at that point what the allegations were?

A. Uhm, yes, I believe so.

Q. And at that point did you call law enforcement or anybody to tell them about these statements you made to him and the observations that you saw about him and Britly?

A. We had called the police twice because of the noise and because of the taunting that was going on from James' side and I told the police, both sets of police that came out two different times, I believe I told both of them that we thought that he was sleeping with his daughter.

Q. So after he was arrested, did you talk to any investigator or anything about your observations?

A. No. Mmm-mmm. No. The first time I talked to someone was a month ago, three weeks ago when the investigator came to my door.

MS. GOOD: No further questions, Your Honor.

THE COURT: Any redirect?

MS. SENN: Yes, Your Honor, one question.

REDIRECT EXAMINATION

BY MS. SENN:

Q. Ms. Penrod, from your porch could you clearly see the dock?

A. Yes. We can still clearly see it even during the summer.

Q. And could you clearly see the hammock?

A. Yes. There was no fence at the time so you could clearly see the hammock.

Q. Did you ever at any point in time see James spooning any of his other children on the hammock --

A. No.

Q. -- or anywhere else?

A. No.

MS. SENN: Thank you, Your Honor.

THE COURT: Thank you, Ms. Penrod. You may step down. Madam Solicitor, would you like to take up the

matter of law now or call your next witness? I leave it to you.

MS. SENN: Your Honor, the State calls Steve Knafelc.

Thereupon,

CAPTAIN STEVEN KNAFELC

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: Steven John Knafelc.

DIRECT EXAMINATION

BY MS. SENN:

Q. Thank you. I'm glad you said that. I can spell it, but not say it. How are you today?

A. I'm good.

Q. Captain Knafelc, what do you do?

A. I'm a captain in criminal investigations with the Sheriff's Office.

Q. With what Sheriff's Office?

A. Kershaw County.

Q. How long have you been with the Sheriff's Department?

A. I have been with the Sheriff's Office about 19 years.

Q. Before that, do you have any other relevant law

enforcement experience?

A. No, ma'am.

Q. In August of 2012 in what capacity were you employed?

A. I was lieutenant over investigations. If I'm not mistaken, I believe there was a captain above me and a sergeant below me.

Q. Can you tell the jury a little bit about how - you said you were captain over investigations. What kind of investigations? General crime or is there a specific unit that you have always worked in?

A. It's general crime. We handle everything form mailbox vandalism to murder.

Q. In 2012 was that the same way?

A. Yes.

Q. What kind of training have you had as a result of your law enforcement employment?

A. Obviously basic academy when I first graduated back in '95. I have been through several classes. Just different crime scene investigation classes, negotiation classes. I mean, it varies throughout the years.

Q. Okay. Can you describe for the jury what an investigator does?

A. Well, obviously it depends on what type of crime was committed. Obviously the road deputies take the report, the

initial report. They get the basic information before the investigator's report is submitted. Back then our captain would actually, once the report was submitted, would actually assign it to an investigator and then move forward from there.

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

A. I did.

Q. When was that?

A. It was the, I believe the 11th of August. Justin Dill or Investigator Dill at the time was on-call. I believe I was out of town, and he called me just to let me know what he had and what he was doing.

Q. So when you say he called to let you know what he had, do you mean that he told you that there was an investigation about sexual assault?

A. Yes.

Q. What did you do with that information?

A. He just, like I said, he was right below me. He was sergeant over investigations and had the experience to know what he needed to do that day.

Q. So what did you do from there?

A. Like I said, I believe I was out of town. I didn't do too much that particular day. He told me what he was going to do as far as what his steps were going to be taken and I

think later that day I actually went to Sheriff's Office.

Q. Did you ever make contact with Tammy Miller or Complainant ?

A. That day?

Q. Yes, sir.

A. No, ma'am.

Q. When did you make contact with them?

A. That day I called and I left a message for Tammy and obviously she wasn't in the house or she wasn't available to take my phone call. I believe the next day is actually when I made contact with Tammy.

Q. So when you made contact with Tammy, did you refer her anywhere?

A. I did. I believe I went to a friend's residence. They were riding horses and just doing things outside and I instructed her what the next steps were going to be. If I'm not mistaken, I'm not sure if it was on a weekend or not, but I believe soon after that was when I told her that we needed to go ahead and make an appointment to The CARE House and also The ARC.

Q. The ARC. What is The ARC?

A. Assessment and Resource Center. Susan Luberoff instructed what she did there and that's in Columbia.

Q. What about The CARE House? What is that?

A. The CARE House is the Child Assessment and Resource

Center where the forensic interview was done. That's in Florence.

Q. Did you refer Tammy or Complainant to go to the emergency room to have a rape kit performed?

A. No, ma'am, I didn't.

Q. Why not?

A. Well, based on what Justin Dill had told me what was going on, there wasn't anything that was freshly committed. There was no reason for any sexual assault kit at that time.

Q. So because it wasn't a fresh assault, you didn't think it would be helpful or beneficial to go to the ER?

A. No, ma'am. I did not. And also I knew that Susan Luberoff was going to see her within the next few days.

Q. Did you ever go out to the Miller's house?

A. Yes, ma'am, I did. If I'm not mistaken, I think I went the next day and took pictures and then also I went out with SLED.

Q. You said when you went out with SLED, is that when the search warrant was performed?

A. Yes, ma'am.

Q. Who was responsible for requesting that search warrant?

A. Myself. I spoke with our Chief Marvin Brown. I believe he's the one that actually called for SLED.

Q. What made you try to get a search warrant of the

house?

A. I believe I got a search warrant on the 23rd of August. The 24th is when SLED came out. I received a phone call from Tammy. She just told me of something on some carpet and some bed spreads and pillows that possibly could be some sort of bodily fluid.

Q. Tammy called you and said that you needed to come out and take more evidence?

A. Well, I wouldn't say she needed me to take. She just wanted me to be informed of it.

Q. At that point is it your duty to investigate that further?

A. Yes, ma'am.

Q. Thank you. Can you summarize the rest of your role in this case?

A. Well, as I stated, I just went ahead and called The CARE House and I'm not sure who I spoke with at The CARE House. Usually it's one of the VA's there or the intake person that I speak with and I give them just a brief detail of what we knew at that time. I fax over or e-mail a copy of the written report so they can have some information and also my VA at the time was Marybeth Eubanks. I instructed her --

Q. I'm sorry. When you say VA, what does that mean?

A. I'm sorry. Victim's advocate at the Sheriff's Office.

Q. What does that person do?

A. She just assists the victims of all types of crimes. She was the one who actually spoke with Tammy. I don't ever speak with a victim of a case like this. I always just get the interview and forward it from there for the forensic interview. That's why I use a third party. Once we got that taken care of, Marybeth spoke with I'm assuming Tammy and set it all up as far as if they needed to be transported to Florence or not. I believe she was a witness here. Also Susan Luberoff.

Q. Did you ever have an opportunity to read or look at The CARE House interview before the search warrant was executed?

A. I did. I believe I would have or I should have. I'm sure I did.

Q. It would be your normal practice?

A. Yeah. Sometimes it takes a week or two for the written report to come back. Usually I always try to have someone to go with the person that needs to be interviewed with the Sheriff's Office.

MS. GOOD: Your Honor, can we approach?

THE COURT: Yes.

(Side bar off the record.)

BY MS. SENN:

Q. Were you at the house when the search warrant was

conducted?

A. I was. Yes, ma'am.

Q. What did you see them do?

A. SLED?

Q. Yes.

A. I just saw them just process what we needed to be processed, pictures, samples.

Q. Did you see them take swabs?

A. Yes, ma'am. Yes, ma'am. They just did their thing. We just asked them what they needed to do and they did what we requested.

Q. Did you see them take pictures?

A. I did.

Q. From that point on what was your role in this investigation?

A. Like I said, once everything was taken care of with prior to SLED coming to The CARE House and The ARC interview, or excuse me, The ARC exam, that was pretty much it. I went to the bond setting. I'm not sure when that was.

MS. SENN: No further questions.

THE COURT: Ms. Good.

MS. GOOD: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. GOOD:

Q. So you did become involved on the 11th just whenever

you got back in town, correct?

A. Yes, ma'am. I believe I was out of town. Like I said, Investigator Dill was just talking to me over the phone a couple times.

Q. You stated you're an investigator. How long have you been an investigator?

A. Oh, geez.

Q. Approximately.

A. 12 years.

Q. As an investigator it's your job to follow up on a case once the deputy hands it over to you, correct?

A. Yes, ma'am. If it's assigned to me, yes, ma'am.

Q. How do you document what you do in a case?

A. I do, sometimes I do case notes. Sometimes I don't. Sometimes I just do with whatever, you know, it tells me or whatever my investigation points towards.

Q. How often do you do that? Do you do that in every case?

A. As far as case notes?

Q. Yes.

A. No, ma'am, not every case.

Q. Why not?

A. It just depends on what case. Sometimes I just know what I need to get done at that moment.

Q. Wouldn't you think it's important to do an

investigative report in the cases that you do, especially the serious cases?

A. Yes, ma'am.

Q. Did you do an investigative report in this case?

A. As far as an investigative report, no, ma'am. I did some notes but nothing as far as an actual report, if that's what your speaking of.

Q. So when you come to testify today, how do you remember everything that occurred from three and a half years ago?

A. Just based on what my case report states.

Q. How long is your case report in this case?

A. How long is it?

Q. Yes.

A. There were several forms, sheets, reports, pictures.

Q. Can you check for me how long your case report actually is?

A. I don't know what you mean by case report.

Q. Did you do an investigative report in this case?

A. I already said, no, ma'am. No. I did some brief notes but as far as my report goes -- Obviously you have a Rule 5 discovery.

Q. You said you went to the scene that day or the next day maybe?

A. I'm not certain. Uhm, I remember going to speak with Tammy there at a friend's house and I spoke with her briefly about what the next steps would be.

Q. Did you see Complainant that day? Was she around?

A. Uhm, I believe I saw her. She was riding horses. As far as me interacting, no, ma'am.

Q. But she was riding horses and seemed to be okay?

A. Well, I don't know.

Q. From what you could observe?

A. She was riding horses. I'm not saying she was okay.

Q. And when you went to the scene, you said, did you ever go to the home and take pictures of the home?

A. I did take pictures. Again, as far as I can remember I'm not sure if it was the next day or when we went out with SLED.

Q. What were you taking pictures of at that time?

A. Just pretty much the same things that SLED was taking. Maybe not as detailed, but just overall.

Q. Was the house clean at that time or was it cluttered in any way?

A. It was cluttered, yes, ma'am, but nothing out of the way that I normally see with my job.

Q. Did it seem as if anything had been vacuumed recently?

A. I don't know, ma'am.

Q. And when you went for the search warrant, what day did you get the search warrant?

A. I believe I signed it on the 23rd.

Q. And the two weeks between August 11th when everything occurred and August 23rd, why would you have not done a search warrant previously to get any potential evidence as quickly as possible?

A. I just -- I don't know, ma'am. I just -- I mean, I just didn't.

Q. You stated that you left the message for Tammy on the 11th, correct?

A. I believe I did, yes, ma'am.

Q. And she didn't call you back?

A. Well, I'm not sure exactly what time that was, but I did speak with her the next day.

Q. You didn't write that down in your notes or your investigative report what time you called and left her the message?

A. I just stated that I need you to come to the office on 8/11 to complete the warrants. Called the victim's mom at the number where I did leave a message.

Q. How did you know she was at a friend's house?

A. I think it was like -- Excuse me. It was -- I think my time was 7:35, I believe, p.m. so it was late in the

evening.

Q. How did you know she was at a friend's house the next day?

A. She returned my phone call.

Q. So she did get your message and called you back the next day?

A. Yes, ma'am.

Q. Did she call you back on the 11th or the 12th, do you remember?

A. I would assume the 12th because it was so late in the day on the 11th.

Q. And when you went for the search warrant, who all was at the home?

A. Uhm, I know Tammy was there, Complainant her sister. I think it was just the twins and the mother, if I'm not mistaken.

Q. Do you know where the younger children were?

A. I do not.

Q. What was the mother and the twins doing during the search warrant?

A. They were just there. They weren't really doing anything. I don't even think, like I said, I make it a point not to speak with -- I spoke with Tammy. But as far as speaking with anybody else, I don't believe I did.

Q. And once you received, or once SLED took everything

that day of the search warrant, did you request any evidence be tested?

A. Oh, at the scene? Yes, ma'am, I did.

Q. When did you request SLED to test that evidence?

A. They just collected it and they sent it to wherever they needed to send it to.

Q. So you never requested that they run DNA samples?

A. Yes.

Q. When did you do that?

A. At the scene. I just request what type of samples or what type of analysis that I'm requesting and they do whatever they need to do in Columbia.

