

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

Honorable Thomas W. Cooper, Circuit Court Judge

JIMMY GALLISHAW, JR.,

RECEIVED

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S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000548

APPENDIX

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COUNTY OF DARLINGTON	)	
THE STATE OF SOUTH CAROLINA	)	
PLAINTIFF,	)	July 19, 2010
VERSUS	)	
JIMMY GALLISHAW, JR.	)	2009-GS-16-01235
DEFENDANT.	)	

BEFORE

THE HONORABLE HOWARD P. KING

APPEARANCES

Suzanne Mayes, Esquire
Sherrie Baugh, Esquire
Attorneys for the State

Tonya Copeland-Little, Esquire
Matthew Swilley, Esquire
Attorneys for the Defendant

Pamela Ozment-Cartee
Circuit Court Reporter

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VOIR DIRE

Case No.: 2010-GS-16-157 Date: July 19, 2010
 Plaintiff: The State Attorney Suzanne Mazes
 Defendant: Jimmy Gillishaw Attorney Tonya Little
 Presiding Judge: Harold P. King Reporter: Pamela Ozment-Car

*****		***** STRIKES *****			
Juror #	Juror Name	Race	Sex	Court	State
114	Charlene Earle	W	F		✓
133	William E. Dargan, III	W	M		✓
064	Tiffany W. Gainey	W	F		✓
003	Deena Adair	B	F		✓
063	Jennifer C. Gainey	W	F		✓
097	Bessie Patterson	B	F		x
051	Kyle W. Elmore	W	M		✓
072	Pattie E. Hoffman	W	F		✓
071	Wayne C. Hicks	W	M		✓
008	Richard M. Anderson	W	M		✓
150	Perneil L. Gurley	B	M		✓
145	Charles E. Wodson, II	W	M		✓
076	Fernando H. Jackson	B	M		✓
032	Askeia Cheng	B	M		x
147	Tonda S. Gainey	W	f		✓
140	Christopher A. Parker	W	M		✓
057	Clinton H. Freeman	W	M		✓
120	Johnny S. White	B	M		x
040	Ramona M. Cotton	B	F		✓
047	Ann S. Drawdy	W	F		✓
136	Timmy R. Huntley	W	M		✓
135	Samuel L. Gainey	W	M		✓
070	Lynn N. Harrelson	w	F		✓
018	Brenda Blakney	B	F		✓

Juror #	Juror Name	Race	Sex	Court	State	De
	ALTERNATE #1					
014	Gloria J. Benjamin	B	F		✓	
	ALTERNATE #2					
139	Lugenia D. Longennecker	W	F		✓	
144	Carrie h. Watson	W	F		✓	
005	Herbert W. Alford	B	M		✓	

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10

1 (Whereupon, Court comes to order at 11:28
2 a.m. on Monday, July 19, 2010.)

3 -- DAY ONE OF TRIAL --

4 **THE COURT:** All right. Madame
5 Solicitor, or Ms. Mayes, what is the first matter?

6 **MS. MAYES:** May we approach?

7 **THE COURT:** Yes.

8 (Whereupon, a bench conference was held.)

9 **MS. MAYES:** Your Honor, the first matter
10 before the Court is the State of South Carolina versus
11 Jimmy Gallishaw, Junior. The first Indictment is 2009-
12 GS-16-1240. This Indictment is for attempting or
13 committing a lewd act upon a child.

14 Indictment Number 2009-GS-1238, Criminal sexual
15 conduct with a minor, first degree. 2009-1237, incest.
16 2009-1241, incest. 2009-1239, criminal sexual conduct
17 with a minor, first degree. 2009-1235 criminal sexual
18 conduct with a minor, in the first degree. 2009-1236,
19 attempting or committing a lewd act upon a child.

20 **THE COURT:** All right. Ladies and
21 gentlemen of the Jury panel, if you would give me your
22 attention. You have heard the State announce that they
23 have called the case, and we are about to commence the
24 trial of the cases --- there are several number of cases.
25 The State of South Carolina versus Jimmy Gallishaw,

THE STATE VERSUS JIMMY GALLISHAW, JR.

11

1 Junior, who is charged in several Indictments with
2 various offenses. What I am going to tell you now is not
3 evidence in this case. It is simply the allegation of
4 the Indictment, and it is the document by which this case
5 is brought to trial. But, you are not to consider what I
6 am telling you now as anything that is in the Indictment
7 as any evidence in this case. It is not evidence. It is
8 simply the charge made by the State against the
9 Defendant. But I tell you this so that you can determine
10 if you know anything about the case, or anything that
11 would prevent you from serving as a juror, or might
12 disqualify you, or cause you to have a conflict of
13 interest.

14 But Indictment Number 1238, charges that Jimmy
15 Gallishaw, Junior, did in Darlington County, on or
16 between June 10, 2004, and June 30, 2006, willfully and
17 unlawfully committed the crime of criminal sexual conduct
18 with a minor, in the first degree, by engaging in a
19 sexual battery with a minor who was less than eleven
20 years of age, specifically **Victim #2** **[REDACTED]**, date of birth
21 **[REDACTED]** **[REDACTED]** 1998.

22 The second Indictment is 09-GS-16-1240. And
23 charges that Mr. Jimmy Gallishaw, Junior, being over the
24 age of fourteen years, did in Darlington County, on or
25 about June 10, 2005, or between June 10, 2005, and

THE STATE VERSUS JIMMY GALLISHAW, JR.

12

1 January 31, 2009, willfully and lewdly commit, or attempt
2 to commit, a lewd and lascivious act upon the body of a
3 minor, of a child under the age sixteen, specifically
4 **Victim #2** [REDACTED], whose birth date was [REDACTED] [REDACTED], 1998, and
5 these charges are lewd act upon a child.

6 2009-GS-16-1237, charges that Mr. Jimmy
7 Gallishaw, Junior, did in Darlington County, on or about
8 July 10, 2007 --- between July 10, 2007, and August 31,
9 2008, willfully and unlawfully had carnal intercourse
10 with a person in the following degree of relationship;
11 specifically his daughter, **Victim #1** [REDACTED], date of birth
12 [REDACTED] [REDACTED], 1997, and the charge is one of incest.

13 Then in Indictment Number 09-GS-16-1241, the
14 State charges that the Defendant did --- that Mr.
15 Gallishaw did, in Darlington County, between June 10,
16 2005, and January 31, 2009, willfully and unlawfully had
17 carnal intercourse with a person in the following degree
18 of relationship, his stepdaughter **Victim #2** [REDACTED], whose
19 date of birth was [REDACTED] [REDACTED], 1999, and that is a charge for
20 incest.

21 Indictment Number 09-GS-16-1239 charges that
22 Mr. Gallishaw, Jimmy Gallishaw, Junior, did between July
23 1, '06 and January 31, '09, willfully and unlawfully
24 commit the crime of criminal sexual conduct with a minor
25 in the first degree by engaging in a sexual battery with

THE STATE VERSUS JIMMY GALLISHAW, JR.

13

1 a minor who is less than eleven years of age;
2 specifically Victim #2 [REDACTED], whose date of birth is [REDACTED]
3 [REDACTED], 1998, and that is a charge of CSC with a minor in the
4 first degree.

5 Indictment Number 09-GS-16-1235, the charge is
6 that Mr. Jimmy Gallishaw, did in Darlington County on or
7 between June 10, 2007 and June 9, 2008, willfully and
8 unlawfully committed criminal sexual conduct with a minor
9 by engaging in a sexual battery with a minor who was less
10 than eleven years of age, specifically Victim #1 [REDACTED], date
11 of birth [REDACTED], 1997.

12 And finally in Indictment Number 09-GS-16-1236,
13 The State charges that the Defendant being a person over
14 the age of fourteen years, did in Darlington County,
15 between July 10, '07, and August 31, '08, willfully and
16 lewdly commit, or attempted to commit, a lewd or
17 lascivious acts upon the body of a child under the age of
18 sixteen; specifically Victim #1 [REDACTED], date of birth [REDACTED]
19 [REDACTED], 1997. And that is a charge of committing, or
20 attempting to commit, a lewd act upon a child.

21 To these charges the Defendant has plead not
22 guilty, and has requested a trial. The defendant, Mr.
23 Gallishaw, is represented by Ms. Tonya Little and Mr.
24 Matthew Swilley.

25 Ms. Little, would you stand and introduce

THE STATE VERSUS JIMMY GALLISHAW, JR.

14

1 yourself with the jury, and also have Mr. Swilley stand
2 and introduce him as well, and have your client stand and
3 face the Jury please.

4 **MS. LITTLE:** Good morning, my name is
5 Tonya Copeland-Little. I am a lawyer from Hartsville. I
6 am an Assistant Public Defender. This is my client, Mr.
7 Jimmy Gallishaw, Junior, and Matt.

8 **MR. SWILLEY:** My name is Matthew
9 Swilley. I am an attorney with the Public Defender's
10 Office, and Ms. Little as well, and I will also be
11 representing Mr. Jimmy Gallishaw.

12 **THE COURT:** Thank you. The State of
13 South Carolina, is represented by the Fourth Circuit
14 Solicitor's Office, but specifically in these cases, this
15 case is being prosecuted by Ms. Suzanne Mayes.
16 Ms. Mayes, will you stand and introduce yourself, and
17 give the name of the agency with whom you work.

18 **MS. MAYES:** Yes, sir, Your Honor. My
19 name is Suzanne Mayes. I am a prosecutor with the South
20 Carolina Commission on Prosecution Coordination. And I
21 am here in conjunction with the Fourth Circuit
22 Solicitor's Office. And your Deputy Solicitor here is
23 Sherrie Baugh.

24 **THE COURT:** Thank you. All right.
25 Ladies and gentlemen, before we select a Jury, I need to

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15

1 ask you some questions. Please give your attention to
2 these questions, and if any of them apply to you then
3 respond accordingly.

4 Is any member of the jury panel related by
5 blood, or connected by marriage to Defendant, Jimmy
6 Gallishaw, Junior? If so, please stand?

7 The following individuals may appear as
8 witnesses in this case, and I would ask if the witnesses
9 are present, if they will stand when their name is
10 called, so the jury might recognize them if they are
11 here. Adrienne Gallishaw, Robin Atkins, Victim #2 [REDACTED],
12 Victim #1 [REDACTED], Captain Danny Watson of the Darlington
13 Police Department. Sergeant Patricia Ray of the
14 Darlington County Sheriff's Department. Doctor Kathy
15 Saunders with the CARE House of the Pee Dee in Florence.
16 Debbie Elliott of the CARE House in Florence. Danna
17 Collins, with the CARE House of the Pee Dee in Florence.
18 J [REDACTED] Gallishaw, Tina McLeod, Michael August. Tina
19 McLeod is with Darlington County Department of Social
20 Services. Michael August, the Darlington Police
21 Department. Rick Charles of SLED, The State Law
22 Enforcement Division. Rosina James and/or a custodian of
23 records with the Darlington County Detention Center.
24 Verline Odom, Ollie Gallishaw, Jimmy Gallishaw, Senior,
25 and Steve Buffkin of the Darlington Police Department.

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16

1 And, I believe I have given these names, but just to make
2 sure I have covered everybody, Jimmy Gallishaw, Senior,
3 J [REDACTED] Gallishaw, and Adrienne Gallishaw. Is any member
4 of the jury panel related by blood, or connected by
5 marriage to any of the proposed witnesses? If so, please
6 stand?

7 Is any member of the jury panel represented now
8 or been represented in the last ten years by the Fourth
9 Circuit Solicitor's Office or anyone within the Fourth
10 Circuit Solicitor's Office, or by anyone in with South
11 Carolina Commission on Prosecutorial, or that does the
12 prosecution --- Prosecutorial Commission that Ms. Mayes
13 is with? Has anybody been represented by any of those
14 agencies within the past ten years?

15 Is any member of the jury panel represented now
16 or has been represented in the last ten years by the
17 Fourth Circuit Public Defender's Office, specifically Ms.
18 Little or Mr. Swilley, or any member of the Fourth
19 Circuit Public Defender's Office; if so, please stand?

20 Is any member of the jury panel close personal
21 friends of any of the parties, their lawyers, or any of
22 the witnesses whom I have read off to you? If so,
23 please stand?

24 Does any member of the jury panel know anything
25 about the facts of this case, as I have briefly recited

THE STATE VERSUS JIMMY GALLISHAW, JR.

17

1 them to you --- and when I say know anything about it ---
2 this question is, does any member of the jury panel have
3 any first hand knowledge about any of the facts in this
4 case as I have briefly recited them to you? If so,
5 please stand?

6 Has any member of the jury panel --- Has this
7 case been discussed with you, with any member of the jury
8 panel, by anyone at any time in the past --- if you have
9 any knowledge that you have obtained from any source
10 whatsoever, please stand at this time.

11 And finally, I do not know if whether or not
12 there has been some --- may have been some articles in
13 the news media, either the print media or the broadcast
14 media. But I would ask if there are any members of the
15 jury panel who has heard, or read anything about this
16 case in the media, that would prevent you from giving to
17 both sides --- that is the State and the Defendant a fair
18 and impartial trial, I would ask that you stand. The
19 test, of course, is not whether or not you may have heard
20 something in the media, or read something in the paper,
21 but whether or not that knowledge, that you have obtained
22 from that source, would prevent you from giving to both
23 sides a fair and impartial trial. Does anybody fall
24 within that category, and would not be able to put that
25 aside, and decide the case based upon what you hear in

THE STATE VERSUS JIMMY GALLISHAW, JR.

18

1 this courtroom, please stand?

2 Has any member of the jury panel or a member of
3 your immediate family, and I define immediate family as a
4 spouse, parent, brother or sister, or child; has any
5 member of the jury panel or a member of your immediate
6 family ever been investigated for or charged with an
7 incident involving alleged child abuse or sexual assault;
8 if so, please stand? All right, come forward please.

9 **BAILIFF:** Number 148.

10 **CLERK OF COURT:** Markeice Shannon,
11 Number 148. Come right here for me, sir. Markeice
12 Shannon, Number 148, Your Honor.

13 **THE COURT:** All right. Mr. Shannon,
14 tell me about it.

15 **MR. SHANNON:** My little brother or my
16 little sister, I believe when I was at least ten or
17 twelve --- and they were ripped apart and he lives in
18 Hartsville.

19 **THE COURT:** All right. Let me see if I
20 can get this straight. You are going to have to speak up
21 a little, because everybody has got to hear you and I
22 have to hear you. Your little brother or sister what?

23 **MR. SHANNON:** My little brother --- I
24 don't remember much, but my little brother and my little
25 sister --- My brother evidently raped my little sister

THE STATE VERSUS JIMMY GALLISHAW, JR.

19

1 when he was younger. It ripped apart my household.

2 **THE COURT:** Were you living there at the
3 time?

4 **MR. SHANNON:** I wasn't living there, but
5 my brother came to live with us.

6 **THE COURT:** What happened to those
7 allegations? Was he charged?

8 **MR. SHANNON:** Yes.

9 **THE COURT:** Were they handled in General
10 Session's Court, or was it handled in Family Court, or
11 what happened?

12 **MR. SHANNON:** It was handled in Family
13 Court.

14 **THE COURT:** Would that prevent you from
15 giving both the State and the Defendant a fair trial, or
16 would this prejudice you?

17 **MR. SHANNON:** I cannot, this is
18 personal. This happened to me as well, but I never went
19 to court about it. So, I might have a few personal
20 issues.

21 **THE COURT:** You would have difficulty
22 putting that aside?

23 **MR. SHANNON:** I would be very bias about
24 my opinions.

25 **THE COURT:** Thank you.

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20

1 CLERK OF COURT: Have a seat back out
2 there and don't discuss it with anybody, okay.

3 THE COURT: Is any member of the jury
4 panel employed now, or done business within the last ten
5 years, a business in Florence, South Carolina known as
6 Pee Dee Pool and Spa? If so, please stand? Yes, sir.

7 JUROR: I have done business with Pee
8 Dee Pool.

9 THE COURT: All right, come up please.

10 CLERK OF COURT: This is Juror Number
11 136, Timmy Huntley.

12 THE COURT: At sometime apparently the
13 Defendant in this case may have worked with PEE Dee Pool
14 and Spa. That would be the reason the question was
15 asked. Do you have any knowledge of him, or had any
16 contact with him?

17 MR. HUNTLEY: No, I don't.

18 THE COURT: Would that prevent you, if
19 he was an employee of Pee Dee Pool and Spa, would that
20 prevent you from giving both the State and the Defendant
21 a fair trial based on the evidence?

22 MR. HUNTLEY: No, sir.

23 THE COURT: You could put that aside?

24 MR. HUNTLEY: Yes, sir.

25 THE COURT: Thank you, very much. Has

THE STATE VERSUS JIMMY GALLISHAW, JR.

21

1 any member of the jury panel, or member of your immediate
2 family, as I have defined that term, and that is, parent,
3 spouse, brother sister, or child? Has any member of the
4 jury panel, or member of your immediate family other than
5 what has already been disclosed to me, been the victim of
6 a crime of a sexual nature? If so, please stand. All
7 right, come up please, ma'am.

8 BAILIFF: Number 43.

9 CLERK OF COURT: Would you come forward,
10 ma'am? Ms. Cruse?

11 MS. CRUSE: Yes.

12 CLERK OF COURT: Michelle Cruse, Your
13 Honor.

14 THE COURT: All right, Ms. Cruse. Was
15 it somebody in family, or --

16 MS. CRUSE: I'm still waiting for y'all
17 to take care of the man that messed with my girls two
18 years. They have done nothing. The Solicitor's Office
19 hasn't done anything, so I cannot be impartial.

20 THE COURT: So you have two daughters?
21 They have been accused, but nothing has been done about
22 it?

23 MS. CRUSE: No, sir. They have been
24 interviewed, but nothing has been about it.

25 THE COURT: If you were selected as a

THE STATE VERSUS JIMMY GALLISHAW, JR.

22

1 juror, could you be fair and impartial in this case?

2 MS. CRUSE: No.

3 THE COURT: Thank you, ma'am.

4 CLERK OF COURT: If you would just have
5 a seat back in the audience and not discuss it with
6 anybody, okay?

7 MS. CRUSE: Okay.

8 CLERK OF COURT: Thank you.

9 BAILIFF: Number 63.

10 CLERK OF COURT: This is Jennifer
11 Gainey, Your Honor.

12 THE COURT: All right. Ms. Gainey, tell
13 me about your situation?

14 MS. GAINNEY: When I was five, between
15 the ages of five and nine I was sexually abused.

16 THE COURT: Were there any charges that
17 were ever filed?

18 MS. GAINNEY: No, sir.

19 THE COURT: Would that prevent you from
20 giving a fair and impartial trial in this case?

21 MS. GAINNEY: I would like to think not.

22 THE COURT: Pardon me?

23 MS. GAINNEY: I would like to think not.

24 THE COURT: That's not going to get it.
25 Do you feel like you would or would not be able to put

THE STATE VERSUS JIMMY GALLISHAW, JR.

23

1 that aside?

2 MS. GAINNEY: I think that I could be
3 able to.

4 THE COURT: Can you put that aside and
5 give both sides a fair and impartial trial?

6 MS. GAINNEY: Yes, sir.

7 THE COURT: And would you do that?

8 MS. GAINNEY: Yes, sir.

9 THE COURT: Okay. Thank you.

10 BAILIFF: Number 97.

11 CLERK OF COURT: This is Ms. Bessie
12 Patterson.

13 THE COURT: All right. Ms. Patterson,
14 tell me about your situation.

15 MS. PATTERSON: Okay. My brother is in
16 jail.

17 THE COURT: Your brother, what about
18 him?

19 MS. PATTERSON: He is a sex offender.

20 THE COURT: He is a sex offender?

21 MS. PATTERSON: Uh-huh.

22 THE COURT: So your brother was
23 convicted as a sex offender?

24 MS. PATTERSON: Uh-huh.

25 THE COURT: And how long ago was that?

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24

1 MS. PATTERSON: It was a long time ago.

2 It was in the '70's.

3 THE COURT: Speak up.

4 MS. PATTERSON: In the '70's.

5 THE COURT: Do you know what he was
6 convicted of?

7 MS. PATTERSON: Rape.

8 THE COURT: Is he in prison now?

9 MS. PATTERSON: No, he is out.

10 THE COURT: He is out.

11 MS. PATTERSON: It's been about twenty
12 years now.

13 THE COURT: Okay. Was it a sexual
14 offense with a minor, or was it just a sexual offense
15 with an adult?

16 MS. PATTERSON: An adult.

17 THE COURT: All right. Would that fact
18 prevent you --- would you be able to put that fact
19 aside, and decide this case based on the evidence you
20 hear in this courtroom?

21 MS. PATTERSON: I may.

22 THE COURT: You would be able to?

23 MS. PATTERSON: I think.

24 THE COURT: Would that prevent you from
25 giving both sides, the State and the Defense a fair

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1 trial?

2 MS. PATTERSON: I don't think it would.

3 THE COURT: I can't take a --- I don't
4 think. The question is, would you be able to put it
5 aside, and decide the case based upon what you hear in
6 this courtroom?

7 MS. PATTERSON: No, I can't.

8 THE COURT: You could not put it aside?

9 MS. PATTERSON: No, I didn't approve of
10 the whole thing.

11 THE COURT: I need to know about this
12 case. My question to you is, because of that experience
13 in your lifetime with your brother, would that prevent
14 you from giving the Defendant in this case a fair trial?

15 MS. PATTERSON: No.

16 THE COURT: All right. Would you be
17 able to put that aside, and decide this case based on the
18 evidence that you hear in this courtroom?

19 MS. PATTERSON: Yes.

20 THE COURT: And would you do that?

21 MS. PATTERSON: Yes.

22 THE COURT: Thank you, ma'am. All
23 right. Ladies and gentlemen, a little earlier I asked
24 you if any member of the Jury panel had been the victim
25 of a --- if a member of the jury panel, or a member of

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1 your immediate family, had been the victim of a sexual
2 crime. I would ask, has any member of the jury panel or
3 a member of your immediate family, other than what has
4 already been disclosed to me, you don't need to come back
5 up and tell me the same thing again, but is there any
6 member of the jury panel, or member of your immediate
7 family, been the victim of a violent crime of any type?
8 Not necessarily a sexual crime. If so, please stand.

9 Is there any member of the jury panel who is a
10 close personal friend, or has a relative within the
11 degrees that I have mentioned, who is a police officer,
12 state law enforcement officer, or employed by the
13 Solicitor's Office, or involved in law enforcement in any
14 way? Any member of the jury panel whose immediate family
15 is involved in law enforcement, or a close personal
16 friend who is involved in law enforcement? If so, please
17 stand.

18 All right. I don't think we need to have
19 everybody come up on this. Let's start with the
20 gentleman over here. If you would give me your number?

21 JUROR: 111.

22 THE COURT: 111. Mr. Sprenger?

23 JUROR: Yes, sir.

24 THE COURT: All right. Tell me who it
25 is, Mr. Sprenger.

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1 JUROR: The County Coroner, Todd Hardy.

2 THE COURT: All right. Is he a relative
3 or a friend?

4 JUROR: A friend.

5 THE COURT: All right. Would that fact
6 prevent you from giving both the State and the Defendant
7 a fair and impartial trial based on the evidence?

8 JUROR: No, sir.

9 THE COURT: Would you be able to put
10 that aside and decide this case based on the evidence you
11 hear in this courtroom?

12 JUROR: Yes, sir.

13 THE COURT: And would you do that?

14 JUROR: Yes, sir.

15 THE COURT: Thank you, sir. All right.
16 Yes, ma'am. The lady right here, your name?

17 JUROR: Hannah Smith?

18 THE COURT: Ms. Smith?

19 JUROR: Uh-huh.

20 CLERK OF COURT: It is 110, Your Honor.

21 THE COURT: 110. All right, Ms. Smith,
22 tell me first of all who it is and what the relationship
23 is?

24 JUROR: My nephew, he is a police
25 officer.

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1 THE COURT: A police officer for what
2 agency?

3 JUROR: The Lee County Sheriff's
4 Department.

5 THE COURT: The Lee County Sheriff's
6 Office. All right. Would the fact that you have a
7 nephew with the Lee County Sheriff's Department, would
8 that prevent you from giving to both the State and the
9 Defense a fair and impartial trial, based on the evidence
10 in this case?

11 JUROR: Yes, sir.

12 THE COURT: Would you be able to put
13 that aside, and decide this case based upon what you hear
14 in this courtroom?

15 JUROR: Yes, sir.

16 THE COURT: And would you do that?

17 JUROR: Yes, sir.

18 THE COURT: All right. Thank you,
19 ma'am. The lady right behind you, the lady that just
20 stood. Your name, yes, ma'am.

21 JUROR: 118, Sandra Whispant. Jerry
22 Thompson who works with the Sheriff's Department is a
23 friend.

24 THE COURT: Who is it that works for the
25 Sheriff's Department?

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1 JUROR: Jerry Thompson.

2 CLERK OF COURT: He is the Chief Deputy
3 with the Sheriff's Department.

4 THE COURT: Okay. What is the
5 relationship to you?

6 JUROR: My cousin is married to him.

7 THE COURT: Okay. All right. Would
8 that fact prevent you from giving to both the State and
9 the Defendant a fair and impartial trial?

10 JUROR: No, it wouldn't.

11 THE COURT: Would you be able to put
12 that aside and decide this case based upon what you hear
13 in this courtroom?

14 JUROR: Yes.

15 THE COURT: Would you do that?

16 JUROR: Yes.

17 THE COURT: Okay. Thank you, ma'am.
18 Yes, ma'am, the lady right here.

19 JUROR: 114, Charlene Earl-Truett. My
20 uncle is a Corporal Lewis with SLED.

21 THE COURT: Ms. Earl?

22 JUROR: Yes.

23 THE COURT: Okay. And I'm sorry, what
24 did you say?

25 JUROR: My uncle is Corporal Lewis with

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1 SLED.

2 THE COURT: All right, your uncle is.
3 Would that fact prevent you from giving to both the State
4 and the Defendant a fair and impartial trial based on the
5 evidence?

6 JUROR: No, sir.

7 THE COURT: Would you be able to put
8 that aside and decide this case based upon what you hear
9 in this courtroom?

10 JUROR: Yes.

11 THE COURT: And would you do that?

12 JUROR: Yes.

13 THE COURT: Thank you, ma'am. All
14 right, we will start on my far left.

15 JUROR: 126, Nikki Williams.

16 THE COURT: I'm sorry, I couldn't get
17 your name.

18 JUROR: 126, Nikki Williams. My
19 brother-in-law is a police officer in Kingstree Sheriff's
20 Department.

21 THE COURT: Kingstree?

22 JUROR: Yes.

23 THE COURT: Would that fact prevent you
24 from giving to both the State and the Defendant a fair
25 and impartial trial?

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1 JUROR: Yes, sir.

2 THE COURT: Would you be able to put
3 that aside and base upon what you hear in this courtroom?

4 JUROR: Yes, sir.

5 THE COURT: And would you do that?

6 JUROR: Yes, sir.

7 THE COURT: All right, thank you, ma'am.
8 The lady right next to her.

9 JUROR: 148, my number was changed from
10 160 to --

11 THE COURT: I'm sorry, what is your name
12 again?

13 JUROR: Joyce Wingate.

14 CLERK OF COURT: It is number 146, she
15 was transferred.

16 THE COURT: Number 146, okay.

17 JUROR: Kernard Redmond, he is a
18 Solicitor in Dillon County. He is my cousin.

19 CLERK OF COURT: Kernard Redmond is her
20 cousin.

21 THE COURT: I'm sorry. I know Mr.
22 Redmond. I'm just playing with you. So, Mr. Redmond,
23 the Assistant Solicitor in Dillon County is your cousin;
24 is that correct?

25 JUROR: Yes.

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1 THE COURT: Would that fact prevent you
2 from giving to both the State and the Defendant a fair
3 and impartial trial?

4 JUROR: No, sir.

5 THE COURT: Would you be able to put
6 that aside, and decide this case based upon what you hear
7 in this courtroom?

8 JUROR: Yes.

9 THE COURT: All right, thank you, ma'am.
10 That is Ms. Wingate?

11 CLERK OF COURT: Yes, sir.

12 THE COURT: All right. The lady in the
13 red.

14 JUROR: I am Lugenia Longennecker, Juror
15 139.

16 THE COURT: 139. All right, Ms.
17 Longennecker, tell me about your situation.

18 JUROR: My niece's cousin works for the
19 Sheriff's Department in Darlington County.

20 THE COURT: Who is?

21 JUROR: My niece's cousin.

22 THE COURT: Would that prevent you from
23 giving both the State and the Defendant a fair and
24 impartial trial?

25 JUROR: No, sir.

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1 THE COURT: Would you be able to put
2 that decide, and decide this case based upon what you
3 hear in the courtroom?

4 JUROR: Yes, sir.

5 THE COURT: Would you do that?

6 JUROR: Yes.

7 THE COURT: Thank you. And finally, the
8 lady back in the back corner.

9 JUROR: Ramona Cotton, Number 40.

10 THE COURT: Wait just a moment, what did
11 you say your number was?

12 JUROR: Number 40.

13 THE COURT: 40?

14 JUROR: Yes, sir.

15 THE COURT: All right, Ms. Cotton, what
16 is your situation.

17 JUROR: My uncle is a Highway Patrolman.

18 THE COURT: Okay. All right. Would
19 that fact prevent you from giving both the State and the
20 Defense a fair and impartial trial based on the evidence?

21 JUROR: No, sir.

22 THE COURT: Would you be able to put
23 that aside and decide this case based upon what you hear
24 in this courtroom?

25 JUROR: Yes, sir.

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1 THE COURT: And would you do that?

2 JUROR: Yes, sir.

3 THE COURT: Thank you, ma'am. Is there
4 any member of the jury panel a member of, or a
5 contributor to an organization whose primary purpose is
6 the pursuit of victims' rights, such as MADD, SADD, CAVE,
7 or any of those types of organizations that advocate
8 strict law enforcement in pursuit of victims' rights? Is
9 any member of the jury panel a member of any of those
10 organizations; if so, please stand?

11 All right, Yes, ma'am, your name?

12 JUROR: Number 141.

13 THE COURT: Ms. Ross?

14 JUROR: Yes.

15 THE COURT: All right. Tell me Ms. Ross
16 about the situation?

17 JUROR: I am a volunteer advocate with
18 the Pee Dee Coalition in Florence for where there are
19 abused children.

20 THE COURT: And when you say volunteer
21 advocate, what do you do? Do you work through the
22 Solicitor's Office, or do you --

23 JUROR: No, I am at the shelter.

24 THE COURT: At the shelter. Counsel,
25 come up a moment please.

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1 (Whereupon, a bench conference was held in the
2 presence of the jury panel, but out of the hearing of the
3 jury panel.)

4 **THE COURT:** Has any member of the jury
5 panel been approached by anyone in an attempt to discuss
6 this case with you? If so, please stand.

7 Has any member of the jury panel formed, or
8 expressed an opinion as to the guilt or the innocence of
9 the Defendant, Jimmy Gallishaw, Junior? If so, please
10 stand. And, of course, all of these questions are
11 predicated on not having been disclosed to me. If there
12 is anything you have already disclosed, you don't need to
13 disclose it again. Is there any member of the jury
14 panel who has formed or expressed an opinion as to the
15 guilt of the Defendant, Jimmy Gallishaw, Junior? If so,
16 please stand.

17 Has any member of the jury panel have any
18 religious or moral beliefs which would prevent you from
19 serving on a jury in this case? If so, please stand.

20 Other than what has been disclosed to me, has
21 any member of the jury panel aware of any interest, any
22 bias, or any prejudice, for or against the Defendant
23 Jimmy Gallishaw, Junior? If so, please stand.

24 Other than what has been disclosed to me, can
25 each member of the jury panel give to the State and the

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1 Defendant, Jimmy Gallishaw, Junior, a fair and impartial
2 trial? If not, please stand.

3 Again, other than what has been disclosed to
4 me, does any member of the jury panel know of any reason
5 whatsoever why he or she should not serve as a juror in
6 this case? If so, please stand.

7 All right. Are there additional questions on
8 behalf of the State, Ms. Mayes?

9 MS. MAYES: None from the State, Your
10 Honor.

11 THE COURT: On behalf of the defense,
12 Ms. Little?

13 MS. LITTLE: No, sir.

14 THE COURT: All right. Counsel
15 approach.

16 (Whereupon, a bench conference was held in
17 the presence of the jury panel, but out of the hearing of
18 the jury panel.)

19 THE COURT: All right, Mr. Clerk. If
20 you --- counsel just a minute, one other thing.

21 (PAUSE.)

22 THE COURT: All right. Mr. Clerk, if
23 you would give us a jury please.

24 Ladies and gentlemen, the procedure now is that
25 we are ready to select a jury in this case. When your

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1 name is called, please come through either the side over
2 here or the side over here, whichever is most convenient.
3 Come up to the rail here, turn around, face the jury with
4 your back toward me, face the back of the courtroom. If
5 you are accepted, the State will indicate by saying,
6 present the juror. If you are acceptable to the Defense,
7 the Defense will say, seat the juror, and you will have a
8 seat in the jury box to my right. If either side excuses
9 you, you will have a seat back out with the remainder of
10 the jury panel.

11 All right, Mr. Clerk.

JURY SELECTION

13 **CLERK OF COURT:** Yes, sir, Your Honor.
14 Juror Number 114, Charlene Truett. If you would come
15 forward please.

16 **MS. MAYES:** That number again?

17 **CLERK OF COURT:** 114.

18 **THE COURT:** Ms. Truett, do you have a
19 name change?

20 **JUROR:** Yes.

21 **THE COURT:** Okay, do you prefer to go by
22 Truett rather than Earle?

23 **JUROR:** No, Earle.

24 **CLERK OF COURT:** What saith the State?

25 **MS. MAYES:** Please present the juror.

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1 CLERK OF COURT: What saith the defense?

2 MS. LITTLE: Please excuse Ms. Earle.

3 CLERK OF COURT: You have been excused
4 from this particular case, Ms. Earle. If you would just
5 have a seat back out in the audience, please.

6 Juror Number 133, William Dargan. What saith
7 the State?

8 MS. MAYES: Please present the juror.

9 CLERK OF COURT: What saith the Defense?

10 MS. LITTLE: Please present Mr. Dargan.

11 CLERK OF COURT: Mr. Dargan, if you
12 would have a seat in the jury box for me please.

13 Juror Number 064, Tiffany Gainey.

14 MS. MAYES: That number again?

15 CLERK OF COURT: What saith the State?

16 MS. MAYES: Please present the juror.

17 CLERK OF COURT: What saith the Defense?

18 MS. LITTLE: Please present Ms. Gainey.

19 CLERK OF COURT: Please have a seat in
20 the jury box for me please, Ms. Gainey.

21 Juror Number 003, Deena Adair. What saith the
22 State?

23 MS. MAYES: Please present the juror.

24 CLERK OF COURT: What saith the Defense?

25 MS. LITTLE: Please present the juror.

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1 CLERK OF COURT: Please have a seat in
2 the jury box for me please, Ms. Adair.

3 Juror Number 063, Jennifer Gainey. What saith
4 the State?

5 MS. MAYES: Please present the juror.

6 CLERK OF COURT: What saith the Defense?

7 MS. LITTLE: Please excuse Ms. Gainey.

8 CLERK OF COURT: You have been excused
9 in this particular case, Ms. Gainey. Just have a seat
10 back out in the audience for me, please.

11 Juror Number 097, Bessie Patterson. What saith
12 the State?

13 MS. MAYES: Please excuse the juror from
14 the trial of this case.

15 CLERK OF COURT: You have been excused
16 from this particular case, Ms. Patterson. Have a seat
17 back out in the audience for me please.

18 Juror Number 051, Kyle Elmore. What saith the
19 State?

20 MS. MAYES: Please present the juror.

21 CLERK OF COURT: What saith the Defense?

22 MS. LITTLE: Please seat Mr. Elmore.

23 CLERK OF COURT: Have a seat in the jury
24 box for me, Mr. Elmore.

25 Juror Number 072, Pattie Hoffman. What saith

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1 the State?

2 MS. MAYES: Please present the juror.

3 CLERK OF COURT: What saith the Defense?

4 MS. LITTLE: Please excuse Ms. Hoffman.

5 CLERK OF COURT: You have been excused

6 from this case, Ms. Hoffman. Thank you.

7 Juror Number 071, Wayne Hicks. What saith the
8 State?

9 MS. MAYES: Please present the juror.

10 CLERK OF COURT: What saith the Defense?

11 MS. LITTLE: Please present Mr. Hicks.

12 CLERK OF COURT: Please have a seat in
13 the jury box for me, Mr. Hicks.

14 Juror Number 008, Richard Anderson. What saith
15 the State?

16 MS. MAYES: Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 MS. MAYES: Please present the juror.

19 CLERK OF COURT: What saith the Defense?

20 MS. LITTLE: Please present Mr.

21 Anderson.

22 CLERK OF COURT: Please have a seat in
23 the jury box for me, Mr. Anderson.

24 Juror Number 150, Pernell Gurley. What saith
25 the State?

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1 MS. MAYES: Beg the Court's indulgence.
2 Please present the juror.

3 CLERK OF COURT: What saith the Defense?

4 MS. LITTLE: Please seat Mr. Gurley.

5 CLERK OF COURT: Please have a seat in
6 the jury box for me, Mr. Gurley.

7 Juror Number 145, Charles Wodson. What saith
8 the State?

9 MS. MAYES: Please present the juror.

10 CLERK OF COURT: What saith the Defense?

11 MS. LITTLE: Please excuse Mr. Wodson.

12 CLERK OF COURT: You have been excused
13 from this case, Mr. Wodson.

14 Juror Number 076, Fernando Jackson. What saith
15 the State?

16 MS. MAYES: Please present the juror.

17 CLERK OF COURT: What saith the Defense?

18 MS. LITTLE: Please seat Mr. Jackson.

19 CLERK OF COURT: Please have a seat in
20 the jury box for me, Mr. Jackson.

21 Juror Number 032, Asekia Cheng. What saith the
22 State?

23 MS. MAYES: Please excuse the juror from
24 the trial of this case.

25 CLERK OF COURT: You have been excused

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1 from this case, Mr. Chang. Thank you.

2 Juror Number 147, Tonya Gainey. What saith the
3 State?

4 MS. MAYES: Please present the juror.

5 CLERK OF COURT: What saith the Defense?

6 MS. LITTLE: Please excuse Ms. Gainey.

7 CLERK OF COURT: You have been excused
8 from this case, Ms. Gainey. Thank you.

9 Juror Number 140, Christopher Parker. What
10 saith the State?

11 MS. MAYES: Please present the juror.

12 CLERK OF COURT: What saith the Defense?

13 MS. LITTLE: Please excuse Mr. Parker.

14 CLERK OF COURT: You have been excused
15 from this case, Mr. Parker. Thank you.

16 Juror Number 057, Clinton Freeman. What saith
17 the State?

18 MS. MAYES: Please seat the juror.

19 CLERK OF COURT: What saith the Defense?

20 MS. LITTLE: Please seat Mr. Freeman.

21 CLERK OF COURT: Please have a seat in
22 the jury box for me, Mr. Freeman.

23 Juror Number 120, Johnny White.

24 MS. MAYES: That was 120?

25 CLERK OF COURT: Yes, ma'am. What saith

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.1 the State?

2 MS. MAYES: Please excuse the juror from
3 the trial of this case.

4 CLERK OF COURT: You have been excused
5 from this case, Mr. White. Thank you.

6 Juror Number 040, Ramona Cotton. What saith
7 the State?

8 MS. MAYES: Please present the juror.

9 CLERK OF COURT: What saith the Defense?

10 MS. LITTLE: Please seat Ms. Cotton.

11 CLERK OF COURT: Have a seat in the jury
12 box for me please, Ms. Cotton.

13 Juror Number 047, Ann Drawdy. What saith the
14 State?

15 MS. MAYES: Please present the juror.

16 CLERK OF COURT: What saith the Defense?

17 MS. LITTLE: Please excuse Ms. Drawdy.

18 CLERK OF COURT: You have been excused
19 from this case, Ms. Drawdy. Thank you.

20 Juror Number 136, Timmy Huntley. What saith
21 the State?

22 MS. MAYES: Please present the juror.

23 CLERK OF COURT: What saith the Defense?

24 MS. LITTLE: Please excuse Mr. Huntley.

25 CLERK OF COURT: You have been excused

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1 from this case, Mr. Huntley. Thank you.

2 Juror Number 135, Samuel Gainey. What saith
3 the State?

4 MS. BAUGH: Beg the Court's indulgence.

5 (PAUSE.)

6 MS. MAYES: Please present the juror.

7 CLERK OF COURT: What saith the Defense?

8 MS. LITTLE: Please seat Mr. Gainey.

9 CLERK OF COURT: Please have a seat in
10 the jury box for me, Mr. Gainey. Thank you.

11 Juror Number 070, Lynn Harrelson. What saith
12 the State?

13 MS. MAYES: Please present the juror.

14 CLERK OF COURT: What saith the Defense?

15 MS. LITTLE: Please excuse Ms.

16 Harrelson.

17 CLERK OF COURT: You have been excused
18 from this case, Ms. Harrelson. Thank you.

19 Juror Number 018, Brenda Blakney. What saith
20 the State?

21 MS. MAYES: Was that 18?

22 CLERK OF COURT: Correct. What saith the
23 State?

24 MS. MAYES: Please present the juror.

25 CLERK OF COURT: What saith the Defense?

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1 MS. LITTLE: Please seat Ms. Blakney.

2 CLERK OF COURT: Please have a seat in
3 the jury box for me please, Ms. Blakney.

4 THE COURT: First alternate please,
5 counsel.

6 CLERK OF COURT: Juror Number 014,
7 Gloria Benjamin. What saith the State?

8 MS. MAYES: Please present the juror.

9 CLERK OF COURT: What saith the Defense?

10 MS. LITTLE: Please seat Ms. Benjamin.

11 CLERK OF COURT: Please have a seat in
12 the first chair outside of the jury box for me, Ms.
13 Benjamin.

14 THE COURT: Second alternate.

15 CLERK OF COURT: Juror Number 139,
16 Lugenia Longennecker. What saith the State?

17 MS. MAYES: Please seat the juror.

18 CLERK OF COURT: What saith the Defense?

19 MS. LITTLE: Please excuse the juror.

20 CLERK OF COURT: You have been excused
21 from this particular case, Ms. Longennecker. Thank you.

22 Juror Number 144, Carrie Watson. What saith
23 the State?

24 MS. MAYES: Please seat the juror.

25 CLERK OF COURT: What saith the Defense?

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1 MS. LITTLE: Please excuse Ms. Watson.

2 CLERK OF COURT: You have been excused
3 from this case, Ms. Watson.

4 Juror Number 005, Herbert Alford. What saith
5 the State?

6 MS. MAYES: Please present the juror.

7 CLERK OF COURT: Any show for cause from
8 the Defense?

9 MS. LITTLE: No, sir.

10 CLERK OF COURT: Okay. If you would
11 have a seat in the second chair outside of the jury box
12 for me, Mr. Alford.

13 THE COURT: Anything from the State
14 regarding selection of the jury, Ms. Mayes?

15 MS. MAYES: Nothing from the State, Your
16 Honor.

17 THE COURT: Anything from the Defense,
18 Ms. Little?

19 MS. LITTLE: No, Your Honor.

20 THE COURT: All right. Ladies and
21 gentlemen of the jury panel selected for the trial of
22 this case, I have been advised that there are some
23 matters that we need to take up --- a number of matters
24 that we need to take up, and I am going to have to do
25 those this afternoon. In addition to that, we are going

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1 to probably draw the jury in another case. So, from a
2 scheduling standpoint, we are not going to be able to
3 start the trial of this case until tomorrow morning. So,
4 I am going to excuse you now and will ask you --- allow
5 you to go with the Bailiff, and let them show you where
6 the jury room is. Then I am going to ask that you report
7 back to --- Well, rather than do that, I think what I
8 will have you do is call tonight. Sometimes things
9 happen with regard to cases, and we don't go forward.
10 But, what I am going to ask you to do is to call the
11 number that you have. If you don't have it, get it from
12 the bailiff before you leave. After 6:00-o'clock tonight
13 there is an answering machine very much like the one
14 you've got at home. And your reporting instructions
15 tomorrow will be on that answering machine. But, you can
16 call it anytime all night long, and you will get your
17 reporting instructions for tomorrow. If everything goes
18 as far as the matters that I have to attend to this
19 afternoon are concerned, and we start the trial in the
20 morning, we will start at 9:30, and your instructions
21 will probably be, or would be, to report to your jury
22 room tomorrow morning at 9:30, not the courtroom. The
23 bailiff will show you where the jury room is. But, you
24 will be designated as jury panel number one. So, the
25 message that is on the machine will be for jury panel

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1 number one. So, if you would call that number after
2 6:00-o'clock tonight, your reporting instructions for
3 tomorrow will be on there.

4 Just several things before I --- First of all,
5 do not talk with anyone about this case. That means,
6 when you see your family and friends do not discuss it
7 with them.

8 I know that you don't know anything about the case,
9 and have not heard any evidence in the case, and the only
10 things that you know are the allegations in the
11 Indictment as I have briefly recited them to you, but, it
12 would be improper for you to discuss this case with
13 anyone while you are away from the courthouse.

14 So, when you see your family and friends you can
15 tell them that you are sitting on the jury, but that you
16 can't tell them anything about the case because the judge
17 told you not to. And the reasons for that are pretty
18 self-apparent. You have to decide this case based upon
19 what you hear in this courtroom, and not on the basis of
20 what anyone else might say.

21 So do not discuss it with anyone. Do not allow
22 anyone to discuss it with you. If anyone approaches you,
23 or tries to talk with you about this case, get their
24 name, or their description, report it to the bailiff.
25 They will report it to me in the morning, and I will deal

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1 with them.

2 So, don't talk with anyone. Don't allow anyone to
3 talk with you about it. And don't discuss the case among
4 yourselves when you reassemble in the jury room tomorrow
5 morning, if we go forward, if you come back in, and, of
6 course, this admonition --- all of these admonitions will
7 apply throughout the trial of the case. But, it would be
8 improper for you to begin any discussion in the case
9 among yourselves until all of the evidence is in. You
10 have heard the arguments of counsel, and the instruction
11 on the law by the Court.

12 So, if you are assembling there in the jury room, at
13 anytime tomorrow, or at anytime throughout the trial of
14 this case, you can talk about anything you want to talk
15 about, the weather, the sports, children, grandchildren,
16 anything at all, but don't talk about this case until I
17 tell you that it is appropriate for you to do so.

18 Also, do not read any news stories, or listen
19 to any broadcast media reports about this case. I don't
20 know if there will be anything in the newspaper, but
21 there might be, and there might also be something in the
22 broadcast media.

23 If there is something in the newspaper, simply put
24 that paper aside. Do not read that. Or if there is
25 something on the broadcast media, simply turn that off

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1 and do not listen to it.

2 Again, you have got to decide this case based upon
3 what you hear in this courtroom. And with all due
4 respect to my friends in the news media, they do not
5 always, or not always accurate in what they are reporting
6 as to what went on in the courtroom. So, do not listen
7 to any broadcast media, or read any news stories about
8 this case.

9 With those admonitions then, I am going to
10 excuse you, and allow you to go about your business for
11 the rest of the day. Call that number after 6:00-o'clock
12 tonight, and we will be prepared to tell you then if you
13 need to report in the morning at 9:30. Thank you. You
14 are free to go. If you will go with the bailiffs, they
15 will show you where the jury room is.

16 (Whereupon, the jury is dismissed for the
17 day at 12:42 p.m. on Monday, July 19, 2010.)

18 **THE COURT:** All right. Ladies and
19 gentlemen not selected in the trial of this case, the
20 State has indicated to me, and from a scheduling
21 standpoint that they want to go ahead and draw a second
22 jury for another case this week. But, I don't believe we
23 can get that done before lunchtime. So, what I am going
24 to do is I am going to excuse you now. Ask you to be
25 back in the courtroom at 2:00-O'clock, at which time we

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1 will be ready to go forward with another matter. I am
2 going to wait just a minute before I excuse you, and let
3 that jury that we just drew get in the elevator, and then
4 I will have you come back at 2:00. Let's wait just a
5 moment.

6 (PAUSE.)

7 **THE COURT:** All right. Ladies and
8 gentlemen, I have a matter that I have to take up at
9 2:00. So, what I am going to do is ask you to be back in
10 the courtroom at 2:30. I should be through with the
11 matter that I have to take up at 2:00. But, if I am not,
12 you can come on in. It won't hurt as far as the matter
13 that I am going to take up. It will not prevent you from
14 coming on back in the courtroom.

15 If you would, get your lunch please, and be
16 back in at 2:30. And you are excused at this time.
17 Jurors only are excused --- Jurors only. Be back at
18 2:30.

19 (Whereupon, the jury panel was released at
20 12:44 p.m..)

21 **THE COURT:** Let's let the jury get out.
22 Ms. Mayes, Ms. Little, for the record please, we are
23 going to be in recess now until 2:00-o'clock, at which
24 time we have to do a plea for the Attorney General's
25 Office. And I would ask that everybody be here at 2:30

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1 in the matter of State versus Odom. We will draw that
2 jury. As soon as we have concluded the drawing of that
3 jury, we will go into the Motions and things that we need
4 to take up with Probation.

5 We will be in recess now until 2:00-o'clock.

6 (Whereupon, The Court stands in recess
7 from 11:48 a.m. until 4:21 p.m..)

8 **THE COURT:** We are back on the record
9 now in the matter of State versus Jimmy Gallishaw,
10 Junior. These are cases 1236, 1235, 1239, 1241, 1237,
11 1238, and 1240, all '09 cases. I've been advised that
12 there are several Motions that the Defense wishes to
13 make. And I'll be glad to hear from you in that regard.

14 Let the record reflect, that Mr. Gallishaw is
15 present in the courtroom with his counsel, Ms. Little,
16 and Mr. Swilley. Ms. Little, I'll be glad to hear from
17 you.

18 **MS. LITTLE:** Thank you, Your Honor, may
19 it please the Court. The first Motion I would like for
20 the Court to address is my Motion to be relieved as
21 counsel.

22 That Motion was filed on July 14th, Your Honor,
23 and sent by Fax. And I believe mailed to Ms. Mayes.
24 Your Honor, I think I've handed you up a copy of my
25 Motion to be relieved. And this is actually an issue

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1 that my client would like to be heard on.

2 The reason that he is requesting a different
3 attorney is that he's unsatisfied with my representation.
4 He desires to be appointed a different attorney. He
5 feels that I have not spent enough time preparing his
6 case for trial. And also indicated he does not feel
7 comfortable discussing certain matters of a sexual nature
8 with me, and he would like to be heard by the Court at
9 this time, Your Honor.

10 THE COURT: All right. Let me ask you
11 just a couple of questions before I hear from Mr.
12 Gallishaw.

13 MS. LITTLE: Certainly.

14 THE COURT: How long have you been
15 appointed his attorney, Ms. Little?

16 MS. LITTLE: Your Honor, I was appointed
17 in March 2009.

18 THE COURT: Okay.

19 MS. LITTLE: Shortly after his arrest.
20 March 1st of 2009, my file was opened.

21 THE COURT: So you have now been
22 representing him about fifteen months, or there about.

23 MS. LITTLE: Yes, Your Honor.

24 THE COURT: All right, Mr. Gallishaw,
25 I'll be glad to hear from you with regards to the two

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1 grounds that have been raised requesting that Ms. Little
2 be removed, be excused as your attorney. I'll be glad to
3 hear from you.

4 MR. GALLISHAW: Okay. First of all, I
5 give honor to my Lord and Savior Jesus Christ.

6 THE COURT: We can't hear you. Y'all
7 quit moving around, please. All right. I can't hear
8 when there's too much confusion. You're going to have to
9 speak up, Mr. Gallishaw, because if I can't hear you and
10 I can't understand you there's no way I can help with
11 your Motion. Go ahead.

12 MR. GALLISHAW: Okay. I said I first
13 want to give thanks to my Lord and Savior Jesus Christ.
14 And I want to give honor to you for being able to be
15 heard right now.

16 I've been incarcerated for seventeen months now. I
17 haven't really got much chance to see my lawyer. She was
18 so busy with so many other cases. And within the last
19 week is the time that they have been coming to prepare
20 and get things ready. And I feel that's not sufficient
21 enough time to --- to get --- to get everything that is
22 needed and that's due --- to get everything that's needed
23 that's due to my cases.

24 I think a week before the trial I think that's
25 not sufficient enough time to get anything --- to get

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1 anything done. You know what I'm saying? To say your
2 life is on the line compared to this thing --- you know
3 what I'm saying --- so, I mean, if she's has been my
4 lawyer from the time that she says --- I mean, I haven't
5 been seeing her like that --- I haven't been seeing her
6 so much. The mean I only --- If I've seen her an hour in
7 seventeen months then that's --- that's --- that would be
8 calculating it pretty, pretty close. And I don't feel
9 that's enough time. That's not sufficient enough time to
10 get everything ready. That's due to that Motion.

11 THE COURT: All right. I understand
12 that. What was the other part of your Motion that has to
13 do with discussing matters regarding this case with her?
14 Did you have some uneasiness about that?

15 MR. GALLISHAW: Yes, sir, I guess by ---
16 by me being a male, and some problems that I'm having, it
17 was kind of like just uneasy to be able to discuss them
18 with her. So I have my second attorney here that I can
19 talk too pretty decent.

20 THE COURT: Mr. Swilley has been
21 appointed, or is, at least, assisting you. Is that
22 right, Ms. Little?

23 MS. LITTLE: Yes, Your Honor. He's
24 actually been helping me on this case probably for about
25 the past three weeks.

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1 MR. SWILLEY: That's correct, Your
2 Honor.

3 THE COURT: All right. Thank you, Mr.
4 Gallishaw. You may be seated. Ms. Little, tell me what
5 your response is to the time for preparing this, and what
6 you've done. Also, as I understand it, tell me about
7 discovery and what you've done in that regard.

8 MS. LITTLE: Thank you, Your Honor. I'm
9 just looking back at my notes in this case. I'll be glad
10 to give you a summary of everything I've done. A lot of
11 what I've done has been work that I've done at the
12 office, reviewing all of the evidence, video evidence. I
13 sent our investigator out to the jail to sit down with
14 Mr. Gallishaw. He was able to watch all of the video
15 evidence in this case.

16 I see notes where I requested the Rule 5,
17 called to check on it back in April of 2009. Back in
18 November of 2009, I see where I spent quite a bit of time
19 reviewing his file, then having it printed out. In
20 November of 2009, both my investigator, Mr. Goodman, and
21 I spoke to the Defendant at the jail. Talked to him
22 about his confession. Gave him a paper copy of his Rule
23 5.

24 Then on November 9, 2009, Mr. Goodman went out
25 to the jail and let Mr. Gallishaw watch all the video

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1 evidence in this case. During the meantime I think that
2 we got information that he had mailed a letter to one of
3 the alleged victims in this case, and sent word out to
4 the jail about the importance of not doing any more of
5 that communications.

6 The trial was scheduled for May 2010. It was
7 continued because a key witness was on vacation. Your
8 Honor, I have spoken with all of the witnesses that Mr.
9 Gallishaw has requested that I speak to.

10 In fact, there are only a couple of witnesses
11 that you'll see from my witness list. I've asked him
12 many times over the last couple of weeks if there's
13 anyone else I can talk to, anything that he wanted me to
14 do to prepare for his case.

15 There was one issue that he had with wanting me
16 to get some credit card records from a purchase that he
17 made approximately three or four years ago. He was
18 unable to provide me with the credit card number, or a
19 name of the credit card, or the name of the company he
20 ordered the product from, or the name of the product.
21 Still, however, I did get our law clerk to assist me.
22 With his permission we went on line and basically
23 pretended to be him, at his request, tried to get his
24 credit report. And I did find a credit card that may be
25 the credit card he used. And I faxed a subpoena to them,

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1 for which I have gotten no response.

2 So I have made an effort to get the
3 information. There was also a piece of physical evidence
4 that he said might have been left at his mother's home.
5 I contacted her. I've been to her house and taken
6 pictures. She told me that that piece of evidence has
7 been destroyed.

8 So, to my knowledge, other than the credit card
9 records that he requested that I get, there's been no
10 evidence or witnesses that he wants to present that I
11 have been unable to talk to, or get the evidence that he
12 wants.

13 THE COURT: All right. Also, if you
14 would, Ms. Little, address the second part of his Motion
15 with regards to discussion of the details of the charges
16 with him since they do involve matters of a sexual
17 nature.

18 MS. LITTLE: Yes, Your Honor. I
19 noticed, and I was going to check my notes, that when we
20 were talking --- let me give you the exact date. Well,
21 it looks like just last week on July 14th when I was
22 talking to the Defendant about some matters of a sexual
23 nature, he seemed to be hesitant and not very
24 forthcoming.

25 As a result, I asked if he would feel more

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1 comfortable speaking with either our investigator or co-
2 counsel, Mr. Swilley. At that time, Your Honor, he
3 indicated that he did want Mr. Swilley to be his lawyer.
4 So I actually had Mr. Swilley go out to the jail with me
5 two or three times --- no, two times with me, and then
6 once on his own to make sure that there weren't any
7 matters that Jimmy could talk to him about that he wasn't
8 able to talk to me about.

9 THE COURT: So, you and Mr. Swilley are
10 both in the Public Defender's Office. And in effect,
11 have been for the last two or three weeks, and even now
12 through the trial acting as co-counsel in this matter.

13 MS. LITTLE: Yes, Your Honor.

14 THE COURT: All right. The Court would
15 find that the Defense counsel has done a great deal of
16 work in preparation and connection with this matter.

17 Contrary to your assertions, Mr. Gallishaw,
18 there are a lot of things that need to be done outside of
19 your presence. And Ms. Little has indicated that she has
20 done a number of these things, including interviewing
21 witnesses, trying to find evidence, obtaining the
22 discovery materials from the State, sharing those
23 discovery materials with you, giving you the opportunity
24 to view the videos.

25 She has also discussed with you the confession that

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1 was made in this case. As I said, has spoken to all of
2 the witnesses. Has even tried to trace down --- run down
3 the evidence which you mentioned that she should in this
4 case. And further, associated a colleague of hers, Mr.
5 Swilley, to represent you, or be co-counsel in this case,
6 so that you would be at ease discussing the details and
7 the nature of the charges against you.

8 There are many things that a lawyer has to do
9 in preparation of a case that are not done in the
10 presence of the Defendant, especially when the Defendant
11 is incarcerated.

12 I would find that the Motion to be relieved, to
13 have Ms. Little relieved, is denied. I think that she
14 has done a good job, and is continuing to do a good job
15 in the representation of you in connection with this.

16 And I would therefore, respectively deny your
17 Motion to have her relieved.

18 I would further deny the Motion to have her
19 relieved on the grounds that you do not feel comfortable
20 discussing the charges with her, because she did have the
21 foresight to get her fellow Public Defender involved, who
22 is a male, and you, yourself, have indicated that you
23 have been able to discuss with him the nature of these
24 charges.

25 So, I would respectively deny the Motion for

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1 Ms. Little to be relieved as counsel in this matter.

2 All right. Ms. Little, the next matter seems
3 to be a Motion for Continuance. Is that correct?

4 **MS. LITTLE:** Yes, Your Honor.

5 **THE COURT:** Go ahead.

6 **MS. LITTLE:** Thank you, Your Honor. As
7 you'll note, I handed up my Motion for Continuance. A
8 part of that Motion was grounded and based on the fact
9 that the Defendant was unsatisfied with my
10 representation, and he was requesting a new attorney.

11 The other portion of that Motion for
12 Continuance is based on the fact that the Solicitor
13 provided a new huge stack of evidence to me on July 13,
14 2010. And I was requesting more time to review those,
15 which were actually in the form of letters that the
16 Defendant wrote, allegedly wrote from the Detention
17 Center, to various witnesses and family members.

18 Your Honor, I have had a chance to review all
19 those letters. And I have provided a copy to the
20 Defendant, and given him an opportunity to talk to me
21 about anything that he felt was alarming, or was a
22 surprise. And also, Your Honor, have let him know what
23 in the evidence was of concern to me that I thought we
24 should be concerned about.

25 So, it was quite a bit of evidence, Your Honor.

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1 This is the file that has all of the letters in it. And
2 I was unaware of the existence of any of these letters
3 until July 13, 2010.

4 THE COURT: Okay. Tell me about that.

5 MS. MAYES: I don't know how far back
6 those letters go, or why was the disclosure just made a
7 couple of weeks ago, or a week or so ago.

8 MS. MAYES: Yes, sir, Your Honor, that's
9 when the State became aware as well in July. The
10 Defendant has been incarcerated for a little over a year.
11 The victims in this case are the biological daughter that
12 he had prior to his current marriage. And then he also
13 had a second victim, who is his stepdaughter. She is the
14 daughter of his current wife. His current wife's name is
15 Adrienne Gallishaw.

16 So, what happened is, back in April a letter
17 arrived to the mother of his biological daughter.

18 THE COURT: April of 2010?

19 MS. MAYES: Yes, sir, Your Honor, April
20 of this year. She made the Solicitor's Office aware that
21 she had received a letter from the Defendant, which
22 apparently was mailed from the jail. She brought it to
23 the Solicitor's Office and provided it to Solicitor Patti
24 McKenzie. And Solicitor McKenzie provided Ms. Little a
25 copy of that letter when we received it.

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1 And in follow-up, when I was meeting with the
2 victim here in Darlington County in July, early July, I
3 mentioned that to the parents of the other child, that
4 one of the other mother's had received a letter. And she
5 advised me that she had also received correspondence from
6 him. Actually she advised that some of the letters ---
7 at least, one of the letters had been hand-delivered by
8 another inmate to her door. Apparently, the inmate knew
9 the Defendant from the Detention Center.

10 So, at that point I didn't have the letter.
11 But I did advise Ms. Little by email that apparently
12 correspondence was taking place, and that we were
13 concerned about it. And I asked the mother of the
14 Victim #2 to bring in any other letters that she
15 had at our next meeting, which was less than ten days
16 later. I believe it was --- I believe that conversation
17 with her was on a Friday, then we had the July 4th
18 Holiday. And the next time I was here in Darlington she
19 did bring in the letter to myself and Assistant Solicitor
20 McKenzie. And the day we received the letters we
21 provided them to Ms. Little.

22 The letters were coming addressed to his child.
23 I do want to let the Court know that he has a biological
24 son with his current wife. And the majority of the
25 letters were addressed to the son. However, once the

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1 letters were opened the content of the letters is
2 actually directed to the wife and to our minor victim,
3 **Victim #2** [REDACTED]. We were unaware of that. It was a
4 situation where family members are involved, and we don't
5 question the reason that we weren't immediately made
6 aware that the letters existed, because of the
7 relationship between the Defendant and his family
8 members.

9 **THE COURT:** So what you're telling me
10 basically is that you were not aware of the letters any
11 earlier than what you put on the record. And that law
12 enforcement was not aware of the letters any earlier than
13 what you put on the record. And that the victims had the
14 letters and as soon as you learned of their existence you
15 disclosed that to Defense counsel.

16 **MS. MAYES:** Yes, sir, Your Honor. The
17 first letter was in April to one family member. We
18 actually turned a copy of that one over. And then we
19 became aware of the other letters in July. And within
20 ten days we received physical copies of those and
21 provided those to Ms. Little on the same day. And we
22 also provided records from the jail, which shows his
23 postal delivery account.

24 **THE COURT:** All right. Ms. Little,
25 would you like to respond?

