

ORIGINAL

VOLUME I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

D. Garrison Hill, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PRENTISS LOVE,

APPELLANT

APPELLATE CASE NO. 2012-212037

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT.
COURT'S EXHIBIT # 5 (DETENTION CENTER PHONE RECORDS)**

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
2011-GS-22-00432

COUNTY OF GEORGETOWN

STATE OF SOUTH CAROLINA,

-vs-

PRENTIS WAYNE LOVE;

Defendant.

April 23/25, 2012

B E F O R E:

HONORABLE D. GARRISON HILL

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

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JONATHAN ERIC FOX, Esquire
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Court Reporter

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1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened at 2:37 p.m., April 23, 2012).

3 THE COURT: Okay, anything before we bring
4 the jury in?

5 MS. LIVELY: No. The State is ready to
6 proceed, Your Honor. Did I provide you with a
7 potential witness list? I thought I might have
8 handed it over.

9 THE COURT: Yes, ma'am.

10 MR. FOX: Your Honor, I have, if I can make a
11 quick copy, I have a potential witness list also I
12 will hand up.

13 THE COURT: Okay.

14 MR. FOX: I'll make a copy for the Solicitor.

15 THE COURT: Do you have any specific voir
16 dire other than the general?

17 MS. LIVELY: The State doesn't, Your Honor.
18 It is my understand typically in these kind of
19 cases the Court would normally ask, you know, about
20 if there had ever been someone who is a victim of a
21 violent crime, or their family, in such a way we
22 don't necessarily call out to jurors to tell us
23 what happened and what effect from it if they were
24 involved in this type event. I know that sometimes
25 that is kind of a general question but the State

1 really doesn't have any specific voir dire. I
2 haven't seen any from the defense, so I'm not sure
3 if there are any from them.

4 MR. FOX: I would request that Your Honor
5 inquire whether any juror has been the victim or
6 close family member has been the victim of a crime.
7 I would also request if you would inquire whether
8 any member of the jury panel is a member of any
9 kind of victims advocate group like COSA or MADD or
10 something.

11 THE COURT: Okay.

12 MR. FOX: That would be all, Your Honor.

13 MS. LIVELY: No objection in regard to that.

14 THE COURT: Insofar as any crime, what I
15 would propose to ask, if any member of the jury
16 panel or any member of their immediate family has
17 ever been arrested, charged with, accused of or
18 convicted of a crime that involved, I hate to say,
19 violence or a crime that involved sexual assault or
20 alleged sexual assault or if they had ever been a
21 victim of such crime?

22 MR. FOX: I would ask Your Honor to include
23 whether they had been a victim of, not whether a
24 family member had been a victim.

25 MS. LIVELY: Your Honor, in doing so, I think

1 that is fine but in doing so we if we would have
2 that person step up so we don't taint the rest of
3 the jury in regard to stepping forward to discuss
4 it.

5 THE COURT: Sure. What I will do is, there
6 are a number of questions and I will tell them if
7 they need to respond to any of the questions I need
8 them to come up and I will just ask some other
9 innocuous questions while they're coming up.

10 MS. LIVELY: Yes, sir, that's perfect. Thank
11 you.

12 THE COURT: Thank you.

13 Okay, anything else before we bring the jury
14 panel in?

15 MS. LIVELY: Not from the State, Your Honor.

16 MR. FOX: No, Your Honor.

17 THE COURT: Okay. You can bring them on in.

18 (Jury panel now present).

19 THE COURT: All right, ladies and gentlemen,
20 thank you for your patience. We had to take care
21 of some matters before we could bring you into the
22 courtroom and we had an earlier case that was
23 resolved and we had to resolve it in here and I
24 appreciate your understanding.

25 We are going to select a jury in the case of

1 the State versus Prentis Wayne Love, and Mr. Love,
2 if you would stand up so the jury can see you, sir?

3 All right, thank you.

4 This is a criminal case and there are several
5 things that apply to criminal cases that I need to
6 advise you about and the first is that in a
7 criminal case the defendant is not required to
8 prove himself innocent or prove himself not guilty.
9 Instead, the burden of proof is entirely on the
10 State and Mr. Love has no obligation to produce any
11 evidence or explanation whatsoever.

12 Second, the defendant in a criminal case, no
13 matter what the charge may be, is always presumed
14 innocent of that charge. And finally, the
15 allegations that I'm about to read to you in these
16 indictments are simply that, they are allegations.
17 They don't constitute evidence or proof or even
18 create a suspicion of guilt. The indictments are
19 simply pieces of paper, they are the formal way the
20 case begins and it is the way the government lets a
21 citizen know what he is charged with and that is
22 their only function. And again, Mr. Love has pled
23 not guilty and the burden of proof is entirely on
24 the State. He is presumed innocent.

25 Now, the first indictment, and there are two

1 indictments, the first indictment I'm going to read
2 in case number 2011-GS-22-431, and it alleges that
3 Prentis Wayne Love did in Georgetown County, State
4 of South Carolina, on or about September 11, 2010,
5 willfully and unlawfully commit the crime of
6 criminal sexual conduct with a minor in the second
7 degree by engaging in sexual battery, including but
8 not limited to digital penetration, with a minor
9 who was at least fourteen years or less but who was
10 at least eleven years of age, to wit, initials BB.
11 That is the pertinent part of that indictment.