Q. And it was sent back to you at the end of August of that year, correct?

A. That's what I'm understanding, yes, ma'am.

Q. So when is the next time you sent it off to actually be tested?

A. I believe it was a few years later.

Q. December of 2015?

A. That's what it states, yes, ma'am.

Q. Did you ever speak with the neighbor, Ms. Penrod, in this case?

A. No, ma'am.

Q. When you were there that day for the search warrant, do you remember if she was home or not, if you saw her?

A. No, ma'am.
Q. Did she ever contact you to say anything?
A. Me personally? No, ma'am.
Q. When the mother called you to ask you to come look at these stains, do you know where she got her information from about why to look at those?
A. No, ma'am.
MS. GOOD: No further questions, Your Honor.
THE COURT: All right. Any redirect?
MS. SENN: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. SENN:
Q. Did you conduct the interview of James Miller?
A. No, ma'am.
Q. And you couldn't do the medical exam, could you?
A. No, ma'am.
Q. You said that in all cases of sexual assault someone else performs the interview; is that correct?
A. We use a third party, yes, ma'am.
Q. Okay. But you have the case jacket so you're aware of everything that's going on in the case; is that correct?
A. Yes, ma'am.
Q. You just said that you asked the people on the scene, I think you were referring to when the search warrant was being executed, the SLED agent that was on the scene, you

said that you communicated that items should be tested to those people. Do you know if they ever communicated that directly to the DNA lab?

A. Well, they do their evidence and then they send it to SLED to intake and then whoever gets it from there does the actual lab testing. They are just there to collect and then it goes to Columbia to SLED to the lab.

Q. So it's two totally different departments; is that correct?

A. Yes. Yes, ma'am.

Q. Okay. And is it fair to say in this case that your role was as a supervisory capacity as investigator?

A. Yes. Yes, ma'am.

MS. SENN: Nothing further, Your Honor.

THE COURT: All right. You may step down. Thank you. All right. Ladies and gentlemen, it's a little after 12:30. We have a matter of law that we need to take up. We have lunch coming in for you as well, but I do just want to warn you that since we will be out here in the courtroom working, I will also need to give the attorneys and my court reporter, my law clerk and myself the opportunity to eat as well on this lunch break. We'll try to get you back in as soon as possible, but we will probably be out until about 1:45 or 2:00. Like I said, your lunch should be, if it's not here yet, it will

be on the way shortly.

Remember not to talk about this case with anyone, your fellow jurors. I will allow the jury, if they would like to be on their cell phones or electronic devices during this longer lunch break while they're still here in the courtroom, they are allowed to be on those devices. Again, don't do any independent research, but if you want to check your Facebook page or whatever you want to do, I'm fine with that during this break. All right. We'll get you back in the courtroom as soon as we can. Thank you. I don't even mind if you want to go outside and take a little walk. Whatever you want to do. We just need to make sure we get you back.

(Whereupon, the jury entered the jury room for lunch break at 12:40 p.m.)

THE COURT: All right. If you would like to call your expert and proffer the testimony.

MS. CAVANAUGH: Yes, Your Honor. The State calls Dr. Allison Foster.

Thereupon,

ALLISON FOSTER, Ph.D.

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: My name is Allison Marie Foster.

MS. CAVANAUGH: Your Honor, I do have a copy of Dr. Foster's CV that I provided to Ms. Good. Would you like a copy as well?

THE COURT: I would, please.

MS. CAVANAUGH: (Proffering.)

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Good afternoon, Dr. Foster.

A. Good afternoon.

Q. What is your profession?

A. I'm a licensed clinical psychologist.

Q. Okay. Do you also have a Ph.D.?

A. Yes, Ph.D.

Q. Okay. Can you describe your education? First of all, where are you currently employed?

A. I'm employed as chief psychologist at the Assessment and Resource Center is Columbia. That's a children's advocacy center there. And then I also have a private practice known as Forensic Family Associates.

Q. When did you begin to work at the Assessment and Resource Center?

A. I started there as a pre-doctoral intern in 1994 and I worked there as the program director from 1995 until 2012 and then I shifted into a half time position beginning in 2012.

Q. You said you were in, you started your private practice in 2012?

A. I actually started my private practice in the late '90s and then it just sort of grew to such a degree that I decided to shift to a half time position at The ARC and then contribute the rest of my time to private practice.

Q. What has been your primary focus as a psychologist?

A. Everything I have done has been forensic work with children and families and, uhm, situations where children are suspected as victims or witnesses or nowadays also I do family law cases involving child custody and parenting evaluations as well. So I have been conducting forensic interviews of children who are suspected of being victims for 21 years.

Q. Okay. What about your educational background?

A. College. I went to Emory University in Atlanta, graduated in 1988, and then I worked for a year at a residential treatment facility in Kennesaw, Georgia, then I moved to Columbia, South Carolina and entered the Ph.D. program and graduated with a Ph.D. in clinical psychology in the spring of 1996.

Q. Have you also taught any courses or been in any positions with academic institutions?

A. Yes. I was an appointment with the University of South Carolina School of Medicine, Department of

Neuropsychiatry and Behavioral Science. I'm considered, it's called the Department of Mental Health Assistant Professor so I teach psychiatry residents, fellows and residents in family practice and pediatrics. But also I'm senior faculty for a five day forensic interview training course called Child First that we have been providing in this case for 15 years now.

Q. And along those lines, uhm, do you develop training and programs for different agency personnel regarding suspected child abuse either physical or sexual?

A. Yes. Physical, sexual, psychological abuse and I train in national conferences as well as developing the curriculum for the Child First forensic interview training course and so I teach law enforcement, child protective services, professionals, children's advocacy centers, forensic interviewers, therapists and other professionals.

Q. So do you also -- Have you been published in any, I guess, articles? Have you published any articles or have you been published in any articles in this field?

A. Yes. I have published a monograph for the American Prosecutors Research Institute on child development. Uhm, I have got a book chapter published about the assessment of mental disorders in custody evaluations. Uhm, I have got research in preparation on a couple of matters involving forensic interview techniques. But those are not published at this time.

Q. Okay. Do you also stay updated on the research related to this field?

A. I do. I attend continuing education annually and essentially all of the conferences and literature I read has to do with children, dynamics of abuse, forensic evaluations and the other matters in which I practice.

Q. You said, I apologize if you have already stated this, but you have given multiple, more than ten presentations nationally on this subject as well?

A. Yes.

Q. And when we are talking about this subject and this field, what is the term? Is it child abuse assessment?

A. Uhm, yes. I have been qualified as an expert in child abuse assessment or dynamics of child abuse.

Q. I'll just stop you there. Why is this field actually studied?

A. Because, uhm, there are a lot of factors that are not necessarily a lay person, within a lay person's understanding and also because it's important for us to understand children's development, linguistics, how memory works, how processes like coercion, parent/child relationships or offender/child relationships, how those play into the dynamics of abuse. So there are a lot of behavioral issues as well as developmental issues that are researched and published in the behavioral science literature to help us understand the

best way to evaluate these situations as well as the best way to explain to lay people dynamics that they might not otherwise understand.

Q. What type of - when you say dynamics that they might not understand, what type of dynamics?

A. So things like the fact that delay in reporting by victims is a very robust finding in the research. We know behaviorally that the majority of substantiated cases of child sexual abuse include a very large delay even into adulthood before victims often report childhood sexual abuse. That's not necessarily logical to somebody who is not trained in the field. They might think that it would be self evident that somebody would, a child would find an adult that they could report to. So delay disclosure. Some of the ways children accommodate abuse in situations that they can't control. Uhm, recantation sometimes is an aspect in cases that jurors might not otherwise understand if they didn't have the benefit of education.

Q. And then other things like secrecy as well?

A. Yes.

MS. CAVANAUGH: Your Honor, I believe that it would be at this point that I would ask that Dr. Foster be qualified as an expert in the field of child abuse assessment only. I believe that she has the necessary education, employment, history, training and background

in these areas. She testified that she gives national presentations regarding dynamics and behavioral issues that often arise in the study of suspected child abuse specifically sexual abuse behaviors.

THE COURT: All right.

MS. GOOD: No objection to that.

THE COURT: She is so qualified. I agree that she has the requisite amount of experience and education and the courts in this state have recognized child abuse assessment as an expertise and she is so qualified.

BY MS. CAVANAUGH:

Q. Dr. Foster, were you involved in any way in the investigation against James Miller?

A. No.

Q. Did you in any way, have you ever met Complainant the victim in this case?

A. No.

Q. Have you ever interviewed Complainant ?

A. No.

Q. Have you ever reviewed the forensic interview that she gave to Sally Williamson?

A. No.

Q. Does Sally Williamson even work at the Assessment Resource Center?

A. She does not, no.

Q. Dr. Luberoff does work at the Assessment and Resource Center, correct?

A. Yes, she does.

Q. I'm not even sure if you know this, but did you have any communication with Dr. Luberoff about her examination of Complainant [redacted]?

A. No.

Q. You stated earlier that there are some behavioral issues that fall outside the scope of ordinary, I guess, ordinary knowledge of lay people regarding child sexual abuse; is that correct?

A. Yes.

Q. What are some of those behavioral characteristics that are not known to the average individual?

A. Sure. Well, of course, there are different fact patterns or scenarios for child sexual abuse. But one thing that is in terms of typical patterns, a lot of child sexual abuse occurs at the hands of a family member, an adult who is in a role of an authority figure, a parental figure or step parent figure. As such the abuse tends to be chronic meaning that it occurs over a sustained period of time and so for that relationship to be sustained without the offending behavior being detected there are certain dynamics that are known to occur in those cases along the lines of how an offender exploits his authority, the sense of love, dependency, the

complexities of that kind of relationship and how they can manipulate that to maintain a victim's secrecy and cooperation or compliance.

There are dynamics that the victims experience that typically capture under describing their feeling of helplessness, their sense of entrapment and the fact that they need to accommodate the abuse because they're really in a situation that they feel powerless to change. So there could be a period of accommodation followed sometimes by a process of disclosure that they often reach an age of maturation. In other words, they reach an age where they can consider maybe that they have options to tell or to get out of the situation, options that they perhaps couldn't recognize when they were younger. Uhm, so we know that disclosure may occur at a later point in time.

Q. Are there statistics that have been, are there statistics related to delayed disclosures?

A. Yes, there are.

Q. What are those statistics?

A. Well, there's been about 30 years of what we call retrospective research. So in other words, where researchers have looked back over a 30 year time span of studies that conclude that two-thirds of child sexual abuse victims in America don't come to anybody's attention until adulthood so that's become a fairly well established fact that disclosure

is a common, delayed disclosure is a common aspect to the experience of child sexual abuse.

Q. And, of course, the sample that these statistics are coming from are related to children that have come forward with the allegation of sexual abuse; is that right?

A. Yes. And beyond that it's cases that are ultimately substantiated by videographic evidence, confession, jury conviction. So there is a wide range of different studies but looking at - or pregnancy or definitive medical evidence. So it's not just that adults might say, hey, I was abused as a child, but these are statistics that come from cases that have been well substantiated.

Q. So does that, the two-thirds statistic that you gave, is that referring to, is that including both the known victims that have been substantiated based on evidence such as confession or pregnancy, does that include that population as well as the people that have come forward with allegations?

A. So, yes. So the idea is that amongst the universe of cases that in society we end up substantiating that the vast majority, not all, a third come forward and are resolved in childhood. But two-thirds, the delay is so long that they will not come to anybody's attention until they are legal adults. So we just know that while the process of disclosure can be different in different cases, it's just becomes well understood that it's common for children to find themselves

secret keepers and sort of stuck in a situation they can't get out of and they don't tell about for an extended period of time in many cases.

Q. Okay. When you say delay disclosure, is there a certain, what time frame makes it delayed?

A. It could be - certainly it's defined different ways, but generally speaking it can be anywhere from months to years.

Q. So as far as the reliability of the behavioral science that you are speaking of, what type of, again what is the sample that you're basing the research on and the statistics on?

A. Uhm, there are a lot of studies but there was a substantial kind of, it would be called a meta analytic study that was published a few years ago by Steven Ceci, Carl London, Maggie Roth, there were several authors, and they reviewed research spanning this 30 plus year time frame and that's an often cited research study because it does kind of pull together a lot of different data. But there's been numerous studies really since the 1980's some looking at older cases, some looking at younger cases and using different methodologies.

Q. So along the lines of factors that are commonly observed like behavioral characteristics that are commonly observed in victims of sexual abuse, you said delayed

disclosure and what were the other common behavioral characteristics that have been studied?