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1 MS. LITTLE: No, Your Honor. I don't
2 have any doubt, and I understand, as an officer of the
3 Court, what Ms. Mayes is saying. I have explained to my
4 client that it was my understanding that she just
5 received those letters on the day, or shortly maybe the
6 day before she provided those to us. And as soon as I
7 got them and made copies I actually took them straight
8 out to the Defendant as soon as I got them.

9 There is something the Defendant just made me
10 aware of, and I would like to clarify this on the record,
11 just so he won't have any questions about this. I had
12 provided him with email correspondence between me and Ms.
13 Mayes, and on September 18th of 2009, I have an email
14 correspondence from Ms. Mayes with an offer, a plea offer
15 that I gave to Mr. Gallishaw. And in her correspondence
16 she states: I just wanted to confirm you are
17 representing Mr. Gallishaw. The file material sent to me
18 indicate discovery materials were provided to Public
19 Defender on May 27th, 2009. However, it appears that the
20 case had not yet been assigned to you.

21 That, Your Honor, is simply actually not true.
22 And I really probably should have clarified that with Ms.
23 Mayes. All of our discovery requests go out in the name
24 of A. C. Stevens, our Chief Circuit Public Defender, when
25 those discovery requests are made. So that's why she did

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1 not know that I was the particular lawyer assigned to the
2 case. But I did respond to her after this email and let
3 her know that was my case. And actually, it was assigned
4 to me on March 1st of 2009. So I have been representing
5 Mr. Gallishaw all that time, although Ms. Mayes, when she
6 wrote this correspondence on September 18th, 2009, was not
7 sure if I was the actual public defender defending him.

8 THE COURT: All right. I feel that all
9 of y'all are in the same law firm. You, Mr. Stevens, and
10 Mr. Swilley are all members of the law firm, and what one
11 lawyer knows in that law firm, in this case the Public
12 Defender's Office, then all of the lawyers are charged
13 with that responsibility.

14 Rule 5, of course, the South Carolina Rules of
15 Criminal Procedure does provide for disclosure in
16 criminal cases. And as I have said many times, the State
17 is responsible for disclosing everything required by Rule
18 5, and Brady versus Maryland in a timely manner.

19 The law is also very clear that the State is
20 responsible for anything that may be in law enforcement's
21 file even though they may not know anything about it.
22 But here we've got a different situation altogether.
23 It's a double edge sword actually.

24 First of all, the discovery materials in
25 question are letters allegedly from the Defendant

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1 himself. And obviously if they prove to be from him and
2 having been sent by him he would have, obviously would
3 have had notice of them when he wrote the letters, if
4 that proves to be the case.

5 So I can't see how he's got any --- any
6 prejudice by any failure to disclose the letters.

7 But even more importantly, is that under Rule
8 5© provides as follows: If prior to, or during the
9 trial a party discovers additional evidence, or materials
10 previously requested or ordered, which is subject to
11 discovery or inspection under this Rule, he shall
12 promptly notify the other party, or his attorney, or the
13 Court of the existence of the additional evidence or
14 material.

15 And I would find that the State has met this
16 continuing duty to disclose under Rule 5©, by immediately
17 disclosing to the Defendant's counsel the letters as soon
18 as, or within a very short time after the State learned
19 about them.

20 And in my view, the State has complied with the
21 requirements of Rule 5. And therefore, I do not think
22 that it is grounds for a continuance, or for dismissal,
23 or any other sanctions for violation of Rule 5.

24 So, the Motion would be respectively denied.

25 All right. Now, I understand from in-chambers

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1 conferences, counsel, Ms. Mayes, that there is a
2 statement allegedly made by the Defendant in this case.
3 And that the Defense challenges the voluntariness of that
4 statement. Is that correct, Ms. Little?

5 **MS. LITTLE:** Yes, Your Honor.

6 **THE COURT:** So we've got a matter of
7 moving to Suppress under Jackson versus Denno. Having
8 made the Motion to Suppress the statement under Jackson
9 versus Denno, the burden is on the State to prove the
10 voluntariness of the statement. And I'll be glad to hear
11 from any witnesses or any evidence that you wish to
12 present in that regard, Ms. Mayes.

13 **MS. MAYES:** The State calls Patricia
14 Ray.

15 **THE COURT:** All right. Ms. Ray, come
16 around, please.

17 **WHEREUPON, PATRICIA RAY**

18 **FIRST HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS**

19 **MS. RAY:** I do.

20 **DIRECT EXAMINATION BY MS. MAYES**

21 Q. Good afternoon. Where are you employed?

22 A. At the Darlington County Sheriff's Department.

23 Q. And can you tell us what you do there?

24 A. I'm Sergeant Patricia Ray. I'm an investigator.

25 Q. All right. And Investigator Ray, did you have the

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1 opportunity to become involved in the investigation
2 of a case involving this Defendant, Jimmy Gallishaw?

3 A. Yes, ma'am.

4 Q. All right. Do you have any records from that date?

5 A. The incident report.

6 Q. All right. And you were a county investigator, and
7 you became involved in the allegations involving
8 which minor victim?

9 A. Victim #1 .

10 Q. Victim #1 ?

11 A. No, Victim #2 .

12 Q. Okay. And Victim #2 is what relation to the
13 Defendant?

14 A. Her daughter. The Defendant's stepdaughter.

15 Q. Okay. And when you became involved can you tell us
16 what was the initial date you had contact with Mr.
17 Gallishaw?

18 A. It was February 4, 2009.

19 Q. All right. And describe for us briefly what type of
20 contact you had?

21 A. I had gotten a phone call from the Department of
22 Social Services that there was a referral at the
23 CARE House over in Florence of a child who had been
24 molested by her stepfather.

25 Q. All right. And how did that lead you to having

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1 contact with Mr. Gallishaw?

2 A. Once I finished at the CARE House I was to follow
3 Ms. Gallishaw back to her mother-in-law's to get her
4 things. That's where her baby was. And at that
5 time once we got there Mr. Gallishaw was at the
6 residence.

7 Q. And when you said Ms. Gallishaw, were you referring
8 to his wife Adrienne Gallishaw?

9 A. Yes.

10 Q. All right. I'm going to show you two documents and
11 ask you whether or not you recognize them.

12 A. Yes, ma'am.

13 Q. And what are those documents?

14 A. The first one is a statement of rights, his Miranda
15 Waiver. And the second is a recorded statement form
16 that we use at the Sheriff's Department.

17 Q. And how is it that you recognize those documents?
18 Does it contain your signature anywhere?

19 A. Yes, at the bottom as a witness for his Miranda
20 Waiver, and the other is where we read off for our
21 recorded statement.

22 Q. All right.

23 MS. MAYES: Your Honor, at this time I
24 would have both documents marked as Court's Exhibits 1
25 and 2.

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1 THE COURT: All right. Court's Exhibit
2 Number 1 will be the statement of rights. Court's
3 Exhibit Number 2 would be the statement itself. Is that
4 right?

5 MS. MAYES: Your Honor, actually they
6 are both waiver forms.

7 THE COURT: Both waiver forms. Okay.
8 All right.

9 WHEREUPON, COURT'S
10 EXHIBIT NUMBERS 1 AND 2
11 ARE MARKED FOR THE RECORD.

12 Q. Now, taking a look at the waiver form, Officer Ray,
13 do you have your copy with you?

14 A. Yes.

15 Q. When you read --- Let me ask you. Have you actually
16 had the opportunity to actually read the rights to
17 Mr. Gallishaw?

18 A. Yes, ma'am.

19 Q. And having done so, did he appear to understand
20 those rights?

21 A. Yes, ma'am.

22 Q. Was he in custody at the time?

23 A. Yes, ma'am.

24 Q. Had he been placed under arrest?

25 A. Yes.

PATRICIA RAY - DIRECT EXAMINATION

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- 1 Q. And at any time did he ask that you stop questioning
2 and request an attorney?
- 3 A. No, ma'am.
- 4 Q. Did he appear to make a free and voluntary waiver of
5 his rights?
- 6 A. Yes, ma'am.
- 7 Q. Does the waiver form contain his signature?
- 8 A. Yes, it does.
- 9 Q. And after waiving his rights, did he agree to any
10 other type of statement, such as a recorded
11 statement?
- 12 A. Yes, ma'am.
- 13 Q. Was he advised of any particular rights in relation
14 to that statement?
- 15 A. Yes, ma'am.
- 16 Q. Did he agree to give a statement and record it?
- 17 A. Yes, he did.
- 18 Q. Did he waive the right to do so?
- 19 A. Yes, he did.
- 20 Q. And is that the form there?
- 21 A. Yes, ma'am.
- 22 Q. Did he make any admissions on that particular day,
23 February 4th, confirming [Victim #2] or [Victim #1]
24 [redacted] in alleged sexual comments to both girls?
- 25 A. To me, he did not.

PATRICIA RAY - CROSS EXAMINATION

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1 Q. Okay. And you did have the opportunity to have some
2 type of recording system in place?

3 A. Yes.

4 Q. And what was the outcome of the recording?

5 A. From looking back at it, it did not have any sound
6 to it. But in my statement I briefly put where he
7 did not give a disclosure to me.

8 Q. Okay. So he didn't make any incriminating
9 statement, and the recording does not have audio but
10 it has video?

11 A. Has video but not audio.

12 THE COURT: Is that question that he did
13 or did not make incriminating statement?

14 MS. MAYES: He did not.

15 INVESTIGATOR RAY: Did not.

16 THE COURT: Okay, that's what I thought.

17 MS. MAYES: Nothing further of
18 Investigator Ray.

19 THE COURT: Cross examination, Ms.
20 Little?

21 MS. LITTLE: Beg the Court's indulgence
22 for one moment.

23 (PAUSE.)

24 CROSS EXAMINATION BY MS. LITTLE

25 Q. Sergeant Ray, I believe you testified that Mr.

PATRICIA RAY - CROSS EXAMINATION

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1 Gallishaw was arrested before you took him to the
2 Sheriff's Department.

3 A. Yes, ma'am.

4 Q. And was he cuffed, did he ride in your car cuffed or
5 uncuffed?

6 A. He was in my front seat because I had a DSS worker
7 in the backseat.

8 Q. Was he cuffed at that time?

9 A. No, ma'am.

10 Q. At what point was --- At what point did you actually
11 arrest Mr. Gallishaw, was it before or after he gave
12 you this statement?

13 A. It was before.

14 Q. But why did you not take him into custody at that
15 time as far as cuffing him?

16 A. At the time I was waiting for a marked car to come
17 to where I was. And there was --- I think there was
18 a domestic or something else that was going on, and
19 I was unable to get a marked car with a cage. So at
20 the time I just went ahead and arrested him at his
21 home.

22 Q. So, he was arrested at his home, but he was not
23 placed in cuffs, and he was allowed to ride uncuffed
24 in your car to the Detention Center?

25 A. I didn't feel he was a threat at that time. And

MICHAEL AUGUST - DIRECT EXAMINATION

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1 like I say, I had a DSS worker with me.

2 Q. Do you recall at what point you actually told Mr.
3 Gallishaw that he was under arrest?

4 A. At his home after his wife had left with the kids.

5 MS. LITTLE: No further questions.

6 THE COURT: Redirect?

7 MS. MAYES: No redirect, Your Honor.

8 THE COURT: All right. Thank you, Ms.
9 Ray, you may step down.

10 MS. MAYES: The State calls Michael
11 August.

12 WHEREUPON, MICHAEL AUGUST

13 FIRST HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS

14 MR. AUGUST: I do.

15 DIRECT EXAMINATION BY MS. MAYES

16 Q. Where are you employed, Officer August?

17 A. At the Darlington Police Department, the Darlington
18 City Police Department.

19 Q. And what is your current job description there?

20 A. I'm an examiner and an investigator?

21 Q. All right. And this is an in-camera hearing outside
22 the presence of the Jury, so I'm going to ask you
23 specifically what type of examiner.

24 A. Okay. Polygraph examiner, ma'am.

25 Q. All right. And did you have an opportunity to

MICHAEL AUGUST - DIRECT EXAMINATION

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1 become involved in the investigation concerning
2 Jimmy Gallishaw?

3 A. Yes, I did.

4 Q. And do you have with you any records reflecting the
5 dates?

6 A. I don't have that with me, ma'am.

7 Q. I'm going to show you some documents and ask you if
8 you recognize them.

9 A. Yes, I do.

10 Q. And how so?

11 A. Through the polygraph forms that we fill out before
12 we give a polygraph exam.

13 Q. All right. You mentioned that you're with the City.
14 How did the City become involved in this
15 investigation, if you know?

16 A. How I became involved in it is that Captain Watson
17 asked me to administer a polygraph on Mr. Gallishaw.

18 Q. All right. And that was on the 19th?

19 A. He actually asked me on the 19th would I do it on the
20 20th.

21 Q. All right. That would be on the following day?

22 A. Yes, the following day.

23 Q. And do you know that if on the 19th, if Captain
24 Watson had had any contact with Mr. Gallishaw prior
25 to asking you to assist with a polygraph?

MICHAEL AUGUST - DIRECT EXAMINATION

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1 A. Yes, I believe he had contact on the 19th. What that
2 entailed I don't know, because if I'm going to give
3 a polygraph I try to stay neutral in that. And he
4 asked me to give a polygraph on the 20th. And
5 basically gave me the case facts, what the
6 allegations were on the 20th.

7 Q. All right. And do you know whether by the date of
8 the 19th or 20th, there were two minor victims
9 involved in the investigation?

10 A. Yes, I did.

11 Q. All right. And one was from the City?

12 A. Yes, Victim #1 [REDACTED].

13 Q. All right. And tell us about your initial contact
14 with Mr. Gallishaw.

15 A. My initial contact with Mr. Gallishaw was they
16 actually brought him from the jail. When they bring
17 them from the jail I unhandcuffed them and offer
18 them anything to drink, anything like that. I
19 explained to him the polygraph process, plus what
20 the polygraph process entails. That he has the
21 right to refuse to take a polygraph test. That
22 anytime he can stop the polygraph test, that he's
23 free to do it anytime. He's also advised of his
24 Miranda warning again. Before each polygraph it's
25 our policy to administer --- whether they have been

MICHAEL AUGUST - DIRECT EXAMINATION

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1 read their rights before or not, before I give the
2 polygraph I read them their Constitutional rights
3 and also read them their consent for the interview
4 with the polygraph.

5 Q. All right. And do you have a copy of the waiver of
6 rights that were read to him?

7 A. I have a copy of the consent for the polygraph but
8 not the actual copy.

9 Q. All right. I show you a document and ask you
10 whether or not you recognize this..

11 A. Yes, ma'am, that's his Constitutional rights.

12 Q. Okay. And who went over that with him?

13 A. Me.

14 Q. And where were his rights administered?

15 A. They were administered --- The way I administer
16 rights, they would have been administered at the
17 Darlington Police Department. I actually read them
18 their rights, go through it line-by-line. And then
19 I actually have them read aloud to me the waiver of
20 rights. And then after they read aloud the waiver
21 of rights --- before that they actually read their
22 rights to themselves, and then they put their initials
23 by each and every right. And then they sign, do you
24 understand your rights, and they indicate either yes
25 or no. And they also indicate whether they want to

MICHAEL AUGUST - DIRECT EXAMINATION

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1 talk to me with the words yes or no.

2 **MS. MAYES:** Your Honor, at this time we
3 would mark the Miranda Rights Form, which has been
4 identified by the witness, and the polygraph worksheet,
5 which has been identified by the witness, as Court's
6 Exhibits 3 and 4.

7 **THE COURT:** All right. So marked as
8 Court's Exhibits Numbers 3 and 4.

9 **WHEREUPON, COURT'S**
10 **EXHIBIT NUMBERS 3 AND 4**
11 **ARE MARKED FOR THE RECORD.**

12 Q. Going back to the Constitutional rights, can you
13 read line-by-line and make a part of the record
14 exactly what Mr. Gallishaw was advised of on
15 February 20th?

16 A. Do you want me to read it?

17 Q. Yes:

18 A. Okay. Before I ask them any questions, I go over
19 their rights. You have the right to remain silent.
20 Anything you say can be used in Court as evidence
21 against you. You are entitled to a lawyer now, and
22 you can have him present now or at any time during
23 any questioning. If you can't afford an attorney,
24 one will be appointed to represent you without cost.
25 If you decide to answer questions without a lawyer

MICHAEL AUGUST - DIRECT EXAMINATION

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1 present, you still have the right to stop answering
2 questions at any time. You also have the right to
3 stop answering questions at any time. And then I
4 ask them do they understand their rights, and they
5 indicate yes or no. He indicated yes. Do you wish
6 to talk to us at this time? He indicated yes.

7 And then the Waiver of Rights. It
8 says that I have read this statement of my
9 rights and I understand what my rights are.
10 I'm willing to talk now without a lawyer
11 present. I understand and know what I am
12 doing. No promises or threats have been made to
13 me. No promises, coercion of any kind have
14 been used against me. And he signed it Jimmy
15 Gallishaw, Junior.

16 Q. All right. How is it that he acknowledged his
17 understanding of these rights?

18 A. By each one, I asked him, even though I read it to
19 him I asked him to read it again. He reads it again
20 and then he puts his initials by each one after he
21 reads it.

22 Q. All right. And you have a date and time that is
23 reflected on that form?

24 A. Yes, 2/20/2009, 10:50 a.m.

25 Q. All right. Okay.

MICHAEL AUGUST - DIRECT EXAMINATION

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1 A. I'm sorry. It says 10:50 in the blank. It doesn't
2 say a.m. or p.m.. But it was in the morning so it
3 was a.m..

4 Q. Okay. Now, also on that same date, February 20th at
5 approximately 10:50 a.m., can you tell us whether or
6 not he agreed to participate in a polygraph
7 examination?

8 A. Yes, it says he consented to be interviewed by
9 polygraph. We have a place where we're at,
10 Darlington P.D. Before we begin an examination by
11 means of the polygraph, I actually talk with them a
12 little about it. I told him that it was about
13 criminal sexual conduct with **Victim #1**. That was
14 the issue at hand at that time.

15 Q. Okay. Let me show you this, Officer, and ask you
16 whether you recognize it.

17 A. I do.

18 Q. And what is that?

19 A. It's the consent for the interview with a polygraph.

20 Q. And how does he acknowledge, if at all, a
21 understanding of his rights concerning the
22 polygraph?

23 A. I actually read that to him. You have the right to
24 refuse to take the polygraph. If you agree to take
25 the polygraph test you have the right to refuse or

MICHAEL AUGUST - DIRECT EXAMINATION

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1 stop the test at any time. If you agree to take the
2 polygraph test you have the right to refuse to
3 answer any individual questions. And he reads each
4 one of them and initials beside it.

5 Q. All right. And did he sign this document as well?

6 A. He did.

7 Q. And does it contain his initials?

8 A. It does.

9 MS. MAYES: Your Honor, this would be
10 Court's Exhibit 5.

11 THE COURT: All right. So marked.

12 WHEREUPON, COURT'S

13 EXHIBIT NUMBER 5 ARE MARKED

14 FOR THE RECORD.

15 Q. All right. Now your interview or examination of Mr.
16 Gallishaw, was it observed by any other law
17 enforcement officer?

18 A. Yes, it was. Actually Rick Charles of the South
19 Carolina State Law Enforcement Division was
20 monitoring the camera in the room. He was outside
21 watching the interview.

22 Q. Okay. There was a SLED Agent supervising the
23 polygraph interview?

24 A. Yes, it was.

25 Q. Now, how do you sign the forms after having been

MICHAEL AUGUST - DIRECT EXAMINATION

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1 advised of your Miranda Rights, can you tell us from
2 your observations whether or not Mr. Gallishaw
3 appeared to understand the rights that were read to
4 him?

5 A. Yes, he understood what I said.

6 Q. Did he ask you to stop answering questions at any
7 time?

8 A. No, he was cooperative with us.

9 Q. Did he ask for an attorney to be present at any
10 time?

11 A. No, ma'am.

12 Q. Were any threats verbally or physically made against
13 him?

14 A. No.

15 Q. Was he offered any promises, or was any form of
16 coercion involved in obtaining his cooperation for
17 the polygraph examination?

18 A. No, ma'am.

19 Q. Based upon your observation, did Mr. Gallishaw make
20 a free and voluntary waiver of his Miranda Rights?

21 A. Yes, he did.

22 Q. What, if anything, followed your polygraph
23 examination with Mr. Gallishaw?

24 A. After the polygraph I told him the results of the
25 polygraph. After I told him the results of the

MICHAEL AUGUST - DIRECT EXAMINATION

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1 polygraph, he confessed to me that he had sexual
2 intercourse with Victim #1 [REDACTED].

3 Q. Did you have the opportunity to advise any other law
4 enforcement officer of what was said to you?

5 A. Yes. Actually Rick Charles was actually at the
6 polygraph, and would go and score the charts. When
7 I brought him out he was actually sitting in the
8 area between the interview room. And when I told
9 him what his results were, he actually broke down
10 and started crying, and I actually held his hand and
11 told him that it would be all right, he just needed
12 to get the truth out, because getting the truth out
13 would make it better. He sat there and cried and
14 said he was ready to tell the truth that, you know,
15 that he had did this. At which time Captain Watson
16 was asked to come in and take a statement on what
17 had happened.

18 Q. Do you have with you the specific questions that
19 were posed to Mr. Gallishaw?

20 A. Yes, I do.

21 Q. And could you tell us what those questions were?

22 A. The relevant issues at hand. Did your penis ever
23 touch Victim #1's vagina? And while on Southern Pines
24 Street, did your penis ever touch Victim #1's vagina?
25 And he indicted no, and to each question he had

MICHAEL AUGUST - DIRECT EXAMINATION

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1 deception indicated on the polygraph.

2 Q. All right. And those questions were specific to
3 **Victim #1** because she had been a victim in a City case?

4 A. Yes, ma'am. With a polygraph we only deal with one
5 issue at hand for each polygraph. And it would not
6 be acceptable to put him on the polygraph for two
7 different people at one time.

8 Q. All right. And following that admission, was there
9 ever a statement that he made concerning girls?

10 A. Yes. He gave Captain Watson a video statement. I
11 was actually watching on the same monitor when he
12 gave Captain Watson a video statement.

13 Q. And that would have been on the 20th as well?

14 A. Yes, ma'am, it was.

15 Q. Based upon your observations on the video monitor,
16 did it appear that his statement to Captain Watson
17 was freely and voluntarily given?

18 A. Yes, it was. We even asked him if he was hungry and
19 went out and got him food and drinks, and brought it
20 back to him. I think Agent Charles went to Burger
21 King and actually got him something to eat.

22 Q. And was he in custody at the time?

23 A. Yes, he was in custody. He wasn't handcuffed, but
24 he was in custody.

25 **MS. MAYES:** Nothing further.

MICHAEL AUGUST - DIRECT EXAMINATION

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1 THE COURT: Cross examination?

2 MS. LITTLE: Yes, sir.

3 CROSS EXAMINATION BY MS. LITTLE

4 Q. Officer August, how much time passed between the end
5 of the polygraph statement --- I mean, the end of
6 the polygraph test and the time when Captain Watson
7 actually took Mr. Gallishaw's statement? Was it
8 done immediately or was it ---

9 A. -- Immediately after the polygraph --- just minutes
10 after --- After the polygraph I added the score
11 cards --- depending on the charge and the length of
12 the interview, fifteen to twenty minutes. And I
13 told him the results of the exam, and I probably
14 talked to him fifteen or twenty minutes, and like I
15 said, he broke down and cried. I was holding his
16 hands and telling him it was okay, you just need to
17 get it out and tell the truth. And that's when we
18 got Captain Watson to come in and get the statement.

19 Q. And during that fifteen to twenty minutes when you
20 were talking to the Defendant after you told him the
21 results of the polygraph, did you ever threaten him
22 in any way?

23 A. No, ma'am.

24 Q. Did you ever tell him that if he didn't confess that
25 his kids were going to be taken away from his wife?

MICHAEL AUGUST - DIRECT EXAMINATION

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1 A. No, ma'am.

2 Q. Did you ever threaten to lock up his wife?

3 A. No, ma'am.

4 Q. Did you tell him that his children were going to be
5 subjected to physical and verbal interviews?

6 A. No, ma'am.

7 Q. Were any other officers present during the fifteen
8 to twenty minutes period before he gave a statement
9 to Captain Watson?

10 A. Rick Charles with SLED.

11 Q. And were you there --- did you hear what Agent
12 Charles said to the Defendant during that time?

13 A. He didn't say anything. He was just present.

14 Q. So it's your testimony that while you were there
15 Agent Charles never made any threats to the
16 Defendant about losing his children, or locking up
17 his wife?

18 A. Absolutely not.

19 (Whereupon, Defense Counsel and Defendant
20 have a discussion off the record.)

21 Q. Did you ever tell Mr. Gallishaw that you were not
22 going to leave his family alone until he admitted --
23 -- made a confession?

24 A. No, ma'am.

25 Q. In your presence, did anybody else ever say anything

MICHAEL AUGUST - DIRECT EXAMINATION

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1 like that to him?

2 A. No, ma'am.

3 (Whereupon, Defense counsel and the
4 Defendant have a discussion off the record.)

5 **MS. LITTLE:** Can I just let Mr. Swilley
6 ask a question or two, Your Honor? Is that okay?

7 **THE COURT:** I will permit it.

8 **MS. LITTLE:** Thank you.

9 **MR. SWILLEY:** Thank you, Your Honor.

10 Q. Officer August, at what point did Mr. Gallishaw
11 start weeping?

12 A. When I advised him of the results of the exam he
13 stated weeping and said that he did it.

14 Q. Okay. And then you said after that you went and got
15 Captain Watson to go speak to him?

16 A. I think actually Charles stepped out and opened my
17 door, and Watson was coming down the hall and said
18 he confessed, you need to come and get his
19 statement.

20 Q. When he started crying, do you feel like he wanted
21 to be there any longer?

22 A. Yes, he was the one that told us what had happened.
23 He was actually weeping. I actually held his hand,
24 you know, he could have pulled away from me and
25 said, don't hold my hand, but he was willing to get

MICHAEL AUGUST - REDIRECT EXAMINATION

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1 emotional, and I felt like he was really remorseful
2 about what he had done.

3 Q. Usually that is a sign of distress or something of
4 that nature?

5 A. It was more of what he had did.

6 Q. Okay. Did you ever ask him again at the point where
7 he started weeping if he wanted to continue on with
8 his statement?

9 A. Yes, he said he wanted to get it off his chest and
10 tell me what happened.

11 Q. Okay. Did you ever directly ask him, are you sure
12 you want to go forward with this?

13 A. No. I read him his right and at any time he could
14 terminate the interview.

15 **MR. SWILLEY:** Beg the Court's
16 indulgence.

17 **THE COURT:** All right.

18 **MR. SWILLEY:** Thank you. Thank you,
19 Officer August.

20 **THE COURT:** Redirect, Ms. Mayes?

21 **MS. MAYES:** Yes, Your Honor, briefly.

22 **REDIRECT EXAMINATION BY MS. MAYES**

23 Q. At any time did you observe any other member of law
24 enforcement make any types of threats against Mr.
25 Gallishaw or his family members?

DANIEL WATSON - DIRECT EXAMINATION

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1 A. No, ma'am.

2 Q. Did you observe anything that appeared to be
3 coercion in detaining Mr. Gallishaw that day?

4 A. No, ma'am.

5 MS. MAYES: Nothing further.

6 THE COURT: Re-cross?

7 MS. LITTLE: No, Your Honor.

8 THE COURT: All right. Thank you, sir.

9 You may step down.

10 MS. MAYES: The State calls Captain
11 Danny Watson.

12 WHEREUPON, DANNY WATSON

13 FIRST HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS

14 MR. WATSON: I do.

15 DIRECT EXAMINATION BY MS. MAYES

16 Q. Captain Watson, where are you employed?

17 A. At the Darlington City Police Department.

18 Q. And how did you become involved in the investigation
19 concerning Mr. Gallishaw?

20 A. I became involved after being notified that there
21 might have been an event that transpired in the city
22 in addition to the one in the county.

23 Q. All right. And just to clarify, the stepdaughter,

24 Victim #2 [REDACTED], would be the alleged County victim,
25 and Victim #1 [REDACTED], his daughter, would be the alleged

DANIEL WATSON - DIRECT EXAMINATION

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1 City victim?

2 A. Yes, ma'am.

3 Q. When did you first have contact with Mr. Gallishaw?

4 A. I had contact with him on February 19th of 2009, at
5 about 4:07 in the afternoon.

6 Q. Exactly what time was contact?

7 A. I took him to the Police Department to have an
8 initial interview with him, to talk with him, to get
9 his take on what was going on, and why he thought I
10 was there talking with him.

11 Q. And I'm going to back track a little bit about the
12 testimony about the polygraph. On February 19th you
13 had initial contact, had the polygraph examination
14 occurred yet?

15 A. No, ma'am, it had not.

16 Q. Describe what you spoke with Mr. Gallishaw about.

17 A. I just did what I always do when I talk to someone
18 for the first time. I just build an initial rapport
19 with them, talk to them for a couple of minutes.
20 And when I go into the part of the questioning
21 phase, I will advise them of their rights, talk to
22 them about what their rights are. I will talk to
23 them about whether or not they graduated high
24 school, can they read and write, and ascertain
25 whether or not the person knows how to read and

DANIEL WATSON - DIRECT EXAMINATION

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1 write, and have an intelligent conversation with you
2 and understand what they're saying and what they're
3 doing.

4 Q. All right. Did Mr. Gallishaw appear to understand
5 the communications?

6 A. Yes, ma'am.

7 Q. And did you have the opportunity to advise him of
8 his Miranda Rights in obtaining any type of written
9 statement from him?

10 A. Yes, ma'am, I did. And I had him initial each one
11 of the blocks. After I read them out loud to him I
12 had him read them again and initial them to show
13 that he understood what they were.

14 Q. And do you have a copy of that document with you?

15 A. Yes, ma'am, I do.

16 Q. I'm going to show you a document and ask you whether
17 or not this is the same?

18 A. Yes, ma'am, they are the same.

19 Q. What is the date and time of this documents?

20 A. February 19th, 2009, at 16:07 or 4:07 p.m..

21 Q. I am going to show you the letters JMG, whose are
22 those?

23 A. Those would be Mr. Gallishaw's.

24 Q. And does this document contain your signature as
25 well?

DANIEL WATSON - DIRECT EXAMINATION

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1 A. Yes, ma'am, it does.

2 Q. And where is that located?

3 A. It's located on the witness line, the first witness
4 line at the bottom.

5 MS. MAYES: Your Honor, this is Court's
6 Exhibit 6.

7 THE COURT: All right. So marked,
8 Court's exhibit 6 for the purposes of the Jackson v Denno
9 Hearing.

10 WHEREUPON, COURT'S
11 EXHIBIT NUMBER 6 ARE MARKED
12 FOR THE RECORD.

13 Q. Did Mr. Gallishaw appear to understand his rights as
14 you advised him?

15 A. Yes, ma'am.

16 Q. And at any time did he ask to terminate the
17 statement or the conversation or the interview?

18 A. No ma'am, he did not.

19 Q. Did he ask for an attorney to be present during the
20 interview time?

21 A. No, ma'am, he did not.

22 Q. Did you make any threats to Mr. Gallishaw in order
23 to obtain a statement?

24 A. No, ma'am, I did not.

25 Q. Did you offer him any promises or rewards in

DANIEL WATSON - DIRECT EXAMINATION

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1 exchange for giving you a statement?

2 A. No, ma'am, I did not.

3 Q. Were any threats made regarding his family members?

4 A. Oh, no, ma'am.

5 Q. And on February 19th, did he appear to freely and
6 voluntarily waive his Miranda Rights?

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

8 Q. And did he give a video statement to you?

9 A. He did, ma'am.

10 Q. At that time did he make any statements concerning
11 or any admissions concerning alleged sexual ---
12 criminal sexual conduct with **Victim #1** or **Victim #2** on
13 that date?

14 A. No, ma'am.

15 Q. And then when was your next contact with him?

16 A. My next contact with him would have been the next
17 day. I cannot remember if I brought him back from
18 the Detention Center or not. I'm sure somebody
19 would have transported him up there. It probably
20 would have been me. I don't recollect at the moment
21 if it was me or not. They brought him up there to
22 see Sergeant August and Agent Charles to have the
23 truth verification test done. At that point I let
24 them do whatever it is that they do, because that is
25 not my area of expertise.

DANIEL WATSON - DIRECT EXAMINATION

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1 Q. All right. Was the polygraph exam out of the blue,
2 or had there been a discussion about it?

3 A. He was pretty adamant that he had not done anything,
4 and that it was a misinterpretation, and he did not
5 understand why somebody would make these lies up
6 about him. I told him, I said, I can provide a
7 polygraph examination for you. I'll try to get it
8 done as soon as possible. Maybe as early as the
9 next morning. And he indicated to me that he was
10 willing to do that. So I put that into action to
11 get it taken care of.

12 Q. Were you aware that he had been advised of his
13 Miranda Rights by Officer August prior to the
14 polygraph examination?

15 A. Yes, ma'am.

16 Q. And were you aware that he had made an admission to
17 the polygraph examiner following the examination?

18 A. Yes, ma'am. I was aware.

19 Q. And what happened next?

20 A. At that point I sat down with him in the interview
21 room, which was being recorded once again, and at
22 that time I asked him if he remembered us talking
23 the day before. And asked him if he remembered
24 being advised of his rights. And asked him once
25 again if he understood what his rights were. And I

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1 asked him once again if he was still wanting to talk
2 to me. And at that time I went into what's --- a
3 little bit about what happened yesterday, and once
4 again told him that it was very important that he
5 tell me the truth, because that was what we were
6 there for was to be seekers of the truth. That we
7 were not there to judge him or convict him.

8 Q. Did he make any admissions concerning sexual contact
9 with his daughter **Victim #1**?

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

11 Q. Did he make any admissions concerning sexual contact
12 with his stepdaughter **Victim #2**?

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

14 Q. And in his statement to you, did he admit that this
15 occurred one time or more than one time?

16 A. More than one time.

17 Q. And in his statement to you, did he indicate to you
18 whether he had --- whether the sexual assaults
19 occurred when the girls were together?

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

21 Q. And by together I mean located in the same room,
22 same incident date.

23 A. Yes, ma'am.

24 Q. And in addition to the verbal statement that was
25 being video recorded, how, if at all, did you obtain

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1 more information from him, or how was it documented?

2 A. What I did was during the interview he gave us a ---
3 wrote down for us a letter to **Victim #1** and **Victim #2**
4 explaining himself, and apologizing for what he did.
5 During the conversation that I had prior with him
6 and the conversation that I had with him that day,
7 we talked about how important it is to tell the
8 truth and to put our best foot forward, so we can be
9 forgiven for our shortcomings. He professed to be a
10 very religious man. He mentioned that several
11 times. We talked about that at great length. He
12 gave me a written letter that you see right here.
13 Do you want me to read it?

14 Q. I was going to ask you whether he appeared to
15 display any type of emotion; did you observe
16 anything?

17 A. He was --- He was still crying to some extent. He
18 was very remorseful. I think he was very upset and
19 very ashamed of what he had done.

20 Q. Did you ask him if he was ashamed?

21 A. I believe I did. I asked him if he was sorry and I
22 asked him if he was ashamed, and I asked him if he
23 could take it back, and I believe at that point in
24 our interview I believe if he could have I believe
25 he would have.

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1 Q. I'm going to show you this document and ask you
2 whether or not you recognize it.

3 A. Yes, ma'am, I do.

4 Q. And how so?

5 A. This is a copy of the piece of paper that Mr.
6 Gallishaw wrote, his letter of apology.

7 Q. Okay. And did he write that in your presence?

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

9 Q. And does the video tape indicate that as well?

10 A. Yes, ma'am, it does.

11 **MS. MAYES:** Your Honor, at this time
12 this would be Court's Exhibit 7, I believe.

13 **THE COURT:** It will be marked as Court's
14 Exhibit Number 7, the letter the witness testified to
15 that the Defendant in this case wrote down.

16 **WHEREUPON, COURT'S**

17 **EXHIBIT NUMBER 7 ARE MARKED**

18 **FOR THE RECORD.**

19 Q. Captain Watson, could you please read into the
20 record the statement that were --- the content of
21 the letter that you observed Mr. Gallishaw write?

22 A. Yes, ma'am.

23 **THE COURT:** All right. We can save a
24 little bit of time. It's in evidence as Court's Exhibit
25 Number 7 and I can read it. It's in the record. It

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1 won't be necessary for him to read it into the record.

2 **MS. MAYES:** Your Honor, the next matter
3 is we do have the video tape from the interview on the
4 19th, as well as the interview on the 20th that contains
5 the statement that the State will be offering. In
6 addition, we have transcripts of those and we can make
7 the transcripts available to the Court to save time as
8 well.

9 **THE COURT:** All right. The video on
10 what date?

11 **MS. MAYES:** February 19, 2009, and
12 February 20, 2009. At this time we will mark the
13 transcripts as Court's Exhibits 8 and 9.

14 **THE COURT:** All right. The transcripts
15 will be marked as Court's Exhibits 8 and 9. One February
16 19, 2009, and the other being February 20, 2009. These
17 are verbatim transcripts of the video tapes, is that
18 correct, Ms. Mayes?

19 **WHEREUPON, COURT'S**

20 **EXHIBIT NUMBERS 8 AND 9**

21 **ARE MARKED FOR THE RECORD.**

22 **MS. MAYES:** Your Honor, they were
23 prepared by a court reporter with certification.

24 **THE COURT:** All right. Do you have any
25 objection to the Court considering these and not

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1 considering the actual tapes, Ms. Little?

2 **MS. LITTLE:** Just one moment, Your
3 Honor.

4 **(PAUSE.)**

5 **THE COURT:** While she's talking to her
6 client about that, let the record reflect that the
7 transcripts are the same certificate from the Court
8 Reporter or the transcriber, that they are a correct and
9 accurate copy of the video tapes. Both exhibits 8 and 9
10 for certification.

11 **MS. MAYES:** Your Honor, no objection to
12 the transcripts being viewed by the Court instead of the
13 videos.

14 **THE COURT:** All right. I want to make
15 sure that this is clear on the record that, and I haven't
16 decided the issue at all, but if I should decide that the
17 video tapes were voluntarily made, that I would rule that
18 the video tapes themselves could be played before the
19 Jury and not just the transcripts, and that is
20 understood. Do you understand that?

21 **MS. LITTLE:** Yes, sir, I understand.

22 **THE COURT:** The issue is not really what
23 the content of the statements are, but whether or not
24 they were freely and voluntarily made. So really 8 and 9
25 both deal with content, as does 7, for that matter, and

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1 the issue really is voluntariness and not what the
2 statements themselves said. So that is the issue that I
3 have to decide under Jackson versus Denno.

4 All right. Go ahead, Ms. Mayes.

5 MS. MAYES: Yes, sir, Your Honor.

6 Q. And preceding that statement, the video tape
7 statement on the 20th in which certain admissions
8 were made, did you make any threats towards Mr.
9 Gallishaw?

10 A. No, ma'am.

11 Q. Or his family member?

12 A. No, ma'am.

13 Q. And did you observe any threats being made by the
14 SLED Agent, Rick Charles?

15 A. No, ma'am.

16 Q. What about the polygraph examiner Michael August?

17 A. No, ma'am.

18 Q. Did it appear that his statement to you was freely
19 and voluntarily made?

20 A. Yes, ma'am.

21 Q. The letter of apology that you mentioned asserting
22 the rights, does that appear to be free and
23 voluntarily given and provided to you?

24 A. Yes, ma'am.

25 MS. MAYES: Nothing further at this

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1 time, Your Honor.

2 **THE COURT:** Cross examination of this
3 witness, Ms. Little?

4 **MS. LITTLE:** Thank you, Your Honor.

5 **CROSS EXAMINATION BY MS. LITTLE**

6 Q. Captain Watson, you weren't present during the time
7 after the polygraph was given but before you
8 interviewed the Defendant on February 20th; is that
9 correct?

10 A. I'm sorry, I didn't understand the question. You
11 went a little too fast.

12 Q. I'm sorry, let me rephrase. After the polygraph was
13 given, between that time and the time when you began
14 interviewing Mr. Gallishaw, were you present when
15 Sergeant August and Agent Charles were in there
16 talking to the Defendant?

17 A. No, ma'am, I was not.

18 Q. Okay. So you don't really know what was said to the
19 Defendant during that time?

20 A. No, ma'am, I don't.

21 Q. And prior to interviewing the Defendant on video,
22 did you ever tell the Defendant what you wanted him
23 to say during his confession?

24 A. No, ma'am.

25 Q. Did you tell him what to write in the letter?

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1 A. No, ma'am.

2 MS. LITTLE: No further questions, Your
3 Honor.

4 THE COURT: Redirect?

5 MS. MAYES: No, sir, Your Honor.

6 THE COURT: All right. Thank you, sir.
7 You may step down.

8 MR. WATSON: Thank you.

9 THE COURT: All right. Ms. Mayes?

10 MS. MAYES: No further witnesses on this
11 matter, Your Honor.

12 THE COURT: All right. Counsel, it's
13 about 5:30 in the afternoon, and we've been here all day.
14 While the Defendant has the right, Ms. Little, to take
15 the stand in regard to this issue only without losing his
16 Fifth Amendment Rights, and I will allow him to do that.
17 I think that what it would be better to do is, and I need
18 to review these statements any how, and that's going to
19 take me some time, but what I would like to do is recess
20 this afternoon. In the morning allow the Defendant to
21 present any testimony or evidence he wishes to present
22 with regard to the voluntariness issue.

23 Of course, I will then allow the State to reply
24 to that, if they wish to do so. And then I will rule on
25 the Jackson versus Denno issue.

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1 Just to make sure, Ms. Mayes, that I have a
2 clear understanding of what the State wishes to present
3 in the way of statements. One would be the statement of
4 the polygraph operator as to what was said to him; is
5 that correct?

6 MS. MAYES: Yes, sir, Your Honor.

7 THE COURT: And the other one would be
8 the statement to Mr. Watson --- both the oral interview
9 video statements he made to Mr. Watson.

10 MS. MAYES: Yes, sir. The letter of
11 apology is --

12 THE COURT: -- The letter as well.

13 MS. MAYES: Yes, sir.

14 THE COURT: So those would be the
15 statements that you consider voluntary statements made by
16 the Defendant in this case?

17 MS. MAYES: Yes, sir, Your Honor.

18 THE COURT: Okay. All right. What we
19 will do then is, we will recess this afternoon. In the
20 morning we will take up the matter of --- Ms. Little, if
21 your client wishes to present himself or any other
22 testimony regarding the voluntariness of the statements.

23 And I think what we will do, Ms. Carter, is
24 bring the Jury in at 10:30 instead of 9:30 to get these
25 matters taken care of.

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1 MS. CARTER: Yes, sir.

2 THE COURT: We will reconvene in the
3 morning at 9:30. Now, Ms. Mayes, are there any other
4 issues, pretrial issues on behalf of the State that you
5 think we need to address?

6 MS. MAYES: Yes, sir, Your Honor. I
7 believe we may have some more that may be more time than
8 an hour. Defense counsel has notified us that they do
9 wish to get into the Rape Shieldtype issues. Both of
10 the minor victims will be early witnesses. So we would
11 need to handle that in-camera prior to their testimony.
12 In addition ---

13 THE COURT: I realize Mr. Swilley has
14 put me on notice with regard to the other case with
15 regard to some Rape Shield issues. What about this case,
16 Ms. Little, are there any Rape Shield issues in this
17 case?

18 MS. LITTLE: Yes, sir, Your Honor. Just
19 briefly, and I'll be glad to speak to Ms. Mayes about
20 this. These are not issues that we would actually try to
21 get into, except for possibly for impeachment purposes,
22 depending on how the children testify. They are not
23 things that I'm going to try to bring out in the
24 Defense's case, but just anticipating that there may be -
25 -- as to what their testimony may be.

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1 THE COURT: So you are taking the
2 position that the Rape Shield Statute allows you to do
3 that for impeachment purposes.

4 MS. LITTLE: Yes, Your Honor.

5 MS. MAYES: I will say, Your Honor, that
6 the minor victim --- one of the minor victims has been
7 involved in a sexual assault that was committed by an
8 older half-brother. And that half-brother is the son of
9 Mr. Gallishaw. And that case was investigated and
10 prosecuted. Ms. Little is aware of that. And that is
11 not something that we wish to even hide. That's
12 something that the victim acknowledged during her
13 forensic interview with the Durant Center. So we have
14 expected that to come out.

15 There was another issue of alleged ---
16 concerning the other minor victim that we do take issue
17 with.

18 THE COURT: All right. So the first
19 issue that you addressed you're not going to contend that
20 the testimony is inadmissible under the Rape Shield
21 Statute. But there is another one that you contend is
22 inadmissible under the Rape Shield; is that right?

23 MS. MAYES: Yes, sir, Your Honor.

24 THE COURT: Do you know what she's
25 talking about, Ms. Little?

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1 **MS. LITTLE:** Yes, Your Honor. That is
2 actually something that I did not --- I put in there out
3 of an abundance of caution. I actually would like to
4 talk to Mr. Gallishaw about whether or not we even think
5 that that would --

6 **THE COURT:** -- All right --

7 **MS. LITTLE:** I really don't see any way
8 that that would actually --- we would actually put that
9 in evidence. Again, unless, you know, the child were --

10 **THE COURT:** I think we can probably work
11 this out. To make sure that we have time and don't keep
12 the Jury waiting unnecessarily, let's say 11:00 for the
13 Jury instead of 10:30. That will give us an hour and a
14 half to address those things in the morning, as well as
15 finish the Jackson v Denno.

16 Wait though, before I say 11:00 I better find
17 out from Ms. Mayes if there's anything else.

18 **MS. MAYES:** Yes, sir, I'm going to go
19 ahead and pass up to the Court --- we discussed this
20 briefly in chambers with Ms. Little, the State's Motion
21 for pursuant to Jessie's Law which does now allow after
22 the passage in 2006, it does now allow for the playing of
23 the forensic interview to the Jury when the child is
24 under age twelve. And I'm going to pass up to the Bar as
25 well as the Statute and the State's Motion that deals

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1 with this concerning both [Victim #2] [REDACTED] and [Victim #1]

2 [REDACTED].

3 We also have copies of each forensic interview
4 to provide to the Court for a later determination.

5 THE COURT: All right. So you have
6 transcripts of them, is that what you're saying?

7 MS. MAYES: Unfortunately, Your Honor,
8 it is not a transcript. It a forensic interview summary
9 of each, as well as the original video taped statement.

10 THE COURT: All right. What's the
11 position of the Defendant with regard to the forensic
12 interviews, Ms. Little?

13 MS. LITTLE: First, are you intending to
14 offer all three, both the first and second interviews of
15 [Victim #1] [REDACTED]?

16 MS. MAYES: The State is offering the
17 final interview of [Victim #1] [REDACTED]. But I believe under
18 Jessie's Law the Defendant could offer the other
19 statement, if he so desires.

20 MS. LITTLE: Yes.

21 MS. MAYES: I believe that Jessie's Law
22 covered --- it being offered by either side. And to
23 advise the Court what we are referring to, one of the
24 children, [Victim #1] [REDACTED], was interviewed on February 10th.
25 During that interview she did not acknowledge any abuse

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1 by her father, Jimmy Gallishaw. Then six days later she
2 was re-interviewed at the Durant Center and did
3 acknowledge sexual abuse by her father.

4 So that is the video tape the State would
5 offer. However, we certainly will offer testimony that
6 the child received an interview and did not make an
7 admission of sexual abuse concerning her father.

8 **THE COURT:** Okay. There are two
9 interviews of that victim?

10 **MS. MAYES:** Yes, sir, Your Honor. And
11 we have forensic interview summaries that go with both
12 that we will go ahead and present to the Court, as well
13 as the forensic interview summary and tape of **Victim #2**
14 **██████████**.

15 **THE COURT:** There was just one interview
16 of **Victim #2**?

17 **MS. MAYES:** Correct, Your Honor.

18 **THE COURT:** Okay.

19 **MS. LITTLE:** Your Honor, Defense would
20 request that --- I understand that under Jessie's Law,
21 Your Honor has to make a finding about certain things
22 about the video. So I believe that Your Honor does have
23 to watch the forensic interview. We would just ask that
24 Your Honor also consider the first interview of **Victim #1**
25 when she denied that anything was going on at the home.

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1 **THE COURT:** Well, the State has
2 indicated what they are going to do is offer the second
3 one. And under Jessie's Law, you have the right to ask
4 the Court to consider the first, which is what you are
5 doing?

6 **MS. LITTLE:** Yes, Your Honor.

7 **THE COURT:** All right. Well, I think
8 I'm going to have to see those. How long are the
9 interviews, Ms. Mayes?

10 **MS. MAYES:** I believe they were about
11 forty-five minutes each.

12 **THE COURT:** All three of them?

13 **MS. MAYES:** All three of them, Your
14 Honor. That's an estimate. It took us about --

15 **THE COURT:** -- Two hours.

16 **MS. MAYES:** Yes, sir, Your Honor, to
17 watch them all. And then the final issue for Your Honor
18 is the State's Motion for Consolidation.

19 **THE COURT:** As I understood that in
20 chambers discussion, Ms. Little was not going to contest
21 that.

22 **MS. LITTLE:** No, Your Honor. Actually,
23 I've read her Motion and her Memorandum in support of
24 consolidating those cases.

25 My client's position is that he would prefer

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1 that the cases not be consolidated. One is a City case.
2 One is a County case. And if Your Honor would just
3 briefly hear my argument, I think you could probably rule
4 on this based on her Memorandum.

5 Our argument is just that they are two
6 different victims. One is a City case. One is a County
7 case. He was served with the warrants at two different
8 times. And he objects to being tried for the acts
9 allegedly committed against both victims. At the same
10 time he would prefer to affirm his right to a second
11 trial with each alleged victim.

12 THE COURT: All right. It appears that
13 we have a lot to do in the morning. Including the
14 remainder of Jackson versus Denno. We've got to address
15 these matters and make sure we are clear on the Rape
16 Shield Statute. And then we've also got to get into the
17 Jessie's Law with regard to forensic interviews, and the
18 consolidation question.

19 It appears that that will probably take all
20 morning. So I don't think we need to keep the Jury
21 waiting in the Jury Room for that time to do that.

22 So, what I would like to do, Ms. Carter, is ask
23 the Jury to come in tomorrow at 2:30. And we'll
24 hopefully be able to get to the testimony tomorrow
25 afternoon at 2:30. We will have to resolve all these

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1 other issues at that time.

2 Ms. Mayes, what I would like for you to do is
3 have your equipment available tomorrow morning for me to
4 review the forensic interviews in chambers. I guess it
5 can be done on the computer. I can do that in chambers
6 tomorrow morning after we take up some of these other
7 issues.

8 In the meantime, is there anything else that
9 you think that I need to look at? I've got the
10 Memorandum in support of the Motion for Consolidation.
11 The Motion for the admission for the out-of-court
12 statements, pursuant to Section §17-23-175. And I have
13 all of the matters regarding Miranda. Did you say also
14 that you had the matters with regard to the Rape Shield
15 Statute, Ms. Mayes?

16 MS. MAYES: Your Honor, we do have a
17 Motion, which I'll pass up to the Court for compliance
18 with Rape Shield.

19 THE COURT: Ms. Little, do you have
20 anything you wish to submit with regard to --- that I can
21 review ahead of time, as to why you think the Rape Shield
22 Statute?

23 MS. LITTLE: No, Your Honor, I'm
24 actually discussing that with my client right now. And
25 we may actually withdraw that second part of the

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1 testimony we offered to seek. But I need to clear it
2 with him.

3 THE COURT: All right. We will take up
4 then in the morning at 9:30. We will spend from 9:30 to
5 lunch time tomorrow trying to finish the remainder of
6 these issues. Is there anything else, Ms. Mayes, that
7 you think we need to get into this afternoon?

8 MS. MAYES: No, sir. Those were the
9 primary issues. The Consolidation, the Rape Shield
10 Issue, and the admission of the forensic interview
11 pursuant to Jessie's Law, the potential admission of the
12 forensic interview pursuant to Jessie's Law. We realize
13 that they won't physically be shown to the Jury until
14 after each victim has testified and are subject to cross
15 examination.

16 THE COURT: All right. Consolidation,
17 forensic interviews, Rape Shield, of course, still got to
18 go back and --- we haven't finished Jackson versus Denno.

19 MS. LITTLE: Yes, sir.

20 THE COURT: All right. Anything further
21 we need to take up this afternoon?

22 MS. MAYES: Nothing from the State, Your
23 Honor.

24 MS. LITTLE: No, Your Honor.

25 THE COURT: We will be in recess until

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1 in the morning at 9:30. Thank you.

2 (Whereupon, The Court recesses for the
3 evening at 5:45 p.m.)

4 --- END OF DAY 1 ---

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1 (Whereupon, Court comes to order at 9:37
2 a.m. on Tuesday, July 20, 2010.)

-- DAY TWO OF TRIAL --

4 **THE COURT:** Back on the record in regard
5 to the matter of State versus Gallishaw. He is not
6 present yet. He will be coming in.

7 (Whereupon, Defendant enters the courtroom
8 at 9:40 a.m.)

9 **THE COURT:** Back on the record in regard
10 to the matter of State versus Gallishaw. Mr. Gallishaw
11 is present together with his counsel. The State is
12 represented by Ms. Mayes and Ms. Baugh.

13 Yesterday when we adjourned we were in the
14 process of a hearing pursuant to Jackson versus Denno, to
15 determine the admissibility of certain statements that
16 were made. The State has presented its evidence on the
17 admissibility of those statements.

18 And now, Ms. Little, the Defense will have a
19 right to present any testimony or evidence that he wishes
20 to present regarding the voluntariness, including his own
21 testimony which he can do without waiving his Fifth
22 Amendment Rights. You may present anything that you
23 would like to present. It is a voluntary decision.

24 **MS. LITTLE:** Thank you, Your Honor. May
25 it please the Court, Defense would call Adrienne

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1 Gallishaw to the stand.

2 THE COURT: All right. Come around
3 please, Ms. Gallishaw.

4 WHEREUPON, ADRIENNE GALLISHAW

5 FIRST HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS

6 MS. GALLISHAW: I do.

7 DIRECT EXAMINATION BY MS. LITTLE

8 Q. Ms. Gallishaw, good morning.

9 A. Good morning.

10 Q. I just have a few questions for you this morning.
11 Of course, you understand why we are here today.

12 A. Yes, ma'am.

13 Q. Back when all of this --- back when Jimmy first got
14 in trouble, or when the police started questioning
15 Jimmy, did anybody ever make any threats to you ---
16 did the police department ever threaten to take your
17 children?

18 A. No.

19 Q. Did anyone ever tell you that you would get in
20 trouble for talking to Jimmy?

21 A. Well, that wasn't that I could get in trouble, but
22 that I could lose my kids if I ever had contact with
23 him.

24 Q. You were told that you could lose your kids. Were
25 you ever told that by the Darlington Police

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1 Department?.

2 A. No, ma'am.

3 Q. Do you recall ever telling Jimmy Gallishaw that they
4 were threatening to take your children, that the
5 police were threatening to take your children?

6 A. Well, the police didn't threaten to take my
7 children. But when he called from where --- I did
8 tell him that I could lose the children by
9 communicating with him.

10 Q. And who is the person that gave you that threat?

11 MS. MAYES: Objection, Your Honor, to
12 the term threat. I believe that's --

13 THE COURT: Objection sustained. This
14 is a non Jury matter, I can discount that myself. Go
15 ahead.

16 A. Repeat the question, please.

17 Q. Who told you that you would lose the children?

18 A. I was told by Ms. McLeod, Ms. Tina McLeod.

19 THE COURT: Check those microphones to
20 see if they are working. She has a soft voice. Go
21 ahead.

22 MS. LITTLE: Your Honor, I believe she
23 answered that Ms. Tina McLeod of the Department of Social
24 Services.

25 Q. She's the one who told you that you could lose the

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1 children?

2 A. By communication with him.

3 Q. And it's your testimony today that you were never
4 threatened by the Darlington Police Department?

5 A. No, ma'am.

6 Q. Or anybody with the Sheriff's Department?

7 A. No, ma'am.

8 MS. LITTLE: No further questions, Your
9 Honor.

10 THE COURT: Cross examination, Ms.
11 Mayes?

12 MS. MAYES: Yes, sir, Your Honor.

13 CROSS EXAMINATION BY MS. MAYES

14 Q. Ms. Gallishaw, the person that you referred to, Ms.
15 Tina McLeod at the Department of Social Services?

16 A. Yes, ma'am.

17 Q. Okay. And the conversation you are referring to is
18 about the Safety Plan?

19 A. Yes, ma'am.

20 Q. And the safety plan was put into place after it came
21 out that Mr. Gallishaw had sexually abused your
22 daughter, Victim #2?

23 A. Yes, ma'am.

24 Q. And DSS advised you that because of the allegations
25 and the allegations of abuse that Mr. Gallishaw

ADRIENNE GALLISHAW - REDIRECT EXAMINATION

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1 couldn't have any further contact with [Victim #2],
2 correct?

3 A. Yes, ma'am.

4 Q. And they went over a paper called a Safety Plan.

5 A. Yes, ma'am.

6 Q. And in that Safety Plan, you agreed that you would
7 not allow him to physically see [Victim #2] ?

8 A. Yes, ma'am.

9 Q. Or communicate with [Victim #2] directly, right, by
10 calls or letters?

11 A. Yes, sir.

12 Q. Did they explain to you that is standard in cases
13 where sexual assault has been found to have
14 occurred?

15 A. Yes, ma'am.

16 Q. Did you agree and sign the Safety Plan?

17 A. Yes, ma'am.

18 **MS. MAYES:** Thank you. Nothing further.

19 **THE COURT:** Redirect, Ms. Little?

20 **MS. LITTLE:** Beg the Court's indulgence
21 for one moment.

22 **(PAUSE.)**

23 **REDIRECT EXAMINATION BY MS. LITTLE**

24 Q. Ms. Gallishaw, did you ever communicate to Jimmy
25 Gallishaw that if he didn't cooperate with the

JIMMY GALLISHAW - DIRECT EXAMINATION

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1 police you could lose your children?

2 A. I don't remember that.

3 MS. LITTLE: Thank you. No further
4 questions.

5 THE COURT: Ms. Mayes?

6 MS. MAYES: Nothing further, Your Honor.

7 THE COURT: All right. Thank you,
8 ma'am. You may step down.

9 All right. Ms. Little, you may call your next
10 witness.

11 MS. LITTLE: Beg the Court's indulgence
12 for one moment.

13 (PAUSE.)

14 MS. LITTLE: The Defense calls Jimmy
15 Gallishaw.

16 THE COURT: All right. Mr. Gallishaw,
17 come on around please.

18 WHEREUPON, JIMMY GALLISHAW

19 FIRST HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS

20 MR. GALLISHAW: I do.

21 DIRECT EXAMINATION BY MS. LITTLE

22 Q. Good morning again, Jimmy. Jimmy, I'm going to take
23 you back to February 2009, at your second interview
24 at Darlington Police Department. The second time
25 that you went to Darlington Police Department. Can

JIMMY GALLISHAW - DIRECT EXAMINATION

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1 you communicate --- Can you tell the Court what
2 threats were made to you by Darlington Police
3 Department?

4 A. Okay. The threats --- regarding the threats that
5 were made were that if I didn't come, if I didn't go
6 ahead and just like confess, confess to these things
7 that they were going to continue to badgering my
8 kids and badgering my wife, do you know what I'm
9 saying --- and take them through all these types of
10 things. And it was like well we're not going to
11 promise you any time, but we have got to get you in
12 some kind of program or something like that, you
13 know, just continually --- do you know what I'm
14 saying --- continually just badgering me and doing
15 things like that.

16 Q. Okay. When you said --- You keep saying and things
17 like that. What specifically did they say that your
18 children and wife would go through if you did not
19 make a confession?

20 A. Okay, they would --

21 THE COURT: Excuse me, Ms. Little.
22 Identify they.

23 MS. LITTLE: I'm sorry.

24 Q. Okay. Can you tell the Court who you're referring
25 to that's making these threats to you.

JIMMY GALLISHAW - DIRECT EXAMINATION

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- 1 A. Um, the guys that were here yesterday --
- 2 Q. What agency?
- 3 A. From Darlington Police Department.
- 4 Q. Was it Captain Danny Watson?
- 5 A. No, it wasn't him. It was a guy there --- the guy
- 6 who administered the polygraph.
- 7 Q. Was it Michael August?
- 8 A. Yes, him and there was one more --- there was one
- 9 more guy in the room with him.
- 10 Q. Okay. I want to know specifically what did Michael
- 11 August say to you to force you to give a confession.
- 12 A. Okay, well, after the polygraph he came in, he
- 13 talked with me and said, do you know how you did;
- 14 and I said, I know how I did, I passed. And he was
- 15 like, no, buddy, you didn't pass --- he was like
- 16 using religion, if it was God's will you would have
- 17 passed or whatever like that. And I said I know
- 18 that couldn't be possible. So we were talking back
- 19 and forth like that. I was letting them know that
- 20 couldn't be right.
- 21 Q. At what point did you begin to feel like you were
- 22 being pressured by Sergeant August?
- 23 A. Once ah --- once --- Once he was talking --- the
- 24 other guy came in, so both of them was at me then.
- 25 Q. Okay. The other guy may have been a SLED agent. Do

JIMMY GALLISHAW - DIRECT EXAMINATION

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1 you know who the other person was?

2 A. No. I just saw him sitting at a computer.

3 Q. What did the other person --- Did the other person
4 say anything to you?

5 A. Yeah, he was talking as well.

6 Q. And what did he say?

7 A. That --- he was one of the ones saying --- he was
8 one of the ones saying I don't know if you'll do
9 time or not, or we might get you into a program, or
10 something like that --- all you got to do is --- you
11 know, -- do you know what I'm saying --- all you got
12 to do is take the wrap, take the wrap so you won't
13 have to put your kids through this anymore, or
14 whatever like that --- because if you don't, we will
15 have to keep doing this, and putting your kids
16 through this, and putting your wife through that.
17 When I saw my wife at the courthouse --- when I went
18 to go see --- when I went up for child support and I
19 saw her eyes they were red and puffed up, that let
20 me know that she had been crying for days on end,
21 you know. And that is one thing that touched my
22 heart. That was one thing that touched my heart,
23 because I know how she looks when she cries. Do you
24 understand? I know how she looks when she cries,
25 and when I saw her like that, you know, that was one

JIMMY GALLISHAW - DIRECT EXAMINATION 124

1 thing that made me --- one thing that made me go
2 ahead and break down too to let them know --- okay,
3 just leave my family alone. Leave my wife alone,
4 leave my kids alone.

5 Q. I want to stop you just for a minute. What exactly
6 did they tell you they were going to do to your
7 wife?

8 A. Okay. Actually they were thinking about --- I think
9 about charging her as well --- about when something
10 --- I don't know.

11 Q. Can you be more specific? The Court needs to know
12 exactly what threat was made regarding your wife.

13 A. Okay, they were saying that ---

14 Q. Who is they?

15 A. That August, August he was saying --- he said that
16 she was --- she was accused of knowing something
17 about --- she was accused of knowing something about
18 one of the incidents. And that they might would
19 charge her or whatever like that too for that. And
20 I couldn't --- I couldn't deal with that.

21 Q. Okay. All right. And what exactly did Sergeant
22 August or the other officer say that your children
23 would have to go through if you didn't do what they
24 asked?