A. Right. So there is sort of a theoretical orientation that was published in the 1980s and it has provided the basis for professionals to kind of proceed forward and study these dynamics. Basically a psychiatrist by the name of Dr. Roland Summit published on the phenomenon of chronic sexual abuse and delayed disclosure. Talked about the manner in which children become trapped first by a stage of secrecy. So the idea that they are manipulated, lured, threatened into believing they need to keep the behavior secret even if they recognize that the behavior is wrong. That this renders that stage of helplessness which comes from the fact that they can't discern. They may feel that they have agreed. They may feel that they have essentially abdicated the right to say no or to change the dynamics. The state of helplessness causes them to kind of live in some period of time that's described as a state of entrapment and accommodation. What that means is that they are still going along with the business of life. They're going to school. They're going to friend's houses. They're participating in whatever activities. Doing their chores. They are acting normally because they are, in fact, working to avoid detection. To not tell. To not have a secret revealed. So that's called accommodation.

And then as we have talked about obviously some number of cases do become discovered. We do get reports and we do investigate cases. Those are the result of a delayed disclosure that comes under whatever circumstances. Maybe because like I said, the individual has matured to a state where they see the option to tell or maybe somebody confronts them. You know, maybe there is an eyewitness who says I saw something happen and they ask a question. So something will ultimately release the discovery or the disclosure and so that phenomenon taking all of that together is often referred to as child sexual abuse accommodation dynamics.

Q. Okay. In this particular -- And this isn't necessarily the dynamics and the behavioral characteristics aren't used as a diagnostic tool?

A. Correct.

Q. What are those? What are they used for?

A. They're really used to describe phenomenon that could otherwise seem illogical or counter intuitive much like the manner in which people can have difficulty understanding how an adult can endure domestic violence and maybe even make a report and take it back, stay in a relationship, go back to the relationship. And that can seem counter intuitive. And yet if understand some of those behavioral dynamics that have to do with manipulation, coercion, the different sort of power dynamics that are in relationships, it can assist the trier of

fact in understanding the phenomenon.

Q. And that actually does exist?

A. That actually exists. That doesn't mean that it diagnosis whether it has happened in one case versus another but in helping them understand that these are real dynamics and in real cases that have been substantiated in the past.

MS. CAVANAUGH: Thank you, Dr. Foster. Please answer any questions for Ms. Good.

CROSS EXAMINATION

BY MS. GOOD:

Q. Good afternoon.

A. Hello.

Q. So you just testified as to secrecy, entrapment, helplessness, I believe delayed disclosure, and potential recantation, correct?

A. Yes.

Q. And those are all five of the factors in this Summit study, I guess, which he created child sexual abuse accommodation syndrome?

A. Long ago, yes. That's how that language was first proffered.

Q. That's what everything is based on, correct?

A. No.

Q. That's the beginning of it where it kind of --

A. Right.

Q. -- came from. And since then the studies that have been done, have they been done in a clinical setting?

A. No. More have been -- Some, yes. But more have been conducted out of data analysis from forensic cases, from jury trials, from child protective trials, tracking the outcomes in the court systems.

Q. And you said that's done using different methodologies, correct? There's not one way to determine that?

A. That's true.

Q. You said all this started about a few years ago?

A. Well, about 30 years ago.

Q. And it's not peer reviewed, is it, for reliability?

A. It absolutely is peer reviewed.

Q. Which methodologies are peer reviewed?

A. Anything that's published in a journal. For example, a journal that's an American Psychological Association Journal or anything like that, they all, nobody is publishing, unless it's in a peer -- Or I'm not citing research unless it's the product of peer review and has been published in a journal or a book that would be considered a treatise edited by experts in our field.

Q. And you stated that most of this is typical patterns, correct?

A. Uhm, I may have said patterns. I don't remember but yes.

Q. And it's not available in all cases, is it?

A. No.

Q. And, in fact, can't these be used in cases where something is unsubstantiated?

A. I don't understand the question.

Q. I guess during these clinical reviews there's been victims that have been unsubstantiated that these apply to, correct?

A. What I would say is -- I'm not sure I'm understanding your question because the studies that look at the phenomena of delayed disclosure, recantation, the process of disclosure, those are all looking retrospectively at cases where there was a substantiation whether it be a confession, a child welfare finding, a jury conviction, et cetera. But if you are asking me can't there be a delayed disclosure and then have the case be unsubstantiated or have it be proven to be false, then the answer would be yes.

Q. Explain to me theoretical orientation. That term. I believe you stated that. Can you explain what theoretical orientation is?

A. Sure. I don't think I said theoretical orientation.

Q. Or maybe I heard it wrong.

A. But I think I said that Dr. Summit put forward a

theory based on his clinical findings and that since that time that the sort of, the elements of that theory have been the source of much study as we have continued to learn more about behavioral dynamics and the investigation, prosecution and defense of child abuse cases.

Q. And you said all this is done as a retrospective research where the cases are ultimately substantiated. That's by conviction or pregnancy or something where you are one hundred percent sure this occurred, correct?

A. Or, you know, beyond a reasonable doubt. Sure, I mean. But yes.

Q. And this word phenomenon, is that a scientific term?

A. Yes, it is.

Q. What does it mean? What's the definition of a phenomenon?

A. Phenomenon is an occurrence. Something which occurs. Same as like the word dynamics which would describe sort of the interplay of various behaviors.

Q. So it indicates that something actually occurs?

A. Yes. It's a very generic kind of term that could be applied in the hard sciences or the softer sciences.

MS. GOOD: No further questions, Your Honor.

THE COURT: Any redirect?

MS. CAVANAUGH: No redirect, Your Honor.

THE COURT: All right. Dr. Foster, you may step down. I'll hear any arguments, Ms. Good, that you have with regard to the testimony that was proffered.

MS. GOOD: Thank you, Your Honor. It's our position that this is gonna be something that ultimately is going to bolster the victim in this case. She's testified that these five different things are from substantiated cases only. She used the word substantiated over and over again which indicates that this occurs in all sexual assault cases that have been substantiated which would indicate that these things are present and the victim that's testifying, even though she's never spoken to them or read anything, that that case is substantiated and it's bolstering the victim in that case. It's not explaining her behavior. It's basically saying it's substantiated.

In addition, Your Honor, she's saying there are several different methodologies all done with retrospective research. You can't apply to one particular person. In fact, you see these things in some cases that are ultimately unsubstantiated. So it's not something that can definitely say this occurred or is a dynamic or anything. She used the word phenomenon, Your Honor, which she described as where something has occurred. I believe that bolsters the victim.

And, Your Honor, what she is testifying to is this child sexual abuse accommodation syndrome. This syndrome has been found in other states to be inadmissible. Specifically, Your Honor, in Louisiana, in State versus Foret which was in 1993. The court held under a Daubert analysis that this study in not substantiated to the point that it's peer reviewed enough that it showed the dynamics that are definitely something that fall within Rule 702.

THE COURT: But South Carolina doesn't follow Daubert. We have Rule 702 and our Supreme Court has specifically said that we don't follow Daubert.

MS. GOOD: Correct, Your Honor. But it's essentially the same in the fact that this is not a diagnostic tool. She's testified that it's not a diagnostic tool. It's not tested in the clinical sense. It's done is a social sense and that she is applying this to all substantiated cases which essentially bolsters the victim as to what she just said is substantiated because these things could potentially apply to her.

I believe that it's outside the course of Berry and Weaverling that have recently come down in that in Berry and Weaverling one was related to post traumatic stress disorder which is a recognizable medical syndrome where in this case this is not a medical syndrome. It's

something that, it's just kind of developed over the years.

In addition, Your Honor, I believe it does bolster the victim. So I would ask that she not be allowed to testify.

THE COURT: All right. Ms. Cavanaugh.

MS. CAVANAUGH: Thank you, Your Honor. Dr. Foster actually, she did not testify to anything about a syndrome. She just testified as to behavioral characteristics that are often displayed in victims that have come forward related to sexual abuse. She stated that -- First of all, under Rule 702 I do believe that she would be allowed to testify as an expert because this behavioral science does fall outside of the normal understanding or the general knowledge of the jury and in behavioral science we actually, are state follows State v. White and so we don't have the Daubert factors to actually deal with. We have to show obviously the qualification. The first prong is to demonstrate the expert actually has the necessary qualifications to testify as an expert in that particular field. Then the second prong is reliability.

Dr. Foster testified that over 30 years there have been studies conducted of victims that come forward with allegations of sexual abuse. I believe what she

testified on direct is that a portion of that sample that have been studied are further substantiated. She said that in direct and in response to one of Ms. Good's questions. But I don't believe that she said all of them were substantiated. But she did say that some of that sample that was studied in this particular field have been substantiated.

But, however, it is a recognized field. It is heavily researched and there are studies that are conducted because these behavioral characteristics are so often displayed in the victims of sexual abuse. And I believe that State v. Berry -- Well, State v. Kromah obviously those cases, the State v. Kromah, the cases that follow that line of thinking don't allow testimony from the forensic interviewer that has been directly involved in this case. They have all ruled that if the forensic interviewer who has been involved with the victim testifies and is qualified as an expert, then that does tend to bolster the credibility of the victim. So that was why we were careful to choose someone who has had absolutely no association directly with the forensic interview or with the victim herself so she is a blind expert so we don't run into the bolstering of the victim that the courts have been concerned about in recent years.

State v. Berry actually allows for a child, this came after State v. Kromah, but it was focused on, actually it cited Weaverling which is one of the first cases to allow expert testimony in this field and then it did allow testimony from an expert regarding typical, not typical but characteristics that are often observed of victims of sexual abuse.

So we do believe that we are complying with the current law as it stands and that her testimony as a blind expert in this field that is recognized is allowable and admissible.

THE COURT: All right. Well, I appreciate both of y'all making such good arguments on this. Obviously as you both are aware our Supreme Court has had a lot to say about experts in child abuse cases. You all clearly have researched this issue as I have and I am going to allow Dr. Foster to testify.

In State versus Chavis which is a 2015 case from the Supreme Court, our Supreme Court acknowledged that expert testimony in child sexual assault cases is permissible so long as it meets the requirements of State versus White.

As Ms. Cavanaugh pointed out, State versus White has two threshold determinations. The first, that the qualifications of the expert must be sufficient. Everybody here has already conceded to the sufficiency of

Dr. Foster's qualifications.

And the second determination that has to be made is reliability. I find that child abuse assessment is reliable based on Dr. Foster's testimony, that these factors that she testified to are based on 30 years of research. Some of those are from a clinical setting. Many of those are from data analysis. There are journal articles that are peer reviewed that discuss this particular science and again our own Supreme Court in State versus Chavis acknowledge that expert testimony in child assault cases is permissible.

State versus Schumpert, that was back in 1993, also allowed expert testimony in a child sexual assault case.

And I also want to note a couple of other cases. State versus Weaverling, and I'm going to quote from that case. There the Court of Appeals stated, "Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault."

In State versus White, that's a Supreme Court case that we have referred to for the factors to be considered, it's a 2009 case from our Supreme Court, the

court stated, "Expert testimony on rape trauma may be more crucial in situations where children are victims."

And then, of course, our most recent case from the Supreme Court, State versus Anderson which confirmed all those findings of White and Weaverling and again recognized that there is an expertise in child abuse assessment but explained that to avoid improper bolstering the better practice is to not have a forensic interviewer who examined an alleged victim as an expert but rather to call an independent witness to testify to the characteristics of the victims.

Here that's exactly what the State is doing with Dr. Foster. She testified that she had no involvement with the investigation of this case and therefore I find her testimony to be admissible.

MS. CAVANAUGH: Thank you, Your Honor.

~~THE COURT: With that being said, let's break for~~ lunch.

MS. GOOD: Can I just ask very briefly?

THE COURT: Sure.

MS. GOOD: I do make the motion that she not be able to use the word substantiated. It's found in only substantiated cases. I believe that does bolster the victim. It's essentially the same as using the word compelling. So I would ask that she not be able to use

the substantiated.

THE COURT: My memory of her testimony was that it could have happened in both substantiated and unsubstantiated cases so, I mean, I don't think that her testimony would be prejudicial in that respect. Certainly if she were to testify on direct that it was in substantiated cases, you could cut her off there and on cross get the exact testimony you got from her before, but I don't think that the word substantiated is something that is verboten as my mom would say, forbidden, so I deny your motion.

MS. CAVANAUGH: Your Honor, I guess just for clarification for Dr. Foster because it is such a hot bottom issue as far as when she describes what is meant by substantiated cases, she included both cases that have been investigated, I'm concerned about the phrase jury verdict. I'm not sure if that's going to later create an issue or not so I guess we'll discuss that with her.

THE COURT: I was going to say, that's something for you to discuss with Dr. Foster. You can work on what wording she wants to use and then Ms. Good I know will be on her toes as she has been throughout this trial and will object and we'll discuss specifics as they come up. But what I heard from Dr. Foster just now in her proffered testimony gives me no concern.