25 A. Numerous --- numerous examinations. They basically

JIMMY GALLISHAW - DIRECT EXAMINATION

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1 --- that's --- that's --- that --- they stated the
2 formal thing they were talking about, all kinds of
3 examinations, just not leaving them alone, just
4 steady pressuring them and messing with them.

5 Q. The statements that the police made to you, how did
6 they make you feel?

7 A. Well, at the time they was doing the talking, you
8 know, the one thing that was in my mind was when I
9 saw my wife in the courtroom --- and not in the
10 courtroom but downstairs --- when I saw how she
11 looked that let me know that she had been up and
12 crying for days on end. And it just --- that
13 touched my heart.

14 Q. What did that make you want to do?

15 A. It made me wanna --- it made me wanna --- wanna to
16 do whatever I had to do in order for them to leave
17 them alone. Because I know once I did they would
18 leave them alone. Once I did they left them alone.

19 Q. Do you have other information that you want to give
20 the Court this morning about the threats that were
21 made to you and how they made you feel and react?

22 A. I don't know how to say it.

23 Q. Have you told the Court everything you want to say
24 this morning about how you were coerced?

25 A. Well, you know, what I'm saying --- I felt that ---

JIMMY GALLISHAW - DIRECT EXAMINATION

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1 I felt that the polygraph test and Danny Watson and
2 those guys I felt they was framing me. So I felt --
3 - I felt that it was entrapment in order to make me
4 do that. That's why Danny Watson wasn't far from --
5 - from the facility, because he came right in and --
6 - he came right, right in afterwards. You know, he
7 came right in just like he was right around the
8 corner just listening to what was going on.

9 Q. Did Captain Watson ever communicate any threats to
10 you?

11 A. No, he didn't make any threats. But he was like
12 telling me --- you know, what I'm saying things like
13 what was going on, and he was like --- he was using
14 like both the girls --- you know, they were talking
15 about one girl, but he began talking about both of
16 them, both of the girls --- like you know both of
17 the girls they are not going to make up this, or
18 they're not going to make up that, or whatever.

19 Q. Was this on camera or off camera?

20 A. No, these things were off camera on the outside of
21 the room. You have the room right there. The door
22 of the room where I did the test, then you have an
23 outside chair sitting right here and another chair
24 right here. I was sitting in one chair and the
25 dude, the guy that was on --- the guy that was on

JIMMY GALLISHAW - DIRECT EXAMINATION

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1 the computer around the corner he was sitting beside
2 me while August was doing the reading of the waive
3 sheet, I guess, the reading of the waive sheet. And
4 then after that then he went in and did the reading
5 of the waive sheet. I guess that's --- I don't know
6 if that's what he does or whatever like that. And
7 then we just sat there and talked. Actually we were
8 just conversating, talking about movies and all
9 kinds of things like that.

10 Q. Okay. All right. At what point did you feel that
11 you must confess in order to save your family?

12 A. After he came out.

13 THE COURT: He who?

14 A. August. After August came out from out of the room
15 with the waive sheets he talked with me and said, do
16 you know how you did. I said, I did pretty good. I
17 think I did good.

18 Q. All right. We have already gone over that. Is
19 there anything else you would like to tell the
20 Court?

21 A. No, that's it.

22 Q. About being coerced?

23 A. No, that's it.

24 Q. Please answer any questions that Ms. Mayes has
25 for you.

JIMMY GALLISHAW - CROSS EXAMINATION

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1 THE COURT: Cross examination?

2 MS. MAYES: Yes, sir, Your Honor.

3 CROSS EXAMINATION BY MS. MAYES

4 Q. Now, Mr. Gallishaw, if I understand correctly what
5 happened --- Have you had a chance to review the
6 video tape of your original statement to Danny
7 Watson on February 19th?

8 A. Uh-huh.

9 THE COURT: Yes? She can't take down a
10 uh-huh.

11 A. Yes.

12 Q. Sir, do you recall your conversation with Danny
13 Watson on the 19th, when towards the end of the
14 interview he asked you if you would agree to
15 participate in a polygraph, and you said that you
16 would.

17 A. Yes.

18 Q. So you did that voluntarily?

19 A. Yes.

20 Q. And you don't dispute that the entire conversation
21 that you had with Captain Watson on the 19th, the
22 first video taped interview, was completely ---
23 completely and freely and voluntarily given by you.

24 A. Yes.

25 Q. And you agreed to the polygraph?

JIMMY GALLISHAW - CROSS EXAMINATION

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- 1 A. Yes.
- 2 Q. So the next day the polygraph was set up?
- 3 A. Yes.
- 4 Q. And you were taken back down to the Darlington
- 5 Police Department by your own agreement?
- 6 A. Yes.
- 7 Q. And you did freely and voluntarily participate in
- 8 the polygraph examination?
- 9 A. Yes.
- 10 Q. And then at the end of the polygraph examination
- 11 Michael August, who was the examiner, informed you
- 12 of the results?
- 13 A. Yes.
- 14 Q. And you were still speaking with him freely and
- 15 voluntarily at that point, correct?
- 16 A. Yes.
- 17 Q. When he told you that you had failed you began to
- 18 cry, didn't you?
- 19 A. No.
- 20 Q. You deny that you cried?
- 21 A. No.
- 22 Q. You deny that?
- 23 A. I did not start crying then, no.
- 24 Q. okay. So your testimony is that you didn't cry, or
- 25 got emotional, and all?

JIMMY GALLISHAW - CROSS EXAMINATION

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1 A. No, not then, no.

2 Q. And you continued speaking with him, and then you
3 agreed to participate in a second interview with
4 Captain Watson, correct? That's the second video
5 taped interview after the polygraph examination?

6 A. Uh'huh, yes.

7 Q. And you said during the course of your conversation
8 with Captain Watson --- and you recall him, he's
9 actually seated in the courtroom over there.

10 A. Un-huh.

11 Q. You know who I'm referring to?

12 A. Un-huh.

13 Q. You've seen that video tape as well?

14 A. Yes.

15 Q. And that statement with Captain Watson was freely
16 and voluntarily given, correct?

17 A. Wait a minute. Once again, you asked me did I see
18 that video statement.

19 Q. The second one.

20 A. No, I haven't seen that one. No, I haven't seen
21 that one.

22 Q. Has your attorney been over the transcript with you?

23 A. Um, yes.

24 Q. So you are aware that during the course of the
25 second interview there was a conversation about

JIMMY GALLISHAW - CROSS EXAMINATION

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1 specifics with Victim #1 and Victim #2 ?

2 A. Uh-huh.

3 THE COURT: Is that a yes?

4 A. Yes.

5 Q. You're aware of what was said during the course of
6 that interview?

7 A. By me?

8 Q. By you.

9 A. Yes.

10 Q. And that statement that you gave to Captain Watson
11 was freely and voluntarily given as well, wasn't it?

12 A. No.

13 Q. It was not?

14 A. It was under --- it was under coercion.

15 Q. And, during your previous testimony on direct
16 examination when the statement was given, it was
17 given to Captain Watson, and Michael August was not
18 in the room.

19 A. No, he wasn't in the same room, but he was on the
20 outside of the room, not in the same room. It was
21 only me and Danny Watson in the same --- in the same
22 room giving the examination. August was on the
23 outside.

24 Q. Right. And we are talking about a second video
25 taped interview, correct?

JIMMY GALLISHAW - CROSS EXAMINATION

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1 A. Uh-huh, yes.

2 Q. There are no threats made by Captain Watson during
3 the course of that interview, are there?

4 A. No.

5 Q. At any point during the course of that interview did
6 you relate to Captain Watson that anyone had made
7 threats towards you?

8 A. No, not at that specific time.

9 Q. Not at all, did you?

10 A. Not at that specific time, not on video.

11 Q. In fact, the first you are hearing of this is today,
12 correct?

13 A. Have told my lawyer about it. As far as y'all
14 hearing it I don't know.

15 Q. You never advised Captain Watson at any point that
16 day that you felt any pressure or coercion from any
17 other person, did you?

18 A. No, I did not advise him of it.

19 Q. And you end up writing a letter at the end of the
20 interview. Let me show you a document and ask you
21 do you recognize it?

22 A. Yes, ma'am.

23 Q. Whose handwriting is that?

24 A. That's my own.

25 Q. And were you given a pen to write this or a pencil?

JIMMY GALLISHAW - CROSS EXAMINATION

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1 A. I can't remember if it was a pen or pencil. I think
2 it was a pen.

3 Q. And you testified you have not seen the video tape.
4 Have you seen any portion of the video tape, such as
5 the end where you shown writing this?

6 A. No.

7 Q. But you don't disagree that you wrote this of your
8 own free will?

9 A. Yes.

10 THE COURT: That's Exhibit 7?

11 MS. MAYES: Yes, sir, Your Honor, the
12 letter addressed to Victim #1 and Victim #2.

13 Q. Now, the threats that you say that heard from the
14 officer, isn't it a fact, Mr. Gallishaw, that he
15 informed you that you had failed the polygraph?

16 A. Yes, that's a fact.

17 Q. And you knew at that point you were going to be
18 charged, correct?

19 A. No, not right then. Not right then. I don't know --
20 - I didn't know at that point too much about the
21 law. I mean, you can't blame ignorance on that.
22 But I did not know too much about the law. Whether
23 I was going to be charged right then and there I
24 really don't know.

25 Q. This wasn't your first involvement with law

JIMMY GALLISHAW - CROSS EXAMINATION

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1 enforcement. You had been previously charged and
2 convicted on a cocaine charge. You've been to court
3 for that, right?

4 A. Yes.

5 Q. So you've had some dealings with law enforcement in
6 the past.

7 A. Yeah, but not as far as to an extent like this.

8 Q. And you had already been charged a few weeks earlier
9 by Investigator Patricia Ray, based on the
10 allegation concerning **Victim #2**?

11 A. Yes.

12 Q. And you had been served with those warrants and you
13 had you had actually been detained out at the
14 Detention Center before the Darlington Police
15 Department even got involved, correct?

16 A. Yes.

17 Q. And several weeks went by, and after the allegations
18 came out by your daughter **Victim #1**, they began
19 communicating with you as well.

20 A. Yes.

21 Q. I believe Captain Watson had that initial interview
22 with you on the 19th that you state was freely and
23 voluntarily given.

24 A. Yes.

25 Q. You agreed to the polygraph the next day?

JIMMY GALLISHAW - CROSS EXAMINATION

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1 A. Yes.

2 Q. And then after the polygraph you were informed that
3 you had failed?

4 A. Yes.

5 Q. And your testimony is that you had no idea that you
6 would potentially be charged?

7 A. I really didn't --- I didn't think --- I knew --- I
8 knew I didn't fail.

9 Q. So you disagree with whether or not you failed the
10 polygraph?

11 A. Yes.

12 Q. And your testimony is that the officer informed you
13 that you failed and then said that the kids would
14 have to go through other examinations?

15 A. Yes.

16 Q. Isn't it a fact, Mr. Gallishaw, that what was said
17 to you is that why put the kids through a trial when
18 you did these things; wouldn't it be better to just
19 admit that you did these things, and you stated yes?

20 A. No.

21 Q. You disagree with that?

22 A. Yes.

23 Q. During the second interview with Captain Watson, on
24 that video tape you became very emotional in that
25 didn't you?

JIMMY GALLISHAW - CROSS EXAMINATION

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1 A. Yes.

2 Q. And you began crying.

3 A. Yes.

4 Q. And he asked you if you were ashamed.

5 A. Yes.

6 Q. And you cried and said, yes, I'm ashamed, those were
7 my girls.

8 A. Yes.

9 Q. And you became overcome with emotion.

10 A. Yes.

11 Q. And your testimony is that was coerced as well?

12 A. No, that wasn't coerced. But what that was, was
13 knowing what I was doing --- knowing that ---
14 knowing that I'm giving up --- knowing that I'm
15 giving up my rights --- knowing what --- knowing
16 what --- knowing what I am getting ready to put
17 myself through --- knowing what is fixing to happen
18 to me. That is where the tears come from, and
19 knowing about my family --- my wife and kids being
20 put through these things. I didn't want --- I
21 didn't want to put them through like that, like
22 that, no, nothing like that.

23 Q. Let me make sure I understand what you're saying.

24 Are you saying you were crying on the video tape for
25 yourself because you realized what you were about to

JIMMY GALLISHAW - CROSS EXAMINATION

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1 put yourself through?

2 A. For one as well.

3 Q. And, in fact, the conversation that you would have
4 about **Victim #2** not having contact with you was part
5 of a Safety Plan?

6 A. Yes.

7 Q. Isn't it reasonable that when somebody has been
8 charged with criminal sexual conduct with a minor
9 that that person would not be allowed to have any
10 further contact with the minor; you agree with that,
11 that's reasonable?

12 A. Yes, with a minor. With a minor, yes.

13 Q. But it's reasonable that the mother would have the
14 responsibility, the legal responsibility to make
15 sure the child was protected.

16 **MR. SWILLEY:** Objection.

17 **THE COURT:** What's the objection?

18 **MR. SWILLEY:** I really think that's
19 irrelevant, Your Honor.

20 **THE COURT:** All right. You can't
21 double-team, Mr. Swilley. This is Ms. Little's witness.
22 She's going to have to be the one to make the objections.

23 **MR. SWILLEY:** I apologize, Your Honor.

24 Q. Your testimony is that you heard threats about not
25 being able to --- about not being able to have

JIMMY GALLISHAW - CROSS EXAMINATION

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1 further contact with the kids. But you would agree
2 that that's reasonable under the circumstances.

3 A. But it wasn't reasonable --- the kids --- I was
4 concerned about the kids but I wanted to get in
5 touch with my wife. Do you know what I'm saying?
6 That's who I wanted to get in touch with. I knew
7 that I wasn't going to be able to talk with the kids
8 right at this point and time. But I wanted to be
9 able get in touch with my wife.

10 Q. You wanted to be able to talk with Adrienne, you
11 didn't not understand why you couldn't keep calling
12 the house, correct?

13 A. No. I mean, I know about not calling the house ---
14 I understood that.

15 Q. So you knew you could not keep calling the house.

16 A. Yes, I knew that.

17 Q. But you made calls to the house anyway following
18 your arrest.

19 A. No, I made one call.

20 Q. And you understand it was a problem when you made
21 that call?

22 A. Yes.

23 Q. And that was reported to the police.

24 A. Yes.

25 Q. And you also knew you were not supposed to have any

JIMMY GALLISHAW - CROSS EXAMINATION

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1 contact with the kids such as letters, correct?

2 MS. LITTLE: Objection, relevant to
3 Jackson v Denno issue.

4 THE COURT: What is the relevance to
5 this on the voluntariness Ms. Mayes?

6 MS. MAYES: Your Honor, I can move on.

7 THE COURT: All right. Objection
8 sustained.

9 Q. So your testimony is that when you gave the
10 statement to Captain Watson, and you were crying
11 because you were thinking about what you were going
12 to have to go through, as well as what the kids were
13 going to have to go through, right?

14 A. Yes.

15 Q. And by that you mean --- you said further
16 examinations.

17 A. Yes.

18 Q. You were aware that the children had already been
19 for a medical examination.

20 A. Yes.

21 Q. And you were aware that they had already gotten
22 interviewed at their house.

23 A. Yes.

24 Q. Isn't it a fact that that's what they confronted you
25 with?

JIMMY GALLISHAW - REDIRECT AND RE-CROSS

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1 A. With the interviews or whatever? With the
2 interview?

3 Q. They let you know that the children had implicated
4 you in this action.

5 A. Yes.

6 Q. And at no time during the statement to Captain
7 Watson on the 20th did you indicate in anyway that
8 you were under coercion, correct?

9 A. No, I didn't say anything to him.

10 MS. MAYES: Nothing further, Your Honor.

11 THE COURT: Redirect?

12 MS. LITTLE: Just briefly, Your Honor.

13 **REDIRECT EXAMINATION BY MS. LITTLE**

14 Q. Jimmy, exactly what did you think would happen to
15 your family if you did not confess on February 20th?

16 A. Okay, besides the things that they was already being
17 put through, by the examinations and all the going
18 up and continuing to asking the same questions ---
19 the same questions --- being harassed.

20 MS. LITTLE: Okay. No further
21 questions.

22 THE COURT: Anything further, Ms.
23 Mayes?

24 **RE-CROSS EXAMINATION BY MS. MAYES**

25 Q. Did you consider it harassment, Mr. Gallishaw, for

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1 the police to ask the children what happened?

2 A. To continually --- to continually --- Okay, if
3 you ask them something one time and they tell you,
4 okay, fine. But to continually, continually,
5 continually, continually --- just continually that
6 is harassment.

7 Q. And you're aware, Mr. Gallishaw, that there weren't
8 any additional interviews after the 20th?

9 A. No, but it was counseling --- I don't know if it is
10 called counseling or not.

11 Q. Counseling. You would consider counseling
12 harassment?

13 A. If they're continuing to ask them about certain
14 situations --- if they continue to keep bringing
15 those things up.

16 Q. Okay. So your testimony is then that you confessed
17 so that the children wouldn't have to undergo
18 counseling, and have them talk about the fact that
19 they were abused?

20 A. Yes, in so many words.

21 MS. MAYES: Nothing further, Your Honor.

22 THE COURT: All right. Thank you, Mr.
23 Gallishaw, you may step down.

24 Ms. Little or Mr. Swilley, you may call your
25 next witness on this issue.

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1 MS. LITTLE: Defense rests, Your Honor.

2 THE COURT: Anything in reply?

3 MS. MAYES: No, sir, Your Honor.

4 THE COURT: All right. Ms. Little, it's
5 your Motion to Suppress the statements on
6 involuntariness. So I will be glad to hear from you by
7 way of brief argument.

8 MS. LITTLE: Thank you, Your Honor.
9 Your Honor, you heard Mr. Gallishaw's testimony on the
10 stand. He felt that Sergeant August was threatening to
11 continue to harass his family by way of additional
12 examinations, and continuing questioning.

13 He stated that he was afraid that --- afraid
14 for his wife for having to go through any continued
15 questioning by police.

16 THE COURT: Let me see if I can
17 determine exactly what we're talking about here. I
18 believe he said that his first interview and his first
19 statement to Mr. Watson, he does not contest that that
20 was freely and voluntarily made. Are you making an issue
21 to suppress that statement?

22 MS. LITTLE: No, Your Honor, the second
23 statement.

24 THE COURT: So that one is all right.
25 So the next one that comes up with his discussions with

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1 the polygraph examiner. And he, I believe, admits that
2 he voluntarily and freely agreed to take the polygraph.
3 So there's no question about that, is it?

4 MS. LITTLE: No question, Your Honor.

5 THE COURT: All right. So what he says
6 that was not voluntary was his statements to the
7 polygraph examiner after taking the test. Is that what
8 you are moving to suppress?

9 MS. LITTLE: Yes, sir, Your Honor, his
10 statements to the polygraph examiner, and then his later
11 statement to Captain Watson.

12 THE COURT: All right. So those are the
13 two statements that you contend are not freely and
14 voluntarily made?

15 MS. LITTLE: Yes, Your Honor.

16 THE COURT: Anything further?

17 MS. LITTLE: Really, Your Honor, that's
18 all the Defense has. You heard from the witness. He
19 says he had felt he had no other choice but to give a
20 confession to protect his family from continued
21 harassment and to make things easier on his wife. And to
22 have the police and everyone else leave his family alone.

23 THE COURT: Well, as I understand it,
24 and let me just make sure so I can know how to rule on
25 this, he is not taking issue with the content of the

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1 statements in that he said these things. What he is
2 taking issue with is the fact that he did this
3 voluntarily, is that correct?

4 MS. LITTLE: His argument is that he
5 made a false confession because he was coerced and he was
6 afraid for his family.

7 THE COURT: All right. He made a false
8 confession. Say that again now. First of all, is he
9 saying that he made this statement and it was not correct
10 because he was coerced into doing it; is that what you're
11 saying?

12 MS. LITTLE: Yes, Your Honor.

13 THE COURT: All right. Ms. Mayes?

14 MS. MAYES: Yes, sir, Your Honor. The
15 Defendant admits that the initial interview with Captain
16 Watson was freely and voluntarily given. And that he
17 freely and voluntarily agreed to the polygraph.

18 And, of course, we have the Waiver of Rights
19 and Advisement of Rights that go along with the polygraph
20 examination questions. And then following the polygraph
21 examination he states that he became worried about
22 harassment, which he defined as the kids being questioned
23 and going to counseling. And as a result he made these
24 statements in a later interview with Captain Watson that
25 all --

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1 **THE COURT:** -- Let's just talk right now
2 about first of all the statement made to the polygraph
3 examiner. What statement do you contend is admissible
4 that the polygraph operator can testify to? I know he
5 can testify that he told him that he did not pass the
6 polygraph test. Now what is it that he told the
7 polygraph operator that you contend is admissible as a
8 statement or a confession?

9 **MS. MAYES:** That he had engaged in
10 sexual relations with **Victim #1** [REDACTED].

11 **THE COURT:** Okay.

12 **MS. MAYES:** And then that statement was
13 followed by the statement that he didn't want to put the
14 girls through this anymore.

15 **THE COURT:** All right. Go ahead,
16 anything else?

17 **MS. MAYES:** Yes, sir, Your Honor.
18 Following that event there was the second interview with
19 Captain Watson that is the Court's Exhibit with the
20 transcript dated February 20th. And also the
21 corresponding video tape.

22 During the course of this interview he
23 acknowledged that he had been read his rights, that he
24 understood his rights, and that he was still willing to
25 talk with Captain Watson. And at no point did he

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1 indicate any degree of coercion, influence, pressure,
2 nothing whatsoever during the course of this interview to
3 indicate any of the things that he has mentioned to the
4 Court today.

5 In fact, during the course of the interview he
6 became overcome with emotion as he acknowledged on the
7 stand, and went into specific detail about the sexual
8 assault of the girls. And then voluntarily, as he
9 stated, wrote the letter of apology. I'm terming it a
10 letter of apology. But the letter to **Victim #1** and
11 **Victim #2**, in which he further goes into detail asking for
12 their forgiveness and stating that he is sorry.

13 Again, Your Honor, at no point was there any
14 indication of coercion or influence towards him or any
15 family member. He acknowledged that as well that nothing
16 like that took place during the course of the interview
17 with Captain Watson.

18 **THE COURT:** Okay. All right. Thank
19 you, Ms. Mayes. Ms. Little?

20 **MS. LITTLE:** Nothing further, Your
21 Honor.

22 **THE COURT:** All right. Ms. Little, I
23 would like for you to address this. And, I may call Ms.
24 Mayes to address it as well.

25 In South Carolina, as in most jurisdictions,

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1 the polygraph is still considered too experimental to be
2 introduced before the Jury. And there are a number of
3 cases that mention, or say that even the mention of a
4 polygraph before a Jury is grounds for mistrial. How
5 does that affect this issue of voluntariness in
6 statement? Are you going --- In other words, the Court
7 makes initial determination of voluntariness. But the
8 Jury also has the right to determine the issue of
9 voluntariness. Now, how are we going to do that without
10 the polygraph being mentioned?

11 MS. LITTLE: Well, Your Honor, the
12 Defense certainly does not have any plans to bring up the
13 polygraph. I think if Sergeant --- If the State intends
14 to call Sergeant August, he's on their witness list, I
15 think he can tell what he said --- what he and the
16 defendant talked about without telling him that he failed
17 the --- without mentioning to the Court that he failed
18 the polygraph first.

19 THE COURT: Well, if I rule that the
20 statement is voluntary as the initial part that I have to
21 do in a Jackson versus Denno, then, of course, if you
22 request that the Jury also has the right to consider the
23 voluntariness, and I guess my question to you is, are you
24 going to want the Jury to consider the voluntariness of
25 the statement to Captain August --- I mean, to the

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1 polygraph examiner, Mr. August, if, in fact, I rule
2 preliminarily that it is admissible. If so, how are we
3 going to do that without mentioning the polygraph?

4 **MS. LITTLE:** Your Honor, the fact that
5 Sergeant August is a polygraph examiner, and he's on the
6 State's witness list, and I assume that they were going
7 to attempt to call him. I was going to object obviously
8 to any mention of the polygraph. If the State feels that
9 they can put him on the stand without disclosing that
10 he's a polygraph examiner, or that a polygraph was done
11 then I would have no objection to it. Otherwise, I would
12 just object to the witness' testimony altogether.

13 **THE COURT:** Ms. Mayes, how are you going
14 to get a --- I make the determination and I can hear the
15 testimony about the polygraph, but the Jury can't. How
16 are you going to establish voluntariness before the Jury
17 without mentioning the polygraph of the statement made to
18 the polygraph examiner?

19 **MS. MAYES:** Your Honor, I had this
20 conversation yesterday with Agent Charles and also
21 Officer August. And we discussed referring to it as an
22 investigative interview. At that time Agent Charles, or
23 during one of my conversations with Agent Charles, he
24 advised me that --- I believe he was the one who was
25 involved in the case with Judge Newman in Williamsburg

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1 County wherein there was some testimony offered about a
2 polygraph examination. I believe it may have been termed
3 something different, such as a verification examination,
4 or verification interview.

5 But regardless I think we could rephrase it.
6 Our concern though is we don't want to make a
7 misrepresentation to the Jury as if there was some type
8 of interrogation that took place that no one else could
9 see, or that's top secret and leave them wondering was he
10 really taken into a room and interrogated. When in
11 reality, it was a voluntary polygraph exam.

12 (PAUSE.)

13 MS. LITTLE: Your Honor, may I just add
14 one additional point. We would object to any rephrasing
15 of any sort of test that was done. We think it would be
16 confusing to the Jury. And the threat that the polygraph
17 --- or that the Jury would somehow get the idea that the
18 polygraph was done would be highly prejudicial and
19 inadmissible.

20 THE COURT: Why can't they just phrase
21 it --- ask questions in the form of, after you had your
22 initial interview with, or your initial discussions with
23 Mr. Watson, thereafter, were you questioned and did you,
24 was there a discussion --- not him, because he's not
25 going to be the Defendant, but they could call the

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1 examiner and ask him if he, in fact, questioned the
2 Defendant, and what the Defendant told him, and just
3 classify it as an interview and not as an agreement to
4 take the polygraph, or what he said after the polygraph,
5 or anything to do with the polygraph. If they
6 characterize it as an interview with Officer August, then
7 where's the harm?

8 MS. LITTLE: Your Honor, I don't see any
9 harm if they just call it an interview and nothing else
10 and he doesn't ---

11 THE COURT: -- That's what I'm going to
12 require, Ms. Mayes. We'll come back to it, and I'll
13 elaborate on it in just a minute.

14 Let me go into the situation with the Jackson
15 versus Denno, and get these matters on the record.

16 It is axiomatic that a Defendant in a criminal
17 case is entitled to an independent evidentiary hearing to
18 determine the voluntariness of any statements made prior
19 to the submission of the statements to the Jury. And, of
20 course, that's what we've been doing yesterday afternoon
21 and today.

22 Where there's conflicting evidence about a
23 statement the Court must first make a finding as to the
24 validity of the statement. And if the statement is found
25 to be valid, then it should be submitted to the Jury. So

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1 that's what my determination is.

2 In making the determination, the trial Judge
3 should examine the totality of the circumstances,
4 including the background, experience, and conduct of the
5 accused surrounding the utterance to determine whether
6 the State has met its burden of proof so as to warrant
7 the admission of the confession or statements to the
8 Jury.

9 The test of admissibility of the statement is
10 whether it was knowingly, intelligently, and voluntarily
11 given. A confession may not be extracted by any sort of
12 threats, or violence, or by obtaining any direct or
13 implied promises, however slight, or by the exertion of
14 improper influence.

15 Part of the State's burden during this hearing
16 is to prove by the preponderance of the evidence that the
17 statement was voluntarily made and in compliance with
18 Miranda versus Arizona.

19 The State bears the burden of proof even when
20 the Defendant has signed a Waiver of Rights form.
21 Although custody is a factor to be considered in
22 determining voluntariness, the Defendant need not share
23 that he was in custody at the time of the statement in
24 order to request a Jackson v Denno hearing on the
25 voluntariness of the statement.

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1 However, I don't think there's any question in
2 this case that the Defendant was in custody. He was not
3 free to leave. And I don't believe the State would
4 contend that the statements would be admissible without
5 compliance with Miranda.

6 The Court has reviewed the evidence in this.
7 case, including Court's Exhibit Number 1, which is a
8 statement of rights and a Miranda waiver. Also, Court's
9 Exhibit Number 2, which is an introduction of the tape
10 recorded statement. State's Exhibit Number 3, another
11 Miranda Rights statement. State's Exhibit Number 4, the
12 polygraph examination pretest worksheet, which is, I
13 think, admissible for the purposes of this hearing, but
14 would not be admissible before the Jury. Same thing with
15 Court's Exhibit Number 5, which is the consent to
16 interview with the polygraph, is admissible for the
17 purposes of this hearing, but is not admissible before
18 the Jury. And then Court's Exhibit Number 6, which is
19 the voluntary statement which indicates that it was a
20 video statement. And State's Exhibit Number 7, or
21 Court's --- all these are Court's Exhibits. I'm
22 referring to these as State's Exhibits, but they are all
23 Court's Exhibits. Court's Number 7, which is the letter.
24 Court's Number 8, which is the audio transcription of the
25 additional interview with Mr. Watson. And Court's.

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1 Exhibit Number 9, the second interview with Mr. Watson.

2 Those are the matters that the Court has reviewed.

3 After having considered that evidence and the
4 testimony in this case, the Court is convinced, and I
5 find, that before the alleged incriminating statement, or
6 confessions were obtained, that the Defendant was fully
7 advised of his rights under the Fifth and Sixth
8 Amendments to the Constitution of the United States. And
9 that the Defendant was advised of the constitutional
10 safeguards required by Miranda versus Arizona, 384 U.S.
11 436 as follows.

12 The Defendant was advised prior to
13 any interrogation that he had the right to
14 remain silent. The Defendant was advised prior
15 to any interrogation that if he waives his
16 right to remain silent and made a statement,
17 that such statement could and would be used
18 against him in a court of law.

19 The Defendant was advised prior to
20 the interrogation that he had the right to
21 employ and select an attorney of his own
22 choice. And that if he did not have the money,
23 funds, or resources to employ an attorney, that
24 the Court would appoint and provide an attorney
25 for him, if he so desired, without cost or

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1 expense to him. And that he had the right to
2 have his attorney present with him at all times
3 during the interviews and all interrogations.

4 And that he was advised prior to the
5 interrogation that he had the right to consult
6 with his lawyer before interrogation. And that
7 he was advised prior to interrogation that he
8 had the right to interrupt and terminate the
9 interrogation at any time, and that he had the
10 further right to stop answering questions at
11 any time prior to the interrogation.

12 And that he was further advised that
13 if during the interrogation he desired an
14 attorney the interrogation would cease until
15 the attorney was provided him, and he would be
16 given an opportunity to consult with his
17 attorney prior to the interrogation.

18 Having considered all of the evidence in this
19 case, the Court's finding is first of all, the initial
20 statement is not contested. That is, the statement to
21 Mr. Watson is not contested as being freely and
22 voluntarily and intelligently made. And proof of the
23 voluntariness of that statement would not be necessary
24 before the Jury, because the Defense does not contest the
25 voluntariness of that statement.

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1 Secondly, the Court finds that the statement
2 made to Officer August was also knowingly, intelligently,
3 and voluntarily made. And that the Defendant was in
4 custody at the time the statement was given. And that it
5 was given in accordance with Miranda.

6 However, for reasons not related to the
7 voluntariness issue, the issue of the polygraph is not
8 admissible into evidence. The Court has ruled that any
9 testimony regarding the polygraph examination is not
10 admissible. So if the State desires to prove the
11 statement made to Mr. August, that is that he committed
12 these acts, that it will have to be done without mention
13 of his voluntarily agreement to take the polygraph,
14 without any discussion about the results of the
15 polygraph.

16 And, in fact, the word polygraph cannot be
17 used. It can be characterized as a voluntary interview
18 with Mr. August, but it cannot be anything to do with the
19 polygraph.

20 And I would caution you, Ms. Mayes, I think
21 that's its highly dangerous, highly charged, and very
22 dangerous because almost inadvertent use of polygraph,
23 while I think the case that you're referring to with
24 Judge Newman said that not all cases, where there is an
25 inadvertent mention of polygraph is grounds for mistrial,

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1 it is both questioned. If it comes out, I'm sure I'm
2 going to get a Motion for Mistrial. So, I caution you
3 and your witnesses against that.

4 Finally, with regard to the statement to Mr.
5 Watson, the second interview, I would find that that
6 statement was knowingly, intelligently, and voluntarily
7 made. That the Defendant was in custody. And that he
8 was given the Miranda Warnings.

9 And having examined the totality of the
10 circumstances included, the background, experience, and
11 conduct of the accused, I find that he freely and
12 voluntarily made the statements.

13 Any statements made by law enforcement by his
14 own testimony as to him prior to making that statement
15 could not be considered threats or intimidation, but
16 simply an attempt on their part to get him to admit that
17 what he had done was wrong, and asking him didn't he want
18 to protect his children in connection with this. And I
19 don't see that they made any threats, or intimidation, or
20 in any way coerced him into making the statements.

21 And the Court would find that those statements
22 are proved or are admissible, and valid, and admissible
23 into evidence. And that would be the ruling with regard
24 to Jackson versus Denno.

25 Now, my question, Ms. Little, would be and

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1 maybe we will talk about this a little bit later as we
2 get on into this, do you also want an instruction to the
3 Jury regarding the voluntariness at the time of the
4 admissions and statements before the Jury?

5 MS. LITTLE: Yes, Your Honor.

6 THE COURT: Okay. I'll take care of
7 that as well. All right. That's takes care of the
8 matters with regard to Jackson versus Denno. Let's move
9 to the next issue before the Court. That regards the
10 issue of consolidation Ms. Mayes.

11 MS. MAYES: Yes, sir, Your Honor,
12 yesterday we did submit to the Court State versus Jones.
13 The cite on that case is 479 S.E.2d 517. It's a 1996
14 case.

15 That case involved the sexual abuse of two
16 minor victims. The evidence presented at trial is that
17 both victims were sexually assaulted in the same
18 location. Both were present in the same motel room on,
19 at least, one occasion of abuse. And as a result there
20 was a proper consolidation in that case.

21 We have a nearly identical factual situation
22 here in that Victim #1 [REDACTED] did not reside in the
23 Defendant's home. Victim #2 [REDACTED] did. Victim #1 [REDACTED]
24 would occasionally visit that home on weekends. And her
25 testimony, we expect to be, is that while visiting that

1 home she was in the bedroom with the Defendant. That
2 [Victim #2] [REDACTED] was also present in that room when [Victim #1]
3 was sexually assaulted.

4 There are also things she saw that confirm the
5 sexual assault, that we allege to be the sexual assault
6 of [Victim #2]. And both girls reported during the course
7 of their forensic interviews that they had knowledge of
8 certain events that occurred in the bedroom to each
9 other.

10 In other words, they were both present in the
11 room when the sexual assault took place, and there were
12 things that they saw or heard to confirm that the other
13 girl was being sexually assaulted during the course of
14 the same occasion that they experienced in an assault.

15 Furthermore, Your Honor, in the Defendant's
16 statement to law enforcement, that will be offered as
17 evidence. He stated to law enforcement that there were,
18 at least, three occasions that he engaged in sexual
19 assault, and that those girls were together. He stated
20 that it occurred in the bedroom of the home. And that
21 each time it occurred they were both present in the room.

22 And he followed that up with a letter during
23 the course of his statement to law enforcement that he
24 hand wrote, and he addressed it to both girls, and
25 simultaneously asking for their forgiveness together.

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1 And I really don't see how we could redact any reference
2 to both girls. It's part and parcel of his confession,
3 and of the letter that he wrote in the present of Captain
4 Watson. And then during the interviews of both girls
5 obtained at the CARE House, which were videotaped, and we
6 submit are admissible under Jessie's Law. They did make
7 reference to each other being present.

8 There is no question that each girl would be a
9 material witness in the case of the other girl, if for
10 nothing more than to confirm that they were present. It
11 was, at least, an occasion that they were in the same
12 bedroom with the Defendant.

13 THE COURT: All right. Thank you. Ms.
14 Little?

15 MS. LITTLE: Yes, Your Honor, and I have
16 read State v Jones. Basically Defense argues that the
17 trial of the cases between the two different victims
18 should not be consolidated. The Defendant is entitled to
19 a separate trial with each victim. The warrants in the
20 cases were done at different times by two different
21 agencies.

22 Your Honor, there's the worry that the Jury
23 will be confused. The girls have similar names,
24 Victim #2, Victim #1. One is the daughter. One is a
25 stepdaughter. There's evidence that Defense intends to

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1 present that, at least, one of the children changed her
2 story. We just feel that the Defendant would be
3 prejudiced by having all these cases consolidated.

4 I understand there would be some issues of
5 judicial economy to try these cases together, but that
6 should not trump Defendant's right to a fair trial, Your
7 Honor.

8 We respectively request that you deny the
9 Motion of Consolidation.

10 **THE COURT:** How do you distinguish the
11 situation here from State versus Jones.

12 **MS. LITTLE:** Your Honor, I really don't
13 have any way to distinguish it. It's a very similar
14 case.

15 **THE COURT:** Okay.

16 **MS. MAYES:** I do want to make the Court
17 aware of one thing. When you take a look at the
18 indictment the time frame involved in **Victim #2** is longer.
19 But I do want to clarify for the Court that **Victim #2**
20 lived in the home with him. So there were occasions that
21 we expect her testimony will be that she experienced
22 sexual assaults when **Victim #1** was not present. There were
23 additional incidents with her. It was ongoing abuse in
24 the home, what the State alleges.

25 However, the Defendant only acknowledges events

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1 with the two girls together. And the events that
2 happened to Victim #1 were only events that were in the
3 presence of Victim #2.

4 And under Jones they cited that there was one
5 occasion that the girls were together. However, the
6 implication is that they weren't always together on each
7 incident that was testified to in that case.

8 THE COURT: All right. Thank you. I
9 find the authority of the South Carolina Court of Appeals
10 in State versus Jones, 479 S.E.2d 517 very persuasive,
11 and very similar to the situation that we have here.
12 That was an opinion written by Judge Ralph King Anderson.
13 And as all the lawyers know, Judge Anderson is very
14 thorough in his research and in his writing. When he
15 writes an opinion he gives a very, sometimes succinct and
16 sometimes not so succinct history of the law in that
17 particular field.

18 But I find that the facts here are very similar
19 to the ones in States versus Jones. The offenses are of
20 the same general nature. That is, that they are all
21 alleged sexual offenses with minors. They are
22 interconnected in that the victims in this case are his
23 daughter and his stepdaughter. That they occurred, at
24 least, three occasions when all three of them --- I mean,
25 when the two of them were together. And they arise out

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1 of a chain of circumstances. Some of which are provable
2 by the same evidence. Some of which may not be as Ms.
3 Mayes has pointed out with one of them. But on, at
4 least, three occasions some of the same evidence may be
5 used to prove all the cases.

6 I think that there is no prejudice to the
7 Defendant in this situation. As I say, it's all the same
8 periods of time, same nature, same type of offenses,
9 interconnected showing a chain of circumstances. And
10 therefore, the Court would allow the cases to be
11 consolidated and tried together. The Motion to
12 Consolidate is granted.

13 All right. Now we are to the point of the Rape
14 Shield matters. And, I believe that both parties have
15 made motions in connection with that.

16 The State has made a motion to require the
17 Defense to comply with the Rape Shield Statutes. The
18 Defense has made a motion to be allowed to offer proof of
19 prior sexual knowledge and or activity of the witnesses.
20 I think these can be heard together. So, Ms. Mayes let
21 me hear from you first with regard to the motion to
22 require --- comply with the Rape Shield Statute. And
23 then I'll hear from Ms. Little.

24 MS. MAYES: Yes, sir, Your Honor. When
25 Victim #1 [REDACTED] received her interview at the CARE House,

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1 she acknowledged that there had been a prior occasion of
2 sexual intercourse with a brother. And his name is
3 S [REDACTED] G [REDACTED]. S [REDACTED] G [REDACTED] is the son of the Defendant
4 Jimmy Gallishaw.

5 THE COURT: All right. Let me see if I
6 understand so I get the facts exactly right. This is
7 [REDACTED] Victim #1 ?

8 MS. MAYES: Yes, sir, Your Honor, [REDACTED] Victim #1
9 [REDACTED].

10 THE COURT: And again just so I can keep
11 the facts straight, is she the daughter or stepdaughter?

12 MS. MAYES: She is the biological
13 daughter of the Defendant.

14 THE COURT: All right. Daughter of
15 Defendant. And in her interview she indicated a prior
16 sexual affair with who?

17 MS. MAYES: She was ten years old, I
18 believe, Your Honor. And at age ten the incident
19 involved a brother who was approximately thirteen. His
20 name is S [REDACTED] G [REDACTED]. He is a half-brother.

21 THE COURT: Half-brother. One incident,
22 is that all she acknowledged?

23 MS. MAYES: Your Honor, I will have to
24 get clarification on that. I believe it was one incident
25 of, one incident of sexual intercourse.

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1 **THE COURT:** And when would this have
2 been in relation to the events alleged to have occurred
3 with the Defendant?

4 **MS. MAYES:** It was during the same time
5 frame, Your Honor.

6 **THE COURT:** What does she say about
7 that? I know it is probably in the forensic interview
8 and I probably hear it a little bit later. I did peruse
9 the forensic interviews last night, didn't read them in
10 detail, but I do remember something about that.

11 **MS. MAYES:** Your Honor, she indicated
12 that it occurred on a bed in her dad's room, which would
13 be the home which Mr. Gallishaw was residing in at the
14 time. She indicated that her clothes were removed; that
15 she told him to stop; that a grandfather was also present
16 in the home. And he put his private part in her private
17 part. And the reason that the State concedes that this
18 would be admissible, isn't so much as issue of prior
19 sexual knowledge or similarity, but there is medical
20 evidence that will be offered in this case that when
21 **Victim #1** got her medical examination that it was consistent
22 with chronic past penetration. We do acknowledge that.
23 alternative explanation to the injury or medical evidence
24 would be admissible. So for that reason we do not
25 dispute that the incident with her brother would be

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1 admissible.

2 THE COURT: I'm not sure I understood
3 that. You're going to have to say that again.

4 MS. MAYES: When Victim #1 [REDACTED] received
5 her medical examination at the CARE House it was
6 consistent with chronic past penetration.

7 THE COURT: It was consistent or
8 inconsistent?

9 MS. MAYES: Consistent with. In other
10 words, the medical findings were consistent that chronic
11 past penetration had occurred. And so with us offering
12 specific medical evidence and medical findings we would
13 not attempt to imply that there hasn't been a contact
14 with another person as well. I do think that would be
15 admissible to explain that.

16 THE COURT: So, what you're saying is
17 now is that you are not insisting, or you're not taking
18 the position that the Defense does not have the right to
19 inquire about the sexual conduct with the step-brother?

20 MS. MAYES: I think, Your Honor, that we
21 are really trying to get clarification as to what extent
22 it would be admissible, and how much, and then there were
23 some other issues that they wanted to get into as well.
24 But we would not contend to make the representation to
25 the Jury that the Defendant is the only person who had

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1 engaged in sexual intercourse with [Victim #1]. We
2 acknowledge that.

3 THE COURT: So you are willing to admit
4 that she has had sexual intercourse. Are you going to
5 say other people, or just this one step-brother?

6 MS. MAYES: There was the one occasion
7 with the step-brother, S [REDACTED] G [REDACTED] and then there was
8 another incident that was reported to the CARE House that
9 involved a young man by the name of C [REDACTED] D [REDACTED], Junior.

10 THE COURT: Okay. So on those occasions
11 you are not invoking the protections of The Rape Shield
12 Statute?

13 MS. MAYES: Correct. We acknowledge
14 that that would be admissible because of the medical
15 evidence. However, beyond that we don't believe that any
16 details would be admissible. I don't know what extent
17 they might be trying to get into reputation type
18 testimony. We acknowledge that it would be admissible.
19 That she had had prior sexual intercourse.

20 THE COURT: So those individuals ---
21 you're saying is that those cases, those individuals and
22 things that came out on the forensic interviews you are
23 not going to say that they are not inadmissible. In
24 other words, the prior sexual conduct and prior sexual
25 intercourse with those individuals, the State is not

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1 invoking or seeking to invoke the protections of the Rape
2 Shield Statute.

3 MS. MAYES: Correct, Your Honor.

4 THE COURT: Now let me find out from Ms.
5 Little if there's anything she wants to go to beyond
6 that.

7 MS. LITTLE: No, Your Honor, not at this
8 time. There is an issue, in the child's interview she
9 indicated that she was raped by her brother.

10 THE COURT: Is that the same incident
11 that the State is referring to?

12 MS. LITTLE: Yes, sir.

13 THE COURT: She said that she's not
14 going to prevent you from doing that.

15 MS. LITTLE: Yes, sir.

16 THE COURT: In fact, Ms. Mayes may bring
17 it out herself. I don't know. But she is not saying
18 that the Rape Shield Statute protects the victim from
19 that incident.

20 MS. LITTLE: Right. Yes.

21 MS. MAYES: Your Honor, I think it's
22 the phrasing --

23 MS. LITTLE: -- May we approach? Your
24 Honor, I don't want to get into too much of this while we
25 have witnesses present in the courtroom. May we

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1 approach?

2 THE COURT: Sure, come on up.

3 (Whereupon, a bench conference was held in
4 the presence of the Defendant, but outside the hearing of
5 the Defendant.)

6 THE COURT: All right. Here's where we
7 stand on the issue. This is Victim #1 [REDACTED], is that not
8 correct who we have been talking about, Ms. Mayes?

9 MS. MAYES: Yes, sir, Your Honor. It
10 was Victim #1 [REDACTED] that we just addressed.

11 THE COURT: All right. The ruling of
12 the Court is that based upon what the State has
13 represented is that they do not intend to ask for the
14 protection of the Rape Shield Statute with regard to
15 prior sexual activity or knowledge with the step-brother,
16 and possibly one other incident with S [REDACTED] G [REDACTED]. And
17 that they would not be seeking the protection of the Rape
18 Shield Statute in connection with that.

19 There is some issue with regard to the
20 characterization of that sexual incident. That question
21 being whether there could be consent or not. The State's
22 position being that they could not be consent because of
23 her age. The Defense position being that it appeared to
24 be or was consensual. But that is a matter that I will
25 take up before these questions are asked before the Jury.

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1 But the main thing and we'll talk about that a little bit
2 later before we get there and before Ms. **Victim #1** testifies.

3 At this point, the ruling of the Court, based
4 upon the representations of the State, is that the
5 Defense will be able to inquire about, or the State will
6 be able to bring out the two prior sexual incidents with
7 the brother and --- well, the two individuals that were
8 involved, the two incidents. So that takes care of the
9 Rape Shield question. The issue is how it will be
10 characterized is something we'll have to take up at a
11 later time. Okay. Now, that takes care of the Rape
12 Shield --- there are not any other incidents that you
13 would contend on behalf of the Defendant that you have
14 the right to inquire about other than those two, is that
15 right, Ms. Little?

16 **MS. LITTLE:** Your Honor, there is one
17 additional matter that we need to cover. And it's in
18 reference to the other victim, Miss **Victim #2**.

19 Your Honor, Defense is saying that they may
20 seek to offer testimony of **Victim #2**'s brother, that he
21 had witnessed another person touch her private areas,
22 basically her breasts. And that comes from, Your Honor,
23 the forensic interview with **Victim #2**. She's asked if
24 anyone else has ever done anything to her body and she
25 said no. Later an interview was done with another

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1 brother who stated that he had seen a boy named Devon
2 touch his sister's breasts.

3 THE COURT: What about that, Ms. Mayes?

4 MS. MAYES: Yes, sir, Your Honor, again
5 this would not be admissible to explain prior sexual
6 knowledge pursuant to Grovenstein or things of that
7 nature.

8 There is medical evidence concerning [Victim #2]
9 [REDACTED]. She was ten years of age at the time that she
10 got her examination. That examination was also
11 consistent with past penetration. And [Victim #2] reports
12 that her stepfather, Jimmy Gallishaw, was the only person
13 who has had sexual intercourse with her. And there is
14 certainly no indication that anyone else has. It appears
15 that the Defense would be wanting to get into something
16 that was seen by, or something that was reported by a
17 seven-year-old boy. I believe he was seven at the time
18 that he got that examination, or he got his interview.
19 We don't know the specifics of --

20 THE COURT: What is the relevance of
21 that, Ms. Little?

22 MS. LITTLE: Your Honor, only possibly
23 for impeachment purposes, if the child denies that anyone
24 else has ever touch her sexually, that evidence would be
25 offered to impeach her credibility.

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1 **THE COURT:** Well, I might allow it if it
2 really was serious sexual conduct such as intercourse, or
3 penetration, or something. But simply the fact that
4 somebody else might have touched her breast I just don't
5 believe it's really an impeachment question. But anyway,
6 I'll think about that. Go ahead.

7 **MS. MAYES:** Your Honor, I will submit
8 the Court the exact phrase that was used by the child
9 during his examination. I'm trying to get his exact age
10 on the date of the examination. He was six years old.
11 And his name is J[REDACTED].

12 J[REDACTED] stated that a boy named Devon had
13 something on his hand and quote, did like that to his
14 sister's breast. He made a thumping motion on his chest.
15 Then the child went on to describe that his sister had
16 told him that her father, her father, Jimmy Gallishaw,
17 had touched her in her private parts. I'm going to
18 submit this as Court's Exhibit to make clear that this is
19 not, --- seems to be an indication at all that this was a
20 sexual act. It appeared to be a child touching another
21 child on the outside of their clothing and not sexual in
22 any way.

23 **THE COURT:** All right. Court's Exhibit
24 Number 10. Do I already have this?

25 **WHEREUPON, COURT'S**

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1 EXHIBIT NUMBER 10 WAS
2 MARKED FOR THE RECORD.

3 MS. MAYES: I believe you do not, Your
4 Honor, because that is the interview with J [REDACTED]
5 Gallishaw when he was six years of age.

6 THE COURT: All right. Court's Exhibit
7 Number 10, and I have read the portion which Ms. Mayes
8 refers to. In my view, that evidence is not trustworthy
9 prior sexual conduct on the part of the victim. And I
10 don't think that it's relevant. I don't think that it is
11 evidence of anything. She may not have even considered
12 that a sexual contact. And therefore, I don't think it
13 would be admissible for any impeachment purposes. The
14 Court would sustain the Motion to Suppress that
15 testimony.

16 All right. All right. That brings us to ---
17 it takes care of the Rape Shield Statute. The only thing
18 that I need to determine is whether or not the matter can
19 come up for impeachment purposes. But she's going to
20 admit as to what happened, I understand.

21 Then the issue then becomes one of the forensic
22 interviews under Jessie's Law. I know I'm going to have
23 to view the video tape.

24 Ms. Mayes, let me hear from you with regard to
25 anything you would like to present other than the videos,

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1 or anything you would like to say with regard to the
2 admission of the forensic interviews under that Statute.

3 MS. MAYES: Yes, sir, Your Honor, with
4 the enactment of Jessie's Law provision, §17-23-175 in
5 2006, it has been upheld in several cases that have come
6 down since the enactment and practical use of the
7 provision. And those cases are State versus Bryant, 675
8 S.E.2nd 816, that's a 2009 case. Also State versus
9 Russell, 679 S.E.2nd 542, that's a 2009 case.

10 THE COURT: Are both of those cases ---
11 Well, I know Bryant is. Let me look at Russell. Yes,
12 they are both Court of Appeals. They are both 2009
13 cases. It looks like that they were actually decided on
14 the same day or within a day or two of each other, same
15 day, argued the same day and decided the same day. No,
16 that's Russell. I'm sorry. Let me find Bryant. It's
17 February of 2009. Do you know the status or the
18 certiorari on either one of those cases? Are they going
19 up to the Supreme Court or have they been finalized?

20 MS. MAYES: I do not know the status of
21 that, Your Honor.

22 THE COURT: Okay. Go ahead.

23 MS. MAYES: Your Honor, the Statute
24 allows for the video tape of the forensic interview to be
25 shown to the Jury as long as certain requirements are

1 met. The first, which is paramount, is that the child
2 must testify in the Court proceeding and be subject to
3 cross examination. So we would not be offering these
4 video tapes until we hear from the forensic interview
5 probably tomorrow morning after the children have
6 testified.

7 Secondly, we would lay the foundation through
8 the forensic interviewer, that she is a trained
9 interviewer in conducting forensic interviews, and that
10 she followed an accepted format, or format in which she
11 received specific training. And we expect to offer that
12 testimony through the forensic interviewer as well.

13 In this case it was Debbie Elliott of the CARE
14 House. Ms. Elliott has been conducting forensic
15 interviews for years. She has testified previously as an
16 expert on numerous occasions even prior to the enactment
17 of Jessie's Law. And so we can proffer that testimony
18 prior to actually offering the video tape.

19 But as I mentioned, the Court of Appeals has
20 upheld the admissibility of the video tapes in child
21 hearsay pursuant to this Statute. And, in fact, there
22 was a specific finding that the Legislature --- Court of
23 Appeals determined that the Legislature has made a
24 specific allowance for these out-of-court statements by
25 child victims provided that certain elements are met, and

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1 that is the Court in State versus Russell.

2 THE COURT: Okay. All right. Ms.
3 Little, what's your position with regard to the
4 admissibility of the statements as an exception to the
5 normal hearsay that these would not be admissible by ---
6 not Court ruled but by Statute under §17-23-175, commonly
7 referred to as Jessie's Law?

8 MS. LITTLE: Your Honor, I certainly
9 agree with the State that Ms. Mayes has presented to the
10 Court, and understand that the Court has made provisions
11 for these types of statements to be admissible, provided
12 the Court makes the finding as stated specifically in
13 Jessie's Law, that as far as the visual and audio
14 recording, the circumstances, and considering those and
15 other factors if the Court determines that those
16 statements are admissible then we would certainly --- We
17 don't have any argument against the current state of the
18 law.

19 Also, Your Honor, the State pursuant to
20 Jessie's Law, is offering some of the forensic
21 interviews. And Defense would also move to offer one of
22 the forensic interviews, which would be the first
23 interview of **Victim #1**, conducted by Ms. Danna
24 Collins, which is recorded also in accordance with the
25 Statute, and in which the child denies any sexual contact

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1 with the father.

2 THE COURT: What your position on the
3 statement by the Defense, Ms. Little, that if you going
4 to offer some of them you ought to offer all of them.

5 MS. MAYES: Your Honor, I believe that
6 they can offer that video tape as well pursuant to the
7 witness. I think once the foundation has been met by the
8 witness that she is qualified, or that the interview was
9 done pursuant to a subject format. I think either side
10 can offer it as physical evidence to the Jury.

11 Now, our intent would be to offer testimony
12 through that witness that the child received a forensic
13 interview a week before, and did not acknowledge sexual
14 abuse by the Defendant at that time, as Ms. Little has
15 been advised.

16 There will be testimony from Ms. Elliott in certain
17 areas that she has been qualified as an expert
18 previously, such as why a child might not make an
19 immediate disclosure of abuse, especially delayed
20 reporting to the parent, or an authority figure involved.
21 We can acknowledge that through her testimony.

22 And then we would offer the video tape in which an
23 admission was made. That's not to say that the Defense
24 can't offer the other video tape as well. I believe they
25 can if they choose to do so.

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1 I believe under Jessie's Law that any hearsay
2 the child has made would be admissible. So I think she
3 can testify to the Jury about the content of that
4 original interview when she did not make the disclosure.

5 **THE COURT:** I don't know that I can
6 require her to put in the video interview. But, you can
7 certainly ask about it, and she's going to ask her about
8 it, and you can cross examine her about it, and we'll go
9 from there. But it would probably be admissible if you -
10 -- I'll have to view it, of course, but it will probably
11 be admissible if you offer it.

12 All right. I am going to have to take those
13 matters up before I can make a finding with regard to
14 forensic interviewers, and we'll come to that in just a
15 minute. Now let's go to --- I believe that's all the
16 matters that the State had. Is that correct, Ms. Mayes?

17 **MS. MAYES:** Yes, sir, Your Honor, that's
18 all we have at this time. Now, when I most recently
19 checked my emails, there was an email sent by Ms. Little
20 to myself and to you, I believe, last night. I don't
21 know if the Court received that.

22 **THE COURT:** I didn't go by my office
23 last night, but did go by this morning.

24 **MS. MAYES:** In that email, Ms. Little
25 advised that she would have an objection to the

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1 qualification of the forensic interviewer as an expert.

2 THE COURT: She has handed me copies of
3 those motions this morning. I'm going to call on her in
4 just a minute. What I'm wondering is, do you have
5 anything further? I'm getting ready to go into her
6 Motion regarding the expert testimony.

7 MS. MAYES: No, sir, I don't have
8 anything further on the issue about S17-23-175.

9 THE COURT: Okay. All right. Ms.
10 Little, let me hear from you with regard to the Motion to
11 determine the admissibility of the prosecution's
12 potential expert witness testimony.

13 MS. LITTLE: Yes, Your Honor. We just
14 move that before --- outside of the presence of the Jury,
15 that the Court hold an in-camera hearing to determine
16 admissibility and whether or not these proposed experts,
17 Danna Collins and Debbie Elliott are qualified as
18 experts.

19 THE COURT: The forensic interviewers,
20 is that correct?

21 MS. LITTLE: Yes, Your Honor.

22 THE COURT: Okay. And they are the ones
23 that are recorded that I'm going to review, is that
24 right?

25 MS. LITTLE: Yes, Your Honor. And I

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1 would just like a ruling, outside of the Jury's presence,
2 just to question whether they are qualified to testify,
3 and whether or not that is actually their field of
4 expertise.

5 THE COURT: Douglas held that they
6 didn't need to be experts, didn't it?

7 MS. LITTLE: Yes, Your Honor. But, I
8 believe Ms. Mayes intends to offer them as experts.

9 THE COURT: Pardon me?

10 MS. LITTLE: I believe Ms. Mayes
11 intends to offer them as experts, to try and qualify them
12 as experts. And I wanted to have that hearing outside of
13 the Jury's presence.

14 THE COURT: We are outside of the Jury's
15 presence, so let's talk about that. The Douglas case is
16 my case. I'm familiar with that. And I qualified Ms.
17 Herrord, who was in Sumter in the case as an expert in
18 the field of forensic interviewing. The Supreme Court
19 held that her testimony was admissible but she did not
20 have to qualify as an expert in order to testify to what
21 she testified to. My good friend Justice Pleicones
22 dissented. Then also thereafter the White case came down
23 on the same issue. What's your position, Ms. Mayes?

24 MS. MAYES: Yes, sir, Your Honor,
25 there's also been another recent case, I believe that is

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1 also your case, State versus Baker. This was decided
2 just a few weeks ago just as recently as 2/15/2010. I
3 know Your Honor is going to review the cases, but there's
4 something specifically that I need to distinguish about
5 our current situation.

6 My understanding of State versus Douglas is
7 that case was prosecuted prior to the enactment of
8 Jessie's Law. It might not be the actual date of the
9 trial was prior to that, but it was not one where they
10 were offering the forensic interview through Ms. Harrod.

11 **THE COURT:** That's right. It was simply
12 her interview, and all she did was recommend either a
13 forensic interview or --- I think she recommended, if I
14 recall, recommended that the child be seen by a medical
15 doctor.

16 **MS. MAYES:** Yes, sir, Your Honor. And
17 prior to the enactment of Jessie's Law there were a lot
18 more restrictions without what forensic interviewers
19 would testified to. They were limited to time and place
20 just other --- witnesses. But now that the Legislature
21 has passed Jessie's Law, they acknowledge in the Statute
22 that the interview must be done according to certain
23 requirements by someone trained in conducting
24 investigative interviews. I'm reading directly from
25 Section B(2) of the Statute. And so with them requiring

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1 that it be done by a trained investigative interviewer
2 they are, in effect, asking that it be someone with
3 skills and a level of expertise above that of a lay
4 person.

5 And so we do intend to offer Debbie Elliott as an
6 expert in forensic interviewing, and the child assessment
7 issues that go along with that such as, delayed
8 reporting. The Defense has already indicated that they
9 intend to make a strong argument about the fact that
10 **Victim #1** did not make an initial disclosure of sexual abuse
11 by her father. And that is an area that someone like Ms.
12 Elliott is trained to recognize, and trained to the
13 literature, and studies surrounding that, and has
14 testified previously as an expert on the topic of delayed
15 reporting.

16 In addition, they have indicated an intent to
17 get into the fact that the victim, who was age eleven at
18 the time of her interview, had prior sexual involvement
19 with even another family member. And that is something
20 as well that Ms. Elliott is qualified, and we can proffer
21 that to the Court, and that she has knowledge of when
22 children act out sexually as a result of sexual abuse
23 that's been occurring in the home.

24 And we contend those topics are admissible
25 because the Defense has clearly opened the door to them.

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1 But in addition, these are recognized areas of behavioral
2 evidence that have been previously testified to that are
3 more reliable than doll tracking and things of that
4 nature that are mentioned in State versus White.

5 There is extensive case law to support the use
6 of behavioral evidence in criminal sexual conduct cases.

7 THE COURT: All right. Ms. Little, let
8 me ask you, after Douglas the Legislature pass Jessie's
9 Law, so in effect, didn't they require a level of
10 expertise in the Statute?

11 MS. LITTLE: This is actually Mr.
12 Swilley's argument.

13 MR. SWILLEY: Your Honor, I disagree
14 with that. I think that that really wouldn't be an
15 expertise. I think that the expertise that that would be
16 would be if we had is the expertise to say that the child
17 is telling the truth. I think that that's a matter for
18 the Jury. Any testimony about that would just would just
19 unduly prejudice the Jury and bolster the witness'
20 testimony.

21 THE COURT: How do you distinguish it
22 from Baker?

23 MR. SWILLEY: Well, Your Honor, in this
24 case, we request that the Court make a ruling that these
25 forensic experts not give any testimony as to the

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1 voracity of the child. I think that would definitely
2 comport with Baker as well as Douglas.

3 THE COURT: All right. Tell me exactly
4 what --- I'm not sure I understand what you're asking for
5 here, and that's what I want to get straight. I do need
6 to look at the tapes here during the next hour. If after
7 reviewing the forensic interview video, hypothetically if
8 I make a determination it meets the requirement of the
9 Statute, Jessie's Law, and it's therefore admissible,
10 what difference does it make whether the witness is an
11 expert or not an expert?

12 MR. SWILLEY: Well, Your Honor, as to
13 the difference between whether the witness is an expert
14 or not I think --- When an expert is qualified as an
15 expert I think the Jury will automatically --- You might
16 even say it is automatic, that the Jury would actually
17 afford that witness more credibility had the witness been
18 just a lay person.

19 THE COURT: Then how do you distinguish
20 that between the medical witness in a personal injury
21 case, or anything else? We tell Jurors all the time that
22 they are to give no more weight to an expert witness'
23 testimony than they give to anybody else's testimony.
24 Experts are not entitled to anymore weight than anybody
25 else.

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1 I'm trying to determine whether you are arguing
2 that it is inadmissible. I'm not sure what you're asking
3 for here. That's what I'm having a hard time getting my
4 head around.

5 After I view the video tapes, and if I find
6 that the video forensic interview is admissible --- I'll
7 ask Ms. Mayes the same question.

8 What difference does it make whether the
9 witness qualifies as an expert or doesn't qualify as an
10 expert, Ms. Mayes?