MS. CAVANAUGH: Thank you, Your Honor.

THE COURT: All right. Thank you. It is 1:15. How long do you all need for lunch? Can y'all do it in 45 minutes? Can we get back her at 2:00?

MS. CAVANAUGH: Yes.

THE COURT: I would appreciate that. Let's get back here at 2:00 so we don't have the jury out forever. Thank you.

(Luncheon recess.)

BAILIFF: All rise.

THE COURT: Okay. Thank you. Please be seated. Bring in the jury please.

(Whereupon, the jury returned to the courtroom at 2:00 p.m.)

THE COURT: All right. Welcome back from lunch. I'll ask the State to call their next witness.

MS. CAVANAUGH: Thank you, Your Honor. The State calls Dr. Allison Marie Foster.

Thereupon,

ALLISON MARIE FOSTER

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: My name is Allison Marie Foster.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Dr. Foster, what is your profession?

A. I'm a licensed clinical psychologist. I'm chief psychologist at a place called the Assessment and Resource Center which is a children's advocacy center in Columbia.

Q. When you say a children's advocacy center, what is meant by that phrase?

A. Sure. Children advocacy centers are multi disciplinary programs that are accredited and they provide services to children when there is an investigation of suspected child abuse. So we provide forensic interviews of children, forensic medical exams, some limited therapy and victim advocacy support services.

Q. And are those type of child resource centers, are they located throughout the state?

A. Yes. I think we have 17 of them in South Carolina.

Q. Do you also currently have a private practice?

A. Yes, I do. I have a private practice known as Forensic Family Associates.

Q. How long have you had that private practice?

A. I started moonlighting, I worked full-time at The ARC beginning in 1995. For 17 years there I was the program director, but I also had a little bit of moonlighting private practice in the background since the late 1990's. Finally in

2012 I stepped aside from my full-time work at The ARC and became a half time chief psychologist and then I spend the rest of my time in private practice doing child custody evaluations and other court ordered work involving children and families.

Q. So what area do you actually specialize in?

A. Everything I do involves forensics and children and families so whether that's child abuse evaluations or court ordered family court sort of things, DSS cases, that sort of thing.

Q. What is your educational background?

A. I went to college at Emory University in Atlanta and then I worked for a year at a residential treatment facility for emotionally, behaviorally disturbed adolescents in Kennesaw, Georgia, and then I relocated to Columbia where I entered the Ph.D. program in clinical psychology so I graduated in the spring of 1996 with my Ph.D. in clinical psychology.

Q. And your undergraduate degree, was that also in psychology?

A. It was in psychology.

Q. And are you licensed in South Carolina?

A. Yes. So to be licensed as a psychologist in South Carolina you have to have a doctorate degree which I have, and then you do a year of post doctoral supervised practice and

take a national exam and a state oral exam and then every year, of course, I attend continuing education credits to maintain my license.

Q. And again that specific licensure is in clinical psychology?

A. Correct.

Q. Do you have to complete any training to maintain your licensure?

A. Yes. Every year I'm required to attend a certain number of hours of continuing education through conferences or reading articles or doing my own presentations and research in the field.

Q. You just mentioned presentations. Do you actually give presentations in this area?

A. Yes. I train nationally in child abuse conferences as well as regionally. I'm invited speaker to various conferences and then here in our State of South Carolina I'm senior faculty for a five day forensic interview training course that we provide called Child First and that's where we teach law enforcement officers and child protective service workers and forensic interviewers and other professionals about how to appropriately conduct an interview of a child.

Q. Do you also -- You stated that you present in Child First. Do you also develop the curriculum and training for these programs?

A. Yes, I do.

Q. Do you stay up to date and current with the research in this field as well?

A. Yes, I do.

Q. Have you been qualified as an expert in a court of law in the field of child abuse assessment?

A. Yes.

Q. Approximately how many times?

A. Uhm, probably 150 to 200 times.

MS. CAVANAUGH: Your Honor, at this time I would offer Dr. Allison Foster as an expert in the field of child abuse assessment.

THE COURT: All right. Any objection?

MS. GOOD: No, ma'am.

THE COURT: All right. She is so qualified.

BY MS. CAVANAUGH:

Q. Dr. Foster, what does the field of child abuse assessment actually encompass?

A. Uhm, it encompasses a lot of things from understanding children and their developmental states so understanding how abuse can affect children at different developmental stages. Also, how they can remember and relate information. Psychological effects of abuse depending on the relationship between the perpetrator and the victim and the age of the victim. So often in our field we talk about the

dynamics of child abuse as part of the specialty of child abuse assessment. And then, of course, related, too, is just the process of how to gather information from children and understanding the process of disclosure. How children tell and when they tell and that sort of thing.

Q. And when you're referring to child abuse, are you talking about physical and sexual abuse?

A. Yes.

Q. Are there certain behavioral characteristics that are common in child victims of sexual abuse?

A. Yes. Uhm, some dynamics will vary depending on what kind of relationship we are talking about between the offender and the victim so that it can vary somewhat in terms of the dynamics and how disclosure happens depending on that relationship.

Q. And do these -- We'll get into the specific characteristics later, but are these characteristics that are often displayed? Do they seem atypical to someone who is not familiar with these victims?

A. Exactly. They can seem unexpected. For example, we know in the field of child sexual abuse and what we call the disclosure pattern, in other words, when and how children tell, that it's more common for there to be a delay. It's called delayed disclosure and the delay can be as long as years. So it can be weeks, months or years. We actually know

from research that the majority of bona fide victims, people who are known to have been victimized as children, two-thirds of them won't come to anyone's attention until adulthood. So things like that can seem not to be common sense if you're not an expert in the field or if you're not familiar with the kinds of dynamics that keep children from telling.

Q. And is this a field that's been studied over a number of years?

A. Yes.

Q. Specifically related to this case have you had any direct involvement with the investigation of the defendant James Miller?

A. No. I have not.

Q. Did you interview Complainant or counsel Complainant [redacted] in any way in this case?

A. No.

Q. Did you have any opportunity to review her forensic interview or any statement that she might have given in this case?

A. No.

Q. But again you just testified are there behavioral characteristics that are common to a large majority of victims of child sexual abuse?

A. Yes.

Q. How is this particular area of study, how are the

studies conducted? Who is used in the studies?

A. Over the years the studies of child abuse behaviors and dynamics has moved from being something that therapists and clinicians have studied to more of an examination looking at cases that have played out in court. So at this point most of the research relies on researchers going back and looking at cases where there were arrests and investigations, prosecutions and convictions ard then the researchers look back and they look back at how the disclosure process happened. How did the child tell. What were the behavioral components that kept the child keeping a secret for some period of time and things of that nature. So it's called retrospective research because they go back and look at cases that are - cases where there is a lot of data that - mostly out of like child welfare files like CPS, DSS files, law enforcement files and court records.

Q. Now, you mentioned delay disclosure. First of all, backing up just a little bit, do all child victims of sexual abuse even disclose?

A. No. They do not.

Q. And to these studies -- How do you know? If they never disclose, how do you know that there are child victims out there they don't disclose?

A. That's a very good question. There's actually been a body of research in the last 10 to 15 years by the CDC,

Centers for Disease Control and Kaiser Permanente Insurance where they have just collected a large amount of research on American citizens today and it's anonymous survey data and that has become one of the rather surprising pieces of information is how many well educated, well employed insured Americans out there who have never told anybody but who are endorsing on these surveys that they experienced child abuse. So it's not perfect because nobody is going to go out to verify each of those claims. But there's a lot of information to suggest that the minority of children tell during childhood if they are being abused more than will tell in adulthood and some will never. Some portion of probable victims just never tell law enforcement or seek any kind of justice like that.

Q. Along those same lines is there a term known as accidental disclosure where the child is not the first one to disclose?

A. Yes.

Q. How does that come about?

A. So within the cases that do come to our attention and make my work, some of those discoveries happen. We call it - there's two types of discovery, accidental and purposeful. Some children decide and it's a purposeful process, they decide to tell somebody what's happening and that's how they come to our attention. For others it's accidental discovery. For example, the child is trying to

keep it a secret, but somebody walks in and there is an eye witness to something that alerts people that something is going on. Or some other evidence shows up like a parent discovers photos or a text message or any number of things that could lead to an accidental discovery of abuse without that child really being ready to come forward and tell.

Q. So as far as the child victims that do disclose, are there statistics associated with how many of those child victims have a delayed disclosure?

A. Yes. We know that the norm is for there to be a delay. Most child sexual abuse occurs with dynamics around influencing children to keep a secret. Children tend to be very vulnerable to worrying about the consequences for themselves and the offender. More often than not child sexual abuse occurs between an adult who is well known and is typically a family member or authority figure over the child. So it's a very complex relationship and those dynamics will lead children to not tell and to delay their disclosure for months if not years.

Q. When a child does decide to disclose, is there always a full disclosure?

A. No. In our field we talk about stages of disclosure and how children can move from a stage including a stage called denial. In other words, like you asked about the accidental discoveries. Let's say somebody stumbles upon some

information and confronts a child. That child may first say no, nothing is happening. That's a denial stage. Then they move into a tentative stage where they're testing the waters where they tell some of what's happened, maybe drop some hints and perhaps want to see how it's handled so they don't want to go too far down the road if they were not going to be believed, for example, or if some bad consequences might happen. Then they move into what is called active disclosure and active disclosure is when, sometimes it happens when children have kind of matured into a certain developmental stage or something has shifted in their family where they realize they see an opportunity to tell where maybe they didn't see before so then they'll move into active disclosure and they might be willing to tell pretty much everything.

Q. When they do finally tell someone what is happening, uhm, do they give the full detail the very first time that they tell they have been abused?

A. It's not typical. That's less likely to happen. First of all, if you think about it, if it's something that you have not been speaking of, you have been suppressing months or years, the first telling requires a tremendous amount of psychological effort both emotionally and even just organizing the memories to tell everything. So we know that not everything is likely to come out in a single interview or in a single outcry. There's going to be sort of an initial,

sometimes we refer to it as script memory where a child is telling the basics of how things usually go. Then if they are asked more detailed questions, they will be able to relate information about specific incidents in more graphic detail.

Q. And what type of factors play into the delayed disclosure?

A. Uhm, the factors that play into delayed disclosure have to do with the pressures that are brought to bear on the child to feel responsible for keeping a secret whether that be to keep the perpetrator out of trouble, to keep themselves out of trouble, to protect other family members. So depending on kind of if they have been manipulated and how they have been controlled they will have various concerns weighing on their mind and so those things are going to inhibit the child from wanting the abuse to be discovered and then once - if it's chronic which is what most child sexual abuse is, meaning it happens more than one time, once a chronic sort of pattern gets established it gets harder and harder for a child to even feel like they have the right to speak up and change the terms so that's called entrapment and accommodation in our field. So they still go to school. They still do their chores. They still make friends and they actually invest in just trying to have normalcy, normal life and accommodate and put up with the part that they can't change.

Q. Do child victims ever feel a sense of

helplessness?

A. Yes. So the stages that we teach in our field to help understand this process is that at the outset the child understands that this is a secret. The child may be overtly told to keep it a secret. They may just implicitly understand that it's a secret and that there will be bad consequences if people knew. They enter a state of helplessness again because they feel like they have sort of fallen into something that they don't know how to get out of. They may even feel that because they didn't say no or they didn't scream or then didn't do something the first time, they almost feel like they have just no right to get out of it. Like they have complied with that. So then they enter that stage of helplessness that goes into entrapment. The feeling that, well, I'm stuck with this now. I'm trapped in these circumstance but I need to just accommodate it because I still have a life to live. So those stages are what we refer to as the child sexual abuse accommodation dynamics that kind of sustain that not telling, that kind of investment in not telling for some period of time.

Q. You stated it is not uncommon for the perpetrators to be within the home?

A. Right.

Q. In fact, is that a common situation for victims of child sexual abuse?

A. Yes. It is, I believe, still the most statistically the most common.

Q. And if there are multiple children in the home, is the perpetrator necessarily going to abuse all of the children in the home?

A. No. No. There are going to be a few different dynamics at play. One is going to have to do with perpetrator preferences, so male, female, age range, that sort of thing. But also beyond that it has to do with the sense of power and control in that particular relationship. Obviously an offender doesn't want to get caught and so the quality of the relationship between that -- You said it was - you asked me about in the same home?

Q. Yes.

A. So there, say it's a parent or parent figure, they may have a very different kind of emotional behavioral relationship with one child over another. Maybe one child is emotionally closer to that parent, more loyal to that parent, maybe one child is more assertive or goes their own way and that child would be less likely to be a target, but the one that is closer or more easily manipulated or more loyal to the parent, that would be the more submissive one perhaps or the one that is more invested in that relationship would be the one that would be more vulnerable to being groomed. So there are child characteristics, there are perpetrator

characteristics and the perpetrator may even test the waters with more than one child, you know, but they are going to determine which child they feel that they can engage in this relationship.

Q. If a child is older, 15, 16 or 17, do these factors still come into play?

A. Yes. Again assuming a hypothetical where we're talking about family relationships, if this is a child maybe 15, 16, 17, but has been a child of a parent since infancy so the relationship is built across all of those years.

Q. In cases of chronic abuse, what is meant by chronic abuse?

A. Multiple times. Sort of an ongoing situation.

Q. Okay. Is there going to be a clear memory of each and every time they were sexually abused?

A. No. No more than anybody here if they were asked to provide an account of each and every time that they did something that they did chronically, your brain would have quite a difficult time sorting through each and every time.

Q. Are there certain instances that they might remember more clearly versus another?

A. Yes. Uhm, often, often the last time, a time just before discovery or just before the end, a lot of times that is a more easily retrieved event because it's recent and because it's the end. Things change. Things happened after

that. So that could be one. Sometimes children will remember specific events because they have happened in unusual locations. So, for example, if abuse often happens in the daughter's bedroom just by way of example but then sometimes it happened in a vehicle or it happened in another location, that might stand out. Also, if something progressed in a certain way like the first time perhaps the sexual abuse goes from something less painful or less intrusive like touching or fondling or something to something more invasive like full sexual penetration or oral sex or something like that. So there can be different markers and different reasons why certain memories will stand out, but then if there are a lot of events that seem to go a certain way all the time those tend to be sort of blurred together.

Q. And does chronic sexual abuse often affect memories of other activities going on in the child's life at that time?

A. Well, in general when something aversive is happening, so in other words, if you're in a situation you don't want to be in and you're enduring a situation that you don't want to endure, there is a process that sometimes victims will describe that we call dissociation. They're just not paying attention to everything that's going on because they are sort of mentally trying to not be there so that can kind of affect their memory and their recall of like what all

is going on because they're frankly trying not to think.

Q. Dr. Foster, to wrap up, you stated that you do stay up to date on the research in this field?

A. Yes.

Q. Does your knowledge also come from just experience as a psychologist?

A. Yes. As a psychologist who has evaluated about 2000 children suspected of sexual abuse.

MS. CAVANAUGH: Thank you. Please answer any questions from the defense.

CROSS EXAMINATION

BY MS. GOOD:

Q. Dr. Foster, you stated that the research that's gone back over the last several years, do you know the majority of that research what age group the children were?

A. Cases that go to court tend to involve older children as a wide age range, but I would say that the majority is more like eight years of age to adolescence.

Q. What is adolescence? What would you consider that age?

A. Through 18.

Q. And is there a difference -- You testified the developmental capacity of say a five year old versus a 17 year old, what's the difference developmentally wise when it comes to their brains and memory in development?

A. Quite a lot. So five year olds think very - we talk about how it's important to be simple and concrete with five year olds because they live in the world of the senses, what they see, hear, taste, touch and smell and they live in the present and they don't understand all the complexities of life. Obviously that was age five. You were asking me to contrast to age what?

Q. 17, 18.

A. So 17, 18, you have somebody who is as we say in psychology launching so they are sort of at the tail end of childhood and preparing more for independence, for independent living and independent thinking and independent judgment and they do understand a lot more about the complexities of relationships and different psychological factors and things like that.

Q. Okay. And when it comes to the memory of a five year old versus a 17 year old, is there a difference when it comes to what they can remember when it comes over their childhood or lifetime like from the several months before versus for a 17 year old like ten years before?

A. Uhm, yes. So all of us are better at recall for recent events than past events, but certainly five year olds, we don't expect them to remember nearly as many details as we expect adolescents to be able to retrieve about things and adolescents 16, 17, 18 year olds, uhm, they tend to be able

to, assuming normalcy, assuming they have normal IQ, no impairments, we would expect them to be able to map out and recall different life events from their elementary school years into their middle school and high school.

Q. So that would be something normal you would see their events through elementary school and middle school?

A. Right. What we know is that most of us lose our most of our preschool memories and then as we get older we code memories with more details and so they can become more retainable so you probably have better recall of your later elementary school years into your middle school years and your high school years and as you go back in time to your earlier elementary years your memories are likely to be more sparse.

Q. And usually in traumatic events do you find that suspected victims or when you're interviewing somebody recall their hobbies and the normal things that they like to do everyday?

A. I normally expect they would be able to answer questions about normal activities, yes.

Q. For example, if they stated they liked fishing or hunting, they would be able to discuss those with you and talk to you about those different things because that's something that's a sense of normalcy that they were okay with. They didn't have a traumatic event with?

A. If it's something that they experienced that I'm

asking them about, like if it's a child who knows about hunting or fishing and I'm asking them to describe that, I would expect them to be able to describe it if it's something they have experienced unless for some reason it's associated with something traumatic that they are trying to suppress.

Q. And do you find as the children get older that there is more purposeful, they decide to tell something versus accidental disclosure?

A. That's correct. In the research accidental discoveries are more commonly with littler ones and more purposeful statements become more common with older children.

Q. And you discussed these different things of secrecy, entrapment, accommodation, helplessness and delayed disclosure. In fact, those things throughout the research can also be found in instances where somebody came forward about a situation and it's found to be not a sexual abuse scenario, correct?

A. Right. So somebody could report something as happening and say it happened a long time ago and it could turn out that they were just saying something happened that never really happened.

Q. When you were discussing multiple children in the home, that there is perpetrator preference by what a child maybe looks like, their age, that sort of thing but also a

sense of power and control and you stated that's less likely for one of the children in the home who is more outgoing to be the target of the sexual abuse in the area versus another child in the home who might be more passive?

A. I think I used -- I don't think I used the word outgoing. I think I said something like assertive or aggressive or acting out so right. If an offender is concerned that somebody is more likely to just create trouble and say things to others, then that might prevent the offender from picking that child as a target.

Q. And finally you stated that usually when somebody is disclosing chronic abuse in a sexual abuse scenario, one of the times more often you said that they remember is the last time something happened, correct, because it's the most fresh in their memory?

A. Yeah. Not a hundred percent of the time, but it is often one of the freshest ones and one of the ones that's more retrievable.

MS. GOOD: No further questions, Your Honor.

THE COURT: Thank you. Any redirect?

MS. CAVANAUGH: Just a few follow up questions, Dr. Foster.

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Is the first time also a memory that child victims

remember well?

A. Yes. I forgot to mention that, but the first time or the first time that the child realizes that something sexual is occurring that shouldn't be occurring definitely depending on the age of the child when that's happening can be a very salient palpable memory.

Q. And Ms. Good asked you about the personality of the victim. Earlier you also testified that the degree of closeness between the perpetrator and the victim also played a role in who is abused; is that correct?

A. Yes. That is correct.

Q. So if the defendant is closer to one particular child, is that child the one that they often choose?

A. Yes, because it's the emotional bond. Emotional -- To sustain a child's secrecy and cooperation requires emotional manipulation. If it's going to be a family child sexual abuse situation, it requires emotional manipulation and compliance and so that's going to be born out of, it can be born out of that closeness. The fact that that child is loved, is loyal to that parent and so that makes them more vulnerable.

MS. CAVANAUGH: Thank you. No further questions.

THE COURT: Thank you, Dr. Foster. You may step down. The State may call their next witness.

MS. CAVANAUGH: The State calls Justin Dill.

Thereupon,

JUSTIN DILL

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: Justin Lee Dill.

DIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Good afternoon. Justin, were you employed with Kershaw County Sheriff's Office at one point?

A. Yes, ma'am, I was.

Q. When were you with the Kershaw County Sheriff's Office?

A. From October of 2005 until January of 2016.

Q. Did you resign recently?

A. I did.

Q. But you were with the Sheriff's Department for approximately 11 years?

A. Yes, ma'am.

Q. And what were your positions in the Sheriff's Department over that period of time?

A. Started as a road patrol deputy. I did warrants and then I was a criminal domestic violence investigator and then I moved into criminal investigations.

Q. Did you -- Were you eventually a sergeant within the

Sheriff's Department?

A. Yes, ma'am. I was a sergeant then lieutenant.

Q. Back in August of 2012 what was your position at the Sheriff's Department?

A. Criminal investigator, I believe.

Q. What type of investigations did you have in that role?

A. Any type burglaries, homicides, vandalism. Just any type of crime.

Q. Were you involved in the investigation against James Miller?

A. Yes, I was.

Q. When did you become involved in that investigation?

A. On the night that the call was given out, I was the actual on-call investigator. That's how I was called to be a part of the investigation.

Q. When were you -- I know that was a long time ago. Do you have your report with you?

A. Uhm, I have the CAD and a few other papers. I don't have the actual report.

Q. Would the incident report actually help with your memory of this case?

A. Yes, ma'am.

Q. When did - what time of day did you actually become

involved in this case?

A. I believe it was the afternoon.

Q. (Proffering.)

A. Thank you.

Q. Okay. And how did you become notified that your assistance was needed?

A. A phone call from the responding deputies.

Q. Do you remember which responding officer called you?

A. I believe it was Deputy Brooks Houser.

Q. And at that point what was the nature of the complaint?

A. Uhm, that a father in a household had been sexually assaulting one of the children.

Q. Okay. What was your understanding of -- What was Corporal Houser doing when he notified you? Where was he?

A. He was at the residence on Wild Turkey in Kershaw County. I believe Wild Turkey Road at Lake Wateree.

Q. What did you advise him to do at that point?

A. Bring him over to the Kershaw County Sheriff's Office for questioning.

Q. Okay. Was it your understanding that -- Did you also direct Corporal Houser to read the suspect his Miranda Warnings?

A. I don't recall if I did or if he advised me that he

had already advised him of his Miranda.

Q. Okay. Did you actually go to the Miller's house that day?

A. No, ma'am, not that day.

Q. Where did you first come in contact with James?

A. He was transported to the Kershaw County Sheriff's Office in Lugoff. I first came in contact with him there.

Q. Do you know what time he was, he arrived at the Sheriff's Department?

A. Approximately 3:35 that day on August the 11th, 2012.

Q. When he arrived at the Sheriff's Department, where was he taken?

A. Through the back entrance of the office into the interrogation room or interview room in the criminal investigation division.

Q. Okay. Tell me about that room. Is there recording equipment available there?

A. Yes, ma'am. Audio and visual recording. It's just a small room with a door and a small window, table and some chairs.

Q. How is the recording equipment activated?

A. The recording equipment at our office actually records all the time, 24 hours a day even when it's dark and the door is closed and no one is in there. When you walk in,

the lights turn on and you walk in and it's already recording.

Q. So that's where you took James once he arrived at the Sheriff's Office?

A. Yes, ma'am.

Q. At that point was he under arrest?

A. No, ma'am. He was just detained.

Q. So upon him coming into the interview room, what did you do?

A. Read him his Miranda Rights.

Q. And how do you actually -- What is meant by Miranda Rights?

A. His rights as a citizen. He has the right to an attorney. He doesn't have to talk to us and he's free to go at any time basically.

Q. Okay. I'm going to show you what's been marked as State's exhibit number 1. Do you recognize that document?

A. Yes, ma'am, I do.

Q. What is that?

A. It's our standard Miranda form at the Kershaw County Sheriff's Office.

Q. Is this a form that you used that afternoon?

A. Yes, ma'am.

Q. How do you know that?

A. It's got his name, date of birth, the information at

the top, the date and also my name and it says at KCSO which is where we were along with his signature at the bottom waiving his rights.

MS. CAVANAUGH: Your Honor, at this time I would ask that State's exhibit number 1 be admitted into evidence.

THE COURT: Any objection?

MS. GOOD: No object.

THE COURT: So admitted.

BY MS. CAVANAUGH:

Q. Do you have a copy of that form with you?

A. Yes, ma'am, I do.

Q. And when you go over the Miranda Warnings, how do you actually do that?

A. Generally before Miranda I get a person's information, name, date of birth, address, any current phone number, generally always write the date and always write who is present in the room during the Miranda interview at the top, then I advise them I'm gonna read them their rights. After each line, each right, I ask them do they understand and if they acknowledge that they do understand, I check beside it.

Q. Can you read the individual rights for us?

A. Yes, ma'am. The first is you have the right to remain silent. The second is anything you say can and will be used against you in a court of law. You have the right to

talk to a lawyer and have him or her present with you while you're being questioned. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning, if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Q. When you go over each of these rights, do you make a check mark after you read each one?