11 **MS. MAYES:** It does, I believe, makes a
12 difference, Your Honor, because under the Statute we have
13 the burden of meeting these qualifications. And one of
14 those is that they are trained investigative
15 interviewers.

16 In my opinion or in my argument to the Court is that
17 that would require a level of expertise that goes ---

18 **THE COURT:** -- But this is requiring a
19 level of rising to the qualification of the witness as an
20 expert and the instruction to the Jury as to what an
21 expert witness is.

22 **MS. MAYES:** I believe that it would,
23 Your Honor, because they have made clear that it can't
24 just be an interview that's done by a friend, or a
25 neighbor, or even maybe a hospital employee when a child

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1 comes in for a sexual abuse examination. It's got to be
2 a specific level of training. And there's a specific
3 questioning format that must be followed. Non leading
4 questions.

5 In this particular case, it's going to be what
6 they called the RATAC questioning format, which is
7 recognized.

8 **THE COURT:** Granted that is all used to
9 prove that they meet the basic requirement under Jessie's
10 Law to get the forensic interview into evidence. If they
11 meet those requirements and they get the basic
12 requirements of Jessie's Law. But why does that require
13 a finding by the Court that the witness is an expert?

14 **MS. MAYES:** In this case I believe that
15 it would, Your Honor, because the State can only
16 anticipate that there are going to be issues raised by
17 the Defense about the fact that there was delayed
18 reporting. And in addition, that the victim had acted
19 out sexually with other people.

20 And the testimony from this particular witness,
21 the CARE House employee, Debbie Elliott, she has a
22 specific level of knowledge on those issues that goes
23 beyond what a lay person would have. And so for her to
24 give testimony in that regard, I believe it requires a
25 level of expertise as well.

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1 In the past when we get into those issues we
2 normally do qualify these witnesses as experts in order
3 for them to give opinion testimony.

4 Now, we do not expect Ms. Elliott to testify to
5 anything that would be improper bolstering, such as
6 voracity that was mentioned by Defense counsel. That is
7 not a question that we pose the witness. Do you believe
8 the child? Did you believe the child? That's not
9 something --

10 THE COURT: -- Her opinion as to what
11 the witness told her, the truthfulness of him?

12 MS. MAYES: That's correct, Your Honor.
13 Instead, the questions are normally phrased consistent
14 with case law on behavioral evidence in these type of
15 cases. Such as Rape Trauma Syndrome case law where we
16 say is it consistent, or not consistent to see delayed
17 reporting, is that common or uncommon, and what are some
18 of the reasons why. And then when we talk about some of
19 the symptoms that might follow sexual abuse in the home;
20 why children might act out sexually are some of the
21 factors involved in that.

22 THE COURT: All right. Mr. Swilley,
23 when we get to the forensic interviewer I will be glad to
24 hear from you regarding if they should be qualified as an
25 expert. It seems like to me though that if after viewing

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1 the tape and hearing what the qualifications are, if the
2 witness qualifies under the Statutes then it does rise to
3 the level of an expert witness. And the fact that you
4 think the Jury might give more weight to an expert
5 witness than another witness does not hold a lot of
6 water, because we use expert witnesses all the time. And
7 it's always been an argument that an expert witness who
8 testifies to the ultimate issues --- the Jury is
9 cautioned against giving anymore weight to an expert
10 witness than they would anybody else. I really don't see
11 what the argument is.

12 MS. SWILLEY: Well, Your Honor, it's
13 still our contention --- I don't think this field of
14 expertise is reliable and would comport with Rule 702. I
15 think that even though --

16 THE COURT: -- You're challenging the
17 qualifications of the expert.

18 MR. SWILLEY: As well as the reliability
19 of her opinion testimony, yes, Your Honor.

20 THE COURT: She might not give an
21 opinion according to what Ms. Mayes has told me.

22 MR. SWILLEY: I was under the impression
23 that she would give an opinion as to whether the child's
24 behavior is consistent with other children that have been
25 abused.

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1 **THE COURT:** She is going to say that
2 that it is consistent with other things. She's not going
3 to give her opinion as to whether or not she believes the
4 child, or she thinks the child was telling the truth.

5 **MR. SWILLEY:** Your Honor, I don't think
6 she would come out and say that. But I think what Ms.
7 Mayes says as far as whether it is consistent with other
8 children that have been abused. I think that's what that
9 kind of testimony would do. I think that would, in
10 effect, bolster or attempt to bolster the testimony of
11 the child.

12 I think that that although she would not come
13 out and say that she believes that the child is telling
14 the truth. I think that if she were to testify as an
15 expert that the child has, in fact, displayed
16 characteristics of prior abused children. I think that
17 would, in effect, bolster the credibility, or bolster the
18 testimony of the child witness.

19 **THE COURT:** Well, let me read from
20 Baker. Even if we assume the trial court erred in
21 qualifying Herrod as an expert, we find Baker suffered no
22 prejudice as a result of the decision. The Jury was free
23 to accept or reject Herrod's testimony. The mere fact
24 that Herrod was qualified as an expert did not require
25 the Jury to give her testimony any greater weight than

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1 that given to a non expert witness.

2 The trial court made that point exclusively
3 clear by stating, and then it gives my charge as to what
4 I told them about expert testimony, the court went on to
5 say, the foregoing demonstrates the Jury was informed.
6 It was free to assign no weight to Herrod's testimony.

7 Further, the Jury understood Herrod's testimony
8 was not to be afforded more weight simply because she was
9 qualified as an expert. Thus, Baker was not prejudiced
10 by the trial court's decision.

11 So she can testify --- What they said that she
12 can testify the way she testified to, whether she was
13 qualified as an expert or not. And the fact that I
14 qualified her as an expert was not prejudicial because I
15 gave them a charge about expert witnesses. That's what
16 Baker says. And then it goes on to say that Baker's
17 contention that Herrod's testimony constituted an
18 improper bolstering is without merit. As in the Douglas
19 case, Herrod did not testify she believed the testimony
20 of the younger or older niece, and did not vouch for the
21 victim's voracity.

22 All right. I understand your argument and
23 position on it. I think I need to at this time to
24 recess. Is there anything else other than my viewing the
25 video tapes of the forensic interviews that the Defense

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1 wishes to bring up at this time, Mr. Swilley or Ms.
2 Little?

3 MS. LITTLE: No, Your Honor.

4 THE COURT: Anything from the State?

5 MS. MAYES: No, sir, Your Honor. We are
6 looking at some other case law. If we find another case
7 to support directly --- that supports the admission of
8 the video tape we'll submit that to the Court as well. I
9 believe there might have been another one this past
10 Spring.

11 THE COURT: All right. Well,
12 admissibility is pretty clear from what I've got to do
13 and that is governed by Statute. I don't think there's a
14 whole lot of argument about what governs the
15 admissibility of the forensic interview. The question is
16 a little closer as to whether or not the interviewer
17 should be qualified as experts. And I've got to look at
18 Baker and Douglas, either one of which I'm not sure I
19 understand, even though I tried both of those cases, and
20 whether that makes any difference. I think that's a
21 little bit closer question that I've got to determine on
22 the expert.

23 I think though that if the forensic interviewer
24 is qualified under the terms of the Statute, and the
25 video meets the terms of the Statute, then the video is

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1 admissible whether or not they are an expert. And I'm
2 not sure it makes a lot of difference as to whether or
3 not they are an expert.

4 So, what's the status of the equipment and me
5 being able to review, is it set up in chambers, or how it
6 is it set up, Ms. Baugh?

7 MS. BAUGH: I believe it's just a matter
8 of taking it back there.

9 THE COURT: All right. Ma'am, let's do
10 that. All right. How long do these two interviews last
11 altogether?

12 MS. MAYES: I would estimate as we
13 mentioned yesterday, Your Honor, about two hours. That's
14 approximate.

15 THE COURT: Is that counting the first
16 one?

17 MS. LITTLE: Counting the first one,
18 Your Honor. I think that's counting all three.

19 THE COURT: All right. Let's set it up,
20 and I'll view them in the next couple hours. We will be
21 in recess then until --- As far as Court personnel if
22 it's going to take two hours, let's plan to reconvene at
23 1:45.

24 (Whereupon, The Court stands down at 11:43
25 a.m. until resuming its sitting at 2:34 p.m.)

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1 THE COURT: This doesn't need to be on
2 the record, but one thing before we get started. During
3 the course of the testimony in this case I want to
4 caution everyone, spectators and everyone else,
5 Defendant, victims, and everyone else that they need to
6 sit impassively to the testimony without any shows of
7 emotion, without nodding your head, shaking your head, or
8 anything else.

9 If I do see any shows of emotion, or
10 expressions of disbelief, or supporting the testimony, I
11 will be required to take appropriate action, which may be
12 making a finding of contempt.

13 So, if you can't sit here quietly and listen to
14 the testimony without shows of emotion I'll have to ask
15 you to leave.

16 (PAUSE.)

17 THE COURT: All right. Back on the
18 record with regard to the matter of the State versus
19 Jimmy Gallishaw, Jr., Indictments 1240, 1238, 1237, 1241,
20 1239, 1246, 1235.

21 Just to make sure that we are clear on the
22 rulings of the Court before we bring the Jury back in,
23 and I'm advised that all the Jurors are here, the Motions
24 that was heard by the Court, the Court denied the Motion
25 to Relieve Counsel, and denied the Motion by the

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1 Defendant for Continuance.

2 Also the Court denied the Motion to Suppress
3 after the Jackson versus Denno Hearing of the statements
4 made to the polygraph operator, with cautions to everyone
5 not to in any way refer to the polygraph, but refer to it
6 as an investigative interview.

7 The Court also denied the Motion to Suppress
8 the statements made to Mr. Watson, both oral and video.
9 I'm not sure there was a Motion made with regard to the
10 letter that was written. But that was a Defendant's
11 letter, and I see no reason why that would not be
12 admissible as well.

13 The Court also granted the Motion by the State
14 to Consolidate the two cases for the reasons that were
15 placed on the record, the two victims in this case.

16 With regard to the Rape Shield Statute, Rape
17 Shield matters, I think the ruling is clear on that, that
18 the State has indicted that they were not going to deny
19 that there were prior sexual acts by one or more of the
20 victims.

21 And the matter with the forensic interviews, I
22 cannot make a determination on that until I have heard
23 the qualifications of the forensic interviewers. And I
24 will not make a Motion with regard to the issue of
25 whether they will be qualified as an expert in one or

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1 more fields until after I have heard from them, which I
2 understand will be in the morning.

3 Is there anything else that we need to put on
4 the record as far as the State is concerned before we go
5 forward with the Jury, Ms. Mayes?

6 MS. MAYES: Nothing at this time, Your
7 Honor.

8 THE COURT: Okay. Anything further?

9 MS. LITTLE: Your Honor, I do have one
10 photo I would like to get pre-marked as a Defense Exhibit
11 for identification purposes only. I am not planning to
12 admit it at this time.

13 THE COURT: Okay. Then what's the
14 purpose of --

15 MS. LITTLE: Well, I anticipate that one
16 of the witnesses is going to describe an event that
17 happened here, and I want to ask her if this is a
18 accurate picture.

19 THE COURT: Show it to Ms. Mayes and see
20 if she has any objection to it being introduced for
21 identification purposes only.

22 MS. MAYES: No objection to it being
23 pre-marked.

24 THE COURT: Defendant's Exhibit Number 1
25 for identification purposes only.

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1 WHEREUPON, DEFENDANT'S
2 EXHIBIT NUMBER 1 IS PRE-
3 MARKED FOR IDENTIFICATION
4 PURPOSES ONLY.

5 MS. LITTLE: Also, Your Honor, Defense
6 would move at this time that witnesses in this case be
7 sequestered.

8 THE COURT: All right. Tell me what
9 witnesses you feel sequestration is necessary.

10 MS. LITTLE: Your Honor, I would ask
11 that each one of the child victims not be present while
12 the other child is testifying.

13 THE COURT: All right. That would be --

14 MS. LITTLE: Victim #1 and Victim #2.

15 THE COURT: Right. Any others? That
16 makes sense. The State's theory is that they were
17 present at the same time with each other during the
18 occurrence of these events. And I think that is an
19 appropriate Motion as far as sequestration of those two
20 witnesses are concerned. But I would have to have the
21 reason why sequestration of any other witnesses was
22 necessary.

23 MS. LITTLE: Yes, sir, just one moment.

24 (PAUSE.)

25 MS. LITTLE: No, Your Honor, just those

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1 two witnesses I would like to be kept separate during
2 their testimony.

3 THE COURT: All right. Ms. Mayes, my
4 understanding from pretrial conferences is that one of
5 those two is going to be your first witness; is that
6 correct?

7 MS. MAYES: Your Honor, can I get a
8 clarification if she's referring to both of the minor
9 victims?

10 THE COURT: That's right.

11 MS. LITTLE: That's correct.

12 MS. MAYES: Your Honor, under the Victim
13 Witness Bill of Rights they are exempt from
14 sequestration.

15 THE COURT: That's correct. They are
16 the victims in this case and they have the right to be
17 present.

18 MS. LITTLE: Okay, Your Honor, just over
19 my objection. If you would note my objection.

20 THE COURT: Well, what's the objection?
21 Do you concede that the Victims Bill of Rights doesn't
22 allow the victims to be present in the courtroom?

23 MS. LITTLE: Yes, Your Honor.

24 THE COURT: Okay. All right. I will
25 not require the sequestration of those two witnesses

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1 because of the Victims Bill of Rights. I think that
2 under the Bill of Rights the victims do have the right to
3 be present along with, of course, any other witnesses,
4 the primary officer always. And the others, I don't see
5 any prejudice from the various other witnesses being
6 present. So the Motion to Sequester is denied.

7 All right. Anything else?

8 MS. MAYES: Yes, sir, Your Honor. We do
9 have concerns about the minor victims testifying in a
10 courtroom with spectators. We actually have no objection
11 to spectators being excluded, which includes our own
12 witnesses where the minor children are involved. We
13 realize that is a discretionary matter for the Court.

14 THE COURT: I'm going to deny that
15 Motion. If there had been concerns about the victims
16 testifying in open courtroom, and you needed to handle it
17 in some other fashion, then we needed to address that
18 earlier. I'm not going to close the courtroom to
19 spectators or anyone else at this point.

20 The Motion is denied.

21 All right. Anything before we bring the Jury
22 in, Ms. Mayes?

23 MS. MAYES: No, sir, Your Honor.

24 THE COURT: Ms. Little?

25 MS. LITTLE: No, sir.

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1 **THE COURT:** All right. Bring the Jury
2 in, please.

3 (Whereupon, the jury enters the courtroom
4 at 2:43 p.m.)

5 **THE COURT:** All right. Good afternoon,
6 ladies and gentlemen, and thank you for your promptness
7 in being back here. We are now ready to proceed.

8 If it's any consolidation to you, I will tell you
9 that this morning we didn't just take the morning off.
10 We've been working since 9:30 this morning on matters
11 related to this case. It has taken us all morning long
12 to resolve those issues. But we are now ready to go
13 forward with the trial of this case. And I would ask Mr.
14 Suggs if you will swear the Jury for me, please.

15 **CLERK OF COURT:** Yes, sir, Your Honor.

16 (Whereupon, the jury is sworn at 2:45 p.m.
17 on Tuesday, July 20, 2010.)

18 **THE COURT:** All right. Thank you very
19 much, ladies and gentlemen. Before we begin the actual
20 trial of this case, I thought it might be helpful if I
21 explained to you basically how a trial proceeds.

22 I know all of you have seen trials on
23 television. But I think that you will find that it is a
24 great deal different in real life.

25 First of all, The State will make an opening

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1 statement. An opening statement is not evidence. It is
2 simply an outline to help you understand what the State
3 expects the evidence will show.

4 The Defendant may, if he wishes to, present an
5 opening statement. But he doesn't have to for reasons
6 that I will explain later.

7 Following the opening statements you will hear
8 the testimony and evidence in this case. This will
9 consists of testimony from the State's witnesses, as well
10 as any physical exhibits which may be introduced into
11 evidence.

12 And I will tell you that there likely will be
13 some physical exhibits introduced into evidence. And the
14 lawyers may ask for permission to publish those exhibits
15 to you, and pass them around to you while you're sitting
16 there in the Jury box.

17 I will probably grant that permission for them
18 to do so. But I will tell you that if you do not have as
19 long to look at the physical exhibits as you would like
20 to, do not be concerned, or do not concern yourselves
21 about that, because anything that is admitted into
22 evidence will be allowed to go with you to your Jury room
23 when you retire to deliberate a verdict. So, you will
24 have an ample opportunity to study that exhibit for as
25 long as you would like to.

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1 Following the completion of the testimony, the
2 attorneys will again have an opportunity to make what is
3 called a closing statement or a summation to you. This
4 is an opportunity for the attorneys to summarize the case
5 from their respective points of view. Again, these
6 arguments are not evidence.

7 Following the closing statements by the
8 attorneys, I will instruct you on the law of South
9 Carolina as it pertains to the issues that have arisen in
10 this case. When I have completed my instructions to you,
11 you will be permitted to begin your deliberations in
12 order to reach a verdict.

13 Now, ladies and gentlemen, you are now the Jury
14 in this case. And I want to take a few minutes to tell
15 you something about your duty as Jurors, and to give you
16 some preliminary instructions.

17 At the end of this trial I'll give you more
18 detailed instructions, and those instructions will
19 control your deliberations.

20 It will be your duty to decide from the
21 evidence what the facts are. You, and you alone, are the
22 judges of facts. You will hear the evidence, and decide
23 what the facts are, and then apply those facts to the law
24 which I will give to you. That is how you reach your
25 verdict.

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1 In doing so, you must follow the law whether
2 you agree with it or not. The evidence will consist of
3 testimony of witnesses, documents, and other things
4 received into evidence as exhibits, and any facts which
5 the lawyers agree, or which I may instruct you to accept.

6 Now you should not take anything that I may say
7 or do during this trial as indicating what I think of the
8 evidence, or what your verdict should be.

9 The same law that makes you the judge of the
10 facts makes me the judge of the law. You must take the
11 law as I give it to you, regardless of what you think the
12 law is, or what the law ought to be.

13 If I'm wrong on the law there is another time
14 and place for that error to be corrected. But for this
15 case, you must accept the law as I instruct it to you.

16 Now this is a criminal case brought by the
17 State of South Carolina. The State charges the
18 Defendant, Jimmy Gallishaw, Junior, with a number of
19 offenses set forth in these indictments.

20 These charges include lewd act upon a minor,
21 criminal sexual conduct with a minor under the age of
22 eleven years, incest, criminal sexual conduct, another
23 count of criminal sexual conduct with a minor under 11
24 years, and another lewd act charge.

25 In other words, I'll go into more detail with

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1 the actual charges at the end of this case and after the
2 proof is in.

3 But I will tell you that the indictments in
4 this case, which I hold in my hand, are not evidence of
5 anything. You are not to consider them as evidence in
6 this case. They are simply the description of the
7 charges brought by the State against the Defendant, and
8 serve as the means by which this case is brought to
9 court.

10 The Defendant has pled not guilty to these
11 charges, and he's presumed innocent unless and until
12 proven guilty beyond a reasonable doubt.

13 A reasonable doubt is the kind of doubt that
14 would cause a reasonable person to hesitate to act. A
15 Defendant has the right not to testify, and never has to
16 prove innocence, or present any evidence. The burden of
17 proof is always on the State of South Carolina.

18 Now there are certain things that are not
19 evidence, and you must not consider them as evidence in
20 deciding the facts of this case. Statements and
21 arguments of the attorneys are not evidence. Questions
22 and objections of the attorneys are not evidence. And
23 testimony that I instruct you to disregard is not
24 evidence.

25 Evidence may be direct or circumstantial.

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1 Direct evidence is testimony by a witness about what that
2 witness personally saw, or heard, or did.

3 Circumstantial evidence is indirect evidence.
4 The law permits you to give equal weight to both. But it
5 is for you to decide how much weight to give to any of
6 the evidence.

7 There are rules of evidence which control what
8 can be received into Court. When a lawyer asks a
9 question, or offers an exhibit into evidence, and the
10 lawyer on the other side thinks that it's not permitted
11 by the rules, that lawyer may object.

12 If I overrule the objection, the question may
13 be answered or the exhibit may be received. If I sustain
14 the objection, the question cannot be answered and the
15 exhibit cannot be received.

16 Whenever I sustain an objection to a question
17 or deny a Motion to admit an exhibit into evidence, you
18 must ignore the question or the existence of the exhibit.
19 And you must not guess what the answer would have been,
20 or what the exhibit would have shown.

21 Sometimes, it may be necessary for me to
22 request that you leave the courtroom while I discuss with
23 the attorneys legal questions that come up during the
24 trial. If this occurs, you should not speculate about
25 our discussions or the reasons that you were asked to

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1 leave the courtroom. This is simply a procedure that
2 the law requires when certain legal issues arise.

3 There also may be occasions when I ask the
4 attorneys to approach the Bench so that I can discuss a
5 legal issue with them in private. I will do this as
6 often as possible so that you will not be required to
7 leave the courtroom more than is absolutely necessary.

8 Again, if I ask the attorneys to approach the
9 Bench, or if I ask you to leave the courtroom, please
10 don't think that anybody is trying to hide anything from
11 you, or keep any evidence from you.

12 This is simply a procedure used by all courts
13 and by all lawyers to determine and decide legal
14 questions.

15 Now in deciding the facts of this case, you may
16 have to decide which witnesses to believe and which
17 witnesses not to believe.

18 You may believe everything a witness says, or
19 only part of it, or none of it. In deciding what to
20 believe, you may consider a number of factors including
21 the witness' ability to see, or hear, or know the things
22 a witness testified to, the quality of the witness'
23 memory, the witness' manner while testifying, whether the
24 witness has an interest in the outcome of the case, or
25 any motive, bias, or prejudice, whether the witness was

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1 contradicted by anything the witness said or wrote before
2 the trial, or by any other evidence. And how reasonable
3 was the witness' testimony when considered in the light
4 of other evidence which you do believe.

5 Now, just a few words about your conduct as
6 Jurors, some of which I have already mentioned to you,
7 but they are important enough that they bear repeating.

8 Do not talk to each other about this case, or
9 about anyone who had anything to do with the case until
10 the end of the case and you go to your jury room to
11 decide on your verdict.

12 Do not talk to anyone else about the case until
13 the trial is ended following your verdict and you have
14 been discharged as Jurors. This means, do not discuss
15 the case with members of your family, or friends, or with
16 anyone else. You may tell them that you are a Juror, but
17 don't tell them anything about the case until you have
18 been discharged by me.

19 Do not let anyone talk to you about the case.
20 If anyone should try and talk with you, get their
21 description, or their name, and report it to the bailiff,
22 who will report it to me, and I will deal with them.

23 Do not read any news stories, or articles, or
24 listen to any radio or television reports about the case.
25 Again, you've got to decide this case based on what you

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1 hear in this courtroom, and not what might be reported in
2 the news media.

3 You are not to consider as evidence anything
4 that you may see or hear when court is not in session.
5 Do not do any research, such as consulting dictionaries,
6 or other reference materials, or the internet, or any
7 other form of electronic research. And do not make any
8 investigation into the case on your own.

9 Finally in summary, just as important, or more
10 important than any of the above things that I have
11 mentioned to you, is do not make a decision about what
12 your decision in this case should be until you have heard
13 all of the evidence in this case, and have heard the
14 instructions on the law by the Court, as well as the
15 arguments of the attorneys.

16 You will be instructed when to begin your
17 deliberations by either me or the bailiff.

18 Any objections to my opening remarks on behalf
19 of the State, Ms. Mayes?

20 MS. MAYES: None for the State, Your
21 Honor.

22 THE COURT: Ms. Little?

23 MS. LITTLE: No, Your Honor.

24 THE COURT: All right. The first order
25 of business, ladies and gentlemen, is the matter of

OPENING STATEMENT BY MS. MAYES

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1 opening statements. And for that purpose the Court will
2 recognize Ms. Mayes on behalf of the State.

3 **MS. MAYES:** May it please the Court?

4 **THE COURT:** Yes, ma'am.

OPENING STATEMENT BY MS. MAYES

5
6 **MS. MAYES:** Ladies and gentlemen, what
7 this case is really about is broken trust, because in
8 this case a child's trust was broken, and betrayed by
9 someone that she should be able to rely on the most to
10 care for her, and to protect her, her father.

11 In this case there were two girls who were
12 betrayed by this man. You will hear from **Victim #1** [REDACTED].
13 She is the biological daughter of the Defendant, Jimmy
14 Gallishaw. And you will also hear from **Victim #2** [REDACTED].
15 **Victim #2** is the stepdaughter of Jimmy Gallishaw.

16 Both of these girls considered him dad. Both
17 of these girls were betrayed by him in the most terrible
18 way. You may have heard the indictments that were called
19 yesterday as you were selected as a Juror.

20 The law in this case is actually very simple.
21 And at the close of all the testimony the Judge will
22 instruct you on exactly what the law is. But I will
23 briefly let you know that the charges are what we call
24 criminal sexual conduct with a minor in the first degree.
25 And that covers an act of what we call sexual battery,

OPENING STATEMENT BY MS. MAYES

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1 when a person who was under eleven years old.

2 In this case the State alleges that both
3 [Victim #2] [REDACTED] and [Victim #1] [REDACTED] were under the age of
4 eleven at the time the Defendant, Jimmy Gallishaw,
5 engaged in sexual battery with them.

6 Now sexual battery, what does that mean? It is
7 under the law, and is actually very simple, it can be the
8 insertion of anything into the vagina. It can be a
9 private part into another private part. It could be the
10 insertion of a finger into the vagina. But it is any act
11 of penetration, however slight.

12 In addition to that charge of criminal sexual
13 conduct with a minor is another charge, called
14 attempting, or committing a lewd act upon a child. That
15 can be any act of improper touching, or a lewd or
16 lascivious purpose.

17 And under our law, anytime that an adult engages in
18 a sexual touching of a child under the age of sixteen it
19 would be defined as committing a lewd act upon a child.

20 One of the charges you may have heard is
21 incest. Incest involves sexual relations between a
22 father and daughter, or a father and stepdaughter. And
23 that is because children are protected under our laws
24 from these types of acts with family members.

25. You are going to hear from both [Victim #2] and

OPENING STATEMENT BY MS. MAYES

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1 **Victim #1** in this case. In addition, you are also going to
2 hear from law enforcement officers that were involved in
3 this investigation. Specifically, several members of the
4 Darlington Police Department, Officer Michael August, and
5 also Captain Danny Watson, who is present in the
6 courtroom as well.

7 You will hear testimony that after Jimmy
8 Gallishaw was advised of his Miranda Rights, the right we
9 all hear about on tv, have the right to remain silent,
10 you have the right to an attorney, anything you say may
11 be used against you in court, after being advised of
12 those rights that Jimmy Gallishaw waived his rights and
13 agreed to speak to law enforcement.

14 You will hear testimony that he admitted,
15 during the course of the interview with law enforcement,
16 that he had, in fact, engaged in sexual intercourse with
17 his daughter, **Victim #1**, and his stepdaughter, **Victim #2**.

18 You will hear from his own statement that that
19 occurred more than one time in the home. You will hear
20 testimony that **Victim #2** actually lived in the same home
21 with Mr. Gallishaw. And that is because her mom,
22 Adrienne Gallishaw, was married to him, still is married
23 to him. And that his daughter, **Victim #1**, would come over
24 sometimes on weekends and visit. And that is how he had
25 access to those girls on a regular basis.

OPENING STATEMENT BY MR. SWILLEY

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1 I ask you to keep in mind that sexual abuse of
2 a child is and will be the central focus of this case.
3 And I submit sexual abuse of a child is a secret crime.
4 It is a crime of silence and it is a crime of shame.

5 [Victim #2] and [Victim #1] have broken that silence,
6 and have the courage to come before you twelve, thirteen,
7 fourteen here today. And after all is said and done, I
8 submit the State will meet it's burden of proof
9 abundantly, and prove that Jimmy Gallishaw is guilty as
10 charged with criminal sexual conduct with a minor,
11 committing a lewd act upon a child, and incest. Thank
12 you.

13 **THE COURT:** Mr. Swilley, does the
14 Defendant care to make an opening statement?

15 **MR. SWILLEY:** Thank you, Your Honor. If
16 it please the Court?

17 **THE COURT:** Yes, sir.

18 **OPENING STATEMENT BY MR. SWILLEY**

19 **MR. SWILLEY:** Good afternoon, ladies and
20 gentlemen. My name is Matt Swilley. I, along with Ms.
21 Little over here, we both represent Mr. Jimmy Gallishaw
22 in this matter. Okay. Now we are going to see,
23 throughout the course of this trial, that the State will
24 not prove, beyond a reasonable doubt, that Jimmy
25 Gallishaw was guilty of a crime for which he has been

OPENING STATEMENT BY MR. SWILLEY

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1 charged.

2 And there is an excellent reason for that,
3 because it's not true, because he did not do these
4 things. Throughout the whole course of this trial you
5 are going to hear some flagrant, nasty, and awful
6 allegations thrown at him. And that's all they are.
7 They are allegations. They are just words. Okay? That
8 is all that is going on.

9 I can see from the time they read the
10 indictments of all those crimes you may have had chills
11 running up your backs, chills running up your spine, or
12 whatever, hairs standing up on the back of your neck. I
13 don't know.

14 But during the course of this trial, what I'm going
15 to ask you to do is ask you to use that organ between
16 your ears and figure out what really happened and what
17 didn't. And the only way you can do that is to use your
18 common sense. Your collective common sense. And y'all
19 are all from Darlington County, so I know you've got good
20 common sense. And you're going to be able to tell who is
21 credible and who is not, who is probably telling the
22 truth, who is not.

23 But as Ms. Mayes says, she was right about one
24 thing, this is a case about broken trust. This is a case
25 about a man, the man of the house, a working man taking

OPENING STATEMENT BY MR. SWILLEY

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1 care of his family, not just him, but all the time
2 someone else's kids, his stepdaughter, trying to support
3 them for whatever reason. I don't know why, and we
4 probably won't find out, but they decided to turn their
5 back on him, come up with these allegations. Hopefully
6 we will find that out.

7 But as the Judge told you and Ms. Mayes went
8 over, there are three bedrock principles in our American
9 Criminal Law. Number one, the burden of proof is always
10 on the State. The Defense does not have to prove
11 anything. The reason they are sitting here closest to
12 y'all is because they have the burden of proof and that
13 will never change.

14 Number two, almost most importantly, the
15 Defendant, Mr. Gallishaw, is innocent until proven
16 guilty. A feat which will not be accomplished.

17 Number three, in order to be convicted he has
18 to proven guilty beyond a reasonable doubt. Now what is
19 a reasonable doubt as Judge King informed you is a doubt
20 which will make you --- something that will make you
21 hesitate --- hold on, wait one second, make you hesitate.
22 You will see several of those incidents throughout the
23 course of this trial, the testimony.

24 I'm not going to stand up here and talk too
25 much longer. Number one, I know y'all don't want to hear

OPENING STATEMENT BY MR. SWILLEY

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1 my voice. Number two, what is said up here, the opening
2 and closing arguments really aren't important. What is
3 important is the testimony you are going to hear, things
4 that are shown, the inconsistencies in the State's
5 witnesses. That is what is important and that is what
6 I'm going to ask you to pay attention to throughout the
7 course of this trial.

8 Now there's physical evidence in this case.
9 Don't make any mistakes about it, that these young ladies
10 have had sexual experiences. However, there is no
11 evidence whatsoever that links this evidence to Mr.
12 Jimmy Gallishaw, or any other individual for what will be
13 shown to you. None whatsoever. No DNA, no fingerprints,
14 hair sample, nothing linking Jimmy Gallishaw. No
15 physical, credible evidence that links Jimmy Gallishaw to
16 any wrongdoing in this case. You will see that.

17 As far as the statement he made to the police,
18 well, under duress and coercion, Mr. Gallishaw told them
19 things for which he believed they wanted to hear. And
20 you will see throughout the testimony in this case that
21 Mr. Gallishaw would have probably admitted to the Kennedy
22 Assassination, even though it happened probably like
23 fifteen years before he was born.

24 Finally, I would just like to thank you for
25 being here. Thank you for your attention. I know you

Victim #2 [REDACTED] - DIRECT EXAMINATION

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1 don't want to be here. But you probably don't realize
2 how important your job is here today. This will be the
3 most important probably couple of days in this man's
4 life. And his life depends on your diligence during this
5 matter.

6 I want to thank you for being here and thank
7 you for your attention.

8 THE COURT: All right. Ms. Mayes you
9 may call your first witness.

10 MS. MAYES: May it please the Court?

11 THE COURT: Yes, ma'am.

12 WHEREUPON, Victim #2 [REDACTED]

13 FIRST HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS

14 MISS Victim #2: I do.

15 DIRECT EXAMINATION BY MS. MAYES

16 Q. Could you state your full name for the Court?

17 A. Victim #2 [REDACTED].

18 Q. Okay. Now, Victim #2, I want to make sure that
19 everybody can hear you. The first thing I'm going
20 to do is adjust this microphone. And we may need
21 you to lean into it sometimes, okay? And now I'm
22 going to step back here and see if we can hear you
23 from here. How old are you right now, Victim #2?

24 A. Twelve.

25 Q. Twelve. Who all lives in your house right now?

Victim #2 [REDACTED] - DIRECT EXAMINATION

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1 A. My Grandmamma, my mamma, my little brother, and my
2 little sister.

3 Q. You mentioned that you have a mom. What's your
4 mom's name?

5 A. Adrienne Gallishaw.

6 Q. What is your grandmother's name?

7 A. Verline Odom.

8 Q. And you mentioned that you have a brother. What's
9 his name?

10 A. J[REDACTED] Gallishaw.

11 Q. And you have a sister. Is she older than you or
12 younger?

13 A. Younger.

14 Q. And what's her name?

15 A. O[REDACTED] Gallishaw.

16 Q. How old is your baby sister?

17 A. Two.

18 Q. And how is it, Victim #2, that you know the Defendant
19 in this case, Jimmy Gallishaw?

20 A. He's married to my mamma.

21 Q. I want to talk with you a little bit about that.
22 Okay? About how old were you when they got married?

23 A. I don't remember.

24 Q. When you first met him were you old enough to
25 remember, or was that before you were even old

1 enough to remember?

2 A. I guess it was before I was old enough to remember,
3 because I really don't remember.

4 Q. Okay. So has he always been a part of your life?

5 A. I don't --- Well, ever since I was old enough to
6 remember yeah, he has been.

7 Q. When we talk about ever since you were old enough to
8 remember, what did you call him when he was living
9 in the house with you and your mom?

10 A. Daddy.

11 Q. Daddy. And when you called him daddy, let me ask
12 you this, is he your biological father?

13 A. No.

14 Q. And you mentioned that you have a brother, J [REDACTED].
15 Is he the biological father of J [REDACTED]?

16 A. Uh-huh.

17 Q. And you mentioned that you have a little sister. Is
18 he the biological father of your little sister?

19 A. Yes, ma'am.

20 MS. MAYES: Beg the Court's indulgence.

21 (PAUSE.)

22 Q. Where did you just finish school?

23 A. I'm still at school. And I go to Darlington Middle.

24 Q. Okay. I need you to speak up so that the Court
25 Reporter here can write down everything that is

Victim #2 [REDACTED] - DIRECT EXAMINATION

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1 being said and repeat it back. Sometimes I might
2 ask you to say an answer again to make sure that we
3 can hear it. Okay? You said that you just finished
4 the school year. What school year did you just
5 finish?

6 A. Sixth.

7 Q. And that was sixth grade at what school?

8 A. Darlington Middle.

9 Q. Okay. I want to go back to some of the places that
10 you lived with the Defendant, Jimmy Gallishaw, lived
11 with you. Okay? I'm going to show you a photograph
12 and ask you whether or not you recognize what's in
13 the photograph, okay? Do you recognize what's in
14 this picture?

15 A. Uh-huh.

16 THE COURT: Please answer either yes or
17 no, please.

18 A. Yes.

19 Q. And what is that a picture of?

20 A. My grandmamma house.

21 Q. All right. Now, you say my grandma's house. Which
22 grandmamma would be, would that be your mom's mom,
23 or the mom of the Defendant, Jimmy Gallishaw?

24 A. My mamma's mamma.

25 [REDACTED] All right. And what is her name?

Victim #2

- DIRECT EXAMINATION

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1 A. Verline Odom.

2 Q. Okay. So this home is Ms. Verline Odom's. Can you
3 tell us whether or not that is here in Darlington
4 County?

5 A. Yes, it is.

6 Q. And did you ever live in this house?

7 A. Yes.

8 Q. All right. Did your mom live in this house?

9 A. Yes.

10 Q. And what about the other family members you
11 mentioned?

12 A. Yes.

13 Q. Can you tell us whether or not Jimmy Gallishaw lived
14 in that house too sometimes?

15 A. Yes.

16 Q. Okay.

17 MS. MAYES: Your Honor, at this time we
18 would mark this as State's Exhibit 1 for evidence.

19 THE COURT: Offered into evidence as
20 State's Number 1. Any objections?

21 MS. LITTLE: No, Your Honor.

22 THE COURT: All right. Admitted without
23 objection.

24 WHEREUPON STATE'S

25 EXHIBIT NUMBER 5 WAS

Victim #2 [REDACTED] - DIRECT EXAMINATION

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1 ADMITTED INTO EVIDENCE

2 WITHOUT OBJECTION

3 MS. MAYES: It would be actually 5, Your
4 Honor.

5 THE COURT: Okay. State's Number 5
6 admitted without objection.

7 Q. Now when we talk about this house, that's your mom's
8 mom's house that you stayed at sometimes. Was this
9 the only place that you lived with Jimmy Gallishaw,
10 or was there another place?

11 A. It was other places.

12 Q. What are some of the places that you remember after
13 this place.

14 A. We lived in a house, and then we moved into a
15 trailer, and then it burnt down, and then we moved
16 into Grandma's house, and then we went back to that
17 house.

18 Q. If I understand correctly, after this house there
19 was a trailer?

20 A. Yes, ma'am.

21 Q. And what happened to the trailer?

22 A. It burned down.

23 Q. After it burned down where did you go to stay?

24 A. At my Grandma Ollie's house.

25 Q. You say Grandma Ollie's house. I'm going to ask you

1 whether or not you recognize what's shown in this
2 photograph.

3 A. Yes, I do recognize it.

4 Q. Okay. And whose house is this?

5 A. Grandma Ollie's house.

6 Q. Okay. And is Grandma Ollie's house in Darlington
7 County, or do you know?

8 A. No, it's not in --- well --

9 Q. What's the name of the place it is?

10 A. Lydia.

11 Q. Lydia. Okay. So when you stayed here at Grandma
12 Ollie's house, did you have a room?

13 A. No, ma'am.

14 Q. Where did you stay?

15 A. I stayed in Jimmy Gallishaw's room.

16 Q. Okay. When you say Jimmy Gallishaw, you're
17 referring to the Defendant?

18 A. Yes.

19 Q. Now did your Mama also live in this house?

20 A. Yes.

21 Q. Or come to visit this house?

22 A. Yes.

23 Q. Okay.

24 **MS. MAYES:** Your Honor, this would be
25 State's Exhibit 6 as evidence.

Victim #2 [REDACTED] - DIRECT EXAMINATION

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1 THE COURT: Any objection?

2 MS. LITTLE: No, Your Honor.

3 THE COURT: State's Number 6 admitted
4 into evidence.

5 WHEREUPON, STATE'S

6 EXHIBIT NUMBER 6 WAS

7 ADMITTED INTO EVIDENCE

8 WITHOUT OBJECTION.

9 Q. The house that we talked about first, which is your
10 mama's mama's house. Would you call it a house or
11 an apartment?

12 A. An apartment.

13 Q. Okay. Well, I'm going to call it an apartment too.
14 And when we talk about the apartment, what room in
15 the apartment would you sleep in, Victim #2?

16 A. The back one. The one in the back.

17 Q. Okay. I need you to speak up so that everyone can
18 hear you.

19 A. The back room.

20 Q. Okay. And when you say the back room, what kind of
21 room is it? What's in there?

22 A. Bed.

23 Q. Is it a bedroom?

24 A. Yes, ma'am.

25 Q. And who all would normally sleep in that particular

1 bedroom?

2 A. At what point in time?

3 Q. Okay. We'll talk about that. Let me ask you this
4 way. In the bedroom that you stayed in, how many
5 beds were in there?

6 A. Two and a crib.

7 Q. Two and a crib. Who would normally sleep in the
8 bedroom on normal days, like week days when you were
9 in school?

10 A. I don't understand what you're saying but I don't
11 get the point in time, like now or --

12 Q. When y'all would stay in this house when Jimmy
13 Gallishaw stayed there --- Let's go back to around
14 the time that your little sister was born. You
15 mentioned there was a crib in there. So when your
16 little sister was a baby, who would normally stay in
17 there?

18 A. Jimmy, my mamma, me, and my little brother, and my
19 little sister would sleep in the crib.

20 Q. Okay. And where would you stay?

21 A. In my bed.

22 Q. Okay. And was your bed in this room or a different
23 room?

24 A. It was in that one.

25 Q. Now were there ever times anyone would come visit

Victim #2 [REDACTED] - DIRECT EXAMINATION

223

1 you at this house and also stay in that room?

2 A. Yes.

3 Q. And who was that person?

4 A. [REDACTED] Victim #1 .

5 Q. Okay. What's [REDACTED] Victim #1 's last name?

6 A. [REDACTED] Victim #1 .

7 Q. And when [REDACTED] Victim #1 would come and stay, what room would
8 she sleep in?

9 A. In the same room.

10 Q. All right. When your little sister was born you
11 mentioned there was a crib. What are some things
12 that would occupy your mom when your little sister
13 was born?

14 A. The baby.

15 Q. What do you mean by that?

16 A. She would have to change her diaper, and watch her,
17 and put her to sleep, and make bottles and stuff.

18 Q. Okay. So was your mom always in the room when you
19 and Jimmy and [REDACTED] Victim #1 were in there?

20 A. No, ma'am.

21 Q. Okay. And the baby always in the room when y'all
22 were in there?

23 A. No, ma'am.

24 Q. All right. Where might your mom be in the house
25 with the baby?

1 A. In the livingroom.

2 Q. What was in the livingroom?

3 A. Couches, and a play pen, and the tv.

4 Q. Was there ever a time, [REDACTED], in this house, or
5 in this apartment, when something happened that made
6 you feel uncomfortable?

7 A. Yes.

8 Q. Can you tell us what it was that happened?

9 A. Jimmy would touch me or say things that made me feel
10 uncomfortable.

11 Q. I want to ask you about when you say that he would
12 touch you. What do you mean by that?

13 A. His privacy would go into my privacy, and that's it.

14 Q. I want to ask you a little bit more about that.

15 When you said my privacy, I want you to take a look
16 at this girl just so we know what part of your body
17 you are referring to. I want to look at the front
18 of the girl, from the top of the head all the way
19 down to the bottom of the feet, and the back of the
20 girl. Do you see the part of the body you were
21 talking about when you say your privacy?

22 A. Yes, ma'am.

23 Q. Can you make a mark or show us what part you are
24 talking about? Is it on the front of the girl or
25 the back of the girl?

Victim #2

- DIRECT EXAMINATION

225

1 A. Front.

2 Q. And you mentioned his privacy. I want to ask you
3 the same thing. Taking a look at this picture of
4 the man from the head to the feet of the front, and
5 back, do you see the part or parts you were talking
6 about?

7 A. Yes, ma'am.

8 Q. Can you show us on here the part you are referring
9 to? Is it on the front or the back of the man?

10 A. Front.

11 MS. MAYES: Your Honor, this would be
12 State's Exhibit, pre-marked already as 1 and 2.

13 THE COURT: All right. No objection I
14 assume, Ms. Little or Mr. Swilley.

15 MS. LITTLE: No, Your Honor.

16 THE COURT: All right. State's 1 and 2
17 are admitted into evidence without objection.

18 WHEREUPON, STATE'S
19 EXHIBIT NUMBERS 1 AND 2
20 WERE MARKED AND ADMITTED
21 INTO EVIDENCE WITHOUT
22 OBJECTION.

23 Q. Victim #2, when we talk about this house or
24 apartment, did that happen one time or more than one
25 time?

1 A. More than one time.

2 Q. And when you said that his privacy touched your
3 privacy, in what way did it touch it?

4 A. It went in.

5 Q. Okay. Did that happen one time or more than one
6 time in this location?

7 A. More than once.

8 Q. I need for you to speak up so that the Court
9 Reporter can hear everything. What room in the
10 house did that happen in?

11 A. The same room where the bed and crib was.

12 Q. All right. And was there ever anybody else in the
13 room when this happened to you?

14 A. Well, when Victim #1 used to come over, maybe like
15 twice, she in the room, I think.

16 Q. Okay. So you remember that Victim #1 was in the room.

17 A. Yes, ma'am.

18 Q. And was that one time or more than one time that you
19 remember Victim #1 being in the room?

20 A. More than once.

21 Q. Was this at daytime or nighttime?

22 A. I think it happened once at night and I think ---
23 just at night, yes.

24 Q. Okay. What is it --- was this the only place that
25 something happened with Jimmy Gallishaw?

Victim #2 [REDACTED] - DIRECT EXAMINATION

227

- 1 A. No, ma'am.
- 2 Q. What are some of the other places that you remember
- 3 it happening?
- 4 A. At Grandma Ollie's house.
- 5 Q. I'm going to show you a picture, which is State's
- 6 Exhibit 6. Is this what you're referring to as
- 7 Grandma Ollie's house?
- 8 A. Yes, ma'am.
- 9 Q. And that's the house in Lydia?
- 10 A. Yes, ma'am.
- 11 Q. Where do you remember something happening in this
- 12 house?
- 13 A. In Jimmy Gallishaw's room.
- 14 Q. Why were you in that room, [REDACTED] Victim #2 ?
- 15 A. Because that's where we sleep when we went over
- 16 there.
- 17 Q. I want to ask you a little bit about that. You said
- 18 that this is his mama's house.
- 19 A. Yes, ma'am.
- 20 Q. Did you go see him there before y'all lived in the
- 21 apartment, or after y'all lived in the apartment?
- 22 A. I think both, kind of both.
- 23 Q. Okay. And when you would go see him here, was that
- 24 everyday or just sometimes?
- 25 A. Sometimes.

- 1 Q. When you would go see him there sometimes, would you
2 spend the night?
- 3 A. Yes, ma'am.
- 4 Q. Were there ever times that your mom would come over
5 there to spend the night too?
- 6 A. Yes, ma'am.
- 7 Q. What room would she normally sleep in?
- 8 A. Jimmy Gallishaw's room.
- 9 Q. Was your mom always in the room with you and Jimmy,
10 or were there times she wasn't in the room?
- 11 A. There was times she wasn't.
- 12 Q. What, if anything, [REDACTED] Victim #2, what, if anything, led
13 to this coming out, led to a grownup finding out
14 about what you described to us?
- 15 A. Are you trying to say what happened before I told my
16 mamma?
- 17 Q. Yes.
- 18 A. I don't know what day it was, but one morning we
19 went to grandma's house to spend the night, and my
20 mamma had woke up to take him to work, and I woke up
21 and I had to go to the bathroom. I didn't know
22 anybody was in the bathroom and he was in there. I
23 used the bathroom and then --- I can't remember all
24 he said, but he said like --- I can't really
25 remember, but I know that my mamma had saw me and I

Victim #2

- DIRECT EXAMINATION

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1 was on the toilet with my pants down bent over on
2 the toilet not facing him, and when she saw she
3 asked what it was --- She opened the door of the
4 bathroom she asked us what she thought it was, and I
5 don't know --- He was about to say but I said yeah
6 because I wanted it to be over, and ---

7 Q. Okay. Let me ask you a few questions about that,
8 okay? What room in that house in Lydia are you
9 referring to?

10 A. The bathroom.

11 Q. And who is it that walked in and saw something?

12 A. Adrienne Gallishaw.

13 Q. And who is she?

14 A. My mamma.

15 Q. And who was in that bathroom right before your mamma
16 walked in?

17 A. Jimmy Gallishaw.

18 Q. You are referring to the Defendant, Jimmy Gallishaw,
19 that was in the bathroom too?

20 A. Yes, ma'am.

21 Q. And you said that --- were your pants up or down?

22 A. Down.

23 Q. What kind of pants were they?

24 A. Pajamas.

25 Q. And these were your pajama pants?

1 A. Yes, ma'am.

2 Q. They were down?

3 A. Yes, ma'am.

4 Q. Where were you at in the room?

5 A. On top of the toilet.

6 Q. Okay. When you say that I need you to clarify a
7 little bit more. Was the toilet seat up or down?

8 A. Down.

9 Q. And so it is down. What part of your body was on
10 it?

11 A. My knees.

12 Q. Okay. So the toilet seat is down and you were on
13 your knees. Were you looking facing out or facing
14 away?

15 A. Away.

16 Q. And where was Jimmy Gallishaw?

17 A. Behind me.

18 Q. And was he covered or not covered?

19 A. What do you mean was he ---

20 Q. I am asking whether --- you mentioned his privacy
21 before. Do you know if it was covered up or not
22 covered up?

23 A. Not covered.

24 Q. And how is it that you were on your knees on the
25 toilet feet facing away; how did you know to get in

Victim #2 [REDACTED] - DIRECT EXAMINATION

231

1 that position?

2 A. Cause this happened to me more than once.

3 Q. When you say this happened to you more than once, do
4 you mean by who?

5 A. Jimmy Gallishaw.

6 Q. Okay. Was that the first time you had ever been on
7 your knees facing away?

8 A. No, ma'am.

9 Q. So your mom walks in and sees that?

10 A. Yes, ma'am.

11 Q. What was her reaction?

12 A. She was like is this what I think it is, and I don't
13 know what he was going to say, but I said yeah,
14 mamma, because I was tired of like this happening to
15 me. And I didn't want somebody --- my mamma life
16 like that no more.

17 Q. You said yes mamma?

18 A. Yes, ma'am.

19 Q. And had you told your mamma before this?

20 A. Yes, but I had took it back. I know my mamma had
21 always loved him, and I didn't want like her to be
22 feel like I was the problem, because that's why he
23 ain't married, he ain't got nobody to be with.

24 Q. How did that make you feel keeping the secret and
25 pretending like nothing was happening?

1 A. I felt like I was keeping something --- it didn't
2 like feel right with me. I knew I was hiding
3 something and I had to get it out before something
4 else happened.

5 Q. Okay. When you told your mom that morning, what was
6 her reaction when you told her that something had
7 happened?

8 A. She was crying.

9 Q. What did Jimmy say?

10 A. He said it was because of some medicine or something
11 like that.

12 Q. Do you remember what kind of medicine he said it was
13 because of?

14 A. No, ma'am.

15 Q. And who did he say that to?

16 A. My mamma.

17 Q. Okay. And did you hear him say that to your mamma?

18 A. Yes, ma'am.

19 Q. And how did it make you feel when you heard him
20 telling your mom it was because of a medicine that
21 he took?

22 A. I felt like it wasn't no use to tell her and I knew
23 he was going to lie. I felt like my mamma wasn't
24 going to believe me.

25 Q. You worried that your mamma wouldn't believe you?

Victim #2 - DIRECT EXAMINATION

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1 A. Yes, ma'am.

2 Q. And after that happened when your mom saw what she
3 saw, do you remember going to a place in Florence
4 that is called a CARE House?

5 A. Yes, ma'am.

6 Q. Do you remember talking to some people there, a
7 doctor and a lady who interviewed you?

8 A. Yes, ma'am.

9 Q. Do you recall whether or not you told them about
10 what had happened with Jimmy?

11 A. Yes, I did tell them.

12 Q. And do you recall whether you went ahead and told
13 them about the other times it had happen before what
14 your mamma saw in the bathroom?

15 A. They had asked but they didn't really get like into
16 it. But, yeah, they asked me about it.

17 Q. Did you let them know that it had happened more than
18 one time?

19 A. Yes, ma'am.

20 Q. How was it, Victim #2, that people found out that
21 something had happened with Victim #1, your stepsister?

22 A. Because I told them. They had asked me --- well,
23 because told me to tell the truth, and they had
24 asked me had this ever happened to anybody else that
25 you know of, and I said yes.

1 Q. All right. And so when you got asked that question
2 whether it had happened to anybody else, how did you
3 feel about answering that, how did you feel about
4 telling about Victim #1?

5 A. Well, I felt about that --- I knew that she wouldn't
6 like to go through that, and I know because I didn't
7 feel like going through it. So I went ahead and
8 told that I had saw him what the same thing happened
9 to her too.

10 Q. Okay. So you let them know that?

11 A. Yes, ma'am.

12 Q. Which place do you remember something happening to
13 Victim #1?

14 A. At mamma's, at Adrienne Gallishaw's mamma's house.

15 Q. Is that the apartment that we referred to?

16 A. Yes, ma'am.

17 Q. And what is your date of birth, Victim #2?

18 A. [REDACTED], 1998.

19 Q. All right. And you just turned 12, is that correct?

20 A. Yes, ma'am.

21 Q. And when we talk about the times and the times at
22 the apartment, are we talking about a time that you
23 were under age eleven?

24 A. Yes, ma'am.

25 Q. And do you remember about how old you were when you

Victim #2 [REDACTED] - DIRECT EXAMINATION

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1 stayed at the apartment?

2 A. No, ma'am.

3 Q. Would that have been before the time in the bathroom
4 at Lydia?

5 A. Yes, ma'am.

6 MS. MAYES: Beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 (PAUSE.)

9 Q. I want to ask you a few more questions to make sure
10 that I understand exactly what you're talking about.
11 When there was that last time in the bathroom that
12 your mom walked in on, your testimony was that the
13 toilet seat was down?

14 A. Yes, ma'am.

15 Q. All right. And so were your feet on the floor or
16 not on the floor?

17 A. Not on the floor.

18 Q. And where were your knees?

19 A. On top of the toilet seat.

20 Q. Okay. And were you facing towards Jimmy or away
21 from Jimmy?

22 A. Away.

23 Q. And where was he?

24 A. Behind me.

25 Q. When that happened, were your pajama pants up or

1 down?

2 A. Down.

3 Q. And how did you know to get like that or that
4 something was happening that didn't feel right?

5 A. Because it had happened to me more than once. It
6 happened to me more than once.

7 Q. When you say that had happened, what are you
8 referring to something happening, were there other
9 times that he had been on his --- were his feet
10 always --- was he always standing up or were there
11 times he wasn't standing up?

12 A. There was times he wasn't standing up.

13 Q. Describe what you mean by that.

14 A. He would be on his knees.

15 Q. And when you say he would be on his knees, was he
16 looking at you, or were you looking at him, or were
17 you looking away from him?

18 A. Away I think. I think --- because I tried to ---
19 I'm trying to forget all of this.

20 Q. Okay. Let me ask you this. Were there times that
21 he --- were there times that he was looking at you
22 that you were looking at him, or were there times
23 that you were looking away?

24 A. There were times both.

25 Q. And when you say both, you're referring to occasions

Victim #2 [REDACTED] - CROSS EXAMINATION

237

1 that were not in the bathroom?

2 A. Yes, ma'am.

3 MS. MAYES: Beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 (PAUSE.)

6 MS. MAYES: Nothing further.

7 THE COURT: Cross examination?

8 MS. LITTLE: Thank you, Your Honor.

9 CROSS EXAMINATION BY MS. LITTLE

10 Q. [REDACTED] Victim #2, I will stand back here so that maybe you
11 can try to talk loud so you can let the Jury hear
12 everything. Okay? [REDACTED] Victim #2, first I want to show
13 you what's marked as Defense Exhibit 1 for
14 Identification, and see if you recognize this room.

15 A. Yes.

16 Q. And what is this room?

17 A. The bathroom.

18 Q. The bathroom where?

19 A. At Ollie Gallishaw's house.

20 Q. And is this the bathroom where you said that you
21 were in with Jimmy Gallishaw and your mom walked in?

22 A. Yes, ma'am.

23 Q. And on that day in the bathroom, did Jimmy Gallishaw
24 do anything sexual to you? Did he have sex with you
25 on that day?

Victim #2

- CROSS EXAMINATION

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1 A. No, ma'am. Well, he was getting ready to have and
2 if my mamma wouldn't have walked in the door.

3 Q. What was Mr. Gallishaw wearing at the time?

4 A. I don't remember.

5 Q. Okay. You don't know if he had shorts on?

6 A. No, ma'am.

7 Q. Or a tee-shirt?

8 A. No, ma'am.

9 Q. And on these times when you say that Mr. Gallishaw
10 had put his privacy in your privacy, who else was in
11 the room?

12 A. Sometimes Victim #1 would be in the room.

13 Q. Was anybody else in the room?

14 A. No.

15 Q. Was your mother ever in the room?

16 A. Well, when she would be sleep.

17 Q. Okay. So it's your testimony that your mother would
18 be in the bedroom when these things would happen?

19 A. Yes, but she would be sleep.

20 Q. She was asleep. And did you ever yell or try to get
21 her attention?

22 A. No, because I was scared that if I would told nobody
23 would believe me.

24 Q. Well, isn't it true that you had told this several
25 times and then you took it back?

Victim #2 [REDACTED] - CROSS EXAMINATION

239

1 A. Yes.

2 Q. How many times would you say you said something
3 happened and then told your mamma it wasn't true?

4 A. I don't know.

5 Q. Was it more than once?

6 A. I do not know.

7 Q. Did you tell your mother that you made it up because
8 you were jealous of Victim #1?

9 A. No.

10 Q. You never said that?

11 A. No, and if I did, I don't remember.

12 Q. Were you jealous of Victim #1 and Mr. Gallishaw?

13 A. Was I jealous of him?

14 Q. Were you jealous of the time he spent with his
15 daughter, Victim #1?

16 A. Yeah, sometimes.

17 Q. Okay. And so all these times that you told your
18 mother something happened, why did you take it back?

19 A. Because I thought she wouldn't have believed me.

20 Q. Well, did you think if you kept saying it happened
21 and saying it didn't that that was going to make her
22 believe you?

23 A. I didn't know.

24 Q. I want to go back. You said there was a time I
25 think at the apartment when both you and Victim #1 were

1 in the same room?

2 A. Yes.

3 Q. Was your little brother, J [REDACTED], in the room?

4 A. No.

5 Q. Was the baby in the room?

6 A. No.

7 Q. Did your mother Adrienne ever come in the room while
8 anything was happening with Victim #1 that you saw?

9 A. Not as I know of.

10 Q. Why did you think your mom wouldn't believe you?

11 A. Because he was her husband, and she loved him, and
12 sometimes he would say things that like if I wanted
13 something and he needed something, she would give
14 him the money instead of me, so I thought that if he
15 lied she would believe him over me.

16 Q. Did you lie to your mother about other things too?

17 A. Yeah, but they were simple.

18 MS. LITTLE: Your Honor, beg the Court's
19 indulgence for just one moment.

20 THE COURT: Yes, ma'am.

21 (PAUSE)

22 Q. Victim #2, I'm going to ask you one more time, would
23 you tell the Jury how many times you claim Mr.
24 Gallishaw was doing something to you and you told
25 your mamma and then took it back?

Victim #2 [REDACTED] - REDIRECT EXAMINATION

241

1 A. I don't know --- I do not know.

2 Q. Can you say if it was more than five times?

3 A. No.

4 Q. You just don't know?

5 A. I do not know.

6 Q. But you know it was more than once?

7 A. Yes.

8 Q. And because you lied before you didn't think she
9 would believe you now?

10 A. Well, now I just guess something just build up
11 inside of me and said I should go for it.

12 Q. Isn't it true that when your mother walked in that
13 morning you denied anything was going on with Mr.
14 Gallishaw?

15 A. No, that is not true.

16 MS. LITTLE: No further questions, Your
17 Honor.

18 THE COURT: Redirect, Ms. Mayes?

19 MS. MAYES: Yes, sir, Your Honor.

20 REDIRECT EXAMINATION BY MS. MAYES

21 Q. I want to ask you a few more questions about that,
22 about what it was like living at the home with this
23 going on. Did you ever think about telling your mom
24 before that time she came in the bathroom?

25 A. Yes, ma'am.

1 Q. And were there times you tried to tell her?

2 A. No, ma'am. Well, I told her but always took it
3 back.

4 Q. I want to ask you about that a little bit more.
5 What do you mean by that when you say you would tell
6 her but take it back?

7 A. Like I would say like mamma he did this to me, and
8 she was like is this true, and I was like no I'm
9 just playing. I would just make up a reason.

10 Q. Okay. So when your mom would ask you about it,
11 whether it was true, what were you worried about if
12 you did let her know?

13 A. That possibly she was going to jail, and I knew he
14 was going to jail. It hurt me because I know he ---
15 well, he wasn't my daddy but he had always been my
16 daddy I guess from childhood. I just didn't think
17 my mamma would believe.

18 Q. Okay. When you say that he had always been your
19 Daddy, when these things weren't going on, did he
20 spend time with your little brother J [REDACTED]?

21 A. Yes, ma'am.

22 Q. And what about your little sister?

23 A. Yes, ma'am.

24 Q. When you said to Ms. Little that you worried that
25 your mom would believe him and not you, what did you

Victim #2 [REDACTED] - REDIRECT EXAMINATION

243

1 mean by that?

2 A. Because like --- sometimes I would go ask her for
3 something, and then he would be like no don't give
4 that to her because like --- she always used to
5 listen to him like my opinion didn't really matter
6 to her. So I thought if I had told her he would
7 talk her out of it.

8 Q. All right. And when you say that you were worried
9 he might talk her out of it, were you there in the
10 room after the bathroom incident when you heard him
11 saying that is because of the medicine?

12 A. Yes, ma'am.

13 Q. And based on what you heard, was he agreeing that he
14 did something wrong, or was he blaming it on the
15 medicine?

16 A. Well, he said that the medicine had him --- it did
17 something to him and his mind was gone wrong, or
18 something like that. And we was in his room at the
19 time --- at the time he told her because I told
20 mamma if I went there I was going to be where she
21 could see me. And the second day I didn't go there,
22 but the day after I went over there. And I told my
23 mamma, I said mamma that day after they called in
24 the room and they was like do you forgive him, and I
25 was like yeah because the Bible always you had to

1 forgive people.

2 Q. Okay. I want to ask you a little bit more about
3 that. So what you were describing is after you told
4 your mom Jimmy Gallishaw told your mother that it
5 was because of the medicine he took.

6 A. Yes, ma'am.

7 Q. And then after that they called you in a room?

8 A. Yes, ma'am.

9 Q. And asked you to forgive him. Who were you talking
10 about when you say they?

11 A. My mamma asked me did I forgive him and I said yes.

12 Q. And how did it make you feel to hear him giving your
13 mamma this explanation?

14 A. Well, I didn't like --- I knew he was lying but I
15 looked at him funny in the room, but I didn't tell
16 my mamma he was lying, because I guess the braveness
17 I had for the day was gone because I really thought
18 she was believing him.

19 Q. Okay. So you feel like your mom was still having
20 trouble believing this even after what she saw in
21 the bathroom?

22 A. Yes, ma'am.

23 Q. And that's because of the explanation he gave her
24 about the medicine?

25 A. Yes, ma'am.

Victim #2 [REDACTED] - REDIRECT EXAMINATION

245

1 Q. Now Ms. Little asked you if he actually had sex with
2 you that day. And when I talk about sex I mean his
3 privacy in your privacy. Did that actually happen
4 that morning in the bathroom? Had it gotten to that
5 point yet?