A. Yes, ma'am, I do.

Q. Then you sign after you have read each of those rights?

A. I write my name where it says officer's name and title, then I go over what we refer to as a waiver of rights at the bottom of the page, a small paragraph. Once they understand that and the terminology in that paragraph, I also check it. I advise them that this is no admission of any guilt. It's so that you understand what your rights are and that you always have them and if they wish to talk to me, please sign in which in this case he did sign, and the I witnessed at the bottom with the time and the date.

Q. Can you actually read the waiver?

A. Yes, ma'am. It says this is to certify that I have read or have had read to me the above statement of my rights. I understand each of these rights and having these rights in mind I waive them and willingly make a statement. No promises

or threats have been made to me and no pressure or coercion of any kind has been used against me.

Q. What is actually meant by the term coercion?

A. Not doing anything that would make him feel like he had to tell me what I want to hear.

Q. Could you give an example of coercion?

A. Generally my analogy that I use on every person that I talk to is if I pulled out my pistol and pointed it at you, you would probably feel like you needed to tell me whatever I wanted to hear, but that's not going to happen here. And that's coercion.

Q. Did you actually explain that to James that particular afternoon?

A. Yes, ma'am, I did.

Q. After he signed the waiver, did you sign your name as a witness?

A. Yes, ma'am, and time and date.

Q. Again what was that time?

A. August 11th, 2012 and 3:47 p.m.

Q. So that was about 13 minutes after he arrived at the Sheriff's Department?

A. Yes, ma'am.

Q. Did he appear to understand his rights at the time?

A. Yes, ma'am, he did.

Q. Did he appear to be under any stress or distress? Sorry. Not stress. Distress at the time as far as did he appear to be hot or incapable of understanding what you were saying?

A. Not that I recall.

Q. Okay.

(Whereupon, State's Exhibit #46 and #47 marked for identification.)

BY MS. CAVANAUGH:

Q. Did you actually record the interview at 3:47?

A. Yes, ma'am.

Q. Have you had an opportunity to actually review that interview?

A. I reviewed the audio.

Q. Is this a copy of the interview from that particular afternoon?

A. Yes, ma'am, it appears to be.

MS. CAVANAUGH: Okay. Your Honor, at this time I would ask that State's exhibit 46 be admitted into evidence.

THE COURT: Any objections?

MS. GOOD: No objection.

THE COURT: It is so admitted.

MS. CAVANAUGH: Your Honor, at this time I would ask for permission to publish it to the jury.

THE COURT: You may. Is this audio and video or just audio?

MS. CAVANAUGH: Audio and video.

THE COURT: Okay. So we need to dim the lights for the jury's benefit, too. If anyone on the jury has a hard time hearing or seeing, let me know.

(Whereupon, State's exhibit #46, audio and video CD played for the jury.)

MS. CAVANAUGH: Could we turn the lights back on?

THE COURT: Yes. Could we please turn the lights back on.

BY MS. CAVANAUGH:

Q. Investigator Dill, at that point as you stated to Mr. Miller had you talked to the victim?

A. No, ma'am.

Q. Had you talked to the victim's mother?

A. No, ma'am.

Q. Did he, when you told him bottom line this is what the accusations are, did he deny those?

A. No. He didn't say anything.

Q. In fact, what did he say about what happened? Did he say that he needed to get his story on the same page as hers?

A. Yes. He said he didn't want his to differ from hers.

Q. Did that interview end at this point?
A. Yes, ma'am.
Q. And did you take, at that point did you place James Miller under arrest?
A. Yes, ma'am, I did.
Q. And when he first came in, he was not under arrest. He was detained; is that correct?
A. Yes, ma'am.
Q. But you still advised him of his rights?
A. Yes, ma'am.
Q. You still advised him that he had a right to remain silent and not speak to you?
A. Yes, ma'am.
Q. But he chose to speak to you after that?
A. Yes, ma'am.
Q. And he indicated to you that he didn't know where he was at. Did he appear coherent to you?
A. Yes, ma'am.
Q. Did he know that he was at the Sheriff's Office?
A. Absolutely.
Q. Did he know that you were an investigator?
A. Yes, ma'am.
Q. After did you take, uhm, or did someone take Mr. Miller back to, uhm, or not back to but to the jail, uhm, at that point?

A. Yes, ma'am. He was transported to the detention center at the conclusion of that interview?

Q. Okay. And again he did not, he did not tell you he didn't do it?

A. No, ma'am.

Q. At some point did Deputy Hathaway call?

A. Yes, ma'am, he did.

Q. Did you go to the jail after that?

A. Yes. Deputy Hathaway called me and he told me that Mr. Miller did want to speak with me again.

Q. Okay. What time did you receive that call from Deputy Hathaway?

A. Sometime before 4:51 that afternoon.

Q. Sometime before 4:51?

A. Yes, ma'am.

Q. So that was approximately an hour after he first arrived at the Sheriff's Department?

A. Close to it.

Q. And did you go to the jail after you received that call from Deputy Hathaway?

A. I did. I went and transported Mr. Miller. I actually went and asked him if he did, in fact, want to talk to me again and he said he did and then I transported him myself back to the Sheriff's Office for another interview.

Q. How far away is the jail away from the Sheriff's

Department?

A. Five to ten minutes maybe.

Q. During that drive, did you speak to him or ask him any questions related to the investigation?

A. No, ma'am.

Q. Was he trying to speak to you at that point?

A. I recall some brief conversation, but it wasn't in relation to the investigation. I advised him that I couldn't talk to him about it until we got back to the interview room.

Q. What time did you arrive back at the Sheriff's Department?

A. 5:05.

Q. Okay. When you arrived back at the Sheriff's Department, where did you take Mr. Miller?

A. Back through the back straight into the interview room.

Q. Same interview room that we just saw?

A. Same interview room, yes, ma'am.

Q. Did you advise Mr. Miller of his rights once again?

A. Yes, I did.

Q. Did you use the same form and method that you used the first time?

A. Yes, ma'am. Other than I told him that we had

already gone over coercion once.

Q. So you didn't have to go through that again?

A. No, ma'am.

Q. I'm going to ask you to look at State's exhibit number 2. Do you recognize that document?

A. Yes, ma'am.

Q. What is this document?

A. It's a standard Miranda form from the Kershaw County Sheriff's Office.

Q. Is that the form that you used during the second interview?

A. Yes, ma'am.

Q. How do you know that?

A. His name. KCSO is on there. He then initialed it and then it says 5:15 p.m., on August 11th, 2012.

Q. So that's gonna be an hour and a half after the first interview?

A. Yes, ma'am.

MR. CAVANAUGH: Okay. Your Honor, at this point I ask that State's exhibit number 2 be admitted into evidence.

THE COURT: Any objection?

MS. GOOD: No objection.

THE COURT: It is so admitted.

BY MS. CAVANAUGH:

Q. And we'll I see it on the recording, but did you go over his Miranda Rights again?

A. Yes, ma'am.

Q. And did you indicate that he wanted to talk to you again?

A. Yes, ma'am.

Q. At that point did you have a little bit more information about the case?

A. Yes, ma'am. I believe I had read over the statement from the daughter at that point, [Complainant redacted].

Q. And was the second interview also recorded?

A. Yes, ma'am, it was, audio and video from the same room.

Q. Have you had an opportunity to review that recording of that interview?

A. Yes, ma'am, I have.

Q. Is this that particular second interview, the recording of that second interview?

A. Yes, ma'am, it appears to be a copy.

MS. CAVANAUGH: Okay. Your Honor, at this time I ask that State's exhibit number 47 be admitted into evidence.

THE COURT: Any objection?

MS. GOOD: No objection.

THE COURT: It is so admitted.

MS. CAVANAUGH: Permission to publish to the jury?

THE COURT: You may.

(Whereupon, State's exhibit number 47, video and audio interview played for the jury.)

THE COURT: If we could turn on the lights again please.

BY MS. CAVANAUGH:

Q. Investigator Dill, is the interview over at that point?

A. Yes, ma'am.

Q. So Investigator Dill, after you read him his rights the second time, do you layout what the allegations are at that point once again?

A. Yes, ma'am.

Q. And his first response after you confront him the second time or during the second interview with the allegations, does he start telling you a story about a camper?

A. Yes, ma'am.

Q. Does he say, no, I didn't do it at that point?

A. No.

Q. So his first response is to again talk about something that occurred a year ago in the camper?

A. Yes, ma'am.

Q. What exactly, we just saw it, but did he mention it

twice?

A. Yes, ma'am.

Q. What did he say about what happened in the camper?

A. They were sleeping in the camper together and he woke up with his hand on the inside of her leg or on her leg and they both woke up and cried a little bit and then they hugged and went on back to sleep.

Q. And you talked to him a little bit about his reaction when the deputies arrived at the house that afternoon, right?

A. Yes, ma'am.

Q. And does he tell you -- He admits to you that they didn't tell him why they were their initially?

A. No, ma'am.

Q. And he went to the dock and he asked if Complainant he asked Complainant if they were there for him. Is that what he told you?

A. Yes, saying that she said yeah and didn't tell him why.

Q. And then he also, does he also tell you what he told Tammy at the house that afternoon?

A. That this is not all my fault.

Q. And again that's before he knew why they were there?

A. That's what he said, yes, ma'am.

Q. Does he try to blame it on a boy, try to blame why she said this on a boy?

A. I believe it's retaliation for a young boy who kissed her on her cheek and held her hand.

Q. But all he told you about that boy is that he heard that he kissed her on the cheek, right?

A. Yes, ma'am, and that he was a sweetheart.

Q. How old is Britly?

A. I believe at that time she was 17.

Q. Does he also tell you that he has had any other problems with Complainant like this?

A. No. He just referred back to that one instance about finding a letter that supposedly she had written that she wanted to go to Charleston.

Q. What did he say his reaction was when he found this letter about going to Charleston?

A. I think he said he cried all day.

Q. After this interview -- Let me ask you this: Where are the cameras located in that room?

A. If you turned around and looked back at the door which is the wall that you don't see, if you were standing looking at the door, at the top left hand corner is a big black bubble like you see in Walmart.

Q. Okay. So if someone is sitting where James is sitting, can they see that camera?

A. They're looking right straight at it. I mean, it's the only thing off color in the whole room other than the chairs.

Q. What did you do after this interview was over?

A. Transported him back to the detention center.

Q. And was that the extent of your interaction with James that afternoon?

A. I'm sorry. Can you repeat the question?

Q. Was that the extent of your interaction with James that afternoon?

A. Yes, ma'am.

Q. Okay. Did you have an occasion to go to the house several days later?

A. Yes, ma'am, with Captain Knafelc.

Q. Which house is that?

A. [redacted]. [redacted]. Yes. That's correct.

Q. That's in Kershaw County?

A. Yes, ma'am, at the lake.

Q. Can you describe the road and the driveway that leads to that house?

A. It's one way in, one way out, dirt road. The driveway, if I recall correctly, goes down like a slope. I believe it's a two story house.

Q. When you went to the house, who else did you go

with?

A. I remember Captain Knafelc was there, two female SLED agents. They were crime scene agents. I don't recall if the victim and her mother were there but I want to say the mother was there.

Q. What did you do while you were at the house?

A. Stood by while the crime scene technicians analyzed the house.

Q. Was this case actually assigned to Captain Knafelc?

A. Yes, ma'am.

Q. Was that the extent of your involvement with this particular investigation?

A. Yes, ma'am.

MS. CAVANAUGH: Please answer any questions from the defense.

THE COURT: All right. Before we get into cross examination, let's take a break. It is about ten to four. We'll be back on the record at 4:00. Again I remind you not to talk about this case while we are on the break. Thank you.

(Whereupon, the jury entered the jury room at 3:50 p.m.)

(Short recess.)

BAILIFF: Come to order, please.

THE COURT: Thank you. Be seated. All right. Mr. Dill, I remind you that you are still under oath. We can bring the jury back in.

(Whereupon, the jury returned to the courtroom at 4:00 p.m.)

THE COURT: All right. Ms. Good.

MS. GOOD: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. GOOD:

Q. Investigator Dill, in the videos that were just shown to the jury, did you ever see Mr. Miller look up and see that the camera was there?

A. Not that I saw, no, ma'am.

Q. So you don't know if he was aware that there was a camera in there or not?

A. No, ma'am.

Q. The first thing on the first interview before you walked in the room, do you recall the first thing he said while he was crying was -- Let me make sure I get it right -- why would they want to get rid of me?

A. I didn't hear that, ma'am.

Q. And then you came into the room at that point and what was his demeanor? He was crying and upset?

A. Yes, ma'am.

Q. Did he seem overwhelmed?

A. That's fair to say.

Q. And he had concern for his family at that time?

A. That's what he kept saying.

Q. Then after that interview ended, the second one when you brought him back from the detention center began, he was still crying?

A. He began to cry, yes, ma'am.

Q. And the first thing he said to you was I'm confused and hurt, correct?

A. I'm not going to disagree.

Q. So he continued to deny throughout that interview that he ever had intercourse or sexual relations or oral sex or anything with Complainant, correct?