6 A. No, ma'am.

7 Q. What, if anything, stopped it from happening? Did
8 anything stop it from happening?

9 A. Yes, ma'am.

10 Q. What was that?

11 A. My mamma opened the door.

12 Q. Okay. If your mom hadn't opened the door, what do
13 you believe was going to happen?

14 MS. LITTLE: Objection, Your Honor.

15 THE COURT: Sustained. Don't answer
16 that question.

17 Q. That means you can't answer. I'm sorry, you can't
18 answer the question. So I'm going to ask you
19 something else. Prior to that day in the bathroom,
20 had something like that happened before?

21 A. Yes, ma'am.

22 MS. MAYES: Beg the Court's indulgence.

23 THE COURT: Yes, ma'am.

24 (PAUSE.)

25 Q. Ms. Little also asked you about the fact that

1 sometimes your mom would be in the room but asleep.

2 A. Yes, ma'am.

3 Q. If your mom was in the room asleep, would anybody
4 else know what was going on?

5 A. No, ma'am.

6 Q. And how many beds were in this room at the
7 apartment?

8 A. Two.

9 Q. There were two beds in there. Do you know when
10 [REDACTED] was there, do you know all the times it
11 happened to [REDACTED] or some of the times?

12 A. I know once.

13 Q. Okay. Was there other times that [REDACTED] stayed over
14 in that bedroom too when you would sleep in that
15 bedroom?

16 A. Yes, ma'am.

17 Q. And were the other times that your little brother
18 J[REDACTED] would stay in that bedroom and [REDACTED] would
19 stay over too?

20 A. No, ma'am, he would --- he would --- he would like
21 go in the livingroom sometimes, because he has to
22 have his own space to sleep I guess.

23 Q. Who all do you normally remember staying in the two
24 beds in the bedroom in the apartment?

25 A. When [REDACTED] was over?

Victim #2 [REDACTED] - RE-CROSS EXAMINATION

247

1 Q. Right.

2 A. Well, it would be me and Victim #1 in one bed. O [REDACTED]
3 would be in her in the crib, and mamma and Jimmy
4 would be in the same bed.

5 Q. Do you remember all the times that J [REDACTED], where
6 J [REDACTED] would sleep?

7 A. No, ma'am.

8 Q. Okay. But sometimes J [REDACTED] would be in the room
9 too?

10 A. Yes, ma'am.

11 Q. Nothing further.

12 THE COURT: Re-cross?

13 MS. LITTLE: Yes, sir, Your Honor.

14 RE-CROSS EXAMINATION BY MS. LITTLE

15 Q. If J [REDACTED] was in the room too when Victim #1 was
16 staying over, where would J [REDACTED] sleep?

17 A. He would sleep on the floor. And if they had space
18 on the bed he would sleep on the bottom of the bed.

19 Q. So with you and Victim #1, and J [REDACTED] would sleep on
20 the bottom of the bed?

21 A. Yes, ma'am.

22 MS. LITTLE: No further questions.

23 THE COURT: All right. Thank you. You
24 may step down. All right. Ladies and gentlemen, you've
25 been in the courtroom now for about an hour and twenty

1 minutes or so. I think it's appropriate that we take our
2 afternoon break at this time. We are going to take about
3 a ten minute recess. I'm going to send you to the Jury
4 room and ask you to relax a little while. Do not talk
5 about the case among yourselves. Just relax for a few
6 minutes. We will send for you very shortly. Thank you.
7 You may go with the Bailiff.

8 (Whereupon, the Jury exits the courtroom
9 at 3:55 p.m.)

10 **THE COURT:** All right. Counsel, thank
11 you. We will take a very short recess, about ten
12 minutes, and be ready to start back about five after.
13 Thank you.

14 (Whereupon, a recess was taken from 3:55
15 p.m. until 4:10 p.m..)

16 **THE COURT:** All right. Back on the
17 record with regard to the matter of The State versus
18 Jimmy Gallishaw. Mr. Gallishaw is present in the
19 courtroom as well as counsel. The State is represented
20 by Ms. Mayes.

21 Ready to go forward, Ms. Mayes?

22 **MS. MAYES:** Your Honor, the victims are
23 at the restroom with the victim advocate and should be
24 returning any second.

25 **THE COURT:** Okay. Are you ready to go

Victim #1 - DIRECT EXAMINATION

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1 forward, Ms. Mayes?

2 MS. MAYES: Yes, sir, Your Honor.

3 THE COURT: Ms. Little?

4 MS. LITTLE: Yes, sir, Your Honor.

5 THE COURT: All right. Bring the Jury
6 in please.

7 (Whereupon, the Jury enters the courtroom
8 at 4:11 p.m.)

9 THE COURT: All right. Thank you very
10 much, ladies and gentlemen. We are now ready to resume.
11 Ms. Mayes you may call your next witness.

12 MS. MAYES: The State calls Victim #1
13 [REDACTED]

14 THE COURT: All right. Miss Victim #1.

15 WHEREUPON, Victim #1 [REDACTED]

16 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

17 MISS Victim #1: Yes, ma'am.

18 DIRECT EXAMINATION BY MS. MAYES

19 Q. Victim #1, I want to make sure everyone can hear you.
20 Okay? So when you speak if you could speak loud
21 enough for the Court Reporter to hear you and for
22 that last Juror down there can hear you as well.
23 Okay? What is your full name?

24 A. Victim #1 [REDACTED].

25 Q. And how old are you?

- 1 A. Twelve.
- 2 Q. What school did you just finish going to?
- 3 A. Hartsville Middle School.
- 4 Q. What grade did you just finish?
- 5 A. Seventh.
- 6 Q. How old are you right now?
- 7 A. Twelve.
- 8 Q. Okay. I want to go back a little bit before you
- 9 turned twelve. Okay? Who all do you live with in
- 10 your house right now?
- 11 A. My mom, my step-dad, my stepbrothers, my older
- 12 sister, my little sister, and my little brother.
- 13 Q. Okay. Now going back before you turned twelve, what
- 14 are some other family members that you had other
- 15 than the people that you just mentioned?
- 16 A. [REDACTED] Victim #2 [REDACTED] is my stepsister. A [REDACTED] Gallishaw
- 17 is my sister. J [REDACTED] Gallishaw is my little
- 18 brother. And Jimmy Gallishaw is my daddy.
- 19 Q. Okay. When we talk about Jimmy Gallishaw, your
- 20 testimony was that he's your dad, do you mean step-
- 21 dad or biological dad?
- 22 A. Biological.
- 23 Q. And you mentioned [REDACTED] Victim #2 [REDACTED]. Is she your biological
- 24 sister or your stepsister?
- 25 A. Stepsister.

Victim #1 [REDACTED] - DIRECT EXAMINATION

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1 Q. Who is your mom, Victim #1?

2 A. Robin White.

3 Q. Your mom Robin, was she married to Jimmy or not
4 married to Jimmy?

5 A. She was not married.

6 Q. Okay. When did he come into your life, or about how
7 old were you when you remember starting to see him
8 or spend time with him?

9 A. I was either five or six years old.

10 Q. And did it get to the point where sometimes you
11 would see him by going to visit and staying over?

12 A. Yes.

13 Q. And when I say, staying over, I mean spending the
14 night.

15 A. Yes.

16 Q. What places do you remember going to see Jimmy, your
17 dad, where you would spend the night, stay over?

18 A. Sometimes we would go to the apartment. Most of the
19 time I see him at church.

20 Q. Okay. You mentioned that sometimes you would see
21 him at church. Whose church are you referring to?

22 A. Pastor Cynthia Hickman.

23 Q. Is that the church that you were going to as well?

24 A. Yes, ma'am.

25 [REDACTED] All right. I want to show you a picture and ask you

1 whether you recognize the place that's shown in
2 State's Exhibit 5.

3 A. Yes.

4 Q. How do you recognize that place?

5 A. That is where I normally go stay the night.

6 Q. When you say you would normally go stay the night,
7 when you mentioned the apartment, are you referring
8 to this place or another place?

9 A. That place.

10 **THE COURT:** She is going to have to
11 speak up a little bit. I know that Ms. Little is having
12 a hard time hearing, and I'm having a hard time hearing.
13 Slide up just a little closer to the microphone. Okay,
14 go ahead.

15 Q. **Victim #1**, if we can't hear you and we ask you to speak
16 up, you may want to move a little closer to the
17 microphone, or raise your voice a little bit more so
18 that even the last Juror can hear you. When you
19 talked about an apartment, are you referring to this
20 place or another place?

21 A. That place.

22 Q. And did you spend the night, stay over at this place
23 one time or more than one time?

24 A. More than one time.

25 Q. For what reason would you go stay over at this

Victim #1 [REDACTED] - DIRECT EXAMINATION

253

1 apartment?

2 A. To go play with Victim #2.

3 Q. All right. And Victim #2 is your stepsister?

4 A. Yes.

5 Q. And who else would stay at this apartment as well?

6 A. My dad, Victim #2's mom, my little brother and the
7 baby when she was born.

8 THE COURT: A little more volume.

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

10 (PAUSE.)

11 Q. Pull your chair a little bit forward. Lean into it
12 a little bit more. There you go. You mentioned the
13 people that would stay at this house as well.
14 Again, tell us who they are.

15 A. Victim #2's mamma, Victim #2, my little brother
16 J[REDACTED], and the baby when she was born.

17 Q. When you say the baby when she was born, what's her
18 name?

19 A. A[REDACTED] Gallishaw.

20 Q. And that is the baby that was born to Victim #2's
21 mother?

22 A. Yes.

23 Q. And what is Victim #2's mother's name?

24 A. Adrienne Gallishaw.

25 Q. And when you would stay over at this house, the

Victim #1 [REDACTED] - DIRECT EXAMINATION

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1 apartment, what room would you stay in --- sleep in?

2 A. The backroom that Victim #2 slept in.

3 Q. And who else, if anyone, would also sleep in that
4 bedroom?

5 A. Adrienne after she would get the baby to sleep, my
6 dad, me, Victim #2, and sometimes J.

7 Q. And whey you say J, who are you referring to?

8 A. J [REDACTED].

9 Q. And what kind of furniture was in that back bedroom?

10 A. Two beds and a crib in the middle.

11 Q. All right. The crib in the middle was for who?

12 A. O [REDACTED].

13 Q. Now, you said two beds?

14 A. Yes.

15 Q. When you stayed over at this particular place, was
16 there ever a time that something happened that made
17 you feel uncomfortable?

18 A. Yes.

19 Q. And can you tell us what that was?

20 A. (No response.)

21 Q. All right. Let me ask you this. When you say that
22 something happened, was it something somebody did,
23 or something that somebody said?

24 A. Something somebody --- he did.

25 Q. When you say that it was something that he did,

Victim #1 [REDACTED] - DIRECT EXAMINATION

255

1 describe a little more as best you can what he did?

2 A. My dad had sex with me in the wrong way.

3 Q. When you say in the wrong way, what part or parts or
4 your body are you referring to?

5 A. My private parts.

6 Q. And what part or parts of his body did he use to
7 touch your private parts?

8 A. His private parts.

9 Q. All right. I am going to show you these photographs
10 to make sure that I understand, and that we all
11 understand what parts of the body you are referring
12 to. You say your private parts, if you will take a
13 look at the girl on the front and the back. Do you
14 see on here what you are referring to?

15 A. Yes.

16 Q. Is it the front or the back?

17 A. Front.

18 Q. Can you show us by marking what part you are
19 referring to?

20 A. (Indicates.)

21 Q. And you stated that he --

22 THE COURT: State's what, Ms. Mayes?

23 It should have a sticker on it. I just want to get it in
24 the record. The last one that she just marked on.

25 MS. MAYES: Yes, sir. That is State's

1 Exhibit 3.

2 THE COURT: Three?

3 MS. MAYES: Yes, sir.

4 THE COURT: All right. State's Number

5 3. Go ahead.

6 Q. All right. This is a picture of a male, and this
7 picture is of a boy, and the front of the boy and
8 the back of the boy. Do you see the part or parts
9 that you are referring to?

10 A. Yes.

11 Q. Is it the back or the front?

12 A. Front.

13 Q. Can you show us what part or parts you are referring
14 to on the diagram?

15 A. (Indicating.)

16 MS. MAYES: Your Honor, this would be
17 State's 3 and 4 for evidence.

18 THE COURT: All right. State's Number 3
19 and 4. Any objection, Ms. Little?

20 MS. LITTLE: No, Your Honor.

21 THE COURT: All right. Admitted into
22 evidence as State's Numbers 3 and 4 without objection.

23 WHEREUPON, STATE'S

24 EXHIBIT NUMBERS 3 AND 4

25 WERE MARKED AND ADMITTED

Victim #1 [REDACTED] - DIRECT EXAMINATION

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1 INTO EVIDENCE WITHOUT

2 OBJECTION.

3 Q. When that happened, was there ever anybody else in
4 the room? Do you remember someone else being in
5 the room?

6 A. [REDACTED] Victim #2 .

7 Q. Has it happened in this apartment one time or more
8 than one time?

9 A. More than one time.

10 Q. Do you know whether anything happened to anybody
11 else in that apartment?

12 A. Yes.

13 Q. Who would be the other person that it happened to?

14 A. [REDACTED] Victim #2 .

15 Q. How do you know something happened to her?

16 A. I was there.

17 Q. When you say you were there, what room were you
18 referring to?

19 A. The room that we slept in.

20 Q. How is it that you knew that something had happened
21 with [REDACTED] Victim #2 ?

22 A. I would either see or I had instinct that something
23 was happening.

24 Q. Okay. When you say that you had an instinct that
25 something was happening, when you were in the room

1 were you able to see everything in the room or was
2 the room dark?

3 A. It was just dark.

4 Q. Were you able to see everything that was going on?

5 A. No, ma'am.

6 Q. Without being able to see everything that was going
7 on, would you still hear something? What do you
8 mean by that?

9 A. I would hear everything.

10 Q. Was there ever a time that you became aware that
11 something had happened to [REDACTED] Victim #2 because of her
12 actions?

13 A. Yes.

14 Q. What do you mean by that?

15 A. Well when --

16 MS. LITTLE: Objection, hearsay.

17 MS. MAYES: I can rephrase that.

18 THE COURT: All right. Rephrase that
19 please. Objection sustained.

20 Q. Let's go back to when you were actually in the room.
21 And your testimony was that it was dark. Were there
22 times when [REDACTED] Victim #2 slept in the same bed with you?

23 A. Yes.

24 Q. Were there times that something didn't seem right,
25 or didn't seem normal? Were there times when things

Victim #1 [REDACTED] - DIRECT EXAMINATION

259

1 didn't seem normal about Victim #2 when you were
2 going to bed?

3 A. Yes.

4 Q. What was that?

5 A. Well, sometimes she either would be upset or she was
6 crying.

7 Q. All right. And when you say that she would cry,
8 what are you referring to?

9 A. (No response.)

10 Q. All right. Let me ask you this. When you said that
11 she would cry; was it light in the room or was it
12 dark in the room?

13 A. When it was dark.

14 Q. Now would it be dark in the room --- was there ever
15 times when you were able to see something such as
16 shapes or shadows?

17 A. Yes.

18 Q. What do you recall? Do you recall whether or not
19 you ever saw anything that made you concerned for
20 Victim #2?

21 A. I see like certain movements, but I really wouldn't
22 see anything.

23 Q. All right. And did you become aware at some point
24 that you were going to be interviewed at the CARE
25 House, and that is the place in Florence that

1 sometimes interview kids?

2 A. No.

3 Q. How did you find out that you were going there?

4 A. My mamma told me.

5 Q. All right. And when you first went there to be
6 interviewed about this case, did you tell them what
7 you told us today about your dad; that he had put
8 his private part in your private part?

9 A. No.

10 Q. And why or why not?

11 A. I didn't want to tell them.

12 Q. What were some of the reasons you did not want to
13 tell?

14 A. I was just scared.

15 Q. All right. You mentioned that his private part
16 touched your private part in a way that you didn't
17 like.

18 A. Uh-huh.

19 Q. Can you describe exactly what way you are talking
20 about?

21 A. No.

22 Q. Okay. Let me ask you another way then. When his
23 private part touched your private part, what kind of
24 touch was it?

25 A. Like --

Victim #1 - DIRECT EXAMINATION

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1 Q. Let me ask you, and it may be easier for you to show
2 us what you are talking about than to say it. Can
3 you do that?

4 A. Yes.

5 Q. All right. You can show us. Was it a touch on the
6 outside of your body or on the inside?

7 A. (Indicating.)

8 Q. And after that --- after you talked to the lady at
9 the CARE House, do you remember if they actually did
10 a medical examination on you?

11 A. Yes.

12 Q. Did a lady doctor do that?

13 A. Yes.

14 Q. Can you tell us whether or not you told her about
15 what happened?

16 A. Yes.

17 Q. And what made you decide to tell?

18 A. Someone was going to find out anyway if I didn't
19 tell.

20 Q. And what you told the lady doctor about it
21 happening, did they bring you back later for a
22 interview?

23 A. Yes.

24 Q. And when you had the second interview, can you tell
25 us whether or not you did tell about what you told

1 us that happened?

2 A. I told.

3 Q. And how did you feel after you told?

4 A. I felt a little better; but it was --- I guess kind
5 of weird.

6 Q. What do you mean by that?

7 A. (No response.)

8 Q. Let me ask you this way. What were some of the
9 things that you were thinking or feeling when you
10 considered whether you should tell about what had
11 happened with your dad?

12 A. I guess I was just scared.

13 Q. Now, you I believe were eleven when you went for the
14 interview?

15 A. Yes.

16 Q. This would be last year, February 2009; how old
17 would you have been?

18 A. (No response.)

19 Q. What is your date of birth?

20 A. [REDACTED]/97.

21 Q. [REDACTED]/97. All right. So we are talking about an
22 interview that happened in early 2009. How old are
23 you now?

24 A. Twelve.

25 Q. So, when you went for the interview, did they ask

Victim #1 [REDACTED] - DIRECT EXAMINATION

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1 you whether or not anything happen to someone else?

2 A. Yes.

3 Q. So, I am going to ask you now. Has there ever been
4 anyone else who has put their private part inside of
5 your private part?

6 A. Yes.

7 Q. Who is the other person you are referring to?

8 A. My older brother S[REDACTED].

9 Q. All right. And when you say your older brother
10 S[REDACTED], who is his daddy?

11 A. Jimmy.

12 Q. So it is the Defendant, Jimmy Gallishaw?

13 A. Yes.

14 Q. Where would you see S[REDACTED]?

15 A. (No response.)

16 Q. Whose house would you usually see him at?

17 A. I would either see him at church or at my grandma
18 Ollie's House.

19 Q. Okay. And is S[REDACTED] older than you or younger than
20 you?

21 A. Older.

22 Q. And did you tell them about what happened with your
23 older brother S[REDACTED]?

24 A. No --- Yes.

25 Q. Okay. And has there ever been anybody else who has

1 put their private part in your private part other
2 than S [REDACTED]?

3 A. Yes.

4 Q. And who is that person?

5 A. My older cousin C [REDACTED] D [REDACTED].

6 Q. And how old were you when that happened?

7 A. Either seven or eight.

8 Q. And did you tell the people at the CARE House about
9 that also?

10 A. Yes.

11 Q. When this happened with your dad, Jimmy Gallishaw,
12 did he ever put anything on his private part?

13 A. Yes.

14 Q. What do you remember seeing?

15 A. Like he put a condom on it.

16 Q. Okay. And do you remember what the condom looked
17 like, or what color the package it was in?

18 A. Yes.

19 Q. What can you remember about that?

20 A. It was in a blue pack.

21 Q. And was there ever a time when someone gave you a
22 condom?

23 A. Yes.

24 Q. And who was that person?

25 A. My daddy.

Victim #1 [REDACTED] - DIRECT EXAMINATION

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1 Q. You are referring to Jimmy Gallishaw?

2 A. Uh-huh, yes.

3 Q. And when you say he gave you the condom, did he tell
4 you why he was giving you the condom?

5 A. No.

6 Q. And this has been --- You are twelve now, this was
7 when you were going to visit him?

8 A. Yes.

9 Q. All right. After that happened with your older
10 brother S[REDACTED], did you go back over to spend the
11 night anymore?

12 A. No.

13 Q. All right. So did someone find out what happened
14 with S[REDACTED]?

15 A. Yes.

16 Q. And who found out about what had happened?

17 A. My mom and my step-dad.

18 Q. All right. In addition to your mom and step-dad,
19 what about Jimmy Gallishaw's family?

20 A. Yes.

21 Q. All right. When everybody in your family found out
22 about what had happened with S[REDACTED], did you ever
23 spend the night at Jimmy Gallishaw's house any more?

24 A. No.

25 Q. And do you remember what year that was?

1 A. No.

2 Q. Was it before you went to the CARE House for the
3 interview?

4 A. I think so.

5 Q. Okay. So when your dad gave you the condom, that
6 would have been before 2009?

7 A. I think so.

8 MS. MAYES: Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 (PAUSE.)

11 Q. When you were going over to the apartment that we
12 were talking about and staying over, did you tell
13 your mom when you would go back to your mom's house
14 after the weekend, did you tell your mom what had
15 happened?

16 A. No.

17 Q. And why or why not, Victim #1?

18 A. I really don't know.

19 Q. All right. How was it that your mom did find out
20 that something had happened with your dad Jimmy?

21 A. When Victim #2 told her mom, her mom called my mom
22 and told my mom.

23 Q. And when you went to the CARE House, did you know
24 that Victim #2 had told about what had happened to
25 you?

Victim #1 [REDACTED] - DIRECT EXAMINATION

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1 A. No.

2 MS. MAYES: Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 (PAUSE.)

5 Q. When I asked you questions earlier about why --- why
6 you didn't want to tell somebody about what had
7 happened with your dad, and your testimony was that
8 you were afraid, what do you mean by that?

9 A. I was just scared to tell anybody.

10 Q. Okay. And when it came to telling your mom, how did
11 you feel about telling your mother?

12 A. I didn't tell her.

13 Q. How did you feel about telling her before she found
14 out from Victim #2's Mom? Did you think about
15 whether you should tell or not?

16 A. Yes.

17 Q. When you thought about it, what decision did you
18 make?

19 A. I decided not to tell her because I knew how my mom
20 could be. Sometimes it depends on certain things.

21 Q. All right. And you made the decision not to tell?

22 A. Yes.

23 Q. All right. What finally made you decide to tell
24 someone?

25 A. Well, it was like --- well, I guess when I was going

1 back to school, I was antisocial, because normally I
2 talked to everybody. But I started getting
3 antisocial, so I had to tell somebody.

4 Q. When you say that you were being antisocial, do you
5 think it had something to do with this that happened
6 with your dad?

7 A. Yes.

8 MS. MAYES: Nothing further.

9 THE COURT: Cross examination.

10 MS. LITTLE: Thank you, Your Honor.

11 CROSS EXAMINATION BY MS. LITTLE

12 Q. Victim #1, do you remember the first time you ever went
13 to the CARE House, in August of 2008, after
14 everything had happened with S [REDACTED]? Do you
15 remember the first time you ever went to the CARE
16 House when they were asking you about S [REDACTED]?

17 A. Yes.

18 Q. Do you remember during that interview Ms. Elliott --
19 - do you remember Ms. Debbie?

20 A. Yes.

21 Q. And do you remember telling her that nobody other
22 than S [REDACTED] and your cousin C [REDACTED] D [REDACTED] had ever
23 done anything to you?

24 A. Yes.

25 Q. Okay. And when you had that interview with Ms.

Victim #1 [REDACTED] - CROSS EXAMINATION

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1 Debbie, did she talk with you about the difference
2 between telling a lie and telling the truth?

3 A. I don't remember.

4 Q. You don't remember her telling you that you had to
5 tell the truth in that room?

6 A. I remember that.

7 Q. You do? Okay. But in that first interview you
8 never told Ms. Debbie that anything ever happened
9 with Mr. Gallishaw; is that correct?

10 A. Yes.

11 Q. Okay. And I want to remind you about the second
12 time you went to the CARE House, and that time you
13 had a different interviewer, Ms. Danna; do you
14 remember her? Ms. Danna Collins?

15 A. Yes.

16 Q. Okay. And at that interview, did Ms. Danna Collins
17 talk with you about how important it was to tell the
18 truth?

19 A. Yes.

20 Q. Okay. And at that first interview in February 2009,
21 when they were asking you about your dad, Jimmy, did
22 you ever tell Ms. Danna Collins that Jimmy Gallishaw
23 had ever had sex with you?

24 A. No.

25 Q. Did you tell her the only people that had ever had

1 sex with you were S [REDACTED] and C [REDACTED] D [REDACTED]?

2 A. Yes.

3 Q. Okay. And then I want to talk to you about your
4 third interview, which was on February 16, 2009.

5 Did you ever say how old you were in February of
6 '09; do you know how old you were last February?

7 A. I was eleven.

8 Q. Okay. And let me go back a little bit. I don't
9 want to confuse you. When you went to that third
10 interview, after you had already been twice and told
11 that nothing happened, do you remember telling Ms.
12 Debbie that [REDACTED] Victim #2's mother caught him having sex
13 with y'all?

14 A. Yes.

15 Q. And is that true?

16 A. Yes.

17 Q. Okay. Who was in the room with Ms. Adrienne
18 Gallishaw, who did she catch having sex?

19 A. Him and [REDACTED] Victim #2.

20 Q. Okay. So, okay, and where were you at the time?

21 A. I was in the same room they were.

22 Q. Okay. And what did Ms. Adrienne Gallishaw do?

23 A. She just told us to go back to the other bed.

24 Q. Okay. And did you go back to your bed?

25 A. Yes.

Victim #1 [REDACTED] - CROSS EXAMINATION

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1 Q. Okay. Do you remember telling Ms. Debbie that your
2 step-mom walked in while Jimmy was having sex with
3 you?

4 A. No.

5 Q. You never said that?

6 A. No, not that I know of.

7 Q. Okay. So, it is your testimony that Ms. Adrienne
8 Gallishaw --- did she know what y'all say was going
9 on? Did she know what was going on?

10 A. No. I don't think so.

11 Q. Okay. But you said that she saw Jimmy having sex
12 with [REDACTED] Victim #2. Was it dark in the room?

13 A. Yes.

14 Q. How do you know what she saw?

15 A. I don't know what she saw.

16 Q. Well, you just testified that she walked in while he
17 was having sex with [REDACTED] Victim #2; that is your
18 testimony.

19 A. She already knew about it, but I don't know what she
20 saw.

21 Q. Okay. And I believe that you testified that you
22 never actually saw Jimmy doing anything to [REDACTED] Victim #2;
23 is that correct?

24 A. No.

25 Q. That is not correct?

- 1 A. No.
- 2 Q. Did you, in fact, see Victim #2 and Jimmy Gallishaw
- 3 having sex?
- 4 A. Yes.
- 5 Q. Okay. But didn't you testify earlier that it was
- 6 too dark in the room, and you couldn't see anything?
- 7 A. I said I couldn't see certain parts.
- 8 Q. Okay. And was it your testimony that you couldn't
- 9 hear anything either?
- 10 A. Yeah, that's what I said.
- 11 Q. Okay. I am going to ask you about --- you said that
- 12 your dad, Jimmy Gallishaw, gave you a condom. Do
- 13 you remember when that was?
- 14 A. No..
- 15 Q. Would it be fair to say that it was right after he
- 16 found out that you had had sex with S [REDACTED]?
- 17 A. I don't think so.
- 18 Q. And do you recall --- did he ever have a talk with
- 19 you about the birds and the bees?
- 20 A. My mamma talked to me about that before he did.
- 21 Q. Okay. But did Jimmy talk to you about the
- 22 importance of using a condom when you had sex?
- 23 A. Yeah.
- 24 Q. And is that when he gave you a condom?
- 25 A. Yes.

Victim #1 [REDACTED] - CROSS EXAMINATION

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1 Q. And that would have been shortly after he found out
2 you had sex with S [REDACTED]?

3 A. Yes.

4 Q. And how many times did you say that --- or did you
5 say that Jimmy did these things to you?

6 A. More than once.

7 Q. Okay. And each time it happened, was it at the
8 apartment?

9 A. Yes.

10 Q. It never happened anywhere else?

11 A. No.

12 MS. LITTLE: Beg the Court's indulgence,
13 just one minute.

14 THE COURT: All right.

15 (PAUSE.)

16 Q. Victim #1, when Ms. Mayes asked you earlier if you
17 could see what was going on in the room, you told
18 her no; is that correct?

19 A. No.

20 Q. You told her you could see shadows?

21 A. Yes.

22 Q. Shadows of what?

23 A. I could see shadows of certain movement.

24 Q. Okay. But you don't know for sure if they were
25 sexual movements?

1 A. No.

2 MS. LITTLE: No further question.

3 THE COURT: Redirect, Ms. Mayes?

4 MS. MAYES: Yes, sir, Your Honor.

5 REDIRECT EXAMINATION BY MS. MAYES

6 Q. I just want to ask you a little bit more about that.
7 When you said that you would see certain things,
8 certain movements, what made you think that
9 something was happening between your dad and
10 [REDACTED] Victim #2 ?

11 A. I guess it was just instinct.

12 Q. All right. Had something happened to you in that
13 same room?

14 A. Yes.

15 Q. And when you talked about there was a time when
16 [REDACTED] Victim #2 's mamma, Adrienne walked in, when she
17 walked in, was it dark in the room or light in the
18 room?

19 A. It was dark.

20 Q. All right. So, you know --- do you know whether she
21 knew --- do you know what she knew from what she was
22 able to observe?

23 A. No.

24 Q. What do you recall her saying when she came in the
25 room?

ROBIN ATKINS-WHITE - DIRECT EXAMINATION

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1 A. She told us to go get back in our bed.

2 Q. All right. And did you let her know the next
3 morning that anything had happened with you?

4 A. I kept it a secret.

5 MS. MAYES: Nothing further.

6 THE COURT: Re-cross?

7 MS. LITTLE: No, Your Honor.

8 THE COURT: Thank you. You may step
9 down. Counsel, approach.

10 (Whereupon, a bench conference was held in
11 the presence of the Jury, but out of the hearing of the
12 Jury.)

13 THE COURT: All right. Counsel, call
14 your next witness.

15 MS. MAYES: The State calls Robin
16 Atkins.

17 THE COURT: All right. Ms. Atkins, come
18 around please.

19 WHEREUPON, ROBIN ATKINS-WHITE

20 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

21 MS. WHITE: I do.

22 DIRECT EXAMINATION BY MS. MAYES

23 Q. How are you this afternoon?

24 A. I'm good.

25 Q. Would you state your full name for the record.

ROBIN ATKINS-WHITE - DIRECT EXAMINATION

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1 A. Robin Whack Atkins White.

2 Q. And, Ms. White, can you tell us how you know the
3 young lady [Victim #1] ?

4 A. She is my daughter.

5 Q. And in addition to that there has been testimony
6 that [Victim #1]'s father is Jimmy, Jimmy Gallishaw.
7 About how old were you when you first met Jimmy
8 Gallishaw?

9 A. I met Jimmy back in junior high school.

10 Q. And, how old were you when you got pregnant with
11 [Victim #1] ?

12 A. I was seventeen.

13 Q. All right. Ultimately, was there a determination
14 that Jimmy Gallishaw was [Victim #1]'s dad?

15 A. No, he was her father.

16 Q. Okay. And when I say that, was there any type of
17 Family Court case in which that was determined?

18 A. Yes, there was.

19 Q. And that was for child support?

20 A. Yes.

21 Q. So he is the biological father of [Victim #1] ?

22 A. Yes.

23 Q. And Ms. White, about how old was [Victim #1] when he
24 became involved in her life? And by that, I mean
25 actually like having a relationship with her?

ROBIN ATKINS-WHITE - DIRECT EXAMINATION

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1 A. She was about five years old.

2 Q. All right. Tell us a little about how she would
3 have visitation? Where did that usually take place?

4 A. He or his family would come and get her. Once we
5 started going to the same church, she would leave
6 after church with him.

7 Q. And what church are you referring to?

8 A. Glorious Soul Church.

9 Q. Who all are members of that church? Are you a
10 member?

11 A. Yes, I am.

12 Q. And what about your daughter **Victim #1** ?

13 A. She is as well.

14 Q. And what about the family of Jimmy Gallishaw?

15 A. They are as well.

16 Q. And that includes his mom?

17 A. Yes.

18 Q. And what is her name?

19 A. Ms. Ollie Gallishaw.

20 Q. And if there were occasions when you and **Victim #1** were
21 at church, and you would see Jimmy Gallishaw's mom,
22 Ms. Ollie, would you agree for her to leave with Ms.
23 Ollie and Jimmy Gallishaw for the weekend for
24 example?

25 A. Yes.

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1 Q. And did that include over night visitation?

2 A. Yes.

3 Q. And during the time frame of 2007 to 2008, do you
4 know whether your daughter [Victim #1] stayed over at the
5 Gallishaw residence during that time frame?

6 A. Yes.

7 Q. Was there any set patterns as to how she would have
8 visitation?

9 A. No. It was just whenever they wanted to get her or
10 he wanted to get her, they would ask, and I would
11 let her go. I didn't object to her going.

12 Q. All right. And when she was having visitation with
13 her dad, can you recall whether or not there were
14 times that they stayed at the residence of Adrienne
15 Gallishaw, the mother in Darlington County?

16 A. Oh, he would come and get her. I would know exactly
17 which residence he would be going whether he would
18 be going to his mom's or to [Victim #2] s mom. But
19 either way was fine with me, because he was her dad
20 and I trusted him with her.

21 Q. So, during that time frame when she would have
22 visitation, did you also know that he had other kids
23 that were there?

24 A. Yes.

25 Q. And, ultimately in the time frame of 2008,

ROBIN ATKINS-WHITE - DIRECT EXAMINATION

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1 approximately summer of 2008 or August of 2008, did
2 you become aware of an incident that had occurred
3 involving your daughter and Mr. Gallishaw's son
4 S [REDACTED]?

5 A. Yes.

6 Q. And who made you aware of that?

7 A. He did. He called one night. He wanted to speak
8 with her. And I asked if she had done anything,
9 that if she was in trouble I needed to know so that
10 I could address it at home as well, as he is talking
11 to her and disciplining her.

12 Q. So he had asked to speak with her and not with you?

13 A. Yes. Then I asked what was going on, and he told
14 me.

15 Q. When you say he told you, do you mean he told you
16 about S [REDACTED]?

17 A. Yes.

18 Q. And as a result of finding out about the incident
19 with S [REDACTED], was your daughter [Victim #1] interviewed
20 by authorities in relation to that?

21 A. Yes. She went to the CARE House after that.

22 Q. And that is the CARE House in Florence?

23 A. Yes.

24 Q. And after that incident, did you become aware in
25 2008 that something had happened with S [REDACTED] ---

ROBIN ATKINS-WHITE - DIRECT EXAMINATION

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1 Did [Victim #1] go over there and spend the night
2 anymore?

3 A. No, she did not.

4 Q. And why or why not?

5 A. Because I didn't feel comfortable letting her out of
6 my sight right then.

7 Q. So, after you became aware of the incident with
8 S [REDACTED] in 2008, [Victim #1] did not stay over anymore;
9 is that correct?

10 A. Correct.

11 Q. Now, I want to take you to 2009. How did you become
12 aware of the investigation concerning Jimmy
13 Gallishaw in 2009?

14 A. I received a phone call at work from DSS and I am
15 not sure what her name was. I was at work and she
16 called me at work.

17 Q. And when you were contacted at work, what did you --
18 - I don't want you to repeat what anyone said to
19 you, but what was the general request regarding your
20 cooperation with the investigation?

21 A. That I needed to take her to the CARE House for a
22 medical examination and interview.

23 Q. All right. This would be her going back to the CARE
24 House in Florence?

25 A. Yes.

ROBIN ATKINS-WHITE - DIRECT EXAMINATION

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1 Q. What was your reaction to that?

2 A. I was floored.

3 Q. And did you agree to cooperate with the
4 investigation?

5 A. Totally.

6 Q. And did your daughter ultimately go back to the CARE
7 House for an interview?

8 A. Yes.

9 Q. And ultimately did you become aware, personally
10 aware, of the incident involving Jimmy Gallishaw?
11 How did you become aware that Jimmy Gallishaw had
12 been implicated by your daughter?

13 A. They --- Well, one of the care workers at the CARE
14 House --

15 MS. LITTLE: Objection, hearsay.

16 MS. MAYES: I am asking how she became
17 aware.

18 THE COURT: She is not asking what was
19 said, just how she became aware of it. I'll overrule the
20 objection.

21 Q. Who made you aware of it?

22 A. One of the employees at the CARE House, because I
23 knew she had to go back.

24 Q. All right. And after that happened, do you know
25 whether or not Mr. Gallishaw was charged in

ROBIN ATKINS-WHITE - DIRECT EXAMINATION

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1 connection with having sexual contact with your
2 daughter **Victim #1**?

3 A. No, I did not know that they had charged him.

4 Q. All right. Well, I am leading up to the arrest. If
5 you know whether or not he was ultimately arrested
6 and charged in connection to **Victim #1**'s case?

7 A. Well, I didn't know if he was arrested in **Victim #1**'s
8 case, but I knew that he was arrested.

9 Q. Okay. And, when did you become aware that your
10 daughter **Victim #1** was one of the victims?

11 A. When I got the call from the CARE House the DSS
12 worker that she needed to go, and was made aware to
13 them that she was molested.

14 Q. Okay. Let me ask you this. Ultimately did you
15 become aware that Mr. Gallishaw --- Did you have any
16 further contact with Mr. Gallishaw after you became
17 aware of that?

18 A. No, I didn't.

19 Q. Did he attempt to have any further contact with
20 either you or **Victim #1**?

21 A. Only the letter that he sent a few months back, I
22 think it was in April?

23 Q. All right. And that was sent to who?

24 A. I think it was addressed to **Victim #1** in care of
25 myself.

ROBIN ATKINS-WHITE - DIRECT EXAMINATION

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1 Q. All right. And what was your reaction to this
2 letter?

3 A. I immediately called the Solicitor's Office and
4 asked whether it was okay that he sent her the
5 letter, because I thought with allegations there
6 should be no contact.

7 MS. MAYES: All right. Beg the Court's
8 indulgence.

9 THE COURT: Yes, ma'am.

10 (PAUSE.)

11 Q. I am going to show you an item and ask you whether
12 or not you recognize this item?

13 A. Yes, I do.

14 Q. And how do you recognize that?

15 A. That is the letter that Jimmy Gallishaw wrote.

16 Q. And you received this letter where?

17 A. To my home address.

18 Q. All right. And upon receiving it at your home
19 address, you made who aware of it?

20 A. The Solicitor's Office.

21 Q. And the letter is addressed to who?

22 A. **Victim #1** and Robin White.

23 MS. MAYES: Your Honor, we would mark
24 this for identification at this time. I believe it would
25 be State's Exhibit Number 7.

ROBIN ATKINS-WHITE - CROSS EXAMINATION

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1 THE COURT: State's Number 7 for I.D.
2 only.

3 WHEREUPON, STATE'S
4 EXHIBIT NUMBER 7 WAS MARKED
5 FOR IDENTIFICATION ONLY.

6 THE COURT: All right.

7 MS. MAYES: Nothing further at this
8 time, Your Honor.

9 THE COURT: Cross examination Ms. Little
10 or Mr. Swilley.

11 CROSS EXAMINATION BY MR. SWILLEY

12 Q. Ms. White, you said that you and Jimmy met back in
13 junior high?

14 A. Yes.

15 Q. And y'all had a baby together when you were
16 seventeen?

17 A. Yes.

18 Q. Okay. And you only have one child, is that correct,
19 **Victim #1**?

20 A. No.

21 Q. I mean one child with Jimmy Gallishaw?

22 A. Yes.

23 Q. And in your words --- I mean in your opinion --- not
24 in your opinion, I'm sorry. Do you believe that Mr.
25 Gallishaw was a good father to **Victim #1**? Putting

ROBIN ATKINS-WHITE - CROSS EXAMINATION

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1 these allegations aside, as far as taking care of
2 her, doing fatherly activities with her?

3 A. When he would get her, yes. But, as far as doing
4 what he should have, he denied being her father in
5 the beginning.

6 Q. Okay. Once he recognized that he was her father,
7 did he take a paternal role with her?

8 A. Yes, he did.

9 Q. And you had no problems letting her spend time with
10 him?

11 A. No, I didn't.

12 Q. And there were no indicators of any misconduct going
13 on, on his part, was there?

14 A. No.

15 Q. Or you would not have let her go there?

16 A. No, I wouldn't.

17 Q. So there was nothing told by her to you that would
18 indicate that there was any type of misconduct going
19 on by Mr. Gallishaw; is that correct?

20 A. No.

21 Q. And if there had been, do you believe that **Victim #1**
22 would have told you?

23 A. I'm not quite sure.

24 Q. You are not sure? Has **Victim #1** been truthful with
25 you?

ROBIN ATKINS-WHITE - CROSS EXAMINATION

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1 A. Yes.

2 Q. She never mentioned anything about this to yourself?

3 A. No.

4 Q. As far as what Ms. Little referred to as the birds
5 and the bees talk, talking about the initial
6 introduction to what sexual intercourse is; who had
7 that conversation with **Victim #1** ?

8 A. I spoke with her, and he also spoke with her about
9 it.

10 Q. Okay. I see. So if there were ever anything wrong,
11 do you believe that **Victim #1** would have told you? Do
12 you believe that if anything were wrong in **Victim #1**'s
13 live do you believe that she would tell you?

14 A. Yes.

15 Q. All right. So if something were wrong at home or at
16 school she would tell you?

17 A. Yes.

18 Q. If something happened between her and one of her
19 friends she would tell you that as well?

20 A. Yes.

21 Q. So if there were anything important going on in her
22 life she would let you know about that?

23 A. Normally she would.

24 Q. Normally she would?

25 A. Yes.

ROBIN ATKINS-WHITE - REDIRECT EXAMINATION

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1 Q. Okay.

2 MR. SWILLEY: Beg the Court's
3 indulgence.

4 THE COURT: Yes, sir.

5 (PAUSE.)

6 MR. SWILLEY: Defense rest, Your Honor.

7 THE COURT: Redirect?

8 MS. MAYES: Yes, sir, Your Honor.

9 REDIRECT EXAMINATION BY MS. MAYES

10 Q. I want to ask you a little bit more about that. You
11 said normally your daughter would talk to you about
12 things. Have you had the chance now to talk with
13 **Victim #1** about what happened?

14 A. I have, and she doesn't really talk.

15 Q. What do you mean by that?

16 A. She now --- she wants to be more by herself. And
17 she is normally a happy, laughing child. She
18 changed.

19 Q. And has your daughter received counseling?

20 A. Yes, she is still in counseling.

21 Q. And have you talked about some of the reasons that
22 she did not tell you?

23 A. I asked her why, and she won't say anything. She
24 tears up.

25 Q. One of the questions just asked to you was about you

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1 having a conversation with her about the birds and
2 the bees, and you said that he did as well. Who are
3 you referring to?

4 A. Jimmy Gallishaw.

5 Q. Were you aware at the time that Jimmy Gallishaw had
6 given her a condom?

7 A. No, I was not.

8 Q. Did he ever tell you that he was going to give her a
9 condom?

10 A. No, he did not.

11 Q. And your daughter was ten or eleven at the time.
12 Would you have agreed for her to have a condom?

13 A. No, because that's like saying it is alright to have
14 sex, and it is not alright.

15 MS. MAYES: Nothing further.

16 THE COURT: Re-cross?

17 MR. SWILLEY: Yes, Your Honor.

18 RE-CROSS EXAMINATION BY MR. SWILLEY

19 Q. Ms. White, after you found out that S [REDACTED] and
20 [REDACTED] Victim #1 had had their little incident, did you take
21 any kind of measures after that?

22 A. Yes. I told Jimmy Gallishaw I was going to take her
23 to the doctor, and I took her to my OB-GYN, because
24 he said he was going to handle it on his end as far
25 as legally and everything. And I trusted him at his

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1 word.

2 Q. Did you have her put on any kind of birth control?

3 A. I did, because I said she is not going to be in my
4 eyesight all the time, and I can't help what goes on
5 when she is somewhere else. And if someone were to
6 rape her, I do not want her to bear the burden of
7 being pregnant and keeping a child out of rape.
8 That was a precaution.

9 MR. SWILLEY: Beg the Court's
10 indulgence.

11 (PAUSE.)

12 Q. Ms. White, how old was Victim #1 when you had her put
13 on the pill?

14 A. Eleven.

15 Q. Eleven years old?

16 MR. SWILLEY: I have nothing further,
17 Your Honor.

18 THE COURT: All right. Thank you,
19 ma'am. You may step down.

20 Counsel, approach just a moment please.

21 (Whereupon, a bench conference was held in
22 the presence of the Jury, but out of the hearing of the
23 Jury.)

24 THE COURT: All right. Ladies and
25 gentlemen of the Jury, it is a little bit after 5:00, and

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1 I think it is appropriate that we stop at this time.
2 Sometimes I will run a little bit later than this, but
3 this is a good stopping point, and I think we ought to go
4 ahead and stop for the day.

5 I am going to excuse you and allow you to go to
6 your homes and families. And I am going to ask you to be
7 back in your jury room tomorrow morning at 9:30. I have
8 got personnel coming back at 9:00-o'clock in the morning.
9 We still have a matter that we need to take care of
10 outside of your presence, but I want to get that done
11 before you get here, and then be ready to start with you
12 promptly at 9:30. So, if you would, please be back in
13 your jury room tomorrow morning at 9:30, and we will be
14 ready to go forward.

15 The same admonitions apply as has applied
16 throughout this case. That is, don't discuss the case
17 with anyone. Don't allow anyone to discuss it with you.
18 If anyone should try to approach you or try to talk to
19 you about the case get their name and their description,
20 and report it to the bailiffs and they will report it to
21 me, and I will deal with them.

22 Also, when you are reassembling in the jury
23 room tomorrow morning, do not discuss the case among
24 yourself. But, what I am going to ask that you do when
25 you reassembly in your jury room tomorrow morning is the

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1 twelve of you who make up the principal jury here, if you
2 will select a foreperson among yourselves. The person
3 you would like to be the foreperson of the Jury, and be
4 prepared to inform the bailiff before I bring you back in
5 who that person is, and then that foreperson will sit
6 here in the first seat. The alternate should not
7 participate in that selection process.

8 But with those admonitions then I am going to
9 excuse you now. Allow you to go to your own home.

10 Again, do not read any news stories or listen
11 to any radio broadcast, tv broadcast, if there happens to
12 be anything about this. Do not do any research about
13 this case on your own. And do not do any research on the
14 internet or anywhere else.

15 In any event, just forget about this case a
16 little bit over the evening recess, relax, be back
17 tomorrow morning at 9:30, and we will be prepared to go
18 forward at that time. I'll see you tomorrow.

19 The jury is excused. Jury only.

20 (Whereupon, the jury exits the courtroom
21 at 5:08 p.m..)

22 **THE COURT:** Let me know when the jury
23 has cleared the courtroom.

24 (PAUSE.)

25 **THE COURT:** While we are waiting on the

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1 Jury to clear the courtroom, counsel, what I would like
2 to do is start in the morning at 9:00-o'clock with the
3 witnesses. And I am thinking specifically about I guess
4 if I sized it up right it would be Ms. Elliott and Ms.
5 Collins.

6 MS. MAYES: Yes, sir, Your Honor.

7 THE COURT: And that would be on the
8 basis of their qualifications. They are from the CARE
9 House.

10 How about Dr. Saunders, is she going to be put
11 up and testify at some point, or her's will be medical
12 testimony; is that correct?

13 MS. MAYES: That's correct, Your Honor,
14 but I do not believe that it would be during that time
15 frame tomorrow, because it wouldn't be until after the
16 video tapes.

17 THE COURT: I understand that. And her
18 qualifications are completely unrelated to the
19 qualification of Ms. Elliott and Ms. Collins under
20 Jessica's Law, or under a proffer of expert testimony.
21 Her's would be a different type of expert testimony. So,
22 let's try to get Ms. Elliott and Ms. Collins, and get
23 their qualifications out of the way between 9:00 and
24 9:30.

25 MS. MAYES: Yes, sir, Your Honor.

23 -- END OF DAY TWO OF TRIAL --

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1 (Whereupon, Court comes to order at 9:05
2 a.m. on Wednesday, July 21, 2010.).

3 -- DAY THREE OF TRIAL --

4 **THE COURT:** Thank you. We are back on
5 the record with the State versus Jimmy Gallishaw. Mr.
6 Gallishaw is present with counsel. The State is present
7 and represented by Ms. Mayes, and Ms. Baugh.

8 The Jury is not is not due until 9:30, but I
9 want to use this time between 9:00 and 9:30 to take care
10 of certain witness qualification with regard to Section
11 17-23-175 that the State wants to proffer, as well as
12 perhaps qualification of one or more expert witnesses.

13 Ms. Mayes, you may proceed with whatever
14 witness you want to call with regard to either or both of
15 those issues.

16 **MS. MAYES:** Your Honor, the State calls
17 Debbie Elliott.

18 **WHEREUPON, DEBBIE ELLIOTT**

19 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

20 **MS. ELLIOTT:** I do.

21 **DIRECT EXAMINATION BY MS. MAYES**

22 Q. Good morning, Ms. Elliott. Where are you employed?

23 A. Good morning. I am employed at the CARE House of
24 the Pee Dee in Florence.

25 Q. And what is your job description there?

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1 A. I am a forensic interviewer.

2 Q. And how long have you worked in the field of
3 forensic interviewing?

4 A. I have worked in the field of forensic interviewing
5 for seven years.

6 Q. All right. And where were you at prior to working
7 at the CARE House?

8 A. I worked at the Durant Children's Center in Florence
9 as a forensic interview.

10 Q. All right. Tell us a little bit about the field of
11 forensic interviewing?

12 A. A forensic interview is conducted in a child
13 friendly setting with just the interviewer and the
14 child. Children are referred to us by physicians
15 throughout the Pee Dee, law enforcement throughout
16 the Pee Dee, and Department of Social Service
17 Agencies when there have been allegations of
18 suspected sexual abuse, or suspected physical abuse,
19 or witnesses to domestic violence.

20 Q. All right. And what can you tell us about your
21 educational background and training?

22 A. I graduated from Clemson University in 1978. I have
23 worked in three different Department of Social
24 Service Agencies. Two in Virginia. Ten years at
25 the Florence County Department of Social Service in

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1 the treatment unit dealing specifically with sexual
2 abuse and severe physical abuse. A year and a half
3 in adoptions, and two and a half years at the Durant
4 Children's Center, and four years at the CARE House
5 of the Pee Dee.

6 Q. Now what courses or specific training have you
7 attended in the field of conducting forensic
8 interviews?

9 A. I attended Finding Words through the Assessment
10 Resource Center in Columbia, the ARC in Columbia in
11 2002. Advance Finding Words through the ARC and
12 also the low country, the Dee Norton Low Country
13 Center. And attended seminars on a yearly basis.
14 Most recently in San Diego in January of this year
15 in child abuse.

16 Q. And what questioning format is taught at the Finding
17 Words Program?

18 A. It is a national protocol called the RATAC Protocol,
19 and that is an acronym. And it is designed
20 specifically for children to be able to --- to give
21 them the tools to be able to tell what has happened
22 to them, if something has happened.

23 Q. All right. You mentioned the acronym RATAC. Can
24 you briefly give us --- tell me what you mean by
25 that?

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1 A. Sure. The "R" in RATAC stands for rapport, and that
2 is just when the interviewer takes the child back
3 into the child friendly interview room, and you just
4 build rapport by talking to the child, gaining that
5 child's trust. Get to know the child a little bit.
6 Understanding that child's narrative style.
7 Finding out age; where they live, school, pets,
8 family, just kind of general information about the
9 child. Getting the child comfortable in the room.
10 Talking about truth and lie, and understanding ---
11 getting an understanding from the child as to
12 whether they understand that concept. Sometimes,
13 depending on the child's age doing a truth lie
14 morals competency exercise with the child. And that
15 is the rapport building.

16 The "A" in RATAC stands for anatomy
17 identification. Sometimes with younger
18 children and on up through teen age years we
19 use what is called an anatomy -- anatomical
20 drawing of a child. And we use the drawing
21 that is specific to that child's gender and
22 race, and go over body parts. Not making a big
23 deal about anything. Just finding out what the
24 child calls body parts from the head to the
25 toe, including the private areas.

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1 The next part of RATAc is touch where
2 we talk about okay touches, touches that are
3 okay to get, and then touches that are not okay
4 to get. At that point sometimes children go
5 straight into the abuse scenario, which is the
6 second "A" in RATAc where they talk about what
7 has happened, if anything has happened to them.
8 We, as forensic interviewer's, then try to
9 gather as much information as possible about
10 that incident or incidents by that perpetrator
11 or multiple perpetrators. The who, what,
12 where, when of what happened.

13 Then the "C" in RATAc stands for
14 closure, where we try to close the interview in
15 a respectful manner, and not leaving the child
16 felling so raw after having talked about all of
17 this traumatic information. And also educating
18 the child in what to do if anything like this
19 should ever happen again. That is kind of in a
20 nutshell what RATAc is.

21 Q. All right. And you mentioned RATAc protocol. Can
22 you tell us whether or not that protocol is
23 generally accepted among child abuse professionals
24 and your peers in the field of forensic
25 interviewing?

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1 A. It is. It is a national protocol.

2 Q. Is it possible for you to estimate the number of
3 forensic interviews you have conducted during the
4 course of the past seven years?

5 A. Twenty-five hundred to three thousand.

6 Q. And have you testified previously as an expert in
7 the field of forensic interviewing?

8 A. I have.

9 Q. Does that include General Sessions Court?

10 A. It does.

11 Q. Now, what specifically is done during the course of
12 a forensic interview to assess competency?

13 A. In the rapport building stage we are talking --- I'm
14 talking to the child about the general family
15 information. And I am kind of checking off things
16 that the child is telling me, and comparing it to
17 what the guardian or the parent told me prior to the
18 information when the child was not present. We get
19 what is called an intake summary. Just information
20 about the family, who lives in the family, school,
21 grades, any kind of behavioral problems, criminal
22 history, substance abuse issues with mom, dad,
23 family members. I am just kind of checking that off
24 while I am talking with the child.

25 And also, the truth lie morals competency

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1 exercises is conducted at times, especially with younger
2 children that really can't give you a definition of what
3 truth is, but they can demonstrate what that means.

4 Q. All right. And what format is used or what
5 safeguards are used during your questioning?

6 A. Well, I guess the first safeguards would be the
7 rules that are given to the child prior --- well at
8 the beginning of the interview usually about the
9 most important thing being stressing that the child
10 tell you the truth about everything. And if you ask
11 a question you tell the child, if I ask you a
12 question and you don't understand what I'm asking,
13 you tell me that. If I ask you a question and you
14 don't know the answer tell me that. Don't make up
15 something like you might with a multiple choice
16 question and a test at school. It is not like
17 school. And that is part of the safeguard. Also
18 the questioning is starting out very narratively.
19 We are asking about general things like school,
20 home, pets, family. And getting the child to talk
21 as narratively as possible, or just telling like you
22 would in a conversation. Then if you kind of think
23 about it as a funnel going on down to more specific
24 questions without leading and without suggesting to
25 the child any information.

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1 Q. All right. Did you have the opportunity to conduct
2 a forensic interview with a young lady by the name
3 of Victim #1 [REDACTED] in 2009?

4 A. I did.

5 Q. Would that be February 15, 2009?

6 A. I did. I don't have my notes up here. I thought we
7 were just going to do my qualifications. Do I need
8 to get my notes?

9 Q. Well, do you recall doing an interview with Victim #1
10 [REDACTED]?

11 A. I do.

12 Q. Okay. And have you had a chance to review that
13 interview?

14 A. I have.

15 Q. Can you tell us whether or not the general protocol
16 and guidelines that you mentioned, that were part of
17 your training, were followed in that interview with
18 Victim #1 [REDACTED]?

19 A. They were.

20 Q. And have you had an opportunity to conduct an
21 interview with Victim #2 [REDACTED] in 2009?

22 A. I did.

23 Q. Can you tell us whether or not your guidelines and
24 protocol were used, that you mentioned in part of
25 your training, were followed in that interview?

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1 A. They were.

2 MS. MAYES: That is all Your Honor from
3 the State on the matter of Jessie's Law.

4 THE COURT: All right. Tell me what
5 your proffered her --- what your proffer is here, and
6 then I will give Ms. Little an opportunity to cross
7 examine.

8 Are you trying to qualify her as an expert?

9 MS. MAYES: No, sir, Your Honor. I
10 believe based on our conversation yesterday --

11 THE COURT: You are talking about the
12 statutory?

13 MS. MAYES: Yes, sir, Your Honor. Now,
14 if there are other matters that you would like for me to
15 take up at this time I can do that as well.

16 THE COURT: Well, if you want to qualify
17 her as an expert, I want to go into that too.

18 MS. MAYES: Okay.

19 THE COURT: All right. Our conversation
20 yesterday was an in-chamber discussion, and the way I
21 analyzed the law. But I want to put everything on the
22 record, and I want you to proffer everything that you
23 want to proffer, and then I will rule on it on the
24 record.

25 MS. MAYES: Yes, sir, Your Honor.

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1 Q. Now, moving beyond the questioning format as used
2 during the course of this forensic interview, what
3 is done during the interview in order to establish
4 certain behavioral characteristics or symptoms of
5 child abuse?

6 A. During an interview?

7 Q. Correct. Doing your overall assessment at the CARE
8 House.

9 A. Well, I am looking at everything. Not just the
10 interview, I am looking of course at the words the
11 child is saying, but also the child's behavior. The
12 way the child reacts to certain questions or doesn't
13 react. I am looking at whether there is a lot of
14 emotion or not. The behaviors that the child has
15 exhibited that the mother, or whoever the caretaker
16 is, has talked about prior to coming into the
17 interview in the intake information. And all of
18 that you look at to assess, to make a determination
19 as to what I think is going on. I have to make
20 recommendations for that child and or that family,
21 the health of the child and the family.

22 Q. Do you necessarily expect for a child to make a full
23 disclosure of sexual abuse during a forensic
24 interview?

25 A. No.

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1 Q. And why or why not?

2 A. It is so common for children not to make a full
3 disclosure. It has been my experience of
4 interviewing many, many children it's pretty rare
5 for a child to make a full disclosure. And we were
6 taught disclosure is really a process, it is not
7 just an event. It takes time for children to really
8 be able to tell everything, and I feel like we don't
9 always know everything. We probably don't always
10 know everything. When we do the intake --- just to
11 give you an example. When we do the intakes with
12 the moms or the caretaker of the child, and they
13 come in prior to the forensic interview, we always
14 ask the parents about whether there has been any
15 childhood sexual history, or sexual abuse of them as
16 a child. And so many times the mothers or fathers
17 will say, yeah something happened to me, and it
18 happened to me twenty years ago and I have never
19 told anybody. So it can go on, and it can be years
20 and years and years, or months or days before
21 children will tell. I think what they will do a lot
22 of times is they will sort of throw something out
23 there to kind of test the waters, because they have
24 been told so many times by the perpetrator so many
25 different things as to what will happen if they

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1 tell, or to threaten them, and use bribery, and all
2 kinds of things they will tell children to keep them
3 from telling. So it is not surprising that children
4 delay.

5 Q. Now do you necessarily expect a child to make an
6 immediate disclosure following the first incident of
7 sexual assault?

8 A. No.

9 Q. Sexual abuse?

10 A. No.

11 Q. Why or why not?

12 A. Well, most commonly sexual abuse is perpetrated by a
13 family member. Somebody who has access to the
14 child. So you are talking about a person who the
15 child trusts usually. Loves probably. Respects.
16 Children are taught to respect and obey authority.
17 They don't know what is going to happen. They don't
18 understand what has happened to them usually, after
19 the first event or later. They still don't
20 understand, so, no.

21 Q. During the course of your clinical experience, both
22 at the CARE House and the Durant Children's Center,
23 can you tell us whether delayed reporting, meaning a
24 report after ongoing sexual abuse is still occurring
25 over a period of time, can you tell us whether that

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1 is common or uncommon in child abuse scenarios?

2 A. It is common.

3 Q. Can you tell us whether that is common or uncommon
4 when the perpetrator is a person residing in the
5 home?

6 A. It is common.

7 Q. Can you tell us whether that is common or uncommon
8 when the alleged perpetrator is an authority figure?

9 A. It is common.

10 Q. Now what are some behavioral characteristics that
11 may follow child abuse, specifically when the child
12 is subjected to ongoing acts of abuse by a family
13 member, such as a parent or guardian?

14 A. All children are different. But some of the
15 behaviors we see commonly are children beginning to
16 act out sexually, sometimes with other children,
17 sometimes with children their own age, some younger.
18 Some sexually act out with older people. They have
19 been sexualized, if you think about it like kind of
20 a light bulb --- or a light switch. They have sort
21 have been switched on, and they don't know what it
22 means, and they begin to act out sexually. We see
23 other things like you know drugs, substance abuse
24 issues, school behavior problems, acting out,
25 behaviors changing at home. Other children you know

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1 become the Type A, the perfect children, or
2 seemingly the perfect children with no behavioral
3 problems. But all children are different. But we
4 see those commonly where children begin to act out
5 sexually.

6 Q. You mentioned the delayed reporting that you have
7 observed during the course of your clinical
8 experience. Can you tell us whether or not delayed
9 reporting among victims of child abuse is supported
10 by research in the literature?

11 A. It is. Roland Summit wrote a publication, published
12 a publication in 1983 talking about child abuse
13 accommodation syndrome. And Tom Lyons did the
14 scientific publication of that in 2003, where they
15 talk about the accommodation syndrome, where
16 children --- the reasons why children don't tell,
17 or why they delay. All the reasons --- the
18 behaviors, the way the perpetrators get children to
19 do what they want them to do for their own sexual
20 gratification. The secrecy part of it where it is a
21 secret. You know, you can't tell. If you tell
22 these things are going to happen. And children are
23 --- they sometimes have to accommodate when things
24 happen over a period of time, because they feel like
25 --- And we tell children this as parents, I know

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1 what you are doing, you know, I have eyes in the
2 back of my head, I know what is going on. So
3 children think that their parents know sometimes.
4 Sometimes parents do know and nothing happens. So
5 they have to accommodate what's going on in their
6 home because they are powerless. They have no
7 independence. And they are dependent on all of
8 these people. The parent or the perpetrator or both
9 to take care of them, to provide for everything.

10 Q. What, if any, impact may be involved if the
11 perpetrator is giving the child money?

12 A. Well, it is a huge impact, especially with the very,
13 very poor families. Children want things just like
14 every other child in their classroom has, and wants
15 to do things just like other children do. So that
16 can have a huge impact on children.

17 Q. Now did your training and clinical experience also
18 include familiarity with a situation where a child
19 may make an initial report and then take it back or
20 recant?

21 A. Sure.

22 Q. And what are some factors involved in recantation,
23 specifically when the alleged perpetrator is an
24 authority figure, or residing in the same home?

25 A. Recantation is common also. Once children tell,

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1 depending on the fall out or what happens; and so
2 many times it is exactly what the perpetrator told
3 the child would happen. You know, how are y'all
4 going to live. I am the financial person in this
5 family. How is your mom going to take care of you.
6 Sometimes mama's don't believe. Mothers don't
7 believe. Father's don't believe. The children are
8 looked at like you know they are the perpetrator,
9 that they perpetrated this. They stirred up all of
10 this stuff, and now look, now look what has
11 happened. So, children take it back, or they think
12 that they can take it back, and make things stop, or
13 go back to the way things were, and they think that
14 that is better than what has happened, because
15 sometimes children to get taken out for their safety
16 and placed in foster care. Even though that is the
17 safest place for children to be at the time, if you
18 think about it in a child's view, or in their little
19 shoes, think about how that feels to a child. They
20 are ripped away from everybody they know, and they
21 think loves them, and all their things and animals,
22 and stuff, and it is hard. So it is very common for
23 a child to recant.