A. Not the entire interview but he did deny it at some point.

Q. And, in fact, at that point how much information did you have about the case?

A. I just read, I believe I only read over Complainant's statement which was a very detailed statement that she had written.

Q. It was only about a page and a half, correct?

A. I haven't seen it since.

Q. This was the first statement that she wrote to Houser?

A. As far as I know, yes, ma'am.

Q. And, in fact, it didn't have many, many details in it, did it?

A. That's not how I remember it but I haven't seen it since that day.

Q. But you continued to tell him that there were many, many details, that it was over the course of a year, constant, constant, constant, constant, and it's just elaborate details about all of this, correct?

A. Sure.

Q. And at that point he still continued to deny anything happened?

A. Sometimes, yes, ma'am.

Q. In fact, he did know why he was there, correct? Didn't he indicate to you in the first interview that the officers told him what he was being investigated for?

A. I believe I asked him if the officers told him and he said no. But at some point he did say that he knew why. I can't remember if I told him or not.

Q. Didn't he say that they told me that my daughter said that I have been forcing myself on her for a year and having sex and you said who told you that and he said the officers?

A. Oh, that is correct. Was that the second interview?

Q. That was the first interview. But so he was aware of what the allegations were?

A. Yes, ma'am, he knew.

Q. Okay. And he continued to cry throughout both interviews?

A. Yeah. He cried on and off, yes, ma'am.

Q. And he continued to be concerned about his family?

A. It appeared so.

Q. And despite the crying and being completely overwhelmed with everything and wondering why they would do this, you continued to push him saying just tell me what happened? Tell me what happened, correct?

A. Yes, ma'am.

Q. And he continued to deny it over and over saying I don't know why they are doing this?

A. He did deny it, yes, ma'am.

Q. Didn't he say that Complainant was the wild fire in the family?

A. I believe he called her a wild flower.

Q. And that Breana was the one they had under control?

A. Yes, ma'am, that's what he said.

Q. And at that point he told you about the Harrelson boy, correct?

A. The 15 year old, yes, ma'am.

Q. That they had been arguing about that?

A. Yes, ma'am.

Q. Did you ever speak to Complainant at any point?
A. I didn't interview her, ma'am.
Q. Because it wasn't your investigation, correct?
A. Not after talked to my -- Later on, no, ma'am.
Q. And before you went into the room with him the first time, did you ever tell him why he was there?
A. I don't recall.
Q. You just assumed he knew why he was there at that point, correct?
A. Yes, ma'am.
Q. And ultimately you went with the search warrant with Knafelc. Did you get the search warrant or did Knafelc get it?
A. I don't recall.
Q. When you were there, who was present for the search warrant?
A. I believe -- I know that myself and Captain Knafelc were there. I believe Melissa Skipper from SLED was there. I believe there was a blond hair female from SLED there and I want to say but I can't swear under oath, but I think that the mother was there.
Q. Do you remember any of the children there, either of the twins?
A. Not for certain, no, ma'am.
Q. And throughout the entire interview both the first

and the second one he continued to say it's not fair to my family, correct?

A. He did say that, yes, ma'am.

Q. He didn't say it wasn't fair to him?

A. I think he said it isn't fair to either one of us.

MS. GOOD: No further questions, Your Honor.

THE COURT: Any redirect?

MS. CAVANAUGH: Just a few, Your Honor.

REDIRECT EXAMINATION

BY MS. CAVANAUGH:

Q. Ms. Good asked you about the first interview and whether he expressed concern related to his family which he did in that interview, correct?

A. Yes, ma'am.

Q. And what else did he say about his story and the family's story in that first interview?

A. He wanted to make sure that his story didn't differ from theirs.

Q. She also asked you whether during that second interview that he did deny the allegations, correct?

A. Yes, ma'am.

Q. But did he admit that he regularly slept in her bed?

A. Yes, ma'am, even the night before the interview.

Q. And did he also tell you about the one time where he

woke up with his hand inside of her leg?

A. Yes, ma'am.

Q. And yet he said he still continued to sleep with her; is that correct?

A. Yes, ma'am.

Q. Ms. Good asked you about when James referred to Complainant as the wild flower?

A. Yes, ma'am.

Q. And he said that to you, correct?

A. He did, yes, ma'am.

Q. Did he give you any reason as to why she was a wild flower?

A. He just - he kept referring back to I'm assuming the 15 year old boy that had kissed her on the cheek and held her hand.

Q. Okay. And he also mentioned a letter?

A. Yes, ma'am.

Q. But those were the only reasons that he was able to give you as far as her being a wild flower; is that right?

A. That's the only thing he referred to.

Q. And as far as him realizing or becoming aware of the allegations, I would like to get to that. Did he admit to you that his first reaction when the responding officers arrived, what did he do?

A. It's my understanding he put his hands up behind his

head, actually took everything out of his pockets, pulled his pockets out and put his hands up behind his head is my understanding.

Q. And that was after you went down to the dock, right?

A. Yes, ma'am.

Q. And that was after he asked Complainant if they were there for him, right?

A. Yes, ma'am.

Q. And he admitted that she said yes; is that right?

A. Yes, ma'am.

Q. But that was all she told him, right?

A. Pertaining to what he told me, yes, ma'am, as far as I know.

Q. So he didn't know at that point what the police were specifically there for; is that correct?

A. That's what he said, yes, ma'am.

Q. But by the time he came to the police station he did know what the allegations were, right?

A. Obviously, yes, ma'am.

Q. But his reactions at the house that morning or that afternoon were before he even knew why they were there and he admitted to that, correct?

A. Yes, ma'am.

MS. CAVANAUGH: Thank you.

MS. GOOD: Very briefly.

RECROSS EXAMINATION

BY MS. GOOD:

Q. It was mentioned that he admitted to you that he went down to the dock and Complainant told him that the cops were there for him, correct?

A. I'm sorry. Can you repeat that?

Q. I'm sorry. Just now you stated that he told you, James Miller told you that Complainant said yes, they're there for him, correct?

A. After he asked her, yes, ma'am.

Q. And as a police officer when you go to arrest somebody, what's the normal procedure?

A. What's the normal procedure?

Q. Right. Do you ask them to take everything out of their pockets?

A. I tell them they're under arrest first of all.

Q. But do you ask them to take things out of their pockets?

A. No, ma'am.

Q. Put their hands up?

A. You don't want them to put their hands in their pockets. Show me your hands.

Q. But indicating putting your hands up, that would indicate that you're cooperating?

A. Oh, yeah, that would be indicative, yes, ma'am.

Q. Yeah. Okay. So that if three cops were coming at you, it would show, hey, look, I'm not trying to do anything?

A. I suppose, yes, ma'am.

MS. GOOD: No further questions.

THE COURT: Thank you. You may step down.

MS. CAVANAUGH: Your Honor. At this time the State rests.

THE COURT: Okay. Ladies and gentlemen of the jury, the State has now rested. There are matters of law that I need to take up with the attorneys so I'm going to go ahead and let you go for the day. It's now almost 4:20 in the afternoon. Let me talk to you a little bit about tomorrow morning. Because of some scheduling issues we are not going to start until 11:15 tomorrow and so I would like you all to be here right around about 11:00 so we can start promptly at 11:15. I do not anticipate this trial going beyond this week so if anybody is worried about it bleeding over into Monday, that's not any sort of anticipation. That's not on the radar screen that that would happen in this case. So tomorrow if you could be here at 11:00 in the morning, I would appreciate it. Again, I thank you because you guys have been such a great jury as far as being on time. It makes all the difference in the world. So thank you. When you go home

MS. GOOD: Your Honor, I would renew all previous motions and objections at this time also.

THE COURT: Okay.

MS. GOOD: In addition, I would ask at this time, I know he's in custody. He's not been allowed to have his medication. I was seeing if he can take it here so that he can have his medication at least for overnight for purposes of his back.

THE COURT: Okay. What medication is that that he wishes to take?

MR. MILLER: Oxycontin, Lortab, a steroid pill and two of the muscle swelling, makes the muscles go down or whatever. I don't know exactly what you call it. Something that reduces the swelling or whatever.

THE COURT: All right. So he's wishing to take all of those all at once? Seems like a bad idea.

MR. MILLER: That's what they prescribed. I'm not taking any more than they're prescribing.

MS. GOOD: He hasn't had anything since he left court here yesterday, Your Honor. They would not allow him to take his medication with him to the detention center nor allow him to take his medication.

THE COURT: Do you have his prescriptions?

MS. GOOD: We do, Your Honor.

THE COURT: I would like to see those.

MS. GOOD: (Proffering.)

THE COURT: Two of these I don't see any indication that they were prescribed for him specifically so I don't know if y'all have the actual prescription, but there is nothing to indicate that they are for him specifically. With regard to the hydrocodone and the oxycontin, I do see that they are for James Miller and I will allow him to take them as prescribed. Now, I'm not a doctor but I happen to have a lot of experience with surgeries and pain medication and my assumption is that you are not to take the oxycontin and the hydrocodone at the same time. You take one and then if the pain doesn't subside, you have the opportunity to take another. Again I'm not a doctor but I don't think you're supposed to take them at the exact same time. I would suggest that the jail, they would be in custody of his medication. He can go ahead and take one of the pain pills now. The two that don't have his name on it we are not going to transport him with those drugs. Otherwise with the pain medication he can be transported with those and the medication will be in the custody of the jail itself.

MS. GOOD: Thank you, Your Honor.

THE COURT: And we're going to note that the pain medication was taken at 4:30, whichever one. I assume he wants the oxycontin first but again it's up to him which

one he wants to take first.

MS. GOOD: Thank you, Your Honor. Finally, I have discussed it with my client and it's his indication at this time not to testify. I don't know if you want to go ahead and put on the record and question him regarding about his right to testify.

THE COURT: Let's go ahead and do that. If he will come forward and we'll place him under oath. Just so he has a microphone there.

Thereupon,

JAMES WAYNE MILLER

after having been first duly sworn, testified as follows,

THE COURT: James Miller, at this time I'm going to tell you a little bit about your rights. I want to make sure that you understand everything that I say so that at any time if you have a question or you need me to explain something further, you just speak up and let me know and I'll be happy to do that.

MR. MILLER: Yes, ma'am.

THE COURT: We have reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the Constitution and that amendment states in part no person shall be compelled in any criminal case to be a witness against himself. This means you can't be

required to testify in this case. You have a right to testify on your own behalf, but no one can make you do that and this is a personal right and no one can make the decision about whether to testify except for you. If you decide to testify, you will be subject to the same rules that govern other witnesses. You may be examined and cross examined on any relevant issue in the case.

Additionally, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and I determine that the probative value of admitting this evidence outweighs its prejudicial effect to you, then I will allow the State to introduce your record to attack your credibility.

If you decide to testify, this decision on your part must be made freely, voluntarily and intelligently with the knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify.

If you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether you testify or not. You may talk with your attorney, your

family or anyone else, but the final decision will be entirely up to you.

Do you understand what I have just explained to you?

MR. MILLER: Yes, ma'am.

THE COURT: Do you have any questions?

MR. MILLER: I would like just to consult with them one more time.

THE COURT: Okay. I will allow you to do that. Go ahead and consult with them.

MR. MILLER: I'm good.

THE COURT: Have you discussed with your lawyer whether or not to testify?

MR. MILLER: Yes, ma'am. I feel like I already have.

THE COURT: And do you wish to testify?

MR. MILLER: No, ma'am.

THE COURT: Okay. Thank you very much.

MR. MILLER: Yes, ma'am.

MS. GOOD: I believe that's it, Your Honor.

THE COURT: Okay. All right. As I announced to the jurors, we will not be starting court until 11:15 tomorrow. I hope to be here at about 11:00 tomorrow so if there is anything that you need from me. What about any jury instructions? Does anybody have anything that they would like to request? My law clerk and I have been

THE COURT: Yes, ma'am.

MS. CAVANAUGH: Good morning, ladies and gentlemen.

First of all, I want to start off by thanking you for your careful attention throughout this trial. I paid attention to you throughout this trial and I know that you paid attention to each and every single witness that testified in front of you today so I want to thank you sincerely for that.

I know when you came in this courthouse on Monday morning you certainly did not expect to have to listen to what you listened to this week and the bottom line is what you had to hear was uncomfortable, was unimaginable and frankly disgusting. But, ladies and gentlemen, that is what Complainant now Maynard had to live through for an entire year.

And, ladies and gentlemen, your role in this case is very important. When you came in on Monday morning, you took an oath. Well, excuse me. On Tuesday morning when you sat in this jury box, you took an oath to follow the law as the Judge will instruct you on it at the end of this trial and to deliberate once you receive the case at the end of my closing argument and at the end of Ms. Good's closing argument.