24 Q. And what impact, if any, may there be if there is a
25 lack of support or emotional support by the non-

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1 offending parent following a disclosure?

2 A. It is a huge impact if the child is not believed.

3 Q. And can you tell us whether or not recantation is
4 common when there is a lack of support by the non-
5 offending parent?

6 A. It is common.

7 MS. MAYES: Beg the Court's indulgence.

8 THE COURT: All right.

9 (PAUSE.)

10 Q. You mentioned your clinical experience with delayed
11 reporting, as well as the literature in support of
12 delayed reporting. Let me ask you, are you familiar
13 on this as a factual allegation regarding Victim #2

14 | ?

15 A. I am.

16 Q. And can you tell us whether or not that factual
17 scenario, with the alleged perpetrator residing in
18 the same home as stepfather, is consistent or
19 inconsistent with a child having a delayed report of
20 sexual abuse?

21 A. It's common.

22 Q. And are you familiar with the factual scenario
23 concerning Victim #1 ?

24 A. I am.

25 Q. And can you tell us whether or not it is consistent

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1 with the history of sexual abuse when the alleged
2 perpetrator is the biological father?

3 A. Yes.

4 MS. MAYES: Beg the Court's indulgence.

5 (PAUSE.)

6 Q. All right. I want to ask you about what, if any,
7 forms of manipulation may be used to illicit an
8 adult abuser and a child who resides in the home?

9 THE COURT: I didn't understand the
10 question.

11 MS. LITTLE: I didn't --

12 Q. What, if any, forms of manipulation may be used when
13 there is an adult perpetrator and a child?

14 A. Manipulate the child to do what they want them to
15 do; is that what you are asking?

16 Q. What --- Exactly. I can rephrase. Let me rephrase
17 that question. I am asking specifically about you
18 mentioned briberies. How if, at all, does that play
19 a role when there is an adult perpetrator and a
20 child?

21 A. When adults give children money, or bribe them to
22 give them money, what can happen is that the child
23 takes the money. The act occurs, the sexual act
24 occurs, then the child feels as though they are also
25 part of what is going on. They have brought that

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1 child into the secret. And the child can then feel
2 like well he is going to tell, and tell that I got
3 money for this, and she would be in just as much
4 trouble in their mind as the perpetrator.

5 MS. MAYES: Nothing further at this
6 time.

7 THE COURT: All right. Tell me what you
8 are proffering this witness for and asking the Court to
9 do before I allow --- I am going to allow Ms. Little to
10 cross examine, but I don't know what your proffer is
11 here. What you are asking the Court to rule on.

12 MS. MAYES: Yes, sir, Your Honor.

13 Q. Ms. Elliott, have you testified previously in court
14 concerning these issues such as delayed reporting?

15 A. I have.

16 Q. And Child Abuse Accommodation Syndrome?

17 A. I have.

18 Q. And behavioral characteristics that may follow
19 ongoing child abuse?

20 A. I have.

21 Q. And have you been qualified previously as an expert
22 in the general field of child abuse assessment
23 during your testimony?

24 A. I have.

25 Q. And does that include General Sessions Court?

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1 A. Yes.

2 MS. MAYES: Your Honor, the State would
3 offer Ms. Elliott as an expert in the field of child
4 abuse assessment, which would include some of the
5 characteristics that have been described through her
6 testimony.

7 THE COURT: All right. As far as I
8 understand it first of all, are you offering her as
9 qualified under Section 17-23-175, as a person so that
10 the --- or a qualified trained person so that the hearsay
11 statement of the minor would be admissible. And
12 secondly, you are offering her as an expert in the field
13 of child abuse assessment; is that correct?

14 MS. MAYES: That's correct, Your Honor.

15 THE COURT: All right. Keeping that in
16 mind, Ms. Little or Mr. Swilley, you may cross examine.
17 Qualifications only.

18 MS. LITTLE: Your Honor, can you
19 clarify. This is just in regard to qualifications as an
20 expert, or qualifications --

21 THE COURT: You can challenge her
22 qualifications under 17-23-175 or do you --

23 MS. LITTLE: No, Your Honor. We do not
24 challenge her qualifications under Jessie's Law as being
25 a trained interviewer of children.

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1 **THE COURT:** All right.. Then that is 17-
2 23-175. Then what we are talking about then is simply
3 the qualifications that she is an expert.

4 I am not qualifying her as an expert. And the
5 Court has not been asked to qualify her as an expert in
6 forensic examination, or forensic interviewing. I have
7 been asked to qualify her as an expert in child abuse
8 assessment.

9 We have got three things here. We have
10 qualification under the Statute, which I believe you have
11 admitted to. The State has not offered her as an expert.
12 in the field of forensic interviewing, but is offering
13 her as an expert in the field of child abuse assessment.
14 So that looks like to me that is the only issue that I
15 have got to rule upon. And that is what you can cross
16 examine on, Mr. Swilley.

17 **MR. SWILLEY:** Your Honor, what I was
18 going to request the Court is, I be permitted to examine
19 Ms. Debbie as far as her qualifications as well as her
20 liability of the proposed expertise, which would be child
21 abuse assessment. I mean, we would purport that that is
22 not really a --- that that would not really assist the
23 jury.

24 **THE COURT:** I'm going to give you a
25 chance to argue in just a minute. What I want to know is

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1 if you want to ask her any questions that you go ahead
2 and do so with regard to her qualifications as an expert
3 in the field of child abuse assessment.

4 Then under State versus Council we will find
5 out whether or not I am going to qualify her as an
6 expert.

7 MR. SWILLEY: Thank you, Your Honor.

8 CROSS EXAMINATION BY MR. SWILLEY

9 Q. Ms. Debbie, did I hear you correctly that you
10 graduated from Clemson?

11 A. That is correct.

12 Q. In '78?

13 A. That's correct.

14 Q. What was your field of study?

15 A. Social work was my major.

16 Q. Social work was your major? And was that a
17 Bachelor's of Art or a Bachelor's of Science?

18 A. Bachelor's of Arts.

19 Q. Bachelor's of Arts. I see. Did you have any kind
20 of formal academic training in psychology or any
21 kind of child psychology training?

22 A. I had child psychology courses.

23 Q. How many?

24 A. Two or three in the Sociology Degree.

25 Q. I see. And do you have any kind of graduate degrees

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1 in anything child related or child psychology
2 related?

3 A. I do not.

4 Q. You don't. And I am sorry if I didn't hear this
5 correctly, but have you been through any kind of
6 formal training courses through your employment, or
7 not through your employment, that would assist you
8 in testifying about the expertise, if you will, of
9 child abuse assessment?

10 A. In courses I have been through Finding Words,
11 through the Assessment Resource Center in Columbia
12 in Advanced Findings Words. That is the training
13 that you learn how to become a forensic interview.

14 Q. Okay. For forensic interview. But I was talking
15 about child abuse assessment. Have you been through
16 any kind of courses, any kind of workshops about
17 standard --- standard qualifications in assessing
18 child abuse?

19 A. Well, part of Finding Words is assessing child
20 abuse.

21 Q. And what goes on in the Findings Words course? What
22 goes on during this?

23 A. It is a week long --- the initial session is a week
24 long where you are learning about child development,
25 behavioral aspects of children. Asking the

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1 questions. Gathering the information from the
2 children. Making recommendations. Assessing the
3 child and the family.

4 Q. Okay. And would you say during these courses during
5 your training, I guess subsequent to your academic
6 education, would you just say that you learned how
7 to decide whether the child was being truthful with
8 you; is that pretty much what you learned how to do?

9 A. That is part of what Finding Words is.

10 Q. What would be the other part?

11 A. The child development aspect. Learning how to ask
12 the questions so that you are not leading, or
13 suggesting to the child, or suggesting to the child.

14 Q. And as far as dealing with matters concerning child
15 abuse assessment, how long have you been dealing
16 with those matters with your employment?

17 A. Matters of --

18 Q. -- Child abuse assessment.

19 A. Child abuse?

20 Q. Yes, ma'am.

21 A. My entire career I have worked in social work. I
22 have been either a social worker, forensic
23 interview, I have always been in social work.

24 Q. Okay. I see. Would you say that the social work is
25 a broader field than just child abuse assessment;

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1 wouldn't you agree with that?

2 A. It is.

3 Q. It is. So as far as --- Would you say that you
4 specialize in child abuse assessment with your
5 employment?

6 A. I do.

7 Q. You do. Okay. And how long would you say you have
8 been specializing in it?

9 A. When I was a social worker at Florence County DSS I
10 was a social worker in the Treatment Unit with
11 sexual abuse cases and severe physical abuse cases
12 only. I did that for ten years. And at that I was
13 assessing child abuse. And as a forensic
14 interviewer, I also assess child abuse.

15 Q. I see. And let me ask you. Do you know, or do you
16 have, any statistics with you concerning your
17 studies, as far as child abuse assessment, as far as
18 how often delayed reporting occurs, gathering
19 statistics concerning, I guess, disclosure process.
20 How often --- like I said, how often delayed
21 reporting occurs? How often full disclosure occurs,
22 or any other statistics concerning the behavioral
23 characteristics of children who have been abused?

24 A. I don't have the statistics with me, but last year
25 at the CARE HOUSE between Danna and me, Danna

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1 Collins, the other forensic interview and I, we
2 interviewed over eight hundred children. And of
3 those eight hundred children that were suspected
4 sexual abuse, and suspected physical abuse, or
5 alleged physical abuse and alleged sexual abuse, I
6 would say close to 80% delayed their reporting.

7 Q. That is a rough estimate on your part?

8 A. It is.

9 Q. Okay. I see.

10 MR. SWILLEY: Beg the Court's
11 indulgence.

12 THE COURT: All right.

13 (PAUSE.)

14 Q. Debbie, can you give me a rough estimate --- not a
15 rough estimate --- Can you just tell me about how
16 many times you have testified as an expert in
17 General Sessions Court, or any other criminal court
18 in this country?

19 THE COURT: In what field?

20 MR. SWILLEY: Yes, Your Honor. That is
21 what I was going to clarify.

22 THE COURT: Let's you know --- She has
23 already testified earlier that she has testified as a
24 forensic interview, and as a child abuse assessment
25 expert. And she hasn't been proffered as a forensic

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1 interview, so I want you to limit your questions to the
2 field of child abuse assessment, because she hasn't been
3 tendered as an expert in forensic interview.

4 MR. SWILLEY: That is what I meant, Your
5 Honor.

6 Q. How many times have you testified as an expert in
7 child abuse assessment only, do you know?

8 A. Never in child abuse assessment only. It has always
9 been in a forensic interviewing and child
10 assessment.

11 Q. I see.

12 A. Over twenty times in South Carolina, North Carolina,
13 and Maryland.

14 Q. I see. I would be just interested to know, what
15 would be your definition of child abuse assessment,
16 Ms. Donna?

17 A. I am Ms. Elliott.

18 Q. I am so sorry.

19 A. Child abuse assessment is a broad assessment where
20 you are, as a forensic interviewer in child abuse
21 assessment would be taking in all of the information
22 that is provided by the intake, by the parent. When
23 they come in they give us all of that information
24 that I talked about. The first four pages in my
25 forensic interview summary. Those first four pages

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1 are information provided by the guardian. And then,
2 of course, the forensic interview. Then talking to
3 the parent, the non offending parent afterwards in
4 the followup. And gathering information from the
5 social worker, from law enforcement, so you are
6 making an assessment of what is going in that
7 child's life and in that family, to make a
8 determination or recommendation as to what is going
9 to be in the best interest of that child for his or
10 her safety, and mental health.

11 MR. SWILLEY: Thank you. I have nothing
12 further, Your Honor.

13 THE COURT: Ms. Mayes.

14 MS. MAYES: Yes, sir, Your Honor.

15 REDIRECT EXAMINATION BY MS. MAYES

16 Q. The component of child abuse assessment that you
17 have previously mentioned, such as delayed
18 reporting. Do you know whether you have testified
19 as an expert on that matter in General Sessions
20 Court on one occasion or more than one occasion?

21 A. More than one occasion.

22 Q. And matters such as behavioral preference that may
23 be consistent with a history of child abuse, have
24 you testified about that as an expert on one
25 occasion or more than one occasion?

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1 A. More than one occasion.

2 Q. And when you mentioned the Child Abuse Accommodation
3 Syndrome, and its components. Have you testified
4 previously as an expert as to that matter?

5 A. I have.

6 Q. Now you mentioned previously the publication and the
7 literature that is involved in both child abuse
8 accommodation syndrome and delayed reporting. Can
9 you tell us whether or not those publications are
10 generally accepted among child abuse professionals?

11 A. They are.

12 Q. You mentioned that you yourself conduct interviews
13 at the CARE House that include child abuse
14 assessment. What type of peer review occurs at the
15 CARE House?

16 A. Ms. Collins and I peer review each others
17 interviews. I also send mine to Mr. Ronald Smith,
18 and he peer reviews some of mine as well. It is
19 ongoing. And also, some of the training that Ms.
20 Collins and I go to we are asked to bring a video, a
21 CDR, and they are critiqued at the training.

22 Q. And I don't think that we previously clarified this.
23 But the interviews that are conducted by you at the
24 CARE House, are they videotaped or recorded in any
25 way?

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1 A. They are. They are recorded and burned on a CDR.

2 Q. And can you tell us whether or not that is a
3 generally accepted method among forensic
4 interviewers in the field of child abuse assessment?

5 A. It is.

6 Q. And the ongoing training that you receive in the
7 field of child abuse, can you tell us whether or not
8 such topics as delayed reporting are commonly
9 updated as training topics?

10 A. At every conference that I go to there is something
11 about delayed reporting. There was in San Diego in
12 January.

13 Q. And can you tell us whether or not topics such as,
14 child abuse accommodation syndrome, and behavior
15 characteristics, consistent with child abuse, are
16 matters also discussed at training that you have
17 attended?

18 A. They have.

19 **MS. MAYES:** Nothing further, Your Honor.

20 **THE COURT:** Re-cross on the
21 qualifications?

22 **MR. SWILLEY:** No re-cross, Your Honor.

23 **THE COURT:** All right. Thank you,
24 ma'am. You may step down.

25 All right. The issue with regard to this

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1 witness as far as Section 17-23-175, I don't think there
2 is any disagreement between counsel as to whether this
3 witness meets the qualifications under Section (e)(2)
4 that the interviewer has been trained in conducting
5 investigative interviews with children. Is that a
6 correct statement, Mr. Swilley?

7 MR. SWILLEY: It is, Your Honor.

8 THE COURT: All right. And then so she
9 has been proffered as an expert, not in the field of
10 forensic interviewing, but in the field of child abuse
11 assessment. You can test the qualification of her in
12 that field if you are so inclined, Mr. Swilley.

13 MR. SWILLEY: Your Honor, as far as the
14 qualifications of Ms. Debbie, I don't feel as though she
15 has enough academic experience to testify in this matter.

16 As well, Your Honor, I believe that this
17 expertise, in and of itself, is not reliable in
18 accordance with Rule 702 of the South Carolina Rules of
19 Evidence. I think that her testifying as an expert in
20 this proposed field would only assist --- would not
21 assist the trier of fact, which is the jury to understand
22 any evidence or determine any factual issue except where
23 the child is telling the truth, which would be improper
24 bolstering. So, I would argue that.

25 THE COURT: That is not what she is

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1 tendering her for. She is not tendering whether she is
2 telling the truth or not. She said, she is tendering her
3 expert testimony as to whether this is consistent with
4 other child abuse cases, and other --- the field of child
5 abuse assessment. And wouldn't that assist the trier of
6 fact under 702 to determine a fact in issue, and that is
7 whether or not this actually occurred?

8 MR. SWILLEY: Your Honor, I understand
9 what you are saying, but I believe it is kind of the same
10 thing but something different. I believe that the trier
11 of fact to understand --- the fact at issue would be the
12 truthfulness of the child, because that is what they are
13 alleging Your Honor, and I think that would be improper
14 bolstering, and hence not reliable.

15 THE COURT: Why is it not reliable?
16 What are the Jones Factors with regard to the liability
17 that it does not meet?

18 MR. SWILLEY: Well, Your Honor, I don't
19 have the Jones case in front of me right now, and I
20 really wish I did. One moment please.

21 THE COURT: Well, the Jones Factors are
22 the factors used in determining reliability. And they
23 are the publications and peer review of the technique.
24 Prior application of the method of the type of evidence
25 involved in the case. Quality control procedures used to

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1 insure reliability. And the consistency and the method
2 recognized scientific laws and procedures. Those are the
3 four Jones Factors. Which one of these are not met?

4 She testified regarding publications and peer
5 review. She testified regarding application and method,
6 and the type of evidence involved. She testified as to
7 quality control, i.e., the filming and videotaping of the
8 procedure. And that it is consistent with matters of
9 their field.

10 I am just trying to figure which of the --- you
11 indicated that you didn't think it was reliable, and I am
12 trying to figure out why.

13 MR. SWILLEY: Well, I would just argue
14 to you that I don't feel as though child abuse assessment
15 is really a field, and really is just another term for
16 forensic interviewing, Your Honor. So we will go with
17 that.

18 THE COURT: All right. That is another
19 ground all together, unrelated to the reliability
20 question.

21 Under State versus Council, the thing the Court
22 has to first determine is three things.

23 Is the evidence admissible because it would
24 assist the trier of fact, to determine the fact.

25 Second, whether the witness is qualified by

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1 knowledge, skill, experience and training.

2 And third, the underlying science is reliable.

3 So, now you are switching to the fact that you
4 don't think the underlying science is reliable; is that
5 correct?

6 MR. SWILLEY: Yes, sir.

7 THE COURT: All right. Ms. Mayes, I
8 will hear from you.

9 MS. MAYES: Yes, sir, Your Honor. The
10 State's position is that the factors pursuant to Counsel
11 and Jones have been met. In this regard there is also
12 precedent already established for the admission of
13 behavioral evidence as it relates specifically to sexual
14 assault prosecutions.

15 Specifically, there is the cases that have
16 allowed for expert testimony concerning behavioral
17 characteristics that follow sexual assault. And those
18 cases are State versus Schumpert, State versus Henry, and
19 State versus Weaverling. I believe Weaverling was
20 submitted to Your Honor yesterday.

21 THE COURT: I have reviewed Weaverling
22 and the others.

23 MS. MAYES: And Your Honor, in addition
24 in the case of State versus Henry, in that particular
25 case there was specific testimony about what the Court

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1 termed the phenomenon of delayed disclosure of sexual
2 abuse. The phenomenon of a child being sexual abused and
3 not telling anyone for a period of time. That testimony
4 was admitted, and has been upheld as well.

5 **THE COURT:** All right. Thank you very
6 much counsel. In the controlling case that we have had
7 in South Carolina for a number of years now determining
8 the admissibility of expert testimony is the case of
9 State versus Council.

10 It is the opinion of the State Supreme Court
11 back in 1998, filed on April 5, 1999, and Counsel
12 outlines the procedures that the courts follow in
13 determining whether expert testimony is proper and is
14 admissible in any particular case.

15 When admitting scientific evidence under Rule
16 702 of the South Carolina Rules of Evidence, the trial
17 judge must find that the evidence will assist the trier
18 of fact that the expert witness is qualified and that the
19 underlying science is reliable.

20 Furthermore, the instructions to the trial
21 courts are that the trial court should follow the Jones
22 Factors to determine reliability. And that once the
23 evidence is admissible under 702, then the Court needs to
24 go further to determine its probative value versus its
25 prejudicial effect under Rule 403 of South Carolina Rules

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1 of Evidence. Once the evidence is admitted under the
2 standards then the jury may give it such weight as it may
3 deem appropriate.

4 The outline procedure, and the procedure that
5 we have been following every since Counsel in determining
6 the admissibility of expert testimony is to have the
7 qualifications and testimony proffered in camera, which
8 we have done here. And then it is up to the Court to
9 make a determination based on the evidence that has been
10 presented.

11 The witness in this case has been tendered as
12 an expert in child abuse assessment.

13 The Court will find that the evidence is
14 admissible, because it will assist the trier of fact to
15 determine facts at issue, specifically the typical
16 behavior patterns of adolescent victims of sexual
17 assault, and assist the jury in understanding some of the
18 aspects of the behavior of the victims. And provides
19 insight into the sexually abused child's often strange
20 demeanor.

21 I will further find, that the witness in this
22 case is qualified by knowledge, skill, experience,
23 training, or education. She has a college degree. She
24 has received additional training in that field. She has
25 worked in the Durant Center, and the Care Center in

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1 Florence for a number of years, has conducted a number of
2 interviews and assessments of children. So she is
3 qualified by education, skill, experience, and training.

4 And I will further find that the underlying
5 science has been recognized as being reliable in the case
6 of Stave versus Weaverling, a Court of Appeals case in
7 1999, where the Court held the testimony similar to this
8 where the victims sexual abuse was relevant.

9 The Court went on to say that both expert
10 testimony and behavioral science are admissible as great
11 trauma evidence to prove a sexual offense occurred, and
12 the probative value of such evidence outweighs the
13 prejudicial effect.

14 Furthermore, the expert testimony concerning --
15 - and I am quoting from the case:

16 Common behavioral characteristics of
17 sexual abuse of sexual assault victims, and a
18 range of responses to sexual assault victims
19 encountered by experts is admissible, as it is
20 relevant and helpful in explaining to the jury
21 the typical behavioral patterns of adolescent
22 victims of sexual assault. And assist the jury
23 in understanding some of the aspects of the
24 victims, and provides insight into the sexual
25 abuse a child's often strange demeanor, end

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1 quote. That is a direct quote from Judge
2 Anderson's opinion in State versus Weaverling.

3 It is my view under Rule 702 of The South
4 Carolina Rules of Evidence, that the test of State versus
5 Council have been met, and that the evidence is relevant.
6 And that the witness is qualified to testify in that
7 field. And that the underlying science is reliable.

8 So, I would find that it would assist the trier
9 of fact in determining the fact at issue and that the
10 witness is qualified and the underlying science is
11 reliable.

12 That does not end the inquiry however, because
13 then I must take a look under Section 403 of the South
14 Carolina Rules of Evidence, and conduct a balancing test,
15 to determine whether the prejudicial effect outweighs the
16 probative value.

17 Section 401 provides that relevant evidence
18 means evidence having any tendency to make the existence
19 of the fact that is of consequence to the determination
20 of the action, more probable or less probable than it
21 would be without the evidence.

22 And, of course, 402 says the relevance evidence
23 is admissible and irrelevant evidence is inadmissible.

24 And then 403 actually provides that although
25 relevant, which I have already ruled that the evidence is

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1 relevant, evidence may be excluded if its probative value
2 is substantially outweighed by the danger of unfair
3 prejudice, confusion of the issues, or misleading to the
4 jury, or the considerations of undue delay, waste of
5 time, or needless presentation of cumulative evidence.

6 I have weighed the matters to determine whether
7 it is --- whether the probative value is substantially
8 outweighed by the danger of unfair prejudice. And, in my
9 view, the danger of unfair prejudice does not outweigh
10 the probative value, does not substantially outweigh the
11 value. It is probative on a number of issues that we
12 have discussed already in this case, specifically those
13 recognized by Weaverling, as well as such issues as
14 related to behavioral characteristics, accommodation
15 syndrome, and a number of other factors. Recantation is
16 another one. Those are all relevant issues in this case,
17 and they are --- the jury needs to know those, so it does
18 outweigh any prejudicial effect.

19 So in my view under State versus Council, and
20 702 and 403 the evidence is admissible.

21 She is qualified as an expert in the field of
22 child abuse assessment. The evidence is admissible, and
23 will be --- she will be allowed to testify to that.

24 All right. Counsel, we are running about
25 thirty minutes late. But before we get the Jury in here,

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1 lets take a quick recess of five or so minutes, and be
2 ready to go forward with the first witness.

3 **MS. LITTLE:** Your Honor, excuse me. We
4 still have Ms. Danna Collins, that we just need under
5 Jessie's Law, to qualify whether or not she is an
6 interviewer trained in conducting investigative
7 interviews of children, in order for that statement to be
8 admissible.

9 **THE COURT:** All right. Let's go ahead
10 and get her in. Do you want to qualify her Ms. Mayes?

11 **MS. MAYES:** Yes, sir, Your Honor. The
12 State calls Danna Collins.

13 **MS. LITTLE:** And, Your Honor, we would
14 actually stipulate that she is trained in conducting
15 investigative interviews of children, for the purposes of
16 submitting that hearsay statement dated 2/10/09, forensic
17 interview with **Victim #1** **[REDACTED]**.

18 **THE COURT:** All right. The Defense is
19 willing to stipulate that this witness is qualified under
20 Section 17-23-175 (b) (3) I'm sorry, (b) (2) that the
21 witness --- or the interviewer has been trained in
22 conducting investigative of children. And do you have
23 any problems with accepting that stipulation, Ms. Mayes?

24 **MS. MAYES:** No, sir, Your Honor.

25 **THE COURT:** Okay. You do not need to

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1 testify at this time. So you have been accepted. And it
2 will not be necessary to qualify her as such.

3 **MS. MAYES:** May we approach, Your Honor?

4 **THE COURT:** Sure.

5 (Whereupon a bench conference was held.)

6 **THE COURT:** All right. After a bench
7 conference, just to make sure that there is no
8 misunderstanding, the Defense has stipulated that Ms.
9 Collins, is that correct ---

10 **MS. MAYES:** Yes, sir, Your Honor.

11 **THE COURT:** --- that Danna Collins with
12 the CARE House of the Pee Dee in Florence qualifies under
13 Section 17-23-175 (e)(2). That particular Code Section
14 is as follows:

15 In determining whether a statement possesses
16 particularized guarantees of trustworthiness, the Court
17 may consider, but is not limited to the following
18 factors.

19 Number two, is whether the interviewer has been
20 trained in conducting investigative interviews of
21 children.

22 And as I understand it, Ms. Little, the Defense
23 is willing to stipulate that Ms. Collins has been trained
24 in conducting investigative interviews of children, and
25 would not challenge the admissibility of that interview

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1 on that basis without her testimony. In other words,
2 y'all are willing to stipulate that she meets that
3 requirement of the statute.

4 **MS. LITTLE:** Yes, Your Honor.

5 **THE COURT:** All right. That would be
6 the case then of --- I can get later when we get ready to
7 offer the matters into the record, I can make the
8 necessary findings, because I don't think that I need to
9 do anything else with regard to that particular interview
10 if that is the interview of February 10, is that correct?

11 **MS. LITTLE:** That's correct, Your Honor.
12 2/10/09.

13 **THE COURT:** All right. Any problems
14 with that, Ms. Mayes?

15 **MS. MAYES:** No, sir, Your Honor. This
16 is the interview that the Defense stipulates is
17 admissible, because the child did not make a disclosure
18 of sexual abuse concerning Mr. Gallishaw.

19 **THE COURT:** Right. All right. Okay.
20 Let's take about a five or ten minute break, and then we
21 will go forward with the jury.

22 (Whereupon, a recess was taken from 10:05
23 a.m. until 10:08 p.m..)

24 **THE COURT:** All right. Back on the
25 record regarding the State versus Gallishaw. Mr.

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1 Gallishaw is present with his counsel. The State is also
2 represented by Ms. Mayes.

3 All right. It is my understanding that the
4 State will offer the testimony of Debbie Elliott, with
5 regard to two interviews that she conducted with the
6 victims in this case. That being the interviews of ---
7 correct me if I am wrong on this, but I think I am right,
8 the interview of 2/4/09 with **Victim #2**, that was
9 Ms. Elliott's interview, as was the interview of 2/16/09,
10 **Victim #1**. Is that correct?

11 **MS. MAYES:** That's correct, Your Honor.

12 **THE COURT:** And in addition those are
13 what the State was going to offer, and was not originally
14 going to offer the interview of **Victim #1** on 2/10/09
15 by Ms. Collins. But I indicated that I thought that, in
16 the interest of fairness, that that interview needed to
17 be introduced as well, and that I do not require the
18 Defense to introduce that, but that the State should
19 introduce it. And Ms. Collin's qualifications to conduct
20 that interview has been stipulated to. Is that also
21 correct, Ms. Mayes?

22 **MS. MAYES:** Yes, sir, Your Honor.

23 **THE COURT:** All right. That then brings
24 us to the issue of whether or not the forensic interviews
25 are admissible under 17-23-175. That is the out-of-court

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1 statements of the two children to the two interviewers,
2 where the Court needs to review and determine the
3 qualifications of the individuals who obtained the
4 statements, as well as the contents of the statements,
5 and make a determination of trustworthiness.

6 The Code Section provides, and I find, that
7 this is court addressed in the statute in Section (A)
8 being a Court of General Sessions.

9 Secondly, that the three statements were given
10 in response to questioning during an investigative
11 interview of the child.

12 All three of the statements were given in
13 response to questions during the investigative interview
14 of the child.

15 Third, that an audio and visual recording of
16 the statements are preserved, and are present in Court,
17 and available to be played, and will be played.

18 The other requirement would be, before they are
19 admissible the child would have to testify. And the
20 children both have testified in this case. So that
21 section 17-23-175 (h)(3) that the child testified and was
22 subject to cross examination on the elements of the
23 offense in making the out-of-court statement.

24 And fourth, the Court finds in this hearing,
25 and outside of the presence of the Jury, and after having

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1 reviewed all three of the videos completely in chambers
2 yesterday for about two hours, that the totality of the
3 circumstances surrounding the making of the statements
4 provide the specific guarantees of trustworthiness.

5 Specifically, that the statements were not
6 elicited by leading questions.

7 Secondly, that the interviewer --- I find that
8 the interviewer, Ms. Elliott, is qualified in conducting
9 interviews with children. And the Defense has stipulated
10 to the qualifications of Ms. Elliott in conducting
11 interviews of the children.

12 I would also further find, that the statements
13 represent a detailed account of the alleged offenses.
14 That the statements have internal tolerance.

15 And that any other necessary participants would be
16 available to testify, should that need arise. I believe
17 that the indices and trustworthiness are met in this case
18 on all three statements.

19 And the Court will find, for the record, that
20 the statements are admissible.

21 All right. Having found that then, I believe
22 we have done the things that we need to do in the absence
23 of the Jury. It has taken us a little longer than I had
24 anticipated, but I believe we are ready to go forward.

25 Is there anything before we bring the Jury in

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1 on behalf of the State, Ms. Mayes?

2 **MS. MAYES:** No, sir, Your Honor.

3 **THE COURT:** On behalf of the Defense?

4 **MS. LITTLE:** No, sir, Your Honor.

5 **THE COURT:** Okay. Bring the Jury in.

6 (Whereupon, the Jury enters the courtroom
7 at 10:20 a.m.)

8 **THE COURT:** All right. Good morning,
9 ladies and gentlemen. And again, I apologize for you to
10 be waiting in your jury room. I try to make it a
11 practice not to keep Jurors waiting unnecessarily. It
12 has not been unnecessary. We had a number of very
13 involved legal matters that we had to address, and
14 actually came in at 9:00-o'clock. So we have been
15 working since 9:00-o'clock.

16 It hasn't been a situation of keeping you waiting
17 there in the jury room and sat in the back and drank
18 coffee. So I do apologize for keeping you waiting. But
19 we are ready to go forward at this time.

20 I will tell you that I have been handed a note
21 by the Bailiff. And you are Mr. Hicks, and I believe you
22 have been selected as the foreman of this Jury. And if
23 you would continue to sit there, Mr. Hicks, throughout
24 the remainder of this trial. And, of course, with the
25 alternates outside. And the rest of you can sit in any

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1 seat that you would like.

2 I would also need to ask you now, if anyone has
3 tried to talk with you, or make any contact with you
4 regarding this case over the evening recess? I would
5 need to know about it now. No response, And that's good.

6 All right. We are ready to go forward, and
7 Ms. Mayes, you may call your next witness.

8 **MS. MAYES:** The State calls Adrienne
9 Gallishaw.

WHEREUPON, ADRIENNE GALLISHAW**FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

12 **MS. GALLISHAW:** I do.

DIRECT EXAMINATION BY MS. MAYES

14 Q. Good morning Ms. Gallishaw. Would you state your
15 full name for the Court.

16 A. Adrienne Regina Gallishaw.

17 Q. And Ms. Gallishaw, how are you related to the
18 defendant in this case, Jimmy Gallishaw?

19 A. I am his wife.

20 Q. Okay. And you said that you are his wife. So, as
21 of the present date you are not divorced from him,
22 correct?

23 A. No, ma'am.

24 Q. And have you filed for divorce?

25 A. No, ma'am.

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1 Q. Okay. And if I can get a little information from
2 you about your family. Who are the children in your
3 family?

4 A. Victim #2 [REDACTED], J [REDACTED] Gallishaw, and O [REDACTED], and
5 Victim #1 [REDACTED].

6 Q. All right. And would that be Victim #2 [REDACTED] that
7 we heard from yesterday?

8 A. Yes, ma'am.

9 Q. And her date of birth is [REDACTED], 1998?

10 A. Yes, ma'am.

11 Q. Is she --- how is she in relation to the other
12 siblings, in terms of being older or younger?

13 A. She is the oldest sister.

14 Q. Okay. So she is your oldest. Now, is the
15 Defendant, Jimmy Gallishaw, her biological father?

16 A. No, ma'am.

17 Q. And you mentioned that you have a son. What is his
18 name?

19 A. J [REDACTED] Gallishaw.

20 Q. And as of today's date, how old is your son J [REDACTED]?

21 A. He is eight.

22 Q. He is eight years old today in 2010. Is Mr.
23 Gallishaw his biological father?

24 A. Yes.

25 Q. Okay. And you mentioned that you have his younger

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1 daughter; what is her name?

2 A. O. [REDACTED] Gallishaw.

3 Q. And what is your little girls date of birth?

4 A. [REDACTED]/07.

5 Q. All right. So she was born in [REDACTED] 2007?

6 A. Yes, ma'am.

7 Q. So she just turned three; is that correct?

8 A. She will be three Saturday.

9 Q. Okay. And who is her biological father?

10 A. Jimmy Gallishaw.

11 Q. Now approximately how old was your daughter [REDACTED] Victim #2
12 when you met Mr. Gallishaw and began dating him?

13 A. She was two years old.

14 Q. And with her being two, how did he come into her
15 life? Can you tell us if at all his role in her
16 life as a father figure?

17 A. Um, well I met him and we became a couple. He was
18 daddy to her.

19 Q. And did she call him daddy from a young age?

20 A. Yes.

21 Q. Where has the family lived through the years, Ms.
22 Gallishaw?

23 A. Um, I stayed with my mother. And we moved to a
24 trailer that we owned. Then we left there and I
25 think we had an apartment in Brockington Heights. I

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1 forgot about that. Then after that I moved back
2 with my mom. Then we moved again once we got
3 married to a trailer in Lydia. When that trailer
4 burned down we were in hotels at first. And then we
5 spent about a week or so with his mother until we
6 got a new apartment in East Park.

7 Q. I want to ask you a little bit about some of the
8 homes that were testified about yesterday. The
9 first is the apartment, which is shown in State's
10 Exhibit 5. Do you recognize this location?

11 A. Yes.

12 Q. What is this location?

13 A. That is the apartment we lived in with my mother.

14 Q. Okay. And what is your mother's name?

15 A. Verline Odom.

16 Q. You said that this was an apartment that you lived
17 in with your mom?

18 A. Yes.

19 Q. Who else lived in this apartment with your mom?

20 A. My brother, my children, and Mr. Gallishaw.

21 Q. Okay. And that would be you, the Defendant, Jimmy
22 Gallishaw, **Victim #2**, J[REDACTED]. And then when your
23 little girl was born, what home was you living in
24 when you little birl was born?

25 A. I was living at that apartment with my mother.

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1 Q. Okay. You were living here at this apartment when
2 she was born in 2007?

3 A. Yes, ma'am.

4 Q. And when you brought her home from the hospital,
5 what home did she go home to?

6 A. She went to that apartment.

7 Q. You mentioned that you all lived together. What was
8 the bedroom arrangement in this home?

9 A. There was only one room with two beds. When my baby
10 was born, we had a crib that was in between the two
11 beds.

12 Q. Okay. So, if I understand correctly, you, Mr.
13 Gallishaw, and the children normally slept in one
14 room together?

15 A. Yes, ma'am.

16 Q. Now there was also testimony about another home. I
17 am going to show you State's Exhibit 6, and ask you
18 whether or not you recognize the home shown in this
19 photograph?

20 A. I do.

21 Q. And what is this location?

22 A. That is his mother's, Arlene Gallishaw's house in
23 Lydia.

24 Q. And how did it come to be that sometimes your family
25 lived at the home of his mother?

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1 A. Um, we would go over there when --- I would go on
2 Wednesday nights, because he worked Thursday to
3 Saturday. I would go over and spend the night so I
4 could bring him to work the next morning. The kids
5 would come on Friday nights, because they didn't
6 have to go to school, and we would stay until
7 Sunday.

8 Q. Okay. And if I understand correctly, did you and
9 the children live in the home full-time?

10 A. No, ma'am.

11 Q. Did Mr. Gallishaw stay in this home full-time?

12 A. Yes, he was.

13 Q. Okay. And this would have been approximately what
14 year following your family residing here in 2007?

15 A. That was 2000 --

16 Q. Let me ask you this. When this incident was
17 reported to the police in 2009, where was Mr.
18 Gallishaw living?

19 A. He stayed with his mother at that home.

20 Q. So it was at this location in 2009, and that is
21 State's Exhibit 6?

22 A. Yes, ma'am.

23 Q. And the arrangement that you previously mentioned
24 where you were living in the home, was that
25 occurring early in 2009?

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1 A. Yes.

2 Q. Okay. Again, can you tell us about that
3 arrangement. If the kids had school during the
4 week, where would they stay?

5 A. They were with my mother.

6 Q. Okay. They would stay here at this location with
7 your mom?

8 A. Yes, ma'am.

9 Q. And on the weekends, for what reasons did the kids
10 sometimes go to this location, which was the home of
11 his mother?

12 A. Well, I took them to be with me, because they have
13 to go to school, and so we would all be together.

14 Q. So, as a family you would spend weekends together in
15 the home of his mother?

16 A. Yes, ma'am.

17 Q. And what is her name?

18 A. Arlene Gallishaw.

19 Q. I asked you about this location, State's Exhibit 5,
20 the apartment of his mother. Back in the time frame
21 of 2007, when your youngest daughter was born when
22 you were still in that home, do you know whether or
23 not his daughter, **Victim #1**, would come visit?

24 A. She came a couple of times, to my knowledge.

25 Q. Okay. And what was the arrangements for **Victim #1**

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1 coming to visit?

2 A. I'm not understanding your question.

3 Q. Okay. His daughter, **Victim #1**, and just to clarify,
4 did she live with you?

5 A. No, ma'am.

6 Q. And who did she normally live with?

7 A. Her mother.

8 Q. And what was the arrangement, if any, for **Victim #1**
9 coming to visit her father, Jimmy Gallishaw, with
10 you and your family?

11 A. Where did she sleep or ---

12 Q. Can you tell us whether or not she would sometimes
13 stay over?

14 A. Yes, she would.

15 Q. And when she would stay over, can you tell us what
16 you recall about what room or rooms she would
17 normally stay in?

18 A. The room that we all stayed together, because she
19 slept with **Victim #2**.

20 Q. All right. Now you mentioned that your little girl
21 was born in 2007, what room in the home had a tv?

22 A. The living room, my mother's room, my brother's
23 room.

24 Q. Eventually did you get a television in the back
25 bedroom that you all shared?

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1 A. Yes, we did.

2 Q. Was that television always back there?

3 A. Not to my knowledge, no.

4 Q. And would you always go to bed at the same time as
5 the children, or what can you tell us about that?

6 A. No, we didn't always go to bed at the same time,
7 because they had a time frame to go to bed. On the
8 weekends there time was 11:00.

9 Q. And what, if any, additional responsibilities caring
10 for your newborn?

11 A. Giving her baths, all the things that you do with a
12 baby.

13 Q. Now, I am going to take you to 2009, specifically
14 early in 2009, in January. What, if anything,
15 occurred in the home that seemed unusual?

16 A. Which home are you talking about?

17 THE COURT: Excuse me just a minute Ms.
18 Mayes. Move this chart back a little bit. The alternate
19 can't see the witness.

20 MS. MAYES: Yes, sir, Your Honor.

21 THE COURT: All right. Proceed.

22 Q. In early 2009, your testimony was that you would
23 occasionally spend time in the home of Ms. Ollie
24 Gallishaw; is that correct?

25 A. Yes.

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- 1 Q. And was Jimmy Gallishaw working anywhere at the
2 time?
3 A. He worked at the barber shop.
4 Q. All right. And what did he do at the barber shop?
5 A. He cut hair.
6 Q. And did he work sometimes on weekends?
7 A. Yes.
8 Q. If he had to work, who would normally take him to
9 work?
10 A. I did.
11 Q. And why was that?
12 A. Because he didn't have a driver's license.
13 Q. Well, if it was your responsibility to take him to
14 work, would you normally get up around the same
15 time?
16 A. Yeah. We normally got up at the same time.
17 Q. Was there an occasion, Ms. Gallishaw, when you
18 became aware of a situation that involved Mr.
19 Gallishaw and your daughter **Victim #2**?
20 A. Yes.
21 Q. How did you become aware of something?
22 A. I walked in on it.
23 Q. All right. I want to ask you some questions about
24 that. When you say you walked in on it, what room
25 in the home are you referring to?

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1 A. The bathroom.

2 Q. And what did you walk in on?

3 A. I walked in on her like bent over the toilet,
4 pulling up her pajamas, and he was in there with
5 just a shirt on.

6 Q. All right. And what time of day was this?

7 A. This was early morning, because I think it was
8 around six something when we normally got up to take
9 him to work.

10 Q. So he was up in order to go to work?

11 A. Uh-huh, yes, ma'am.

12 Q. And you mentioned that you walked in on it. When
13 you approached the bathroom, was the door open or
14 closed?

15 A. It was closed.

16 Q. And who opened the door?

17 A. I did.

18 Q. And when you opened the door your daughter Victim #2
19 was where?

20 A. She was in front of the toilet like slouched over
21 pulling up her pajama pants.

22 Q. All right. And you mentioned that she was over the
23 toilet, but which way was she facing?

24 A. Her face was facing the wall.

25 Q. Was that the normal position that she had been using

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1 the restroom?

2 A. No, no, ma'am.

3 Q. You said she was pulling up her pajamas. What are
4 you referring to?

5 A. She had on her bed clothes, because I woke her up.
6 So she was proceeding to pull up her pajama pants.

7 Q. And where were --- were her pajama pants up or down
8 in terms of you being able to see whether her
9 private parts were covered?

10 A. Um, like I didn't see her private parts. But like I
11 said, I guess I must have walked in as to where she
12 was finished pulling them up.

13 Q. And he was wearing what?

14 A. He was wearing a shirt only.

15 Q. And from the waist down what, if anything, did you
16 observe?

17 A. I saw his private parts.

18 Q. And what, if anything, did you note about that?

19 A. That he was erect.

20 Q. And where was he standing in relation to Victim #2?

21 A. He was behind her.

22 Q. I am going to show you a photograph, I believe this
23 has been marked as Exhibit 1. Do you recognize the
24 location shown in this photograph?

25 A. Yes, I do.

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1 Q. And what is this location?

2 A. That is the bathroom.

3 Q. The bathroom that you are referring to?

4 A. Yes, ma'am.

5 Q. And when you walked in, was the toilet seat up or
6 down, from your recollection?

7 A. It was down.

8 Q. And if you could demonstrate here on the photograph,
9 if the toilet seat was down, which way was Victim #2
10 facing or positioned?

11 A. Her --- She was standing like right here in front of
12 the toilet, and her face was facing this way to the
13 cabinet.

14 Q. And Mr. Gallishaw was located where?

15 A. And he was behind her. Like if you could like shut
16 the door, he was standing like right in there behind
17 her.

18 Q. What was your reaction to observing this, Ms.
19 Gallishaw?

20 A. When I opened the door what I said was, what's going
21 on in here? And the both of them acted like
22 anything happened. And he told me that he had
23 taken(sic) some of my medication, because I had a
24 tooth pulled. And that he was still woozie from the
25 medication. And after that, I began to cry and

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1 saying like, why? Why? Why? And they came out of
2 the bathroom, and I just sat on the bathroom floor
3 and I cried. And after a while he came in and he
4 said, get up. He said, get up. And he said, let's
5 go before I was to awake anyone else in the home.

6 Q. All right. And when he said, let's go, where did he
7 mean that he wanted to go to?

8 A. To work.

9 Q. And did you take him to work?

10 A. Yes, I did.

11 Q. And did you have an opportunity to talk with your
12 daughter **Victim #2** further?

13 A. Yes, I did.

14 Q. Where did that occur?

15 A. In the parking lot of my mother's home.

16 Q. And what state were you in when you were speaking
17 with **Victim #2**?

18 A. Um, I can say I guess I was in a state of, in what
19 to really know what was going on. I felt maybe she
20 could tell me out of the presence of him.

21 Q. And what did you say to her?

22 A. I asked her, did anything happen in the bathroom?
23 You know, she told me --

24 MS. LITTLE: Objection, hearsay.

25 THE COURT: Is there any reason that

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1 would be admissible, Ms. Mayes?

2 MS. MAYES: Yes, sir, I can further lay
3 a foundation.

4 THE COURT: All right.

5 Q. What can --- Going back to what exactly had occurred
6 in the bathroom, and what you observed. You
7 testified that you were crying. Could your daughter
8 tell that you were upset?

9 A. Yes, she knew.

10 Q. When you cried, were you in her presence?

11 A. Yes.

12 Q. Did she appear to be herself or not herself after
13 you observed that?

14 A. Um, she didn't seem herself after that.

15 Q. And when you say she didn't seem herself, what do
16 you mean by that?

17 A. When I went to --- once I took him to work and we
18 were in the parking lot, and I questioned her about
19 it, she was --- like she didn't want to talk about
20 it anymore. She just --- I guess you could say
21 forget it, because she told me that --

22 MS. LITTLE: Objection to what she told
23 her.

24 THE COURT: Just a moment. Give me the
25 reason why you think --- What is the basis of your

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1 objection, Ms. Little?

2 MS. LITTLE: Your Honor, 801(d)(1)(d),
3 it would be hearsay.

4 THE COURT: All right. I can't hear
5 you.

6 MS. LITTLE: Hearsay, Your Honor.

7 THE COURT: Okay. The objection is on
8 hearsay. Why do you feel it meets the exception, Ms.
9 Mayes, if so, which one?

10 MS. MAYES: Yes, sir, Your Honor.
11 Excited utterance. In addition the 801(d)(1) exception
12 allows for time and place of a sexual assault as well.

13 THE COURT: All right. The objection is
14 overruled. The 801(d)(1)(d). Statements that are not
15 hearsay if it is consistent with the Declarant's
16 testimony in a criminal sexual conduct case, or attempted
17 criminal sexual case, where the Declarant is the alleged
18 victim, and the statement is limited to the time and
19 place of the incident.

20 Objection, overruled.

21 Q. Now, without going into details about what was said.
22 This is about time and places as the Judge has
23 instructed. Did your daughter confirm whether or
24 not something was in the process of happening?

25 A. Yes, she did.

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1 Q. Where was something in the house that was happening?

2 A. In that bathroom at his mother's home.

3 Q. Okay. And this would be on the same morning that
4 you observed?

5 A. Yes, ma'am.

6 Q. Now, once your daughter [Victim #2] informed you of
7 this, what did you do next?

8 A. I --- I guess I didn't do nothing, because I kept it
9 until I saw a friend. And she knows me pretty well,
10 and she knew that something was wrong with me. And
11 I told her about what I had saw. And she said you
12 are going to have to take her to be checked, and
13 that is what I felt, but I just couldn't do it by
14 myself. So I set her up with an appointment with
15 her family doctor to take her to see if anything had
16 happened without my daughters knowledge. And when I
17 got her to the doctor she thought that she was there
18 for one thing. And he checked her for recent, like
19 I took her for congestion that she was having. That
20 was actually the actual problem. But when I took
21 her in he checked her and everything, and was
22 through with that. I went outside of the door to
23 speak with him privately, and asked could she be
24 examined to see if she was being sexually active.
25 He told me they didn't do it there. But they could

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1 refer me to a place if I felt it was abuse, and if
2 it was by a family member. And I told him that I
3 did. And that is how we had the appointment to go
4 to the CARE House.

5 Q. Okay. So I just want to just kind of get a
6 clarification on some of these things. After
7 [Victim #2] informed you of the incident in the
8 bathroom, did you call the police?

9 A. No ma'am, I did not.

10 Q. And did you call social services or anyone else to
11 make an abuse report on your own?

12 A. No ma'am, I did not.

13 Q. You said you kept it quiet until you could talk to a
14 friend?

15 A. Yes, I did.

16 Q. And you said that you made the decision to take her
17 to the family doctor to have her checked?

18 A. Yes, I did.

19 Q. And you said, because I couldn't do it myself. What
20 do you mean by that?

21 A. I --- I felt that I couldn't take the news alone. I
22 needed somebody there with me in case I was to hear
23 that yeah, she was being sexually active. I
24 couldn't have done that by myself.

25 Q. All right. And your daughter [Victim #2] was how old

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1 on this occasion?

2 A. She was ten years old.

3 Q. She was ten. And when you got her to the doctor,
4 and you privately let him know that you had
5 concerns, and he asked you if it was a family
6 member, what was your response to that?

7 A. I told him, yes.

8 Q. And you are referring to which family member?

9 A. Jimmy Gallishaw.

10 Q. All right. So, as a result of the doctor learning
11 that information, where did he make an appointment
12 for you and **Victim #2** ?

13 A. To the CARE House.

14 Q. And that would be the CARE House --- the child abuse
15 assessment in Florence?

16 A. Yes.

17 Q. And did you take **Victim #2** to the CARE house?

18 A. Yes, I did.

19 Q. And when she got to the CARE House, can you tell us
20 whether or not she was interviewed outside of your
21 presence?

22 A. She was.

23 Q. Meaning that you were not able to observe or take
24 place in that interview?

25 A. No, ma'am.

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1 Q. And following that interview, did you become aware
2 that Mr. Gallishaw was ultimately going to be
3 charged with ongoing sexual abuse concerning

4 **Victim #2** ?

5 A. Well, they had me sit there for a while. And I
6 think some hours went by, maybe about an hour, I
7 don't know how much time, but they called me in the
8 back and they told me that she had told ---

9 Q. Okay, you can't say what she told, but you became
10 aware that Mr. Gallishaw had become implicated, is
11 that correct?

12 A. Yes.

13 Q. And this would have been approximately February 4,
14 2009, is that correct?

15 A. Yes.

16 Q. And so you learned about it at the CARE House, is
17 that correct?

18 A. Yes, I did.

19 Q. And can you tell us whether or not law enforcement
20 became involved in the case?

21 A. Yes, they did.

22 Q. And what about the Department of Social Service?

23 A. Yes, they did.

24 Q. Now, did you call them yourself?

25 A. No, I did not.

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1 Q. Who alerted social services that there was an issue?

2 A. The CARE House did.

3 Q. And who alerted law enforcement, specifically the
4 Darlington County Sheriff's Department, and
5 Darlington Police Department, that there was an
6 issue?

7 A. The CARE HOUSE did it.

8 Q. So, law enforcement and social services become
9 involved, and what --- what exactly is the
10 guideline, or agreement that is put into place after
11 social services become involved?

12 A. We had to do a Safety Plan.

13 Q. All right. And when we talk about a Safety Plan,
14 under the Safety Plan with social services, is Mr.
15 Gallishaw allowed to have contact with your daughter
16 **Victim #2** ?

17 A. No, ma'am.

18 Q. And when we talk about contact, I mean direct
19 contact, meaning in person, or even indirect contact
20 such as phone calls and letters?

21 A. No.

22 Q. And was it your understanding that he could not have
23 contact with **Victim #2** ?

24 A. Yes, it was.

25 Q. Now, prior to that day in 2009 when you observed ---

ADRIENNE GALLISHAW - DIRECT EXAMINATION

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1 How much time passed between, would you estimate,
2 passed --- it doesn't have to be exact, your best
3 estimation, happened between when you observed the
4 bathroom incident and when she got to the CARE House
5 for that sexual assault examination on February 4th?

6 A. I think it was about two weeks.

7 Q. All right. And during the course of time about two
8 weeks before you had gotten to your family doctor
9 what, if anything, were you doing --- were you still
10 living in the same house with Mr. Gallishaw?

11 A. Um, I stayed with my mother, and I continued to do
12 the normal routine, because I didn't want to make
13 him aware of what I was doing.

14 Q. All right. And did he maintain contact with your
15 younger children, such as J [REDACTED] and your youngest
16 daughter?

17 A. Yes.

18 Q. Before that incident in the bathroom, in
19 approximately January 2009, had your daughter

20 [REDACTED] Victim #2 ever said anything before --- and again you
21 are not going to be able to say the details what was
22 said, but had you ever been aware that she had said
23 anything concerning Mr. Gallishaw and sexual abuse?

24 A. Yes, she did.

25 Q. And what ultimately happened?

ADRIENNE GALLISHAW - DIRECT EXAMINATION

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- 1 A. She would tell me things, and then I would go
2 question him about the things that she said to me.
3 And during questioning --- Am I allowed to say what
4 he said?
- 5 Q. Yes, you can say what he said.
- 6 A. He would say, why would you say something like that?
7 And then she would take it back.
- 8 Q. All right. Let me get a clarification about this.
9 Would she --- Was she present when you confronted
10 him about the allegations?
- 11 A. Yes, she was.
- 12 Q. And was she present when he denied the allegations?
- 13 A. Yes, she was.
- 14 Q. And then what response did you see from her?
- 15 A. Um, when I said she would take it back and say she
16 was jealous.
- 17 Q. All right. And did she say that it occurred one
18 time, or more than one time, when she told you
19 something had happened with Mr. Gallishaw?
- 20 A. It was more than once.
- 21 Q. And when she would take it back, would he be in the
22 room, or not in the room?
- 23 A. He was in the room.
- 24 Q. All right. So this occurred, and based on the
25 previous incidents, did you ever alert the police,

ADRIENNE GALLISHAW - DIRECT EXAMINATION

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1 or social services, or a friend of the family about
2 those occasions?

3 A. No, I did not.

4 Q. After you observed the bathroom incident, Ms.
5 Gallishaw, in retrospect, are there any things ---
6 have there been any things that you have personally
7 observed in the home that cause you concern at this
8 point, after having observed the bathroom incident?

9 A. Well, not at that point in time. But after things
10 had been going on, and after having time to just
11 think, things popped in mind, yes.

12 Q. When you say things popped into your mind, what are
13 you referring to?

14 A. Something that I saw, but I didn't really know,
15 because that was a time that, you know, that she
16 said it wasn't.

17 Q. Okay. I want to ask you a little bit more about
18 that. And you said that was a time --- that was one
19 of the times she later told you that it just didn't
20 happen after she said that it did. What was it that
21 you observed that lead to her talking about it on
22 that occasion?

23 A. Um, you know, it was about her time to go take a
24 bath. So I went into the room to see if his son was
25 there, but he wasn't in the room at that time.

ADRIENNE GALLISHAW - DIRECT EXAMINATION

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1 Q. When you say his son, you are referring to his son -
2 -- which son?

3 A. S [REDACTED] G [REDACTED].

4 Q. So that is S [REDACTED] G [REDACTED] his older son?

5 A. Yes.

6 Q. And just to clarify, S [REDACTED] G [REDACTED], is he any
7 relation to you?

8 A. He is my stepson.

9 Q. Okay. And he would normally come visit the home
10 when?

11 A. Um, on different occasions. There was no specific
12 time.

13 Q. All right. And on this particular occasion, what
14 did you observe?

15 A. When I went to the room, and I turned the light on,
16 she was on his lap with her legs on the side, and
17 her feet were like pinned up under the mattress of
18 the bed.

19 Q. Was she facing away from him or more towards him?

20 A. Towards him.

21 Q. What, if anything, else did you observe?

22 A. Well, when I saw that --- I just can't, it's been a
23 while. But, I do remember him sitting up. He had
24 been a little bit nervous, and he said he was going
25 to take her hair loose. Her hair needed be washed.

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1 And at that time, you know, she got up, and I saw
2 that her underwear was pulled to the side.

3 Q. All right. And when you noticed that her underwear
4 was pulled to the side, did that cause you concern?

5 A. It bothered me, but like I say I didn't see anything
6 happening to her.

7 Q. Okay. And following that incident without going
8 into details, can you tell us whether or not your
9 daughter reported that there had been something of a
10 sexual nature with Mr. Gallishaw?

11 A. She did.

12 Q. And then later when he was present and denied it,
13 what happened?

14 A. She would take it back.

15 Q. Now, you spoke about the Safety Plan that the
16 Department of Social Services had you sign. Did you
17 sign that by your own agreement?

18 A. Yes, I did.

19 Q. Was that by your own free will?

20 A. Yes, it was.

21 Q. And not in just your case, but in any case, what is
22 your understanding if someone were to violate the
23 Safety Plan? For example, move back into the home
24 with the perpetrator and the child, all living under
25 the same roof without any supervision?

ADRIENNE GALLISHAW - DIRECT EXAMINATION

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1 A. That the kids could be taken away.

2 Q. So you agreed to the Safety Plan, meaning that Mr.
3 Gallishaw could not have contact with [redacted] Victim #2?

4 A. Yes, I did.

5 Q. And following that, did you ever receive any phone
6 calls from Mr. Gallishaw?

7 A. Yes, I did.

8 Q. Were you always the one who answered the phone when
9 he called?

10 A. No, I was not.

11 Q. Who else would answer the phone when he would call?

12 A. Once [redacted] Victim #2 did. I was at work that day when I
13 found out about it. Um, the other time I think it
14 was my mother that answered the phone.

15 Q. And in your home, Ms. Gallishaw, up until this point
16 in time in February 2009, when he was arrested, what
17 was the arrangement as to who was the financial
18 provider?

19 A. Jimmy was.

20 Q. And during that point in time, were you working
21 steady jobs, or steady full-time jobs?

22 A. No, I wasn't.

23 Q. And since this has occurred, have you had the
24 opportunity to now work a job?

25 A. Yes, I do.

ADRIENNE GALLISHAW - DIRECT EXAMINATION

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- 1 Q. All right. And what kind of work do you do now?
- 2 A. I do housekeeping.
- 3 Q. And going back to that period of time, after you
- 4 signed the Safety Plan, did he contact you in any
- 5 other way?
- 6 A. I got letters.
- 7 Q. And did he attempt contact with **Victim #2** in any
- 8 other way?
- 9 A. Some of those letters had her name in them.
- 10 Q. All right. And I want to ask you some questions
- 11 about letters. When you first got a letter, did you
- 12 notify law enforcement?
- 13 A. No, I did not.
- 14 Q. Or Social Services?
- 15 A. Yes, I did.
- 16 Q. And when letters were addressed, or **Victim #2**'s name
- 17 was put on a letter, did you notify law enforcement
- 18 of that?
- 19 A. No, I did not.
- 20 Q. Or Social Services of that?
- 21 A. When I got the first one, yeah, I did.
- 22 Q. After that first one, did you continue to get
- 23 letters?
- 24 A. Yes, I did.
- 25 Q. Did they always come by mail?

ADRIENNE GALLISHAW - DIRECT EXAMINATION

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1 A. Yes, they did. Well, one didn't.

2 Q. And the one that didn't, how did you receive that
3 letter?

4 A. Um, a man knocked on the door, and my mother
5 answered it, if I am not mistaken. And when I came
6 to the door to see who it was, he told me that he
7 was a inmate that was in jail.

8 MS. LITTLE: Objection.

9 THE COURT: Wait just a minute. What is
10 the objection?

11 MS. LITTLE: I'm sorry, Your Honor,
12 withdrawn.

13 THE COURT: Okay. Proceed.

14 Q. Let me, Ms. Gallishaw, just ask you a specific
15 question and you can answer that. The man, who
16 brought the letter, did he indicate on whose behalf
17 he was delivering the letter?

18 A. Yes, he did.

19 Q. And on whose behalf was that?

20 A. Jimmy Gallishaw.

21 Q. And did he indicate whether or not he had been an
22 acquaintance of Jimmy Gallishaw?

23 A. Yes, he did.

24 Q. And did you know this man personally?

25 A. No, I did not.

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1 Q. And did you get a chance to observe the letter that
2 he delivered?

3 A. Yes, I did.

4 Q. Did it appear to be a letter written by your
5 husband?

6 A. Yes, it was.

7 Q. Having lived with your husband through the years,
8 have you had the opportunity to observe his
9 handwriting?

10 A. Yes, I did.

11 Q. Such as bills, or cards, letters, things of that
12 nature?

13 A. Yes.

14 Q. And the letters that you have received, did you
15 recognize the handwriting?

16 A. Yes, I did.

17 Q. And whose handwriting did you recognize it to be?

18 A. It was Jimmy Gallishaw's.

19 Q. Was there ever a time, Ms. Gallishaw, in which you
20 received any contact from Mr. Gallishaw, in which he
21 wanted you to do something concerning Victim #2?

22 A. Yes.

23 Q. And what was it that he informed you that he wanted
24 you to do?

25 A. He wanted me to have her write a statement saying

ADRIENNE GALLISHAW - DIRECT EXAMINATION

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1 that the things didn't happen.

2 Q. All right. He was asking you to get [Victim #2] to
3 write a statement to say that it didn't happen?

4 A. Yes.

5 Q. And what did you do in response to that? Did you
6 make [Victim #2] aware of it?

7 A. No, I did not.

8 Q. And did you follow through with his request to have
9 your daughter write a statement to say it didn't
10 happen?

11 A. No, I did not.

12 Q. What, if anything, has he said to you, informed you
13 of, concerning you and your cooperation with law
14 enforcement, and with prosecution and, the Court
15 system?

16 A. I don't understand the question.

17 Q. Okay. Do you recall him addressing you and your
18 cooperation as a witness?

19 A. I'm not certain what you are saying.

20 MS. MAYES: Beg the Court's indulgence?

21 THE COURT: Yes, ma'am.

22 Q. I am going to show you first this item. And on the
23 back it has the words I'm missing you. And it is
24 addressed to J [REDACTED] Gallishaw, and in the upper
25 right left hand corner it says Maurice. Whose name

ADRIENNE GALLISHAW - DIRECT EXAMINATION

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1 is Maurice?

2 A. Jimmy's.

3 Q. All right. And can you tell us whether or not you
4 recognize the handwriting in this particular letter?

5 A. Yes, I do.

6 Q. And whose handwriting is that?

7 A. It is Jimmy's.

8 Q. I am going to show you a letter which is in the
9 upper left hand corner addressed as Maurice G. And
10 it is addressed to J [REDACTED] A [REDACTED] G. And ask you
11 whether or not you had the opportunity to observe
12 these items?

13 A. Yes, I have.

14 Q. And who is this letter from?

15 A. It is from Jimmy Gallishaw.

16 MS. MAYES: Your Honor, at this time
17 this would be State's Exhibit 8 and 9 for evidence.

18 THE COURT: All right. They have been
19 offered into evidence as State Exhibits 8 and 9. Any
20 objection on behalf of defense?

21 MS. LITTLE: Objection as to relevance.

22 THE COURT: All right. What is the
23 relevance, Ms. Mayes?

24 MS. MAYES: Your Honor, we may need to
25 address this in-camera.

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1 THE COURT: Okay come up.

2 (Whereupon, a bench conference was held in
3 the presence of the Jury, but out of the hearing of the
4 Jury.)

5 THE COURT: Show 8 and 9 to defense
6 counsel.

7 (PAUSE.)

8 THE COURT: Counsel, let's see if we can
9 save a little bit of time here. Come up for a minute.

10 (Whereupon, a bench conference was held in
11 the presence of the Jury, but out of the hearing of the
12 Jury.)

13 THE COURT: All right. Let's go forward
14 at this time. The Court will make a ruling on the
15 admissibility of the letters at a later time.

16 State's 8 and 9 at this point are I.D. only.
17 She had identified the letters, and they are I.D. only.
18 But there is an objection. The Court will withhold a
19 ruling on the objection until a later time.

20 Proceed, Ms. Mayes. Ms. Mayes, give the
21 letters to the Court Reporter, and have her mark them as
22 State's 8 and 9 for identification only.

23 MS. MAYES: Yes, sir, Your Honor.

24 WHEREUPON, STATE'S

25 EXHIBIT NUMBERS 8 AND 9

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1 WERE MARKED FOR
2 IDENTIFICATION PURPOSES
3 ONLY.

4 THE COURT: All right. Ms. Mayes,
5 you may proceed.

6 MS. MAYES: Yes, sir, Your Honor.

7 Q. Now from what you read in the letters that you
8 received, was it your understanding that Mr.
9 Gallishaw wanted you to testify in the case, or did
10 not want you to testify in the case in cooperation
11 with law enforcement?

12 A. I'm not sure.

13 Q. All right. Let me ask you this. Did he ever talk
14 with you about bringing your daughter to speak with
15 authorities, such as law enforcement, or
16 prosecutors?

17 A. Ask me that again.

18 Q. All right. Let me ask you something else. Going
19 back to when you lived in these residences with Mr.
20 Gallishaw, and your testimony is that **Victim #1**,
21 his biological daughter, would sometimes come over
22 to visit, was there ever anything that caused you
23 concern, in retrospect, concerning **Victim #1** ?

24 A. Nothing I can think of at the time, but I saw
25 something thinking back on it, yes.

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1 Q. And what was it that you observed?

2 A. One time I came into the room to tell them that it
3 was time to go to bed. And she was laying in the
4 bed without any underwear on. And he was up on his
5 knees. And I came in --- I remember telling her
6 that it was time to go to bed. And I asked her why
7 didn't she have her underwear on. Um, do I say what
8 she said to me?

9 Q. Was it in the presence of the Defendant, Jimmy
10 Gallishaw?

11 A. Yes, it was.

12 Q. What was her response?

13 A. She said that she was hot, and that is why she took
14 them off. And I told her, well, you don't be in the
15 bed without your underwear on. And I told her to
16 get up and put them on and go to bed.

17 Q. And when you told her to go to bed, what did you
18 mean by that?

19 A. To get in [Victim #2] s bed for them to go to sleep.

20 Q. So you are referring to the bedroom that had the two
21 different beds in it?

22 A. Yes.

23 Q. And that would be the bedroom at what location?

24 A. At my mother's home.

25 Q. So when you walked in the room, and you observed

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1 **Victim #1** without underwear on, whose bed was she in at
2 that time?

3 A. She was in me and Jimmy's bed at that time.

4 Q. And who, if anyone, else was in the bed with her?

5 A. He was.

6 Q. And were they asleep or were they awake?

7 A. They were awake.

8 Q. And when you told her to get in the bed, you were
9 referring to which bed?

10 A. **Victim #2** s bed.

11 Q. That would be the other bed in the room?

12 A. Yes, ma'am.

13 **MS. MAYES:** Bed the Court's indulgence.

14 **THE COURT:** All right.

15 **(PAUSE.)**

16 Q. Now, you mentioned that Mr. Gallishaw informed you
17 in the letter that he wanted you to talk with

18 **Victim #2** about writing a statement?

19 A. Yes.

20 Q. What, if anything, did he ever ask you to do or
21 discuss in the letter to you about your cooperation?

22 A. About her writing a statement, um, if I am not
23 mistaken, he wanted me to have it notarized. I
24 guess that would make it something legal.

25 Q. All right. Was it your understanding, based on

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1 these communications, that he wanted --- he wanted
2 to pursue a relationship with you?

3 MS. LITTLE: Objection.

4 THE COURT: What is the objection?

5 MS. LITTLE: She is leading the witness,
6 Your Honor.

7 THE COURT: Sustained.

8 MS. MAYES: Yes, sir, Your Honor.

9 Q. Why aren't you separated legally from Mr. Gallishaw
10 at this time?

11 A. I don't have an answer, I just --- me personally, I
12 feel that I got married, you know, and it is
13 something that --- I take marriage as something
14 sacred. I agree in being married once. I mean no
15 situation is like it is now. I just rather be apart
16 than have to deal with --- I don't know, like me it
17 would be uneasy going through --- I don't know, I
18 don't have a definite answer why we are not
19 divorced. I just haven't --- I just put that aside.

20 Q. All right. But the letters that you received, can
21 you tell us whether or not it addressed your
22 relationship, in attempting to continue your
23 relationship?

24 A. Yes, it is.

25 MS. MAYES: Nothing further.

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1 **THE COURT:** All right. Before cross
2 examination, we have been in the courtroom now --- court
3 personnel about an hour and fifteen minutes. The Jury
4 has been over an hour. I think --- it is the middle of
5 the morning. I think it is appropriate that we take a
6 ten minute recess at this time. So we will take ten
7 minutes. It is 11:15. We will be ready to start back in
8 ten minutes.

9 Ladies and gentlemen of the Jury, please go to
10 your jury room. It is still premature for you to begin
11 any discussion among yourselves. And we will send for
12 you very shortly.

13 Thank you, you may go to the jury room.

14 (Whereupon, the Jury exits the courtroom
15 at 11:15 a.m..)

16 **THE COURT:** Counsel, come up, please.
17 We will be in recess now for approximately ten minutes.

18 (Whereupon, a recess was taken from 11:15
19 a.m. until 11:25 a.m..)

20 **THE COURT:** Back on the record with
21 regard to the matter of The State versus Jimmy Gallishaw.
22 Mr. Gallishaw is present in the courtroom with counsel.
23 The State is also present with Ms. Mayes.

24 I understand that the Jurors are not quite
25 ready to resume. So, let's utilize this time to address

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1 Exhibits 8 and 9. Ms. Little, have you had a chance to
2 look at those exhibits? I have them.

3 **MS. LITTLE:** No, sir. I don't have a
4 copy of those.

5 **THE COURT:** I would have given them to
6 you. I thought you had copies of them.

7 **MS. LITTLE:** I do, but I have several
8 copies, and I wasn't sure exactly which letters she was
9 trying to move in.

10 (PAUSE.)

11 **BAILIFF:** Everyone is ready.

12 **THE COURT:** Everybody is back up. All
13 right, ready to go. Where do y'all stand?

14 **MS. LITTLE:** Your Honor, as to State's
15 Exhibit Number 8, during this letter he talks about being
16 locked up for a long amount of time, and being locked up
17 in a place like this. We would object to that as being
18 unduly prejudicial. The Jury has no right to know that
19 he was actually incarcerated when he wrote these letters.

20 **THE COURT:** All right. This is Number
21 8?

22 **MS. LITTLE:** Yes, sir.

23 **MR. SWILLEY:** As with 9 too, Your Honor,
24 the same objections. Also, these letters are too
25 ambiguous to be relevant to prove the matter asserted.

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1 **THE COURT:** Ms. Mayes, what is the
2 purpose of the letters, and what relevance are the
3 letters as far as the issues in this case?

4 **MS. MAYES:** Yes, sir. And, Your Honor,
5 just to go back over the original discussion with counsel
6 about these particular letters.

7 When we received them, I gave specific notice
8 to Ms. Little that in one of the letters he was
9 attempting to influence or coerce the child's testimony.
10 That he was attempting to influence or coerce a
11 recantation from the child. And that we intended to
12 offer the letters as evidence. If they want specific
13 notice as to all of --- all of the letters, of the
14 letters that are being offered --

15 **THE COURT:** She is not claiming they
16 don't have notice. Their objection is relevance.

17 **MS. MAYES:** Of the letters that we are
18 proposing to offer, Your Honor, I do have copies that I
19 can submit to the Court at this time.

20 **THE COURT:** All right. Well, here is
21 what I see as their problem, and I think they say is
22 their problem.

23 If there are parts of the letters that are
24 relevant to issues that are in this case then they would
25 be admissible. But are there parts that are not

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1 admissible as irrelevant, can they be redacted.

2 In other words --

3 MS. MAYES: I don't necessarily object
4 to a redaction, Your Honor, if it deals with a irrelevant
5 matter. But, I do want to just briefly address the
6 relevance of the attempt to influence the child.

7 It appears that the letters are --

8 THE COURT: All right. Counsel, here is
9 what I'm going to do. I thought that we could address
10 this and be very quick with it, but we can't evidently.
11 It should have been resolved before we ever came to
12 court, but there is an objection to the relevance of it.

13 You are obviously on notice, Ms. Little, that
14 they planned to use these letters. And during the lunch
15 recess, I want counsel to sit down and address State's
16 Exhibits 8 and 9, line-by-line and determine what is
17 relevant and what is not relevant. And what the
18 objections are, and what the objections are not. This is
19 something that should have been resolved. But y'all are
20 going to have to spend the lunch recess getting that
21 resolved.

22 All right. Bring the Jury in please.

23 (Whereupon, the Jury enters the courtroom
24 at 11:32 a.m.)

25 THE COURT: All right. Thank you very

ADRIENNE GALLISHAW - CROSS EXAMINATION

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1 much, ladies and gentlemen. We are now ready to resume.
2 The State had finished the testimony --- direct testimony
3 of this witness. And now the Defense will have the right
4 to cross examine. Ms. Little.

5 **MS. LITTLE:** Thank you, Your Honor. May
6 it please the Court.

CROSS EXAMINATION BY MS. LITTLE

7
8 Q. Good morning, Ms. Gallishaw.

9 A. Good morning.

10 Q. Ms. Gallishaw, I am going to start by taking you
11 back to the event that you spoke about that occurred
12 in the bathroom, I believe you said at Ms. Ollie
13 Gallishaw's home.

14 A. Yes.

15 Q. I would like to show you what has been marked as
16 Defendant's Exhibit Number 1, for Identification.
17 Is this an accurate photo of the bathroom at Ollie
18 Gallishaw's house?

19 A. Yes. Except for now she has a different cabinet in
20 there.

21 Q. A different what?

22 A. The cabinet that is above the toilet wasn't there
23 then.

24 Q. Other than the fact that there was no cabinet above
25 the toilet, does this accurately show the bathroom

ADRIENNE GALLISHAW - CROSS EXAMINATION

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1 at Ms. Ollie Gallishaw's house?

2 A. Yes, it does.

3 MS. LITTLE: Your Honor, at this time I
4 would move to enter this into evidence as Defendant's
5 Exhibit Number 1.

6 THE COURT: Any objection?

7 MS. MAYES: Yes, sir, Your Honor, there
8 is an objection. If the cabinet or vanity that is
9 referred to in the photograph is not present during the
10 date of the incident, I believe makes it not a fair and
11 accurate representation.

12 THE COURT: Come up counsel, let me see
13 it.

14 (PAUSE.)

15 THE COURT: The objection is sustained.

16 Q. Ms. Gallishaw, can you --- would you say that the
17 bathroom at Ms. Ollie Gallishaw's house was small or
18 large?

19 A. It was a small one.

20 Q. And if you --- if someone were in that bathroom and
21 you opened the door, would you hit that person with
22 the door?

23 A. Depending on where they were standing, yes.

24 Q. Mr. Gallishaw is a pretty big fellow, isn't he?

25 A. Yes, he is.

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1 Q. If he were standing at the sink in the bathroom,
2 would you hit him if you opened the door to the
3 bathroom?

4 A. Yes, I would.

5 Q. And if anyone were at the toilet, would you hit that
6 person when you opened the door, if someone were
7 standing near the toilet?

8 A. Depending. If they are where the door will open all
9 the way, maybe so.

10 Q. Okay. So it would be fair to say that it is a very
11 small bathroom?

12 A. It was, it is.

13 Q. At your house, and at Ms. Ollie's house during this
14 time, was it common for your family members to ---
15 How many bathrooms were in the house?

16 A. They have two.

17 Q. Okay. And which bathroom did you and your family
18 normally use?

19 A. The one that is in the photo.

20 Q. Okay. And the other bathroom, was it attached to a
21 bedroom?

22 A. Yes, it is.

23 Q. And did y'all have direct access to that bathroom?

24 A. If we ask before we go in, yes..

25 Q. So normally the bathroom that y'all would use would

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1 be the bathroom in the hall?

2 A. Yes.

3 Q. And were you all --- did your family normally ---
4 would more than one person be in the bathroom at the
5 same time?

6 A. Doing what?

7 Q. Well, if for example you were in the bathroom, and
8 one of your children needed to use the bathroom,
9 would they come in?

10 A. When I was done.

11 Q. Okay. On the day that you spoke about earlier, when
12 you opened the bathroom door, did you hit anybody
13 with the door when you opened the bathroom door?

14 A. Not to my knowledge, no.

15 Q. Okay. And I believe you said that **Victim #1** was bent
16 over the toilet?

17 A. No. I didn't say nothing about **Victim #1**.

18 Q. I'm sorry, **Victim #2**. I am very sorry. **Victim #2** ?

19 A. She was --- Yes, she was.

20 Q. Was it possible that she was flushing the toilet?

21 A. No, ma'am.

22 Q. You didn't hear the toilet flush?

23 A. No, ma'am.

24 Q. And you mentioned that she was pulling up her
25 pajamas?

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- 1 A. Yes.
- 2 Q. And I believe you said that her pajamas were already
3 pulled up when you opened the door?
- 4 A. I said, partially she was finishing.
- 5 Q. But you didn't see any of her private parts?
- 6 A. No, I did not.
- 7 Q. And was Mr. Gallishaw touching her in any way when
8 you opened that door?
- 9 A. No, he was not.
- 10 Q. And you mentioned that Mr. Gallishaw had on a shirt.
11 Was it a T-shirt?
- 12 A. Well, not like a --- Like a white T-shirt? No, it
13 was a blue shirt.
- 14 Q. Okay. And was it a long shirt?
- 15 A. It was not long/long, no.
- 16 Q. Okay. So, if Mr. Gallishaw had on shorts under that
17 shirt, would you have been able to see them?
- 18 A. Yes, I would.
- 19 Q. The shirt in question didn't come down past the bend
20 in his knees?
- 21 A. No, it didn't.
- 22 Q. And when you --- you mentioned --- you testified
23 earlier that you saw Mr. Gallishaw's private when
24 you opened that door?
- 25 A. Yes, I did.

ADRIENNE GALLISHAW - CROSS EXAMINATION

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1 Q. Was he standing near the toilet?

2 A. No, he was not.

3 Q. Well, you testified earlier that it is a very small
4 bathroom.

5 A. Okay.

6 Q. So, was he standing --- Where was he standing in
7 relation to the toilet?

8 A. Behind it, because she was --- the toilet is there,
9 she was there, he was there.

10 Q. Okay. So, when you opened the door and the door
11 swung open, if he was behind **Victim #2**, wouldn't he
12 have been behind the door when you opened the door?

13 A. First of all, I didn't say the door swung open. I
14 said I opened the door.

15 Q. Okay.

16 A. So, I didn't swing it open.

17 Q. Okay. So, you just opened the door a little ---
18 partially?

19 A. No, I opened it enough and I saw what I saw.

20 Q. Okay. And what you saw, again, you didn't actually
21 see Mr. Gallishaw touching **Victim #2**?

22 A. No, I did not.

23 Q. Okay. And I believe you testified when you asked
24 **Victim #2** if anything was going on, she said, no?

25 A. She said no.

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1 Q. And, Ms. Gallishaw, do you remember giving a
2 statement to Sergeant Patricia Ray at the Darlington
3 County Sheriff's Department?

4 A. Yes, I do.

5 Q. Okay. You testified earlier that Mr. Gallishaw's
6 privates --- he had an erection; is that true?

7 A. That is the way it seemed to me, yes.

8 Q. That is the way he seemed to you. Are you sure
9 about that?

10 A. Yes ma'am, I'm sure, because I saw him.

11 Q. Okay. And when you gave your written statement to
12 Sergeant Patricia Ray, did you ever mention in your
13 statement that Mr. Gallishaw had an erection?

14 A. No.

15 Q. Okay.

16 A. They didn't tell me that I had to include details
17 like that.

18 Q. Well, did they tell you what to write?

19 A. No, they did not. They just told me to write my
20 statement of what I was there at the CARE House.

21 Q. Right. And did they ask you to talk about anything
22 inappropriate that you had ever seen Mr. Gallishaw
23 do, or were they just specifically talking about
24 this incident?

25 A. Did Sergeant Ray ask me to tell her anything that I

ADRIENNE GALLISHAW - CROSS EXAMINATION

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1 saw, is that what you are asking me?

2 Q. Were you told --- Your statement was --- is it just
3 about this bathroom incident?

4 A. Yes, it was.

5 Q. Okay.

6 A. When I bring her into the CARE House.

7 Q. Okay. So you weren't asked to talk about anything
8 else that you had ever seen in the past?

9 A. No, I was not.

10 Q. Okay. And did you think it was important, a fact
11 like that, that Mr. Gallishaw had an erection; do
12 you think that is something the police would want to
13 know?

14 A. I guess so.

15 Q. And do you know why you didn't put that in your
16 written statement, ma'am?

17 A. Because, they told me to write a statement as to
18 what I saw. But they didn't tell me to go into full
19 details as to what I saw.

20 Q. Okay.

21 A. I wasn't allowed to talk to anyone at that point.

22 Q. Were there any other important details that you left
23 out of your written statement that you know of?

24 A. Not right off, I can't recall.

25 Q. And you mentioned an earlier incident where Victim #2

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1 was getting ready to take a bath. Do you remember
2 what I'm talking about?

3 A. Yeah.

4 Q. Who would normally fix [Victim #2]'s hair at the home?

5 A. Me and Jimmy both did.

6 Q. Okay. So, and you testified that he was a barber,
7 correct?

8 A. Yes, I did.

9 Q. And at times he would do [Victim #2]'s hair?

10 A. Yes, he did.

11 Q. Okay. And that day in question that you talked
12 about, have you ever told anybody at the police
13 about that incident?

14 A. No, I did not.

15 Q. Okay. And didn't you testify that Jimmy helped her
16 take her hair down, because she needed to wash her
17 hair?

18 A. Yes, he did.

19 Q. Okay. Now, I want to ask you about the times when
20 [Victim #1] would spend the night at your apartment. I
21 believe you testified it was a couple of times?

22 A. To my knowledge, yes.

23 Q. Okay. And then you testified about a time when you
24 saw [Victim #1] in the bedroom with no underclothes on.

25 A. No underwear, yes.

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1 Q. Okay. Did she have anything covering her bottom?

2 Did she have on shorts?

3 A. She had on, if I'm not mistaken, a gown.

4 Q. Okay. And was the gown long enough to cover her
5 bottom?

6 A. I don't have a answer for that, because I'm not --

7 Q. Who else was in the room supposedly when that
8 happened?

9 A. [Victim #2] was.

10 Q. Okay. And did you take that opportunity to ask

11 [Victim #2] what was going on?

12 A. She was on her bed.

13 Q. Okay. And in the room that we are talking about,
14 could you see one bed from the other bed?

15 A. If you turn the lights on, is that what you are
16 asking?

17 Q. Yes.

18 A. Yes, you can.

19 Q. And when you walked in, were the lights on or off?

20 A. They were off. I turned the lights on.

21 Q. Okay. And were you concerned when you walked in and
22 saw that [Victim #1] didn't have any underwear on?

23 A. Yes. But, she never told me anything was going on.

24 So ---

25 Q. Did it rise to the level that you were worried

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1 enough to call the police?

2 A. Well, no, it did not.

3 Q. Did it rise to the level that you felt you ought to
4 give her mother a call and talk to her about it?

5 A. No, it did not, because, that is her father. I
6 didn't expect for him to be doing anything like that
7 to her.

8 Q. So you --

9 A. Why make something out of something that I don't
10 know something is going on.

11 Q. So you didn't really believe that anything was going
12 on with Jimmy and **Victim #1**, or Jimmy and **Victim #2** did
13 you?

14 A. And that day I knew there wasn't nothing going on
15 with my daughter. But, whether was something
16 happening in between him and **Victim #1** at that time, I
17 cannot say, because I didn't see anything happening.

18 Q. Okay. So you never --- you never thought that
19 anything inappropriate was going on between Jimmy
20 and **Victim #1**?

21 A. With that incident, no, I didn't think anything was
22 happening. That is her father. I mean, why would -
23 -- why would he?

24 Q. All right. I want to talk to you just briefly about
25 your relationship with Jimmy. And specifically, I

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1 am talking about after the birth of your daughter
2 O[REDACTED]. Can you tell me again, what was O[REDACTED]'s
3 date of birth?

4 A. It is [REDACTED]/07.

5 Q. Okay. After O[REDACTED]'s birth, did Mr. Gallishaw have
6 any problems performing sexually?

7 A. There were occasions, yes.

8 Q. Was it --- Would you say that it was often that he
9 was unable to perform sexually?

10 A. No.

11 Q. Was it sometimes he was unable to perform sexually?

12 A. Sometimes.

13 Q. And did this concern him?

14 A. (No response.)

15 Q. Did he seem concerned to you about this?

16 A. Um, if he was, he didn't make it known to me.

17 Q. Okay. Did he ever buy any sort of sexual aids to
18 try to benefit yours and his sex life?

19 A. Yes, he did.

20 Q. Okay. So, would that have been an artificial penis?

21 A. Yes, he did.

22 Q. Okay. And he also had a penis pump?

23 A. Yes, he did.

24 Q. That he used. And he had to use that on certain
25 occasions?

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1 A. Which thing are you talking about?

2 Q. Well, did he use these items on occasion to try to
3 help himself to perform sexually?

4 A. With the penis pump, I don't know. But, the private
5 part that he bought, yeah.

6 Q. I want to take you back to something that you said
7 earlier, and you talked about jealousy between
8 [Victim #2] and [Victim #1]. Was [Victim #2] jealous of Mr.
9 Gallishaw spending time with [Victim #1]?

10 A. Yes.

11 Q. And was that something that seemed to be a problem
12 in the house. Did y'all ever discuss it?

13 A. Yeah, we did.

14 Q. Okay. And did Jimmy concerned that he wanted to
15 make sure that he loved --- [Victim #2] knew he loved
16 her just as much as he loved [Victim #1]?

17 A. (No response.)

18 Q. Did y'all have a discussion about --- about this
19 jealousy between [Victim #2] and [Victim #1], you and Jimmy?

20 A. (No response.)

21 Q. If you don't remember, you can just say you don't
22 remember.

23 A. I don't remember.

24 Q. Okay. Now, you testified earlier that at times
25 [Victim #2] would tell you that something was going on,

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1 and then she would take it back.

2 A. Yes, I did.

3 Q. And how many times would you say that happened that
4 you can remember?

5 A. I can remember two or three.

6 Q. Okay. And did you ever consider taking Victim #2
7 aside and asking her about this, without her father
8 being present?

9 A. Yes, I did.

10 Q. Okay. And up until the time after the bathroom
11 incident, is it your testimony that you took her
12 aside, outside of Mr. Gallishaw's presence, and she
13 continued to deny that anything was going on?

14 A. On that particular day, yes.

15 Q. Okay. And so you say --- Your testimony is that
16 about three times she would tell you that something
17 was going on, and then take it back?

18 A. Yes.

19 Q. Okay. So, you never knew if she was lying or
20 telling the truth, did you?

21 A. Repeat that once, because I'm trying not to be rude.
22 Repeat it.

23 Q. You testified that on, at least, three occasions,
24 she would tell you something happened, and then she
25 would take it back. So my question to you is, you

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1 couldn't tell whether **Victim #2** was telling a lie or
2 telling the truth; is that correct?

3 A. I'd rather not answer that question, because I don't
4 understand what you are asking.

5 **MS. LITTLE:** Beg the Court's indulgence.

6 **(PAUSE.)**

7 Q. Ms. Gallishaw, on the events that you have testified
8 about today, did you ever get so concerned that you
9 felt that you needed to call the police?

10 A. On the events that I told about happened that
11 particular day, did I get concerned to call the
12 police. Is that what you are asking?

13 Q. Yes.

14 A. No, I did not. Because, I felt that I had to have
15 first.

16 Q. Okay. And isn't it true that because **Victim #2** had
17 said something happened, took it back. Said
18 something happened, took it back. Said something
19 happened, took it back. You didn't know whether to
20 believe her or not?

21 A. On that particular day I believed my daughter. Even
22 though she said nothing happened that particular
23 day, I believed my daughter.

24 Q. You believed that nothing happened?

25 A. That particular day, yes. But if something happened

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1 to her in the past, I didn't find out like I said
2 until we went to the CARE House. But I believed my
3 daughter.

4 Q. You believed her when she told you that nothing
5 happened?

6 A. On that particular day, yeah, I believed her.

7 MS. LITTLE: Okay. All right. No
8 further questions.

9 THE COURT: Redirect.

10 MS. MAYES: Yes, sir, Your Honor.

11 **REDIRECT EXAMINATION BY MS. MAYES**

12 Q. Now, Ms. Little was asking you about the written
13 statement that you gave to the police, that bathroom
14 incident --

15 A. -- uh'huh --

16 Q. -- Did they ask you to do a written statement?

17 A. Yes, they did.

18 Q. And in addition to that, did you --- do you recall
19 whether or not you spoke with Investigator Ray to
20 give her details?

21 A. I don't recall giving her any details, no.

22 Q. All right. And on February 4, 2009, in terms of
23 telling of --- who do you recall telling --- it may
24 not be in the written statement, but who do you
25 recall telling about the fact that when you walked

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- 1 in he appeared to be erect?
- 2 A. I had to tell the workers at the CARE House, since I
- 3 was questioned on why I brought her there.
- 4 Q. All right. And after telling that to members of the
- 5 CARE House, do you know whether or not CARE House
- 6 informed law enforcement of the incident?
- 7 A. I'm pretty sure they did.
- 8 Q. All right. And I want to ask you a little bit about
- 9 that. You mentioned that when you walked in he
- 10 appeared to be in that state. Was Mr. Gallishaw
- 11 able to obtain an erection?
- 12 A. Yes, he was.
- 13 Q. And the aids that Ms. Little was asking you about --
- 14 - I want to follow up on that. Was he able to
- 15 perform sexually?
- 16 A. Yes, he was.
- 17 Q. Was he able to have intercourse with you?
- 18 A. Yes, he was.
- 19 Q. And your little girl who was born in 2007, who is
- 20 the biological father of your little girl?
- 21 A. Jimmy Gallishaw.
- 22 Q. And she mentioned that he purchased a penis pump.
- 23 Why did he tell you that he purchased that?
- 24 A. At first he kept it hidden. But once I saw it, he
- 25 told me it was for the purpose of making him larger.

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1 Q. And where would you see or have knowledge that he
2 was using this?

3 A. In the bathroom at my mothers.

4 Q. And his statement to you was that he thought it made
5 him larger?

6 A. Uh-huh, yes.

7 Q. And she mentioned a sex toy. Can you describe the
8 sex toy that he purchased?

9 A. Yes, I can.

10 Q. And do you know where he purchased it?

11 A. Um, to my knowledge, he got it from one of the, I
12 guess adult video type stores that sell those
13 things.

14 Q. All right. What did --- Describe it if you can.

15 A. It was --- I can't tell you how many feet it was,
16 but it was big. It had like the pinkish color tip,
17 and it was like a darkish brown with the ridges on
18 it. It had ridges like a real person.

19 Q. And did he describe to you or inform you as to why
20 he had purchased that item?

21 A. Yes, he did.

22 Q. What did he say?

23 A. Jimmy told me he purchased it because he felt like
24 if he had something that was large like that that
25 that would keep me from being with someone else,

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1 like far as cheating wise.

2 Q. All right. And did he actually use that toy with
3 you?

4 A. Yes, he did.

5 Q. And what happened as a result?

6 A. After using it numerous times, I began to urinate a
7 lot to where it was like maybe every minute or so.
8 So when I got the chance to go to the Emergency
9 Room, they told me that I had bladder infection as a
10 result of having sex with the toy.

11 Q. All right. And did you inform him of that?

12 A. Yes, I did.

13 Q. Did you continue to allow him to use the toy on you?

14 A. He tried.

15 Q. Now, in talking about that was he --- throughout
16 that time that he would --- had purchased the toy,
17 was he still able to perform sexually with you?

18 A. Yes, he was.

19 Q. Were there any other reasons that he purchased that
20 toy?

21 A. Well, sometimes he would wear it.

22 Q. When you say he would wear it, what do you mean by
23 that?

24 A. He would have it like strapped on him. And I asked
25 him the time he put it on, I asked him, what was the

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1 use to wear it because he was about to go to work,
2 what was the use for him to wear it? And he told me
3 he liked the attention that he got.

4 Q. So he would put his clothes on over the toy?

5 A. Yes.

6 Q. Now, Ms. Little also asked you about the fact that
7 when you were first in the bathroom, **Victim #2** said
8 nothing happened?

9 A. Yes, she did.

10 Q. Who all was in the bathroom at that point?

11 A. It was **Victim #2** and Jimmy. And when I opened the
12 door then I was in there.

13 Q. All right. And later you mentioned in the parking
14 lot your daughter did report to you sexual assault -
15 -- a process of sexual assault that occurred in the
16 bathroom. Was he present when she confided that to
17 you?

18 A. No, she was not.

19 **MS. MAYES:** Nothing further.

20 **THE COURT:** All right. Re-cross?

21 **MS. LITTLE:** No, sir.

22 **THE COURT:** All right. Thank you,
23 ma'am. You may step down.

24 All right. Ms. Mayes you may call your next
25 witness.

DEBBIE ELLIOTT - VOIR DIRECT EXAMINATION

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1 **MS. MAYES:** The State calls Debbie
2 Elliott.

3 **THE COURT:** All right. Come around
4 please.

5 **WHEREUPON, DEBBIE ELLIOTT**

6 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

7 **MS. ELLIOTT:** I do.

8 **VOIR DIRECT EXAMINATION BY MS. MAYES**

9 **Q.** Good morning, could you state your full name for the
10 Court.

11 **A.** I'm Debbie Elliott.

12 **Q.** And where are you employed Ms. Elliott?

13 **A.** I am employed at the CARE House of the Pee Dee in
14 Florence.

15 **Q.** All right. There has been some discussion in this
16 case about the CARE House. Can you tell us
17 specifically what is the CARE House?

18 **A.** We are a non profit, nationally accredited, child
19 advocacy center. Children are referred to us by
20 physicians throughout the Pee Dee. DSS Agencies and
21 law enforcement agencies throughout the Pee Dee,
22 where there have been allegations of sexual abuse,
23 physical abuse, or witnesses to domestic violence.
24 Forensic interviews are conducted, as well as
25 medical assessments, and recommendations are made

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1 for the family.

2 Q. Now you mentioned that you do child abuse
3 assessments. Do you take referrals from law
4 enforcement?

5 A. We do.

6 Q. What about social services?

7 A. We do.

8 Q. What if someone is referred by a local family
9 doctor?

10 A. Yes, we do.

11 Q. When we talk about forensic interviewing, what do we
12 mean by that?

13 A. A forensic interview is a --- it is an interview
14 conducted with an interviewer and a child only, in a
15 small room. A child friendly room. No one else is
16 present at the time. It is conducted ideally in a
17 child advocacy center. Law enforcement, DSS Agents
18 are able to be in an observation room observing the
19 interview, but not in the room with the child and
20 the interviewer. They are videotaped --- recorded.
21 And the interview itself is child friendly. It is
22 geared towards gathering information from a child
23 when there has been an allegation of sexual abuse,
24 and physical abuse in a child friendly way, giving a
25 child tools in order to be able to tell what has

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1 happened, or to demonstrate what has happened.

2 Q. I am going to ask you about your background and
3 training in the field of forensic interviewing.
4 Tell us a little bit about your educational
5 background.

6 A. I have a Bachelor's of Arts degree from Clemson
7 University. I graduated in 1978. Since that time,
8 I have worked in several DSS agencies. Florence
9 County Department of Social Service for ten years in
10 the Child Protective Services Treatment Unit,
11 specifically with child sexual abuse, and severe
12 physical abuse cases, and co-facilitated sex
13 offenders treatment as well for a year and a half
14 after hours.

15 I worked at the Durant Children's
16 Center for two and a half years as a forensic
17 interviewer, and four years at the CARE House
18 of the Pee Dee as a forensic interviewer.

19 I trained at the Assessment Resource
20 Center in Columbia in Finding Words,
21 specifically to learn how to become a forensic
22 interviewer.

23 Q. And you have been doing that approximately how many
24 years?

25 A. Six and a half, close to seven years now.

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1 Q. And is it possible for you to estimate how many
2 forensic interviews you have conducted, over the
3 course of your career, for the purpose of child
4 abuse assessments?

5 A. Between twenty-five hundred and three thousand
6 interviews.

7 Q. Now, in addition to the forensic interviews, have
8 you also attended courses, seminars, training,
9 things of that nature, related to other topics in
10 child abuse such as, delayed reporting,
11 Accommodation Syndrome, recantation?

12 A. I have. I attend seminars yearly since becoming a
13 forensic interviewer, and seminars specifically
14 geared toward learning about delayed disclosure, and
15 Accommodation Syndrome.

16 Q. All right. And in addition to those topics, what
17 about certain behavioral characteristics that may
18 coincide with a history of child sexual abuse, or
19 those topics that you are familiar with?

20 A. I am.

21 Q. And how so?

22 A. In these seminars and training we learn about all
23 kinds of things. The ways that children exhibit ---
24 every child is different, but some children exhibit
25 sexualized behavior at a young age. Sometimes that

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1 is the red flag that brings them into our center;
2 when children are acting out with other children
3 sexually, for example. Or children become sexually
4 active at a younger age. Some kids get into drugs
5 and alcohol some. Every child is different. Some
6 go the total opposite direction, and are just the
7 perfect child and a straight "A" student. Things
8 that kind of behaviorally change with the child, as
9 we kind of call it a red flag.

10 Q. All right. And in addition to these behavioral
11 characteristics being discussed at research and
12 training, can you tell us whether or not you have
13 observed these matters in your clinical experience
14 at the CARE HOUSE and the Durant Children's Center?

15 A. I have.

16 Q. And does that include delayed reporting, and
17 recantation type issues as well.

18 A. It does. Delayed reporting is extremely common in
19 children as well as recantation.

20 MS. MAYES: Your Honor, at this time the
21 State would offer Debbie Elliott as an expert in child
22 abuse assessment.

23 THE COURT: All right. Voir Dire with
24 regard to qualification?

25 MR. SWILLEY: Yes, sir, Your Honor.

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1 Well, I will just object at this time as the witness
2 isn't qualified as an expert, to testify as an expert.
3 As well as the field of expertise not being reliable. I
4 would also care to argue that the Counsel Factors have
5 not been met as far as evidence will not assist the trier
6 of fact. And that the underlying science is not
7 reliable.

8 THE COURT: All right, sir. All right.
9 This was a matter that was addressed in-camera. The
10 Court has already placed on the record the rulings with
11 regards to the objection of the defendant.

12 I do find that the witness is qualified as an
13 expert, and will qualify her as an expert in child abuse
14 assessment, as set forth earlier on the record.

15 Ladies and gentlemen of the Jury, let me tell
16 you what that means. Ordinarily a witness, who is not an
17 expert, can only testify to those things that are
18 rationally based on the perception of a witness, and are
19 helpful to a clear understanding of the witness'
20 testimony, and do not require special knowledge, skill,
21 experience and training. However, if scientific,
22 technical, or other specialized knowledge, will assist
23 the trier of fact to understand the evidence, or to
24 determine a fact in issue, a witness qualified as an
25 expert by knowledge, skill, experience or training may

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1 testify in the form of an opinion or otherwise. So,
2 basically, the difference between an expert witness and a
3 non expert witness is that an expert witness is allowed
4 to give an opinion. And I have qualified Ms. Elliott as
5 a expert in the field of child abuse assessment.

6 All right. Ms. Mayes, you may proceed.

7 MS. MAYES: Yes, sir, Your Honor.

8 DIRECT EXAMINATION BY MS. MAYES

9 Q. And, Ms. Elliott, have you testified previously on
10 these specific topics as an expert in the courts of
11 South Carolina?

12 A. I have.

13 Q. And does that include criminal court or general
14 sessions court that we are in today?

15 A. It does.

16 Q. Now you mentioned a forensic interview at the CARE
17 House. Let me ask you about the parents. What are
18 the rules about a parent being present, or
19 participating in the forensic interview?

20 A. The parent never participates in the forensic
21 interview. The parent --- the supporter, non-
22 offending parent is allowed to come with the child.
23 We encourage that in order to obtain information
24 about the child in the intake portion. But the
25 parent is never in the interview room.

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1 Q. And why is that?

2 A. Well, we want an unbiased, we want a clean
3 interview. We don't want the child led in anyway,
4 or any kind of suggestion made to the child, either
5 verbally or non verbally. So it is just the child
6 and the interviewer. The interviewer doesn't know
7 the child, and the child doesn't know the
8 interviewer. And you are trying to get information,
9 or gather the information as to whether something
10 happened or not.

11 Q. And what, if anything, is done during the interview
12 to assess the child's level of competency?

13 A. In the interview, the initial part of the interview
14 is kind of a rapport studying part where you are
15 just talking to the child, helping the child to feel
16 comfortable in the room, explaining the room, the
17 camera, what is going to happen in the room. That a
18 lot of questions are going to be asked. That you
19 are going to be talking about family, school,
20 friends, pets, just general information about the
21 child, to get the child as comfortable as possible.
22 And while I am doing that, I am sort of checking off
23 things that --- information that I have received
24 prior to the interview intake portion that I just
25 talked with the non-offending parent, about grades, ..

DEBBIE ELLIOTT - DIRECT EXAMINATION

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- 1 behavior, who is in the home, who is not, family,
2 friends, just all of that information. Kind of
3 checking it off. Seeing if the child is really
4 telling me the truth. And stressing to the child
5 that they tell me the truth about everything. How
6 important that is. And setting up the rules of the
7 room. And at times we do a truth lie competency ---
8 moral competency exercise with the child if they are
9 younger to assess if they understand the difference
10 between truth and lie, and consequences of lying.
11 And if they are older, just a verbal explanation.
- 12 Q. Who might be allowed to observe a forensic
13 interview?
- 14 A. The investigator with law enforcement, or the DSS
15 social worker, whoever is working that case.
- 16 Q. I want you to briefly go over what, if any, protocol
17 is used during the course of the forensic interview.
- 18 A. We use a national protocol. It is called RATAC,
19 that is just an acronym. The "R" stands for
20 rapport, and that is what I just talked about. The
21 rapport setting stage where you are just talking to
22 the child. Helping the child feel comfortable in
23 the room, explaining the room, that a lot of
24 questions are going to be asked, that it is very
25 important that the child tell me the truth about

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 everything. If they don't understand a question to
2 let me know that. If they don't know an answer to a
3 question, don't make up anything. Just tell me you
4 don't know, and that's okay not to know something.
5 Just the rapport.

6 The next part, and it is a cookie
7 cutter. It doesn't always go exactly in this
8 form in sequence.

9 The next part is anatomy,
10 identification. That is the "A" in RATAC.
11 With younger children and pre-adolescence,
12 especially --- well, the teenagers too, we do
13 an anatomical drawing of the child, specific to
14 that child's gender and race. So, if it is an
15 African-American little girl I am interviewing,
16 I would use a female African-American drawing.
17 If it is a Caucasian male, I use a Caucasian
18 one. And I am just gather --- getting that
19 child to label for me, or to tell me what parts
20 of the body are called. And I don't make a big
21 deal about any private part. I ask them about
22 eyes, noses, feet, hands, knees, and then get
23 them to tell me what they call private parts
24 without making a big deal about it. Then use
25 that terminology, whatever they call the

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 private parts, that is what I call the private
2 parts, whatever it is. And then feeling and
3 touch inquiry especially with younger feeling.
4 Asking about touches. What kind of touches do
5 you get. What is okay to get, like hugs,
6 kisses, tickles. What's not okay to get, and
7 who gives those kinds of touches, whether they
8 are good, or not okay. And then sometimes that
9 leads straight into the abuse scenario with the
10 child. Sometimes when you are talking about
11 touches, they go right into, oh, well, Uncle
12 Bubba does this, or touches me on my weewe. So,
13 sometimes it goes straight into it.

14 But that is the next "A", is abuse
15 scenario. And in that part, once a child
16 discloses an incident, you try to --- as a
17 forensic interviewer, you try to gather as much
18 information about that incident as possible.
19 The who, what, where, when, what was said, what
20 was done, as much detail as possible about the
21 facts. And also if there are multiple
22 incidents, then you try to get as much
23 information about other incidents, or multiple
24 perpetrators in many cases. It is not just one
25 perpetrator, if there are more.

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 And then at the very end we are
2 closing with the child. That is the last ---
3 the "C" in RATAC. And that is just thanking
4 the child for coming in and talking to me.
5 Acknowledging that it is tough sometimes to
6 talk about that stuff. And closing in a
7 respectful way with that child so that you are
8 not just leaving that child feeling raw. That
9 they have just exposed all of this stuff to
10 you, and you are ending it, because you got
11 what you needed. That is not the way we do
12 things. We thank them. Try to educate them if
13 this ever happens again, and hopefully it
14 won't, but try to educate the child on what to
15 do, who to tell. If somebody doesn't listen,
16 go to someone else until somebody listens and
17 does something. So that is RATAC in a
18 nutshell.

19 Q. All right. And when you talk about this questioning
20 or interviewing format called RATAC, can you tell us
21 whether or not it is recognized among child abuse
22 professionals?

23 A. It is.

24 Q. And how so?

25 A. It is a national protocol.

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIO
COUNTY OF DARLINGTON	)	
THE STATE OF SOUTH CAROLINA	)	
PLAINTIFF,	)	July 19, 2010
VERSUS	)	
JIMMY GALLISHAW, JR.	)	2009-GS-16-01235
DEFENDANT.	)	

BEFORE

THE HONORABLE HOWARD P. KING

APPEARANCES

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Sherrie Baugh, Esquire
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Pamela Ozment-Cartee
Circuit Court Reporter

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DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 Q. Now when you interview children at the CARE House,
2 do you always expect to get a disclosure concerning
3 sexual abuse?

4 A. I don't.

5 Q. And why or why not?

6 A. It is very very difficult for children to disclose
7 sexual abuse. Probably one of the hardest things
8 that they would ever have to do. It is very common
9 for children not to disclose, not to tell. Just
10 because of the nature of it. It is hard enough for
11 adults to talk about sex sometimes. But when you
12 are thinking about a child, a small child who is
13 dependent on adults, who is taught to respect
14 authority, taught to obey, and taught to be
15 affectionate towards people who supposedly love
16 them. To have to disclose some of the most horrific
17 things that they will ever live through, because of
18 the nature, it is secret. Children are told by
19 perpetrators not to tell. They are manipulated by
20 perpetrators. They are threatened at times. All
21 kinds of things can happen. That is what
22 perpetrators tell children. A lot of times those
23 things will happen, they will say things like, if
24 you tell, how are y'all going to survive, who is
25 going to pay the bills, nobody is going to believe

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 you, I am the adult, nobody is going to believe you,
2 you are just a kid, nobody is going to believe you.
3 Your mom is not going to believe you, you are going
4 to get in trouble, she is going to be mad at you.
5 So, all kinds of manipulative things, and coercive
6 things.

7 Q. And, when we talk about reports of sexual abuse that
8 may be made by a child --- when a child might
9 disclose sexual abuse at the CARE House, do you
10 always expect for it to be an immediate report that
11 is following an incident that has just occurred?

12 A. No, we usually don't. That is what delayed
13 reporting means. Many times it is months, years,
14 sometimes many years before children will report,
15 just like it is with adults. When the adults --- I
16 always like to give this example. When the adults
17 come into our center, the non-offending parent comes
18 in to give us the information about the child, we
19 always ask about their background. Ask a lot of
20 different questions. But one of the questions is,
21 whether if they have ever suffered as a child, with
22 child sexual abuse. And I just can't tell you the
23 number of times the mothers say to me, or the
24 fathers say to me, yeah, you know, it happened to
25 me, uncle so-and-so, or granddaddy did it to me, and

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 it was twenty years before. And they had never told
2 anybody. So, to expect a child to go and tell
3 immediately when it is a loved one, somebody that
4 they trust, obey, respect, it is really not even
5 reasonable to think that a child would do that. It
6 is much more reasonable to think that if some crazy
7 man were out in the bush outside, and a child walked
8 by, and the man attacked the child, the child would
9 tell about that, because they didn't know that
10 person. But if you think about it in a child's
11 point of view, that it is somebody that they love
12 usually, somebody who has access to them. So it is
13 somebody that the mother trust usually, or the dad
14 trust. So it is difficult to tell.

15 Q. And based on your own clinical experience at the
16 Durant Children's Center and the CARE House, can you
17 tell us whether delayed reporting is common or
18 uncommon when the alleged perpetrator is a family
19 member such as an authority figure, or a parent, or
20 a guardian?

21 A. It is common.

22 Q. Now, in addition to delayed reporting, what about
23 the term recantation? What is meant by the term
24 recantation among child abuse professionals?

25 A. Recantation is just what it sounds like. Where a

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 child may make a disclosure, or somebody may find
2 that something has happened, or somebody tells that
3 something has happened to the child sexually. The
4 child is questioned, and maybe all of those things
5 will happen that the perpetrator tells the child,
6 like nobody is going to believe you, you know, I'll
7 go to jail, your dog is going to die. They tell all
8 kinds of things so the kid takes it back, they kind
9 of recant. They take some of it back or all of it
10 back, and say oh, no, this didn't happen. And if
11 you really think about it in the way that a child
12 thinks, it makes sense, because they really don't
13 want that person to go to jail normally. They want
14 the behavior to stop. They usually love that
15 person. They don't want them to go to jail. But
16 they want the behavior to stop. They take it back
17 because they want their life back. They want some
18 normalcy again, whatever that may be. But they take
19 it back because of the things that happen. Kind of
20 a fall out of what happens, or, there is pressure.
21 There could be pressure or non-disbelief from the
22 non-offending parent. Maybe the non-offending
23 parent didn't protect the child. Maybe there
24 continued to be contact with the alleged
25 perpetrator. For many reasons children recant.

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 Q. I want to ask a little bit more about that. The
2 role of the non-offending parent. For example, if
3 the alleged perpetrator is the male, a boyfriend, a
4 father, stepfather, and the non-offending parent is
5 the mother, how important, if at all, is the support
6 by the non-offending parent, in order for a child to
7 maintain a disclosure of sexual abuse?

8 A. It is extremely important.

9 Q. And why is that?

10 A. Well, you have got to have that support of the
11 parent, otherwise you have a mom or a dad who
12 doesn't believe you, and then where are you. You
13 are a child who is depending on them. So all of
14 that pressure --- there is all that pressure to take
15 it back, or recant, so that the family can kind of
16 stay the same. It is huge pressure on a child to
17 have to stick to a story. Well, to stick to the
18 facts of what happened, if the parent that didn't
19 abuse the child is not believing the child.

20 Q. Now, you mentioned behavior characteristics. Let me
21 ask you this. What, based on your clinical
22 experience, and also your training, what, if any,
23 behavioral characteristics may follow sexual abuse
24 when it is occurring in the home by a parent, or a
25 guardian?

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 A. What sort of sexual behaviors?

2 Q. Any type of behavioral.

3 A. Children can begin --- we see this a lot at the CARE
4 House, because we ask a lot of questions prior to
5 the interview to the non-offending parent about
6 behaviors. It is a whole page of them, as a matter
7 of fact. And they are kind of red flags when they
8 are checked off. Things like sexualized behavior,
9 children that are too young --- way too young to be
10 thinking about being sexually active, or starting to
11 act out sexually with other kids in their family, or
12 kids outside of the family that gets reported. Bed
13 wetting for younger kids especially. Nightmares,
14 bad dreams, problems with bowel movements with the
15 boys especially. Behavioral problems in school,
16 suspensions. Just lots and lots of different kinds
17 of problems. But a lot of sexualized behaviors
18 usually, because it is things that children have
19 been exposed to themselves that they should have
20 never been exposed to, and they don't know how to
21 cope, or how to tell it, or how to vent like adults
22 may know how to cope with things that happen to
23 them. These are children, and they don't know how
24 to express it. So, usually behaviors are acted out.
25 Q. All right. And can you give an example of what, if

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 any, type of sexual acting out might be a red flag,
2 or a cause of concern where sexual abuse is
3 concerned?

4 A. Where children are --- Siblings are having sexual
5 intercourse with each other, or sexually acting out.
6 Females sexually acting out with each others within
7 the family.

8 Q. Now, did you have, the opportunity to conduct a
9 forensic interview, in this particular case, with
10 the young lady by the name of [Victim #2] [REDACTED] ?

11 A. I did.

12 Q. And do you have with you your records from
13 [Victim #2]'s visit to the CARE House?

14 A. I do.

15 Q. And at the time of [Victim #2]'s forensic interview at
16 the CARE House, how old was [Victim #2] on that date?

17 A. She was ten years old.

18 Q. So she was age ten and she participated in a
19 forensic interview?

20 A. She did.

21 Q. And did she make a disclosure, if at all, concerning
22 sexual abuse?

23 A. She did.

24 Q. And based upon her disclosure of sexual abuse, what,
25 if anything, is done as a result? Who do you make

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 aware of that?

2 A. I contacted the Darlington County Sheriff's
3 Department initially, Investigator Ray, and then
4 contacted the Darlington County Department of Social
5 Service.

6 Q. All right. And can you just adjust the microphone
7 just a little bit and sit in this direction. And
8 did you have the opportunity to conduct an interview
9 with [Victim #1] [REDACTED]?

10 A. I did.

11 Q. And how old was [Victim #1] on the date of her interview?

12 A. [Victim #1] [REDACTED] was eleven.

13 Q. And which young lady did you interview first?

14 A. [Victim #1] .

15 Q. All right. Which young lady was interviewed first
16 in relation to Jimmy Gallishaw?

17 A. [Victim #1] was interviewed on February 10, 2009.

18 [Victim #2] was interviewed on February 4, 2009 by me.

19 Q. All right. And so [Victim #2] comes in on February 4th?

20 A. That's correct.

21 Q. 2009, for her forensic interview. And during the
22 course of that interview you indicated that she made
23 a disclosure of sexual abuse?

24 A. Yes, ma'am.

25 Q. What, if anything, is done during the course of your

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 interview to inquire about other children who might
2 be in the home, and could possibly be exposed to the
3 threat of home?

4 A. We try to ask the children if they know of any other
5 child that the alleged perpetrator may have done to
6 any other child. Whether they have seen it with
7 their own eyes. So that's --- we ask that question
8 normally.

9 Q. Did you ask that question to [Victim #2] [REDACTED]?

10 A. I did.

11 Q. And did she relay to you whether or not she had
12 knowledge of any other child being abuse by the same
13 perpetrator?

14 A. She did.

15 Q. And what --- what name did she give you concerning
16 another child being abused by the same perpetrator?

17 A. She named [Victim #1] [REDACTED].

18 Q. All right. And as a result of [Victim #2] telling you
19 about [Victim #1] [REDACTED], what, if anything, was done as a
20 result at the CARE House?

21 A. It was recommended that [Victim #1] [REDACTED] come in and
22 also be forensically interviewed and medically
23 assessed.

24 Q. Okay. So, if I understand correctly, [Victim #2] named
25 her disclosure on February 4th. Did she indicate to

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 you who the perpetrator was?

2 A. She did.

3 Q. And how did she identify the perpetrator?

4 A. As Jimmy Gallishaw.

5 Q. Okay. And at that time she indicated that **Victim #1**
6 had also been involved, and you brought her in on
7 what date, for her first interview that she received
8 at the CARE House?

9 A. Her first interview was with Ms. Danna Collins,
10 another forensic interviewer here at the CARE House,
11 on February 10, 2009.

12 Q. Have you had a chance to review **Victim #1**'s file, as it
13 refers to Ms. Collin's interview, as well as your
14 own?

15 A. Yes, ma'am.

16 Q. So that first interview was done on February 10,
17 2009?

18 A. Yes, ma'am.

19 Q. Approximately six days after **Victim #2**. And what are
20 the components at the CARE House, do they only get a
21 forensic interview, or does something else go on?

22 A. No, it is two-fold. We --- it is two-fold. We do
23 the forensic interviews normally first, and then the
24 medical assessment follow immediately after.

25 Q. All right. And you said there is a medical

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 assessment. Is that done --- is that an actual
2 medical examination where they are looking at the
3 anatomical parts?

4 A. Yes, it is.

5 Q. And that is also done on site at the CARE House?

6 A. That's correct.

7 Q. And did **Victim #1** receive that type of examination?

8 A. She did, by Doctor Saunders.

9 Q. All right. So on February 10, 2009, during the
10 course of the forensic interview, did she report at
11 that time any sexual assault by Mr. Gallishaw?

12 A. She did not.

13 Q. Following the forensic interview, what was the next
14 step?

15 A. She received a medical assessment by Doctor
16 Saunders.

17 Q. All right. And having reviewed this information,
18 and being familiar with **Victim #1**'s case, can you tell
19 us whether or not a disclosure was made to Doctor
20 Saunders, during the course of the medical
21 examination?

22 A. A disclosure was made to Doctor Saunders.

23 Q. And as a result of that disclosure to Doctor
24 Saunders, on February 10th, what, if anything, was
25 recommended concerning followup?

DEBBIE ELLIOTT - DIRECT EXAMINATION

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- 1 A. Um, by Danna Collins, well that Investigator Watson
2 then contacted us and wanted to have another a
3 follow forensic interview conducted.
- 4 Q. All right. And what was the date of the followup
5 forensic interview?
- 6 A. That was on the 19th, I believe. I'm sorry, February
7 16, 2009.
- 8 Q. All right. So on February 16, 2009, she was brought
9 back in for another interview?
- 10 A. That's correct.
- 11 Q. Now when she made a disclosure, as you mentioned to
12 Doctor Saunders on February 10th, did she identify
13 anything in relation to --- was there any disclosure
14 connected to Mr. Gallishaw?
- 15 A. Yes.
- 16 Q. And during the course of your next interview on
17 February 16, 2009, was there any type of disclosure
18 in connection with Mr. Gallishaw?
- 19 A. Yes.
- 20 Q. Were the interviewing techniques, that you mentioned
21 RATAAC followed, followed during the course of each
22 interview, that you had knowledge of, or that you
23 observed?
- 24 A. Yes, they were.

25 MS. MAYES: Your Honor, at this time I

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 believe we are prepared to offer the exhibits previously
2 mentioned. They have not been pre-marked.

3 THE COURT: All right. Come up just a
4 minute counsel.

5 (Whereupon, a bench conference was held in
6 the presence of the Jury, but out of the hearing of the
7 Jury.)

8 THE COURT: Ladies and gentlemen, after
9 a discussion with counsel, I understand that the matters
10 we are going to go into now will take about forty-five
11 minutes to show the interview tape. That will run us
12 into the lunch hour. So, I think the better thing for us
13 to do is break for lunch now, and we will start back
14 early. So, what I am going to do --- Would an hour give
15 everyone time enough to get lunch. So what I would like
16 to do is, it is 12:30 now, start back at 1:30, and if
17 that suits everyone on the Jury that is what we will do.
18 Any objection to that?

19 That being the case, we will break for lunch at
20 this time, and start back at 1:30. Please be prompt, and
21 we will try to start back right at that time.

22 If you will go get your lunch and be back in
23 the jury room please at 1:30. Jury only, please.

24 (Whereupon, the Jury exits the courtroom
25 at 12:31 p.m.)

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 **THE COURT:** All right. Counsel, the
2 State is offering the video. Let's go ahead and get the
3 authentications of those taken care of. Ms. Mayes, do
4 you want to introduce them as State's Numbers whatever
5 the three numbers are, the next three numbers?

6 **MS. MAYES:** Yes, sir.

7 **THE COURT:** What you are offering is the
8 video themselves?

9 **MS. MAYES:** Yes, sir, in DVD format.

10 **THE COURT:** All right. And in what
11 order.

12 The first will be the videotape of **Victim #2**
13 dated 2/4/09?

14 **MS. MAYES:** Yes, sir, Your Honor. Then
15 following that will be the two separate interviews with
16 **Victim #1** **██████** dated 2/10 and 2/16.

17 **THE COURT:** What is the Defense's
18 position?

19 **MS. LITTLE:** We are going to object to
20 the introduction. The 2/16/09 interview with **Victim #1**.
21 And the 2/4/09 interview with **Victim #2** under 403. That
22 the probative value --- I'm sorry that the prejudicial
23 value greatly outweighs the probative value, specifically
24 the cumulative nature. Your Honor, the children have
25 already testified. Ms. Mayes had the opportunity to ask

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1 the same questions that they asked at the CARE House.

2 **THE COURT:** All right. So, you are not
3 objecting under the Statute as being hearsay. That is
4 not your objection?

5 **MS. LITTLE:** No, just the 403 objection.

6 **THE COURT:** I will overrule that
7 objection. And in my view, they are relevant under 401.
8 And the weighing analysis, which I have done after having
9 viewed the videos, as well as having applied Section 17-
10 23-175, I believe that the videos are admissible, and the
11 prejudicial effect --- the probative value is not
12 substantially outweighed by the prejudicial effect.

13 And the videos will be admitted over the
14 objections of the Defendant. Okay?

15 **MS. LITTLE:** Yes, Your Honor.

16 **THE COURT:** All right. Is there
17 anything else before we recess for lunch? Mark them.

18 **MADAME COURT REPORTER:** They will be 10
19 and 11.

20 **THE COURT:** Ten and eleven will be
21 admitted into evidence. 10, 11, and 12.

22 Thank you, Ms. Elliott. You may step down..

23 **MS. ELLIOTT:** Thank you.

24 **THE COURT:** Anything else before we
25 break for lunch?

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1 **MS. MAYES:** Yes, sir, Your Honor. You,
2 indicated that we may need to take up any issues
3 concerning the letters.

4 The State's position is the letters are
5 relevant on all grounds. The only objection is a
6 reference to the Detention Center. I believe that can be
7 redacted, as long as the Defendant does not contest at
8 any point that he did not write the letters, because
9 there are witnesses we would move to authenticate.

10 **MR. SWILLEY:** He is not contesting he
11 wrote the letters, Your Honor.

12 **THE COURT:** So you are not contesting
13 authenticity?

14 **MR. SWILLEY:** Correct. We just want to
15 take out any mention --

16 **THE COURT:** If you are not contesting
17 authenticity, do you have any witnesses you are going to
18 put to prove that he wrote the letters?

19 That will not be necessary. However, before
20 admission into evidence, publication to the Jury, I want
21 you to go over them, and specifically redact the parts
22 that need to be redacted.

23 All right. Let's see if we can get a quick
24 sandwich, and be back here at 1:30. And we will start
25 with the videos at that time. Thank you.

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WHEREUPON, STATE'S

EXHIBIT NUMBERS 10, 11 AND
12 WERE MARKED AND ADMITTED
INTO EVIDENCE WITHOUT
OBJECTION.

(Whereupon, a lunch recess was taken from
12:35 p.m. until 1:35 p.m..)

THE COURT: Thank you. We are back on
the record with the State versus Jimmy Gallishaw. Mr.
Gallishaw is present with counsel. The State is present
and represented by Ms. Mayes, who is also present.

Ms. Elliott, if you will come back around,
please. All right. I believe, Ms. Mayes, that at this
time the State proposes to play the forensic interviews
that Ms. Elliott conducted. And is the equipment and
everything set up and ready to go with that?

MS. MAYES: It is, Your Honor. We have
someone that is going to help us with the equipment.

THE COURT: All right. Anything before
we bring the Jury in?

MS. LITTLE: No, Your Honor.

THE COURT: Ms. Mayes?

MS. MAYES: Beg the Court's indulgence.

(PAUSE.)

MS. MAYES: We will go ahead and get

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1 that set up.

2 THE COURT: Go ahead and do that so you
3 will be ready to go, yes.

4 (PAUSE.)

5 MS. LITTLE: Your Honor, do you want us
6 to wait until later --- I have written down --

7 THE COURT: Yes, we will do that, maybe
8 after the Jury leaves.

9 (PAUSE.)

10 THE COURT: Ready to go? All right.
11 All right. Ms. Mayes, I have been advised by your
12 investigator that he has the video set up and ready to
13 play. Anything before we bring the Jury in?

14 MS. MAYES: Nothing from the State, Your
15 Honor.

16 THE COURT: Anything, Ms. Little, before
17 we bring the Jury in?

18 MS. LITTLE: No, Your Honor.

19 THE COURT: All right. Bring the Jury
20 in, please.

21 (Whereupon, the jury enters the courtroom
22 at 1:38 p.m..)

23 THE COURT: All right. Thank you,
24 ladies and gentlemen, in your promptness in being back
25 here. And we are now ready to go forward. You heard the

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1 State announce before we recessed for lunch that they
2 wish to play the video of videos of the forensic
3 interviews by Ms. Elliott. I have admitted those
4 interviews into evidence, and they will be allowed to
5 publish them to you at this time.

6 All right. Ms. Mayes, anything other than just
7 turning on the equipment and running it?

8 **MS. MAYES:** Not at this time, Your
9 Honor.

10 **THE COURT:** All right. Tell the Jury
11 which is the first interview, and what they will be
12 seeing.

13 **MS. MAYES:** Yes, sir, Your Honor.

14 Q. Ms. Elliott, you indicated that an interview was
15 done with **Victim #2** **[REDACTED]**?

16 A. That's correct.

17 Q. And that was on February 4, 2009?

18 A. That's correct.

19 **MS. MAYES:** And, Your Honor, outside the
20 presence of the Jury this particular exhibit has been
21 marked as evidence.

22 **THE COURT:** All right. It was admitted
23 into evidence, and it will be published to the Jury at
24 this time. You may proceed.

25 (Whereupon, State's Exhibit Number 10 was

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1 published to the jury.)

2 MS. MAYES: May it please, the Court?

3 THE COURT: All right. Ms. Mayes, how
4 would you like to proceed?

5 MS. MAYES: Yes, sir, Your Honor. Just
6 a few more questions before the next exhibit is offered.

7 THE COURT: All right. Turn the lights
8 on, please. Thank you. Go ahead.

9 Q. Now, Ms. Elliott, during the course of that
10 interview with [Victim #2], was a disclosure
11 made concerning sexual abuse prior to the bathroom
12 incident?

13 A. There was.

14 Q. And what disclosure was made concerning time, place,
15 or the nature of any prior events?

16 A. The times she wasn't exactly sure about. It started
17 around the first or second grade with Jimmy --

18 MS. MAYES: If you could speak into the
19 microphone.

20 THE COURT: Go ahead.

21 A. I think it started in around the first or second
22 grade is when it first started. The last incident,
23 of penetration was around November or December of
24 '08. And then the last attempt --

25 Q. Please, if you could go back now and cover what you

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1 were saying, I was not able to hear you.