Now, your role in this case is very, very important.

You and you alone and collectively are the sole judges of the facts so it's up to you to determine James Miller's guilt. And, ladies and gentlemen, how you come to that decision is through the evidence that we have presented to you over the course of this week and that evidence comes in the form of two forms, physical evidence such as photographs of the home, photographs of Ms. Penrod's view of the dock, the physical evidence you actually are going to be able to see as you did earlier or yesterday, his interview. So that's the physical evidence that you can base your decision on. But you also have other evidence. You have the testimony from each and every single witness that played a role in this case and it is your job as jurors in this case to determine their credibility and I'll go through that a little bit later.

But as a result of Mr. Miller's actions over the course of July of 2011 through August 11, 2012 to Complainant [redacted] finally ended her nightmare when she finally found deep within her the bravery that it took to tell her mom what had been going on, to finally let her mom help her. Because of what he did to her over the course of that year he's charged with two crimes, ladies and gentlemen.

The first crime that he is charged with is criminal sexual conduct in the second degree. A person is guilty of criminal sexual conduct in the second degree if the

actor uses aggravated coercion to accomplish the sexual battery. Ladies and gentlemen, quite simply sexual battery is intercourse, any intrusion whatsoever into the private parts of a female including oral sex as well as. Bottom line though, Complainant testified about how many times he raped her over and over over the course of that year. Ladies and gentlemen, that is sexual battery.

But what is aggravated coercion? That's also defined in our laws, ladies and gentlemen, and it's a longer definition but aggravated coercion means the actor threatened to use force or violence of a high and aggravated nature to overcome the victim or another person -- For instance, the rest of her family -- if the victim reasonably believes that the actor has the present ability to carry out the threat such as a gun around your waist, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion under circumstances of aggravation against the victim or another person. After the first time he grabbed her wrists, if you tell anyone what I did, it will ruin our family. And he said that to her throughout that year.

But there is more to aggravated coercion. Complainant testified she tried to fight him off for the first few months but she eventually gave up. You saw her three

years later, four years later. Complainant is a tiny girl. She was 16. She was even smaller. She tried to fight him off but he held her down. After the first time the threat when he grabbed her wrists in that truck. If you tell anyone what I did, it will ruin us. You will be homeless. You will have no one. He started carrying a gun on his waist for the first time in July of 2011. You didn't just hear that from Complainant. You heard that from Tammy. You heard that from Breana. Completely different to what he used to do. Only when he started raping his daughter did he start carrying that gun. And while he didn't directly threaten her with it while he was doing it, he made those threats over the course of that year and it's around his knees as he's doing that.

If I can't have you, no one will. Complainant interpreted that to mean, and she testified to this, that he would hurt me if I didn't let him do it to me. You will ruin this family. Bruises on her arms from when he held her down. Bruises on the inside of her thighs from his thrusting forcefully as he was raping her.

Dr. Luberoff testified she had an injury at the 7:00 position on her hymen. Combine that with her history it's consistent with sexual abuse.

Ladies and gentlemen, the defendant is also charged with incest and in our code of laws it's a long

complicated definition but the bottom line is having sex with your biological daughter is a crime in South Carolina. So in addition to criminal sexual conduct he's also charged with incest.

Ladies and gentlemen, the laws in this state regarding criminal sexual conduct is also -- The legislature recognizes that these are crimes of secrecy and they are shameful so unlike armed robberies and unlike murders, sometimes, oftentimes there are no other witnesses. Luckily in this case there were other witnesses that corroborated the victim's testimony and I'll get to that because there were plenty that corroborated the victim's testimony including the defendant himself. But the law does state as it relates to criminal sexual conduct in the State of South Carolina, the testimony of the victim need not be corroborated.

However, as I stated previously you are the judges of the credibility of each witness so along with Complainant you judge her credibility and along those lines you don't necessarily have to believe as it relates to each witness, you don't have to believe all of their testimony. It is okay if you just believe some of their testimony. However, I submit to you that each witness that the State presented is credible. And how do you

actually determine their credibility? Well, do they have a bias? Do they have any particular reason to not tell the truth?

Ladies and gentlemen, I'll just cut to the chase. You saw James Miller's interview when he spoke to Investigator Dill. Did he try to say that Tammy has been fighting him all this time? That Tammy and Complainant are teaming up against him? No. He says, well, Tammy and I have been fussing with Complainant. He doesn't try to make it this big conspiracy when he has the opportunity to do that that day. He says that Complainant has been emotional and Tammy and James have noticed that. So again, do the witnesses have any bias? Any prejudice? Do the witnesses that testified, do they have an opportunity to view what they observed? For example, Martha Penrod, we saw pictures of her porch. We saw how she has a view of the dock, a view of where the hammock used to be before that fence was put up by James. So, of course, she had an opportunity to view the things that she saw. And you can view that for yourself. Were they hesitant? Were they forthright? So those are the things that you keep in mind when you think about the credibility of the witnesses.

And who are those witnesses? Well, we brought 14 witnesses in front of you in the course of two days.

Corporal Brooks Houser, Deputy Justin Scott, Deputy Cody Wilson, and Sergeant Thomas Hathaway. Now, I realize that those are all responding officers and they all essentially set the scene for you that particular afternoon. However, what they had to say was very important because, ladies and gentlemen, when the officers arrived that afternoon, and watch the interview, the second interview because James admitted this himself, first of all, he's the man of the house, right? Investigator Dill doesn't just roll up at your house. What is James' reaction as the man of the house? Instead of walking towards the police officers as he sees them in the driveway he sneaks down to where his daughter is. What kind of sense does that make? His first reaction is to walk to his daughter instead of go and talk to the police and say, hey, guys what's going on?

And you don't have to just believe the officers. He tells you that. In his second interview with Investigator Dill he says I walked down to my daughter. So you don't have to just take their word for it. Credibility. Even the defendant himself says that's what he did.

So after he goes down and talks to his daughter, Complainant testified that he said, why didn't you warn me? But even he corroborates what his daughter testified to.

Because what does he tell Investigator Dill he did, he said, are they here for me? A little different. But he admits that his first instinct was to go down there and ask her, are they here for me? And even he tells Investigator Dill -- She said yes. So he says that she said yes. But does he say that she gives him specifics? That she says, yes, they are here to arrest you because you have been sexually assaulting me for a year. No. He says she is crying, emotional. She doesn't answer why. She doesn't tell me why. He says that.

So what does he do? Empties out his pockets, turns around, put his hands behind his head, ready to go off with the officers. Ladies and gentlemen, I submit to you that that is an unreasonable response. He knew why they were there. He knew why they were there.

Sergeant Thomas Hathaway testifies that when they went to the Sheriff's Office, there were no discussions about the case. And let me get one thing straight. Let's be clear. By the time he gets to Investigator Justin Dill, of course he knew what was going on, but the point is, and he admits this, his first instinct he did not know what was going on. He walked toward his daughter, not towards the cops. He held out his hands for arrest. Of course, he's on the scene for approximately an hour and a half. At some point the

officers do tell him, listen, we're taking you to the Sheriff's Office. Your daughter has just told us what's been going on. Do you want to go talk to Investigator Dill? Yes.

So sure, after an hour and a half he knows by the time he gets there what's going on. Don't be confused about that issue. And listen to the interview because he admits it.

Also, Ms. Good kept asking the officers, well, did he ever say who she is? Because remember, he said whatever she says is true. Whatever she says is not a lie. She wouldn't lie. Whatever she says. Whatever she says. And Ms. Good asked each officer, well, did he ever say Complainant Well, no. He didn't. But in his second interview, watch it carefully. He does tell Investigator Dill that when he was saying those things, he was referring to Complainant. It was in the context of him saying, well, I wanted to make sure she wasn't going down the wrong path. So he admits even in his interview that he was talking about Complainant. Pay attention to that second interview for a lot of reasons but because of that issue, too.

One more unreasonable reaction, unbelievable reaction that James has at the scene and then I'll move on. When he's walking by his wife, and again he still

doesn't know exactly why they are there, at least he hasn't been told directly, uhm, he says to his wife, it's not all my fault. It's not all my fault. Okay. Well, how about, what the hell is going on? Or maybe, why are they here? What's happening? I thought this was about a lost gun. No. He even admits that's what he says to his wife as he's, while he's walking with the police because he knew he was under arrest after no one has told him anything. His response is to tell his wife it's not all my wife? Not, what the hell is happening?

And then I'm going to come back to Complainant James Miller has a right to confront the witnesses against him. So each witness that is going to testify against him has to take the stand and he has the ability to confront the witnesses through his lawyer so we can't enter the statements, the written statements. We can't just show you that two and a half hour interview that Complainant gave at The CARE House. She has to take the stand and tell you herself what happened to her. And, ladies and gentlemen, in that second interview he doesn't think she's going to do it because his first response -- Well, after he doesn't respond the first time he talks to Investigator Dill, all that time goes by when he's confronted with the allegations, he says, I need to know what her story is.

Later on in the second interview he says, well, she said this and I see her say it, then I'll go to jail. He does not think that Complainant can do it. Think about what Dr. Foster said. The helplessness. The accommodation. The secrecy. He doesn't think she can do it. Those characteristics are real and even he knows it. But she did. She took the stand and she told you what happened to her over the year, over that year.

And, ladies and gentlemen, if this is just some big conspiracy to get him out of the house, let's think about that for a second. Why not make it a little bit easier on her? Why not make it a little bit more believable? How about this. Instead of talking about the times that he did it at the job sites when Ms. Norwood, the elderly lady was upstairs in the room and he brought her to that bathroom, closed the door and did it to her over the counter, why not leave that one out? Or when he did it to her in the water after he saw Martha Penrod and her family go away on the boat, leave that one out. Just make it easy on yourself. Just talk about the times when you had your own room, he came in that room and he had sex with you. Just leave it at that. If this is such a conspiracy, make it easier on yourself. But she didn't because she is telling you what happened and that is what happened.

How about this. If this is just some conspiracy to get him out of the house, instead of talking about that gun around his waist, why not just say when he had sex with me, he pointed it at me or he used that directly to make me do it instead of just saying, well, it was around his pants when he would rape me? Just make it easy on yourself. But she doesn't do that because she's telling you what actually happened.

What about the bruises? Why not say that those bruises came when he was physically violent towards her instead of when he was holding me down or when he was thrusting himself in me? Why not throw some physical violence in there when no one else is around. She doesn't do that because that's not what happened. What did happen is what she testified to. And it might be hard to believe, but she is certainly not making it up.

And a lot was mentioned about that first statement about how it was short and not thorough. Ladies and gentlemen, you're allowed to use your common sense, too, okay? Common sense. This has been going on for a year. This is the first time that she's told anybody. The emotions are high that day. The dad that she's always known and that she's been scared of for the past year is gone. Corporal Houser did his job, but his job that day is not to sit here and get a detailed question and

answer. He is a responding officer. This case is going to be assigned an investigator. It's not over that first day. He said that. He hands her a piece of paper and says write it down. It's unreasonable to think that she is going to be able to write down a year of detail at that point in time.

Later Investigator Knafelc made sure that she was interviewed more thoroughly at The CARE House. There is an appropriate time for that and it is not at that moment when the responding officer is trying to deal with a sexual assault investigation to make sure the defendant is separated from the scene. The suspect is separated from the scene. And it's just frankly unreasonable to expect her at that point in time to give some long detailed statement about what has happened. But what I do want to make clear to you, and Corporal Houser testified to this and so did Complainant she gave enough information. She was thorough enough to let the investigator know what had been happening. She said it was constant. She said when the first time it happened. She said it was going on for over a year and she said he forcibly had sex with me against my will. So a page and a half but, ladies and gentlemen, it was as thorough as it needed to be under those circumstances.

One more thing about that first statement. If this

is just some big conspiracy that Tammy and Complainant have against James, there is opportunity right there. How about making it as detailed right there so we can, you know, finally get him out of the house. Again, this is not - it's not what happened because that's not what's going on.

Tammy Price, Complainant mom, I'm sure that throughout this trial after hearing what Tammy observed over that year and after as far as him sleeping in her bed, as far as her not trying to get her daughter to counseling, she did everything she could do over that year to try to see what was going on. And again, go back to his second interview. He doesn't try to say that Tammy has been fussing with him this whole entire time. He says they have both been fussing with Complainant. He's not trying to align Tammy and Complainant the day he was arrested, but he's trying to do that today.

Think about what Tammy said about her and James' relationship. They met when they were in fifth grade. They got married when they were 16. They had the twins when she was 17. He made the money for the family. He was the provider. She didn't work. The kids were home schooled. So when Ms. Good asked her about counseling, think about it. They didn't have health insurance. Counseling costs money. James makes the financial