2 A. I'm sorry. The child stated that she couldn't
3 remember exactly when it started, but that it had
4 been a long time. And it started around the first
5 or second grade. She was in the fifth grade when I
6 interviewed her and ten years old. So, it went back
7 for a while. But it had happened at her grandma --
8 Grandma Ollie's house in Lydia, and that it happened
9 in the bedroom. In the marital bedroom, where all
10 the children slept with mom and step-dad. And that
11 penetration had occurred eight or ten times, vaginal
12 penal penetration. Also oral sex had occurred.

13 MR. SWILLEY: Objection.

14 THE COURT: What is your objection.

15 MR. SWILLEY: That is a little more than
16 time or place, Your Honor.

17 THE COURT: Sir?

18 MR. SWILLEY: That is not time or place,
19 Your Honor.

20 THE COURT: All right. Isn't she
21 reciting what she had been told on the video?

22 MR. SWILLEY: Yes, sir. That would not
23 be hearsay. It doesn't fall within 801(d)(1).

24 THE COURT: Come up counsel, I'm not
25 sure I understand what you are getting at.

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1 (Whereupon, a bench conference was held in
2 the presence of the Jury, but out of the hearing of the
3 Jury.)

4 THE COURT: The objection as stated is
5 overruled, but go ahead. Let's move on. Let's not
6 repeat the whole video, but go ahead you can ask her some
7 questions.

8 Q. So it is your understanding that the incidents were
9 ongoing?

10 A. That's correct.

11 Q. And recognizing that --- I am going to ask you. Why,
12 in your expert opinion, may some children cooperate
13 with an abuser?

14 A. Some children cooperate because of intimidation by
15 the perpetrator, threats. They are having to
16 accommodate what is going on in their lives. They
17 feel like somebody already knew and nothing was done
18 about it, so this is just kind of the way it is.

19 Q. And specific to Victim #2 s case, what, if any ---
20 what, if any, examples can you give us about why she
21 may have accommodated or cooperated with an abuser?

22 A. I think that she cooperated and accommodation with
23 him, like she stated in the interview that she knew
24 if she asked her mom or grandma for money they
25 didn't have any, and if she needed money for certain

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1 things she would ask him. And in order to get money
2 she had to accommodate by letting him do it.

3 Q. All right. And what about what was mentioned about
4 fears or concerns that he may say something to
5 friends about her?

6 A. She was fearful that he would tell a friend of hers
7 something bad about her. Like she peed in the bed.

8 Q. And to a ten year old, can you tell us whether
9 cooperation with an abuser, under the circumstances,
10 are consistent or inconsistent with a history of
11 sexual abuse?

12 A. It is consistent.

13 Q. And in this case, where you interviewed [Victim #2] on
14 February 4, 2009, where she reported a ongoing
15 history of sexual abuse, can you tell us whether
16 that is common or uncommon when the perpetrator is a
17 stepfather?

18 A. It is common.

19 Q. And in this particular case, in a situation where
20 [Victim #2] may have made a report to her mother, and
21 then took back or recanted that report, what, if
22 anything, is significant about the family dynamics
23 in this case concerning that?

24 A. In this case the family dynamics --- this mother was
25 extremely passive, kind of subservient to him.

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1 Passive, did not have power, was not empowered in
2 this family at all. And this child just had to
3 accommodate knowing that her mother probably was
4 powerless to do anything about it.

5 Q. During the course of the interview, it was noted
6 that the mother had allowed contact with the alleged
7 perpetrator after the bathroom incident up until the
8 child got to the CARE House. What, if anything, do
9 you do in that regard concerning recommendation, or
10 notification to law enforcement?

11 A. I immediately called law enforcement and DSS in
12 order for them to get the information that we had
13 gathered that day, and to render a plan for this
14 child or children to be in a safe environment.

15 Q. When there is indecision or passivity, as you
16 mentioned by the non-offending parent, such as her
17 mother, can you tell us whether a recantation of
18 taking back the allegation is common or uncommon by
19 a child in that situation?

20 A. It is very common.

21 Q. Now, after [Victim #2] s interview, you indicated that
22 there was a disclosure also about her stepsister
23 [Victim #1] ?

24 A. Yes, ma'am.

25 Q. And that [Victim #1] was brought in for interview. Her

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1 first interview was with which forensic interview?

2 A. [Victim #1]'s first interview was with Danna Collins.

3 Q. All right. And Ms. Collins is employed where?

4 A. At the CARE House.

5 Q. So she is a co-worker of yours?

6 A. That's correct.

7 Q. And was her interview with [Victim #1] also done using
8 the RATAAC question format that you previously
9 mentioned, that protocol?

10 A. Yes, it is.

11 Q. And on that particular occasion, did [Victim #1] make a
12 disclosure of abuse?

13 A. [Victim #1] did not make a disclosure.

14 Q. During the forensic interview?

15 A. During the forensic interview.

16 Q. All right. And then she was re-interviewed on
17 February 16th by who?

18 A. By me.

19 Q. All right. And during that interview did she make a
20 disclosure of abuse concerning Jimmy Gallishaw?

21 A. She did make a disclosure.

22 MS. MAYES: All right. And Your Honor,
23 I believe these are Exhibits 10 and 11.

24 THE COURT: Yes.

25 MS. MAYES: That would be offered to be

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1 published to the Jury at this time, beginning with the
2 February 10th interview with Danna Collins.

3 **THE COURT:** All right. The Court has
4 already made the determination concerning the
5 admissibility of these two videos. Based on the rulings
6 previously put on the record in Section 17-23-175, they
7 have been admitted into evidence, and can be published to
8 the Jury at this time.

9 **MS. LITTLE:** Your Honor, before we
10 publish that, may we approach, please?

11 **THE COURT:** Yes.

12 (Whereupon, a bench conference was held in
13 the presence of the Jury, but out of the hearing of the
14 Jury.)

15 **THE COURT:** All right. Go ahead.

16 **MS. MAYES:** This is Exhibit 10, Your
17 Honor.

18 **THE COURT:** All right. Exhibit 10.

19 **MS. MAYES:** I'm sorry, Exhibit 11, Your
20 Honor.

21 **THE COURT:** What is the date on this
22 one, is this the 2/10?

23 **MS. MAYES:** Yes, sir, Your Honor.

24 **THE COURT:** All right. 2/10/09
25 interview with **Victim #1** [REDACTED]. All right. Ms. Mayes.

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1 **MS. MAYES:** Yes, sir, Your Honor. Next
2 is State's Exhibit 12.

3 **THE COURT:** All right. You don't have
4 any questions, since she was not the interviewer in this
5 case?

6 **MS. MAYES:** No, sir, Your Honor.

7 **THE COURT:** Well, I know from having
8 previously reviewed the video, and also from making the
9 rulings that I have made, that the next video is rather
10 extensive, and will run past our normal break, and we
11 have also been in the courtroom now for about an hour and
12 twenty, or actually an hour and thirty to thirty-five, or
13 forty minutes. I think before we go into that, let's
14 take a brief recess. Ten minutes.

15 If you will ladies and gentlemen of the Jury,
16 if you will go to your jury room. Do not discuss the
17 case among yourselves. It is still premature. We are
18 going to take about a ten minute recess, and be ready to
19 start back in about ten minutes.

20 Thank you, very much.

21 (Whereupon, the Jury exits the courtroom
22 at 3:17 p.m..)

23 **THE COURT:** Thank you, Ms. Elliott. You
24 may step down.

25 All right. Counsel, we will take about a ten

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1 minute recess. Get the next video set up and have it
2 ready to show as soon as the jury comes back in.

3 **MS. MAYES:** Yes, sir, Your Honor.

4 (Whereupon, a recess was taken from 3:17
5 p.m. until 3:28 p.m..)

6 **THE COURT:** All right. We are back on
7 the record with the State versus Jimmy Gallishaw. Before
8 we get back and bring the Jury back, I want to bring to
9 counsel's attention that the Clerk advised me that one of
10 the Jurors notified him that she wanted to talk with him.
11 He got certain information from her. Mr. Suggs, would
12 you tell me and the lawyers for the record what --- who
13 the Juror is, and what the message was.

14 **CLERK OF COURT:** Yes, sir. It is Ms.
15 Blakney, Juror number 18. She indicated that during that
16 testimony a name was brought up and that she realized
17 that **Victim #1**'s stepfather is Jeffrey White; is that
18 correct?

19 **MS. MAYES:** I honestly do not know.
20 Hold on just a second.

21 **CLERK OF COURT:** And that he goes to her
22 church, and his wife Robin White just recently joined the
23 Eastern Star Society that she is in. She said that it
24 would not affect her opinion in any way, but that she did
25 want us to know that during that testimony it did make

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1 her recognize that that was someone that she knew.

2 MS. MAYES: Well, Your Honor, Robin
3 White is a witness in this case, and has already
4 testified. So, you know, we were unaware that there was
5 an association with the Juror.

6 THE COURT: I understand. And I don't
7 think it would have been revealed by any of the
8 questioning or anything of that nature.

9 What is your position, Ms. Little?

10 MS. LITTLE: Your Honor, we would ask
11 that that Juror be excused, based on the fact that she
12 does have a personal relationship; is in a church
13 association with, at least, one of the witnesses. The
14 witnesses names were read out before court, and she never
15 mentioned that she knew this witness.

16 THE COURT: Well, the witness name that
17 was read out was not who the association was. I thought
18 that it was through a spouse; isn't that right, Mr.
19 Suggs? That is what I understood.

20 MS. MAYES: It is this witness, Your
21 Honor, who is actually the mother of one of the victims
22 who just testified.

23 We have her as Robin Atkins. And she has
24 indicated that it is Robin White. That was our mistake.
25 We listed her name as we had it I believe at the time.

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1 We actually listed the name that she was registered under
2 and I did not list her as Robin White.

3 **THE COURT:** All right. What is your
4 position on the Defense's that she be excused and
5 replaced with the alternate?

6 **MS. MAYES:** Your Honor, I cannot object
7 to that under these circumstances. As I stated, I did
8 not list her as Robin White. We had the name Robin
9 Atkins.

10 **THE COURT:** All right.

11 **MS. MAYES:** And that does cause concern.

12 **THE COURT:** All right. That being the
13 case, the Defense having moved to excuse this Juror,
14 based on that conflict, and the matter that was brought
15 to the attention, and without objection from the State,
16 the Court is going to replace Juror Number 18, Ms.
17 Blakney. And under the Statute the proper procedure for
18 sitting an alternate is to draw the alternates by lot,
19 not in the order in which they were drawn.

20 So, Mr. Suggs, I would ask that you put the two
21 alternate's names in a box or something and mix them up,
22 and draw one of the alternates name.

23 Any objection to that procedure, Ms. Mayes ?

24 **MS. MAYES:** No objection, Your Honor.

25 **THE COURT:** Ms. Little?

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1 MS. LITTLE: No, Your Honor.

2 THE COURT: All right. The two
3 alternates being number 128 and 144.

4 MS. LITTLE: Did you say 139, sir?

5 THE COURT: No.

6 Clerk of Court: I have them as 14 and
7 5.

8 THE COURT: You are right. Fourteen is
9 the person who was one alternate, and five was the other
10 alternate. 139 and 144 were the two that were struck.

11 CLERK OF COURT: It is Juror Number 5,
12 Your Honor.

13 THE COURT: All right. Juror Number 5,
14 Mr. Herbert Alford will now become a member of the Jury.

15 All right. Mr. Bailiff, if you will bring Ms.
16 Blakney in, and let the remaining Jurors stay where they
17 are, please.

18 (PAUSE.)

19 THE COURT: Ms. Blakney, we appreciate
20 you bringing this matter to our attention that you
21 brought to the Clerk's attention. That was a situation
22 where that name was not disclosed ahead of time, because
23 the name of the witness was disclosed as being a
24 different name, a married name. But the parties have
25 agreed --- and it is nobody's fault, and it certainly

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1 wasn't your fault. But it is a matter that would have
2 made a jury at the jury striking, but you had no way of
3 knowing that. So, as a result I am going to excuse you
4 from any further service on the Jury. This is the
5 purpose we draw alternates in case these things come up.
6 And that is what exactly has come up in this case. So we
7 are going to excuse you from any further service on this
8 case. Again, I tell you that I appreciate you bringing
9 that matter to our attention. That is exactly what a
10 conscious juror would do. And, I certainly do appreciate
11 you bringing it to our attention.

12 As I say, this is the reason and one of the
13 reasons we draw alternates so if something like this does
14 come up during the course of the trial, we would not have
15 a mistrial.

16 So I am going to excuse you from any further
17 service on this case. Thank you for your service.

18 I would ask you to do this please, ma'am. Once
19 you have been excused as a juror, there is nothing
20 illegal about your talking with anybody about your
21 service. There is nothing illegal about anybody talking
22 to you about your service. It is a practice of which I
23 strongly disapprove, and I strongly discourage, but it is
24 not illegal. You can talk with anyone, or you cannot
25 talk with anyone. And if anyone should approach you, and

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1 want to talk with you about it, and you don't want to
2 discuss it with them, and they continue to harass you, or
3 bother you, you let the Court personnel know, and I will
4 deal with them.

5 I would ask that you do this though. I would
6 ask that you not discuss this case with anyone, and not
7 allow anyone to discuss it with you until after we have
8 concluded this case. And you won't know when that is
9 going to be, so I would ask that you not discuss it with
10 anybody, at least, until Friday. Okay? And with that, I
11 will then excuse you. And I will tell you the other part
12 of it is that you are not only excused from this week,
13 but you are excused from any further service this week.
14 So, you will not need to come back anymore. You will
15 get a small check from Mr. Suggs next week in payment for
16 your services this week. And, I do appreciate your
17 service, and thank you for your consciousness.

18 **MS. BLAKNEY:** All right. Thank you.

19 **THE COURT:** Okay. All right. And when
20 we bring the Jury back in, I will ask Mr. Alford to move
21 over and take his place.

22 Any objection to that procedure, Ms. Mayes?

23 **MS. MAYES:** No, sir, Your Honor. I do
24 want to add briefly in just speaking with Ms. White she
25 advised me that she had been married within the last

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1 year. In August it will be a year. And when the case
2 was assigned to us, and the victim information was filled
3 out concerning address and name, we did not have that
4 name.

5 **THE COURT:** I find no fault on anybody's
6 part. This is just one of those things that happened.

7 All right. Any objection to that procedure Ms.
8 Little?

9 **MS. LITTLE:** No objection to procedure,
10 Your Honor. I would at the appropriate time like to make
11 a Motion.

12 **THE COURT:** All right. I am going to
13 call on you for that.

14 Let the record reflect that between the two
15 videos, I believe it was, before we began playing the
16 second video, Ms. Little asked for permission to approach
17 the bench, and indicated that she had a Motion. And, I
18 will hear from her with regard to that Motion at this
19 time.

20 **MS. LITTLE:** Thank you, Your Honor.
21 Your Honor, at this time the Defense would move for a
22 mistrial, based on the emotional outburst of the witness,
23 Ms. Adrienne Gallishaw. Ms. Gallishaw was crying at
24 first quietly and then loudly during the playing of the
25 forensic interview video of her daughter. I guess at

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1 some point she became overcome with emotion, and got up
2 and exited the courtroom. Your Honor, we believe that
3 this could insight sympathy in the Jurors, and unduly
4 influence the Jurors in favor of the State.

5 We would respectfully move for a mistrial.

6 **THE COURT:** Ms. Mayes.

7 **MS. MAYES:** Your Honor, the witness did
8 exit the courtroom briefly after that episode, which in
9 my opinion is a cure, because it prevented her from
10 sitting here and continuing to show any type of emotion.

11 The State's position is that it would not rise
12 to the level of being overly prejudicial or
13 inflammatory.

14 **THE COURT:** All right. The Court does
15 recall the incident. I am not sure I would characterize
16 the emotion shown by Ms. Gallishaw as being loud or
17 disturbing to the Court as Ms. Little did. It first drew
18 my attention as she was actually exiting the courtroom.
19 I guess being escorted out by the victim's advocate. I
20 did not find it to be overly disturbing. It was somewhat
21 distracting, but I would not say that it was any type of
22 real strong emotional, or wailing, or anything of that
23 nature.

24 I do not think that --- she did and was
25 escorted out as soon as it became apparent that she had

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1 lost control of her emotions. I do not believe it is
2 overly prejudicial or inflammatory.

3 The Motion for a Mistrial would be respectfully
4 denied. However, I will give a curative instruction if
5 you have one that you would like for me to give, Ms.
6 Little.

7 MS. LITTLE: Yes, Your Honor. Your
8 Honor, I would just request that you give an instruction
9 to the Jury that they are not to take any inference from
10 any actions, or shows of emotions by any witnesses, or by
11 anyone in the courtroom.

12 THE COURT: Okay.

13 MS. LITTLE: And I ask you to caution
14 the people who are left in the courtroom --

15 THE COURT: -- I'm sorry.

16 MS. LITTLE: I would also ask that you
17 just caution the remainder of the people in the
18 courtroom. You have done that before. And you had
19 warned about opened displays of emotion. I would just
20 ask that you ask that you caution again the remaining
21 witnesses in that regard.

22 (PAUSE.)

23 THE COURT: All right. I would propose
24 to tell the Jury, in response to the Motion for a
25 Mistrial, which I have denied, I propose to tell the Jury

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1 --- give this curative instructions as: ladies and
2 gentlemen, this is an emotional case for all of the
3 parties involved, the Defendant, the alleged victims, and
4 members of their family. I would instruct you that you
5 should not be influenced, or allow any emotional displays
6 to affect your decision in this case. You must put any
7 such manifestations of emotions out of your mind, and
8 decide this matter objectively on the evidence presented.

9 Any objection to that, Ms. Mayes?

10 MS. MAYES: No, sir, Your Honor.

11 THE COURT: Any objections, Ms. Little?

12 MS. LITTLE: No, Your Honor.

13 THE COURT: Do you think that is
14 sufficient, Ms. Little?

15 MS. LITTLE: Yes, Your Honor.

16 THE COURT: All right. And I would
17 again caution all of the spectators and everyone in the
18 courtroom to maintain your objectivity in this matter.
19 And if you feel that you cannot sit here without displays
20 of emotion, I will have to ask you to leave.

21 All right. Bring the Jury in please.

22 (Whereupon, the Jury enters the courtroom
23 at 3:45 p.m..)

24 THE COURT: All right. Mr. Alford, I am
25 going to ask that you become a member of the principal

THE STATE VERSUS JIMMY GALLISHAW, JR.

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1 Jury here. So, you don't need to move your chair. But,
2 ladies and gentlemen of the Jury, one of the Jurors
3 brought to The Court's attention a matter that came up as
4 a result of one of the testimony that had just been
5 heard. With the agreement of counsel, it was decided
6 that it would be better to excuse Ms. Blakney, which is
7 Juror Number 18, because of this. I told her that I did
8 appreciate her disclosure. That was exactly the kind of
9 thing that needed to be brought to the attention of the
10 Court. It was not her fault. It was not the fault of
11 anyone. It was just one of those things that comes up
12 during the course of the trial. And it is the reason
13 that we draw alternates. So, I have excused Ms. Blakney
14 from any further service on this case. And, in
15 accordance with the procedure have replaced her with the
16 Juror number 5, Mr. Alford. So, he will be a regular
17 member of this Jury now. And, Ms. Benjamin, you will
18 continue to be the alternate in this case. Thank you,
19 very much.

20 Now, the other thing, ladies and gentlemen,
21 that I want to tell you is, that this is an emotional
22 case for all of the parties involved, the Defendant, the
23 alleged victims, and members of their family. I would
24 instruct you that you should not be influenced, or allow
25 any emotional displays to affect your decision in this

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 case. You must put any such manifestations of emotions
2 out of your mind, and decide this matter objectively on
3 the evidence presented from the witness stand. Thank
4 you, very much.

5 Now, we are ready to move forward, Ms. Mayes.
6 The next matter I believe is the video of 2/16/09; is
7 that correct?

8 **MS. MAYES:** That's correct, Your Honor.
9 State's Exhibit 12.

10 **THE COURT:** All right. All right. You
11 may proceed.

12 (Whereupon, State's Exhibit Number 12 was
13 published to the Jury.)

14 **THE COURT:** All right. Ms. Mayes are
15 you ready to proceed?

16 Q. Now, to clarify the time line, Ms. Elliott, you have
17 seen the two videos with **Victim #1** [REDACTED]. And on
18 February 10, 2009, there was no disclosure to the
19 forensic interviewer. Was there a disclosure to
20 anyone else on that day?

21 A. There was disclosure to Doctor Kathy Saunders, at
22 the CARE House during the medical examination.

23 Q. All right. And, I believe we might have to adjust
24 the microphone.

25 A. Is that better?

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 Q. And following that disclosure on February 10, 2009,
2 to Doctor Saunders during the medical examination,
3 she was brought back in on February 16th. What, if
4 anything, was made concerning what type of
5 disclosure concerning the time frame involving Jimmy
6 Gallishaw. Do you understand it to be an isolated
7 incident, or more than one incident?

8 A. More than one incident.

9 Q. I need for you to speak up, please.

10 A. I'm sorry. More than one incident.

11 Q. And were you given a time frame of the incident in
12 relation to her father, and then the last incident
13 that was disclosed concerning someone who was not
14 her father?

15 A. That's correct.

16 Q. And that last incident that was disclosed concerning
17 not her father was who? Who was the alleged
18 perpetrator?

19 A. S██████ --- not her father, S██████ G██████.

20 Q. S██████ G██████. And what is your understanding of
21 her relationship or relation to S██████ G██████?

22 A. S██████ G██████ is her half brother.

23 Q. All right. And she would see S██████ G██████ at what
24 home?

25 A. Her father's home.

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 Q. All right. And S [REDACTED] G [REDACTED] was what age?

2 A. Thirteen.

3 Q. Thirteen. And at the time that the incident became
4 know concerning S [REDACTED] G [REDACTED], Victim #1 was what age?

5 A. Ten, I believe.

6 Q. All right. What is your understanding of any
7 safeguards, or procedures, that were put in place by
8 the family once people became aware of the incident
9 involving S [REDACTED] G [REDACTED] the previously year in 2008?

10 A. My understanding was that S [REDACTED] n G [REDACTED], DJJ dealt
11 with him, and he went off to DJJ in Columbia.

12 Q. All right.

13 A. That is my understanding.

14 Q. And she was first seen at the CARE House, I believe
15 you mentioned, in 2008 regarding that incident?

16 A. Right.

17 THE COURT: We still don't have the
18 volume right on this thing. Nobody can hear her.

19 MS. ELLIOTT: I'm sorry. I will speak
20 up.

21 THE COURT: It is on now. Go ahead.

22 MS. MAYES: Lean into it more, if you
23 can.

24 MS. ELLIOTT: Okay.

25 Q. And after the S [REDACTED] incident became know, to your

DEBBIE ELLIOTT - DIRECT EXAMINATION

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1 knowledge, to the knowledge of authorities, did she
2 have any further contact with the Defendant, Jimmy
3 Gallishaw, that involved going to his home or having
4 overnight visits?

5 A. She did.

6 Q. Following the S [REDACTED] G [REDACTED] incident, if you know.

7 A. I'm not sure.

8 Q. Okay. Your understanding is that S [REDACTED] G [REDACTED]
9 incident was disclosed in 2008, but not the incident
10 concerning her father; is that correct?

11 A. That's correct.

12 Q. And then in 2009, you became aware of the incident
13 concerning her father?

14 A. Correct.

15 Q. Now what is your understanding of the time line in
16 relation to which abuse started first. Was it the
17 S [REDACTED] incident or was it the incident with her
18 father?

19 A. My understanding is that it began with her father.

20 Q. Now, you had mentioned previously in your testimony
21 about siblings acting out sexually. I want to ask
22 you what, if anything, is significant about the fact
23 that Victim #1 at the age of ten would have been
24 involved sexually with a thirteen year old sibling?

25 A. That she had already been sexually victimized by her

DEBBIE ELLIOTT - CROSS EXAMINATION

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1 father, and sexual acting out is very common in
2 other children that we see.

3 Q. Can you tell us if that behavior of acting out
4 sexually is consistent or inconsistent with the
5 history of sexual abuse that had occurred within the
6 home?

7 A. It is consistent.

8 Q. Now, during your interview with [Victim #1], you asked
9 her to describe her relationship with her father,
10 and she said they were close. I want to ask you,
11 based upon that, was [Victim #1]'s delayed reporting of
12 abuse by the father until 2009 consistent, or
13 inconsistent, with the history of sexual abuse by a
14 parent?

15 A. Yes, it is consistent.

16 MS. MAYES: Beg the Court's indulgence.

17 (PAUSE.)

18 MS. MAYES: Nothing further, Your Honor.

19 THE COURT: All right. Cross
20 examination.

21 MR. SWILLEY: Thank you, Your Honor.

22 CROSS EXAMINATION BY MR. SWILLEY

23 Q. Ms. Elliott, going back to your qualifications as a
24 child abuse assessment expert. You said that you
25 got your bachelor's at Clemson, is that right?

DEBBIE ELLIOTT - CROSS EXAMINATION

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- 1 A. That's correct.
- 2 Q. And that was a Bachelor's in Social Work; is that
- 3 right?
- 4 A. Bachelor's of Arts in Sociology.
- 5 Q. I'm sorry?
- 6 A. A Bachelor's of Arts in Sociology.
- 7 Q. I see. Now, what kind of like academic work have
- 8 you done concerning child abuse assessment?
- 9 A. Academic work?
- 10 Q. Yes, ma'am. Over your whole life.
- 11 A. In Florence, is that what you are asking?
- 12 Q. Over your whole life, whether as a student or as a
- 13 professional.
- 14 A. Do you want me to go back over my qualifications?
- 15 Q. No, ma'am. All I was asking as far as your academic
- 16 training, what academic training do you have in the
- 17 field of child abuse assessment?
- 18 A. Academic training was at Clemson University. I
- 19 graduated in 1978 with a Bachelor's of Arts in
- 20 Sociology.
- 21 Q. And how much of that curriculum was course work, or
- 22 academic work dealing with child abuse and child
- 23 abuse assessment, and child abuse study?
- 24 A. Two years of that.
- 25 Q. Two years. Like was it two years of full course

DEBBIE ELLIOTT - CROSS EXAMINATION

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1 work dealing with child-abuse?

2 A. You are asking me about academics; is that correct?

3 Q. Yes, ma'am, I am. Okay. Do you feel as though most
4 of your qualifications, as an expert in child abuse
5 assessment, comes from your experience in the work
6 place; is that correct?

7 A. That's correct.

8 Q. That's correct. Okay. Now, you said as far as
9 assessing a child, you say that every child is
10 different, right? So no particular behavior is
11 indicative of a sexual abuse; is that correct?

12 A. No one particular behavior.

13 Q. No one particular behavior. I see. In your own ---
14 in your professional opinion, can you define for me
15 what delayed reporting is?

16 A. Delayed reporting is really just what it sounds
17 like. It is what we call in the field when delay
18 disclosing what happened to them.

19 Q. So your definition of delayed reporting encompasses
20 untruthfulness; is that true?

21 A. No.

22 Q. No? So, if the child has said one thing that she
23 wasn't abused, or he or she goes on to say that he
24 was abused, that would not qualify as delayed
25 reporting; is that correct?

DEBBIE ELLIOTT - CROSS EXAMINATION

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1 A. They said that they were abused and they take it
2 back and say they weren't, that is called
3 recantation.

4 Q. No, I was asking if a child said that they were not
5 abused, and then later says they were abused.

6 A. No, that would be considered delay, yes.

7 Q. The first statement would be incorrect if it were a
8 lie, right? Do you acknowledge that?

9 A. Or it could be that they just were not ready to
10 actively disclose that something happened.

11 Q. But the statement that they were not abused would be
12 considered a lie; do you acknowledge that?

13 A. If they flat out said that I was not abused, yes.

14 Q. What you call recantation is also a lie, right?

15 A. If --

16 Q. -- Involving untruthfulness; is that correct?

17 A. Well, if the child says that they were abused and
18 takes it back, yeah. But it is very common.
19 Children do that all the time.

20 Q. Children --

21 A. --- That has been --

22 Q. -- Children fabricate all the time. Is that
23 correct?

24 A. They recant all the time that have been abused.

25 Q. I see. Now, Ms. Elliott, you spoke about behavioral

DEBBIE ELLIOTT - CROSS EXAMINATION

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1 characteristics of children that have been abused.
2 Other than what you got from these children, by way
3 of verbal communication, can you list to me what
4 kind of behavioral characteristics these children,
5 **Victim #1** and **Victim #2**, display that would indicate
6 sexualized behavior or abuse? I'm sorry. What kind
7 of behavior would characteristically indicate sexual
8 abuse?

9 A. With **Victim #1**, it is that it happened with S **██████**. I
10 think at one point she had stated to her mother that
11 it may have been consensual, and said that it
12 wasn't. But, she was a ten year old child. S **██████**
13 was a thirteen year old.

14 Q. I mean, I was referring to what you observed besides
15 through your oral communication with children?

16 A. Besides being in the room?

17 Q. Or anything that you got from these children that
18 you did not gain through the interviews.

19 A. That would have been through my intake information
20 with the mothers.

21 Q. I see. Okay. And through the intake information
22 what behavioral characteristics would indicate
23 sexual abuse?

24 A. With these children specifically?

25 Q. Yes, ma'am.

DEBBIE ELLIOTT - CROSS EXAMINATION

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1 A. With **Victim #1** the past --- she had been sent to the
2 Durant Children's Center at age seven. There had
3 been a past report with her. Her mom stated that
4 she had sort of become competitive with her sister,
5 with **Victim #1**. With **Victim #2**, self-esteem issues,
6 that she is ugly, doesn't like herself, this started
7 the year before. She stated she was never full.
8 She overeats. Started talking back to her teacher.
9 Just those indicators. Well, not always indicators
10 of sexual abuse, but can be sometimes. Those are
11 indicators that were outside of the interview room.

12 Q. I see. And why are characteristics like that
13 indicators of sexual abuse?

14 A. They can be when the behavior change in children
15 when they have normally been good and respectful in
16 school, and they start being disrespectful.
17 Disrespectful at home. Sometimes that can be
18 indicative of sexual abuse.

19 Q. I see. And you also listed characteristics such as
20 bed wetting, bad dreams, or incubi, uncontrollable
21 bowel movements as factors that could be indicative
22 of sexual abuse; is that correct? Did you do that?

23 A. I did.

24 Q. During your examination?

25 A. I did.

DEBBIE ELLIOTT - CROSS EXAMINATION

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1 Q. Okay. And are any of those factors present in these
2 children?

3 A. No.

4 Q. No. No. Okay. All right.

5 A. Not that I am aware of.

6 Q. And besides your interviews with the children,
7 **Victim #2** and **Victim #1**, what other interactions or
8 observations have you had of them?

9 A. I have no interactions other than seeing them today
10 at Court. I did the forensic interview, did the
11 intake information with the mothers and the
12 followup.

13 Q. So other than speaking with the mothers, you haven't
14 seen anything with these children that the Jury
15 hasn't seen; is that correct?

16 A. In speaking with the mothers?

17 Q. Besides speaking with the mothers, as far as the
18 interaction with the children?

19 A. I have had no interaction.

20 Q. Thank you.

21 MR. SWILLEY: Beg the Court's
22 indulgence.

23 (PAUSE.)

24 Q. And just to ask about --- you said that delayed
25 reporting is sometimes consistent with abuse, as is

DEBBIE ELLIOTT - CROSS EXAMINATION

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1 recantation, you say that immediate disclosure of
2 abuse is just as indicative of past sexual abuse as
3 well?

4 A. Immediate disclosure is --- Say that again.

5 Q. You spoke of delayed reporting, delayed disclosure,
6 and then you spoke of recantation, and then you said
7 those were also indicative of sexual abuse; is that
8 correct?

9 A. That's correct.

10 Q. Would immediate disclosure be just as indicative of
11 sexual or past sexual abuse?

12 A. Immediate disclosure, meaning that the child
13 immediately disclosed. I am not quite sure what you
14 mean by past sexual abuse.

15 Q. So it just seems as though pretty much when a child
16 discloses sexual abuse, you would just say that is
17 consistent with sexual abuse; is that correct?

18 A. I'm sorry. Ask me that again.

19 Q. It just seems as though, and you stated that often
20 times children who have been abused have delayed
21 disclosure of this abuse?

22 A. That's correct.

23 Q. And then you say that often times they don't
24 originally report it, or they report it, and they
25 recant it. Is that occurrence, is that indicative

DEBBIE ELLIOTT - CROSS EXAMINATION

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1 of abuse than if the child would have just came out
2 and said it from the beginning, and it remains
3 consistent in that statement?

4 A. I don't know.

5 Q. You just don't know. I'll withdraw that question,
6 don't worry about it. Ms. Elliott, is part of your
7 employment that you testify here today?

8 A. Yes.

9 Q. It is?

10 A. Yes.

11 Q. So, just as I am, you are here at work right now,
12 right?

13 A. That's correct.

14 Q. Okay. Going back to the videos of **Victim #1**, did
15 **Victim #1** give any indications that Mr. Gallishaw abuse
16 of her were not verbal, besides what she said?

17 A. She was teary during the interview. That could be
18 an indicator.

19 Q. I see. Ms. Elliott, do you feel that there was
20 anything that you did differently than --- and I
21 forget her name in this case, the young lady who
22 interviewed **Victim #1** personally, is there anything
23 that you did differently than her to illicit a
24 different response from **Victim #1**?

25 A. No.

DEBBIE ELLIOTT - CROSS EXAMINATION

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1 Q. No, nothing. You seem toward the end of the video,
2 you seemed to have gotten a bit frustrated with
3 [Victim #1], and your report said that she was not being
4 credible. What do you make of that?

5 A. I felt at that point that she had sort of --- just
6 remembering so many children, a lot of times
7 children will do that. They will sort of shut down.
8 And I felt like something else may have happened to
9 her, and I just wanted to give her every opportunity
10 to tell me if there had been more perpetrators than
11 she had already reported. I didn't feel like she
12 hadn't been truthful to me in the interview, I just
13 felt like there might have been more.

14 Q. Okay. And do you still think she was trying to hide
15 another individual who she did not name, who was
16 engaged in sexual acts with her?

17 A. I went through everybody that I knew that she had
18 talked about. I don't know.

19 Q. I see. And to your knowledge, did she disclose
20 anything different to any other professionals, like
21 Ms. Saunders?

22 A. No, not to my knowledge.

23 Q. I see. When you begin your interview, I notice that
24 you go through a truth and lie test. Do you
25 understand what a truth is? Do you understand what

DEBBIE ELLIOTT - CROSS EXAMINATION

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1 a lie is? Do you believe that that is effective?

2 A. I do.

3 Q. You do. And in your experience has it always
4 worked?

5 A. Not always.

6 Q. Not always. Have you often caught children lying
7 after you have explained the truth lie test to them?

8 A. I don't explain the truth lie test with younger
9 children.

10 Q. I'm sorry. After you go over the truth lie test
11 with them, after you have had that interaction, do
12 you usually catch children in a lie?

13 A. If I find that they are telling me something that I
14 know not to be true, like something basic like the
15 name of a sibling, or where they live, or where they
16 go to school, or something, I will focus back to the
17 truth and stress that again throughout the
18 interview.

19 Q. Now you stated one of the things that is significant
20 about the family dynamics is that the mother in this
21 case was a passive, when it came to the abuse. Is
22 it your opinion that the mother was aware that this
23 was going on?

24 A. With this child?

25 Q. With Victim #2 ?

DEBBIE ELLIOTT - CROSS EXAMINATION

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- 1 A. From what the child told me the mother walked in.
2 And what the mother reported to me in the intake
3 information, she walked in and saw Jimmy Gallishaw
4 with this child with his pants down, and an
5 erection, and the child bent over toilet pulling up
6 her pajama bottoms. And prior to that she had tried
7 to tell her mom things, and she would keep asking
8 her. And a lot of times she asked in the presence
9 of Jimmy Gallishaw and the child would say nothing.
- 10 Q. In your interactions with either of the girls. Was
11 there anything that would be indicative of sexual
12 abuse in children and you got it from your
13 interaction with either of them?
- 14 A. Indicative of sexual abuse --
- 15 Q. Of the children with your interaction with the
16 mothers.
- 17 A. Are you talking about my intake admission that I
18 gathered from the mothers?
- 19 Q. And whatever other interaction you had with the
20 mothers.
- 21 A. That's the only interaction that I would have with
22 the mothers, other than the follow-up, when we went
23 over the information of the forensic interview and
24 the medicals after both of those were completed.
- 25 Q. I see. And Ms. Elliott, you didn't take part in any

DEBBIE ELLIOTT - REDIRECT EXAMINATION

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1 kind of medical examination or diagnosis of either
2 **Victim #1** or **Victim #2** did you?

3 A. No, sir.

4 Q. I see.

5 **MR. SWILLEY:** Beg the Court's
6 indulgence.

7 **THE COURT:** Yes, sir.

8 (PAUSE.)

9 **MR. SWILLEY:** Nothing further, Your
10 Honor.

11 **THE COURT:** Redirect?

12 **MS. MAYES:** Yes, sir, Your Honor.

13 **REDIRECT EXAMINATION BY MS. MAYES**

14 Q. I want to clarify Ms. Elliott, I believe the
15 question that was posed to you, just a moment ago,
16 on cross examination was about a portion of your
17 report. Do you prepare a report?

18 A. Yes, ma'am.

19 Q. A portion of your report that made a reference to
20 something being not credible. And can you clarify
21 that; were you referring to the entire interview or
22 a portion of the interview?

23 A. No, not the entire interview. I believe the child.
24 I believed --

25 **MR. SWILLEY:** Objection. That is not.

DEBBIE ELLIOTT - REDIRECT EXAMINATION

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1 before her, Your Honor.

2 THE COURT: What is the objection?

3 MR. SWILLEY: As to Ms. Elliott's
4 expression of her giving her opinion as to whether the
5 child is telling the truth or not. I don't believe --

6 THE COURT: But you asked her that. If
7 I recall, the question was asked on cross examination
8 about the issue of credibility. Did you not ask her
9 that?

10 MR. SWILLEY: Your Honor, I didn't --- I
11 wasn't referring to actually whether she believed --

12 THE COURT: Come up counsel.

13 (Whereupon, a bench conference was held in
14 the presence of the Jury, but out of the hearing of the
15 Jury.)

16 THE COURT: Objection overruled.

17 Q. Mr. Swilley had asked you about a portion of your
18 report that made reference to something being not
19 credible. Were you referring to the entire
20 interview?

21 A. No.

22 Q. What specific portion were you referring to?

23 A. I felt that at that point in the interview that
24 there may have been more, because of the child's
25 nonverbal cues, that she was giving me. And I felt

DEBBIE ELLIOTT - REDIRECT EXAMINATION

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1 like maybe --- I just wanted to check it all out to
2 make sure that she was safe in the home, all the
3 places that she was going and visiting, just to make
4 sure.

5 Q. And did that comment that Mr. Swilley asked you
6 about have anything at all to do with her disclosure
7 that she made against Jimmy Gallishaw?

8 A. No.

9 Q. All right. Now, specifically about the behavioral
10 characteristics that he asked you about. What, if
11 anything, did you observe during the forensic
12 interview about Victim #1's demeanor that may
13 have been significant?

14 A. Victim #1 was less verbal than Victim #2 just a little
15 more hesitant to talk. She is the one that said, I
16 don't want to snitch.

17 Q. Okay. And what, if anything, is significant about
18 Victim #2's demeanor during her disclosure of abuse?

19 A. Victim #2 was very tearful, and much more narrative
20 about what had happened.

21 Q. Now, when we talk about the issue of recantation,
22 and you have discussed some of the reasons behind
23 that. During the course of your career there at the
24 CARE House, have you seen, in your clinical
25 experience, a recantation prior to this case?

DEBBIE ELLIOTT - REDIRECT EXAMINATION

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1 A. Yes.

2 Q. And when we talk about delayed reporting, over the
3 course of your career for the last seven years, do
4 you expect immediate disclosure when the alleged
5 perpetrator is a parent?

6 A. No.

7 MS. MAYES: Nothing further, Your Honor.

8 THE COURT: Re-cross?

9 MR. SWILLEY: No, Your Honor.

10 THE COURT: All right. Thank you, Ms.
11 Elliott. You may step down.

12 Counsel, approach and let's talk about
13 scheduling.

14 (Whereupon, a bench conference was held in
15 the presence of the Jury, but out of the hearing of the
16 Jury.)

17 THE COURT: All right. Ms. Mayes, call
18 your next witness.

19 MS. MAYES: The State calls Doctor Kathy
20 Saunders.

21 THE COURT: All right. Doctor Saunders,
22 come around please.

23 WHEREUPON, KATHY SAUNDERS

24 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

25 DR. SAUNDERS: I do.

KATHY SAUNDERS - VOIR DIRE EXAMINATION

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VOIR DIRE EXAMINATION BY MS. MAYES1
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Q. Good afternoon, Doctor Saunders. Could you tell us where you are employed?

A. At the CARE House at the Pee Dee in Florence.

Q. All right. And how long have you been employed there?

A. Since December 2005.

Q. And what is your job description there at the CARE House?

A. I am a pediatric nurse practitioner, and perform the medical evaluations.

Q. All right. And what exactly is involved in a medical evaluation for an alleged sexual abuse, or suspected sexual abuse of a child?

A. The first thing I do is collect a history, or information from the parent or guardian of the child, Department of Social Service, or law enforcement if they have additional information to provide.

Q. What can you tell us about your educational background and training specific to sexual assault examination?

A. I hold a Masters Degree in Nursing, and a Post Masters Degree as a Nurse Practitioner, both in family practice and pediatrics, and I hold a

KATHY SAUNDERS - VOIR DIRE EXAMINATION

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1 Doctorate Degree in Nursing Practice.

2 I graduated from The University of
3 South Carolina in 1996 with my Nurse
4 Practitioners Degree, and excuse me, in 1993,
5 and began a general pediatric practice for
6 about two and a half years. I then made a
7 decision that I wanted to begin evaluations
8 alleged or reported maltreated children, and
9 trained in San Diego, California. I did an
10 internship, a fellowship with San Diego
11 Children's Hospital with the physicians there
12 to learn the skills and expertise in evaluating
13 children that may have been maltreated.

14 Q. And when we talk about maltreated, does that include
15 physical abuse in addition to sexual abuse?

16 A. It does, as well as neglect of children.

17 Q. Is it possible for you to estimate how many sexual
18 assault examinations you have performed children
19 over the course of your career?

20 A. In excess of about seven thousand children total,
21 with about 80 or 90 percent of those being of a
22 sexual abuse nature. But, some of the children that
23 may have been evaluated for sexual abuse may have
24 had other forms of abuse as well.

25 Q. And how long have you been doing the sexual assault

KATHY SAUNDERS - VOIR DIRE EXAMINATION

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1 examinations at the CARE House?

2 A. Since December 2005.

3 Q. And prior to that were you with the Durant
4 Children's Center?

5 A. I was.

6 Q. And is that also an advocacy center for possible
7 child abuse?

8 A. It is.

9 Q. And, how long were you there in the role of
10 performing medical examinations?

11 A. Just about ten years, just a few months short of ten
12 years.

13 Q. Have you testified previously as an expert in South
14 Carolina Courts concerning your medical findings in
15 sexual abuse in children?

16 A. I have.

17 Q. Is it possible to estimate how many times you have
18 testified as an expert?

19 A. In over eight hundred cases.

20 Q. That includes Family Court and Criminal Court?

21 A. It does.

22 **MS. MAYES:** Your Honor, the State would
23 offer Dr. Kathy Saunders in the field of medical
24 examination.

25 **THE COURT:** Do you wish to challenge the

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1 qualifications of the expert Ms. Little or Mr. Swilley?

2 **MS. LITTLE:** No, Your Honor.

3 **THE COURT:** All right. The Court will
4 qualify Dr. Saunders in the field of --

5 **MS. MAYES:** Child sexual assault and
6 medical examination.

7 **THE COURT:** Child sexual assault and
8 medical examination.

9 All right. You may proceed.

10 **DIRECT EXAMINATION BY MS. MAYES**

11 Q. Now, do you necessarily expect to find medical
12 evidence in sexual assault?

13 A. No, ma'am.

14 Q. And why or why not?

15 A. Usually when a child has been sexually assaulted
16 there is a delayed disclosure. Meaning that as soon
17 as the assault happens they do not immediately
18 report it to an adult, or someone who can take them
19 for a medical evaluation. On an average, out of six
20 or seven --- last year it was over about a hundred
21 children who we see in a year, probably less than
22 one percent of those are what we call acute
23 evaluations; meaning that it has occurred within
24 seventy-two hours of the assault. So we don't see
25 then when the assault happens, and over time

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1 injuries can heal and repair themselves if the body
2 is even injured at all during the assault.

3 Q. All right. And when you talk about the fact that
4 injuries might repair themselves, I want to talk
5 specifically about female victims. And when we are
6 talking about female victims and injuries, what type
7 of injuries might occur that can ultimately heal?

8 A. Actually anywhere in the vaginal area in the female
9 can be injured. The most common injury that we see
10 is the hymenal tissue, which lay people referred to
11 as the cherry or the virginal ring. It occurs on
12 the lower rim or the bottom half of the vaginal
13 tissue or the hymenal tissue. If you use it as a
14 base of a clock, the opening with twelve at the top,
15 six at the bottom, three and nine to the left and
16 right, the injuries usually occur between three and
17 nine o'clock, which is the lower rim. You can also
18 see injuries occur just in front of the hymenal
19 tissue called the fossa or the facet, and those
20 injuries are usually midline abrasions, or
21 scratches, or superficial tears in that tissue.
22 There can also be injuries to the preanal, or around
23 the buttocks opening, if there is attempted anal
24 penetration.

25 Q. All right. And I want to ask you whether or not

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1 during your employment there at the care house you
2 had the opportunity to perform a medical examination
3 on Victim #1 [REDACTED]?

4 A. I did.

5 Q. And prior to 2009, had Victim #1 [REDACTED] been seen at the
6 care house in relation to an incident in 2008?

7 A. She was.

8 Q. All right. And who performed that exam in 2008?

9 A. I completed the exam.

10 Q. And in 2008, had there --- do you know if there had
11 been a disclosure concerning a sexual incident with
12 a thirteen year old by the name of S [REDACTED] G [REDACTED]?

13 A. That was the history that I was given for seeing her
14 in 2008.

15 Q. And what if anything was significant about your
16 medical findings when she was seen there, the exact
17 date in 2008?

18 A. It would have been August 18, 2008, that I completed
19 her examination. And on her genital examination,
20 specific to the vaginal area, there was findings
21 supportive of past penetration.

22 Q. All right. And approximately seven to eight months
23 later was Victim #1 [REDACTED] seen at the CARE House again in
24 2009?

25 A. She was.

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1 Q. All right. And I want to take you specifically to
2 that date, February 10, 2009. Was **Victim #1** seen at
3 the CARE House?

4 A. She was on February 10th.

5 Q.. Now, for purposes of medical diagnosis and
6 treatment, do you have the opportunity to speak with
7 the patient herself, himself or herself in order to
8 obtain a history?

9 A. I do. And typically what I ask is when I go into
10 the exam room, if the child can tell me why they are
11 here today, or why they have to have a checkup.

12 Q. And do you require specifically, for purposes of a
13 medical diagnosis and treatment about any type of
14 contact that may have involved sexual abuse?

15 A. I do.

16 Q. And why might you need to know that from the
17 patient, his or herself?

18 A. Because children will sometimes tell me things that
19 they may not have disclosed to a parent or a
20 guardian, or even during the interview process.

21 Q. And for purposes of a medical diagnosis and
22 treatment, did you speak with **Victim #1** **[REDACTED]** there at
23 the CARE House on February 10, 2009, about whether
24 or not there had been contact of a sexual nature?

25 A. I did.

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1 Q. What, if anything, did she report to you?

2 A. She disclosed to me, my daddy would mess with my
3 peepee when I would go to play with my sister. He
4 did it every time. One time my step-mamma Adrienne
5 saw it, and she just told me to go back to bed. He
6 did it the last time just before my eleventh
7 birthday, and the first time was --- I was still ten
8 years old.

9 Q. All right. So that disclosure was made directly to
10 you by Victim #1 [REDACTED]?

11 A. That is correct.

12 Q. And did you follow through with a sexual assault
13 examination of Victim #1 [REDACTED]?

14 A. I did.

15 Q. I am going to ask you whether or not there were any
16 significant findings in 2009?

17 A. On the vaginal exam findings it was consistent with
18 past penetration.

19 Q. All right. So, when she was examined there in 2008,
20 following the incident with the half-brother, and
21 then again in 2009, the findings were consistent
22 with past penetration?

23 A. Yes, ma'am.

24 Q. All right. I am going to ask you to step down, and
25 if you can show us exactly what you are referring to

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1 when you talk about past penetration, and the parts
2 of the anatomy which allows you to make that
3 observation.

4 Let me show you a diagram and ask you
5 what exactly we are looking at here.

6 A. That is a labia diagram of the female genitalia.

7 **THE COURT:** All right. She is away from
8 the microphone, so you are going to have to keep your
9 voice up. Okay?

10 **DR. SAUNDERS:** Okay.

11 Q. If you could take us through any parts that are
12 significant during the course of the medical
13 examination.

14 A. This whole area is referred to as really the vulva.
15 Lay people, often call it collectively the vagina.
16 But actually the vagina is recessed inside the
17 opening that you see here where my finger is at, the
18 dark spot. The urethra is where you void or pass
19 your urine through, and it actually sits behind the
20 folds of skin that are external to the body. So it
21 is a protective structure as is the hymenal tissue,
22 which is around here, and the hymenal orifice which
23 is the opening into the vagina. All of those are
24 recessed behind folds of skin. And because she was
25 into puberty, it is probably several inches behind

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1 the folds of skin that this tissue or these
2 structures are protected.

3 If you think about it, kind of like
4 the vallecule or the little hangie down tonsil
5 part of your mouth to go through past your
6 tongue, to get to that little thing that hangs
7 down the back of your throat, so is this tissue
8 that was injured on [Victim #1] that I saw when I
9 examined her on both occasions.

10 The hymenal tissue, as I told you
11 earlier, is this circle of skin around here
12 that people refer to as the vaginal ring or
13 the cherry.

14 On [Victim #1] when I evaluated her, she
15 was found to be a Tanner stage 3 development.
16 Tanner 4 is the most adult like, or the
17 greatest amount of puberty development that a
18 female can have. So, she was far into her
19 pubertal development.

20 There was a thick estrogenized
21 hymenal tissue, which means that the side rims
22 that were present on her exam were very thick,
23 very elastic, and very fluffy in appearance.

24 There was a small amount of white
25 discharge present, with attenuation of a

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1 posterior rim.

2 Remember I told you that this opening
3 we as medical examiners use it as a face of a
4 clock. The posterior rim is denoted from the
5 3:00-o'clock position around to the 9:00-
6 o'clock position. Attenuation simply means a
7 loss of or absence of that tissue.

8 If you think about the skin when you
9 have intercourse, or it is penetrated it is
10 like a pencil eraser. If you take that eraser
11 and you rub it one time, and you look at it you
12 may say it may or may not have been used. But
13 the more you use it the more it wears down,
14 because it does not heal or repair itself.
15 When the skin around the vaginal opening, as it
16 is used over and over and over again it tends
17 to wear down, and it does not rejuvenate or
18 regenerate itself, because of chronic wearing
19 away.

20 The impression is, of this exam, or
21 the findings of this exam are consistent with
22 past penetration.

23 Q. All right. I am going to ask you if you could,
24 using this marker, show us the area that you are
25 referring to in which you made that observation.

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1 A. The absence of the tissue appeared in this area.

2 Q. Now, is that area located internally, within the
3 vaginal opening, or is that external?

4 A. It is internal.

5 MS. MAYES: Thank you, Dr. Saunders, you
6 may return to your seat.

7 Q. Can you tell us whether or not that type of finding
8 internal to the vaginal opening, is consistent, or
9 inconsistent with chronic or repeated past
10 penetration?

11 A. It is consistent.

12 Q. And can you tell us whether or not it is consistent
13 with past penetration with an object such as the
14 penis during intercourse?

15 A. It could be, yes.

16 Q. Now, did you have the opportunity --- excuse me.

17 MS. MAYES: Your Honor, at this time we
18 would offer this exhibit as State's 13.

19 THE COURT: Ms. Little or Mr. Swilley,
20 any objection?

21 MS. LITTLE: No, Your Honor.

22 THE COURT: All right. Then it will be
23 admitted into evidence as State's Number 13, without
24 objection.

25 WHEREUPON, STATE'S

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EXHIBIT NUMBER 13 IS MARKED

AND ADMITTED INTO EVIDENCE

WITHOUT OBJECTION.

Q. Now, have you had the opportunity to also conduct a medical examination on Victim #2 ?

A. I did.

Q. And when Victim #2 was seen at the CARE House, how old was she on February 4, 2009?

A. She was ten years old.

Q. What type of examination, specifically, was performed concerning Victim #2 ?

A. A complete physical evaluation to include the genital area.

Q. What, if anything, is significant about your medical findings of Victim #2 ?

A. On the genital evaluation or the vaginal exam of Victim #2 there was also attenuation of the posterior hymenal rim, or absence of the posterior hymenal tissue. The cervix was normal. She tolerated a full speculum exam without any difficulty. And the findings of this exam were consistent and supportive of penetration.

Q. All right. I am going to ask you if you can to step down once again, and show us the part or parts that you are referring to of the female anatomy which you

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1 observed on medical findings. .

2 A. Just to reorient you again. The urethra where you
3 void. The hymenal tissues is this collar of skin
4 right here, this area. And again the absence was in
5 the lower rim of the posterior rim on **Victim #2** s
6 exam as well.

7 Q. Can you show us, make a notation, the part or parts
8 that you are referring to?

9 A. (Indicating on State's Exhibit Number 14.)

10 Q. Now, Dr. Saunders, what, if anything, is significant
11 about the fact that you indicated that she tolerated
12 a speculum exam without difficulty?

13 A. On a sexualized or female that is not sexually
14 active --- where she was found to be Tanner Stage
15 3, which is not full pubertal development, or adult
16 like development, you should not be able to complete
17 that without some discomfort to the patient, or
18 having to put them to sleep so that they don't feel
19 the discomfort during the exam to the inside.
20 Because it goes several inches, probably three to
21 five inches inside the vaginal wall into the cervix,
22 it is even a more intrusive or deeper evaluation to
23 look at the cervix of a child or a female.

24 Q. And did **Victim #2** express any type of resistance of
25 discomfort during the sexual exam?

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1 A. No, she tolerated it without any difficulty.

2 Q. All right. And the findings that you noted as past
3 penetration, do you have an opinion as to whether or
4 not that may have been chronic or ongoing
5 penetration injuries?

6 A. It resembles that that you see with chronic or
7 ongoing penetration.

8 Q. And can you tell us whether or not that is
9 consistent with sexual intercourse?

10 A. It is.

11 MS. MAYES: Thank you, you may return to
12 your seat. Your Honor, this will be State's Exhibit 14,
13 for evidence.

14 THE COURT: All right. are there any
15 objections, Ms. Little or Mr. Swilley?

16 MS. LITTLE: No, sir.

17 THE COURT: All right. It will be
18 admitted into evidence as State's Number 14, without
19 objection.

20 WHEREUPON, STATE'S
21 EXHIBIT NUMBER 14 IS MARKED
22 AND ADMITTED INTO EVIDENCE
23 WITHOUT OBJECTION.

24 MS. MAYES: Beg the Court's indulgence?

25 THE COURT: Yes, ma'am.

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(PAUSE.)

MS. MAYES: Nothing further, Your Honor.

THE COURT: Cross examination, Ms.

Little or Mr. Swilley?

MS. LITTLE: Thank you, Your Honor.

CROSS EXAMINATION BY MS. LITTLE

Q. Dr. Saunders, during your medical examination of
Victim #2, did you note any type of abrasions,
scratches, or tears in the vaginal area?

A. I did not.

Q. And --- Now, I am going to ask you about Victim #1.
When you medically examined Victim #1, did you
note any findings of abrasions, scratches, or
superficial tears?

A. On which exam?

Q. On either exam. On the August 2008 exam.

A. I did not.

Q. And while we are talking about that 2008 exam,
after, or before, or during your medical examination
of Victim #1, did she ever mention back in 2008 that
Mr. Gallishaw had ever had any sexual relations with
her?

A. On the 2008 evaluation she did not disclose that
information to me.

Q. And you mentioned earlier in your testimony that

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1 both girls had an attenuated hymen; is that correct?

2 A. That is correct.

3 Q. And I believe when Ms. Mayes asked you, you said
4 that that attenuation of the hymen could be caused
5 by a penis; is that correct?

6 A. That is correct.

7 Q. Well, could it be caused by something else?

8 A. Well, I am sure there are plenty of objects that
9 could be repeatedly inserted into the vagina, if it
10 is large enough can cause injury or a wearing away
11 of that skin.

12 Q. So, your medical findings --- just what you
13 physically saw during your medical examination, you
14 have no way of telling exactly what caused those
15 injuries; is that correct?

16 A. The findings along with the history that **Victim #1**
17 reported to me provides information as to the object
18 that could have been used.

19 Q. I understand. And is there any way that you can
20 tell from a physical examination, unless the sexual
21 activity has happened within the last seventy-two
22 hours, is there anyway for you to tell how many
23 different perpetrators could have caused that
24 injury?

25 A. There is no way.

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1 Q. And you said earlier, you can't say for sure that it
2 is actually based on the injury only, without any
3 reports given to you, you cannot say for sure
4 exactly what caused injury anytime during your
5 medical examination?

6 A. Well, not anytime. If you retrieve DNA evidence, if
7 it is within the seventy-two hours of DNA evidence
8 is present, it can be analyzed if you have a
9 suspect. And that would not be a role that I do,
10 but something law enforcement and SLED would
11 conduct. So I wouldn't say ever. Certainly, if
12 there is no DNA evidence, then the only thing that I
13 can say about the medical evaluation is that there
14 are findings supportive of penetration.

15 Q. Right. And you can't say exactly for sure what
16 caused that penetration; is that correct?

17 A. Not without the history of the child or DNA evidence
18 present.

19 MS. LITTLE: Beg the Court's indulgence
20 for just one moment.

21 THE COURT: Yes, ma'am.

22 (PAUSE.)

23 Q. And Dr. Saunders, just one more question. In this
24 case, in your exam of either of the girls at any
25 time, did you find any DNA, or other type of

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1 evidence linking the sexual assaults to Mr.
2 Gallishaw?

3 A. Actually, because the assault or the last reported
4 event had not occurred within seventy-two hours, I
5 did not perform a evidence collection kit. And that
6 is the only way DNA would have been collected.

7 MS. LITTLE: Thank you, Dr. Saunders.

8 THE COURT: Redirect?

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

10 REDIRECT EXAMINATION BY MS. MAYES

11 Q. I am going to explain that in a little more detail
12 when you talk about within seventy-two hours versus
13 after seventy-two hours. Were either of these exams
14 concerning **Victim #1** or **Victim #2** done within seventy-
15 two hours of the last sexual assault?

16 A. No ma'am, they were not.

17 Q. And if they had been, what type of exam would you
18 have done in that situation?

19 A. I would have conducted a physical evaluation,
20 generally the same way with the exception of using a
21 evidence collection kit that is provided by our
22 South Carolina Law Enforcement Division that allows
23 us to --- in prepackaged envelopes --- there is
24 securely Q-tips, swabs, blood sampling kits, just a
25 whole variety of things that we use to collect

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1 different swabs, and hair samples, blood samples,
2 underwear, clothing from the victim, if it is within
3 that seventy-two hour of the last assault. So, we
4 would have used the same exam technique, but with an
5 addition of also using the special evidence kit that
6 is provided.

7 Q. All right. And if weeks had gone by since the last
8 alleged sexual contact with the perpetrator, is
9 there any need for that type of DNA evidence
10 collection?

11 A. No, there is not.

12 Q. And can you tell us whether or not you normally
13 expect to find fresh injuries, such as fresh
14 scratches or tears if weeks had transpired since the
15 last sexual contact with the perpetrator?

16 A. I do not expect to see injuries.

17 Q. And she asked you, I believe, about the type of
18 object or objects that could result in such a
19 penetrating injury. And just to clarify, for
20 example, would a play injury, or playground injury
21 result in your findings?

22 A. Not unless in the history there was documentation
23 that there was penetration through the external part
24 of the body to the internal part. Things like
25 slipping and falling, and falling on an object does

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1 not injure the inside of the body. When we see
2 those injuries they are external to the body, what
3 we call straddle injuries. And it usually causes
4 injury to the outer folds of the skin, not the
5 inside part of the body.

6 Q. And did you see any type of injury to the outside or
7 external folds of the body consistent with a
8 straddle injury or playground injury?

9 A. I do not.

10 Q. And for example with the use of a tampon, something
11 of that nature result in these findings?

12 A. No, it would not.

13 Q. And explain why.

14 A. There has been extensive research done, because
15 there was concern that any object entering into the
16 body of a female, could cause findings consistent
17 with sexual abuse or penetrating injury. And it has
18 been repeated over the last twenty years using
19 thousands of teenaged early adolescent girls. And
20 the research has shown that as you enter into
21 puberty that tissues becomes somewhat elastic. And
22 it will stretch like a rubber band. If I take a
23 rubber band of average size and wrap it around my
24 finger it is not going to stretch or pop, and that
25 is like the size of like a Tampon would be. But, if

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1 I take a rubber band and I try to stretch it around
2 my head, it is bigger, my head is bigger than what
3 the rubber band can stretch or accommodate to go
4 over my head. The Tampon has the same effect on
5 pubertal girls, or girls that have started their
6 periods. It is small and it is slender, and the
7 tissue will stretch and allow a small object to go
8 into or through that tissue without causing
9 significant injury. The only time we see injury ---
10 penetrating injury on a female that is pubertal ---
11 meaning that she has started her period, is when the
12 object goes through that opening and it is larger
13 than that tissue can stretch and accommodate for
14 that object to go through.

15 Q. And finally, Dr. Saunders, the injuries that you
16 observed on both girls can you tell us in your
17 opinion if it was the result of a fresh --- or use
18 the term acute sexual contact, or something that had
19 occurred in the past?

20 A. It was a past injury.

21 MS. MAYES: Nothing further.

22 THE COURT: Re-cross.

23 MS. LITTLE: No, sir.

24 THE COURT: All right. Thank you,

25 doctor. You may step down.

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1 All right. Ladies and gentlemen, it is a
2 little later than we sometimes run, but I did want to go
3 ahead and complete the testimony of this witness today.
4 And we have now, of course, completed her testimony. And
5 I think it is appropriate for us to recess for the
6 evening.

7 I am going to send you to your homes. Allow
8 you to be away from the courthouse over the evening.

9 And again, give you the same admonitions that I
10 have given you before.

11 Do not discuss the case with anyone. Do not
12 allow anyone to discuss the case with you. Do not read
13 any news stories, or listen to any broadcast or media
14 concerning this case. And do not discuss the case among
15 yourselves when you are reassembling in the jury room.
16 You still have not heard all of the testimony in this
17 matter, and it would still be premature for you to begin
18 any discussion of the case.

19 So, once again, I will tell you over the
20 evening recess just forget about this case, and go about
21 your business. Have a pleasant evening, and a good meal.
22 Then come back tomorrow morning refreshed. And if you
23 would be back in your jury room tomorrow morning at 9:30,
24 we will be ready to resume.

25 I will see you at that time. Have a pleasant