12 And then the second indictment is case number
13 2011-GS-22-432. It alleges that Mr. Love being
14 over fourteen years of age did in this County
15 between December 31, 2009, and September 11, 2010,
16 willfully and lewdly commit a lewd or lascivious
17 act upon the body of a child less than sixteen
18 years of age, to wit, initials BB, age fourteen,
19 with the intent of arousing or appealing to or
20 gratifying the lust or passions or sexual desires
21 of said defendant or of the victim in violation of
22 the South Carolina Code of Laws.

23 Now, those are the allegations of the
24 indictments and our purpose now is to make sure
25 that we can have a jury that can be fair and

1 impartial to both Mr. Love and the State, so to
2 that end I need to know if anyone is related by
3 blood or marriage to the defendant Prentis Wayne
4 Love or kin to him in any way. If so, please
5 stand.

6 Does anyone have any personal, social or
7 business relationship with Mr. Prentis Wayne Love?
8 If so, please stand.

9 I'm going to read to you a list of people who
10 may testify in this case, and listen carefully
11 because I'm going to ask you if you know these
12 people or have any relationship with them.

13 The potential witnesses are Prentis Love,
14 Tabitha Love, [REDACTED], [REDACTED], Regina Autry,
15 Ginger Pop, Dianne Nordeen, Dr. Carol Rahter,
16 R-a-h-t-e-r, Shannon Bellamy, Robby Sarvis, Anthony
17 Carter, Ashley Jenkinson, John Gregory and Denise
18 Brand. Those are the potential witnesses.

19 Did I leave anybody out or is that all the
20 witnesses?

21 MS. LIVELY: That's all for the State, Your
22 Honor.

23 THE COURT: All right.. Is anyone related by
24 blood or marriage or kin to any of these potential
25 witnesses? If so, please stand.

1 Does anyone have any personal, social or
2 business relationship with any of these potential
3 witnesses? If so, please stand.

4 Does anyone know anything about this case
5 other than what you have heard from me here this
6 afternoon? If so, please stand.

7 I'm going to ask some questions now that
8 require some information that is personal so if you
9 need to respond I'm going to ask you to come down
10 one at a time with the bailiff's assistance and
11 we'll form a hopefully short line right here in the
12 center aisle, but the questions are as follows.

13 Is there anyone who is a member of or
14 contributor to, whether it is your time or your
15 money, to any organization whose primary purpose is
16 to promote more aggressive law enforcement or
17 victims rights? That is the first question.

18 The second question, is there anyone who has
19 ever been arrested for, accused of, charged with or
20 convicted of any violent crime or a crime involving
21 any alleged sexual assault or have you had any
22 member of your immediate family be so accused or
23 charged or convicted, or have you or any member of
24 your immediate family been a victim of a violent or
25 sexual crime?

1 And the last question, is there anyone who
2 knows of any reason why they could not be fair or
3 impartial in hearing this case?

4 Those are the questions so if you need to
5 respond, again, we can talk to you one at a time up
6 here in a more private setting.

7 All right.

8 The next question. Is there anyone who has
9 ever been employed by or had a member of their
10 immediate family be employed by the Solicitor's
11 office for the Fifteenth Circuit? The Solicitor is
12 Greg Hembree, so if you have been employed or had a
13 member of your immediate family be employed by the
14 Solicitor's office please stand.

15 All right. I'm going to ask if the lawyers
16 who are going to be involved in the case could
17 introduce themselves to you and introduce the
18 people at their table.

19 Miss Lively.

20 MS. LIVELY: Thank you, Your Honor. Good
21 afternoon, ladies and gentlemen. My name is
22 Candice Lively, I'm a prosecutor with Horry and
23 Georgetown counties, and sitting beside me is David
24 Richardson who is also a prosecutor in our office,
25 and then my lead investigator Ginger Pop with the

1 Georgetown County Sheriff's Department. Amy
2 Garrett is my victim/witness advocate who will be
3 seated with us during the trial.

4 Thank you.

5 THE COURT: Thank you.

6 MR. FOX: Good afternoon, ladies and
7 gentlemen. My name is Eric Fox and I will be
8 representing Mr. Prentis Wayne Love.

9 THE COURT: Thank you.

10 Is anyone related by blood or marriage or kin
11 to any of the lawyers involved in the case or
12 anyone they introduced? If so, please stand.

13 Does anyone have any personal, social or
14 business relationship with the lawyers or anyone
15 they introduced? If so, please stand.

16 Has anyone been represented or involved in a
17 dispute where they were represented by one of these
18 lawyers who were introduced or where the other side
19 was represented by one of these lawyers? If so
20 please stand.

21 Okay. Is there any further voir dire
22 requested by the State?

23 MS. LIVELY: Not from the State, Your Honor.

24 THE COURT: The defense?

25 MR. FOX: None, Your Honor.

1 THE COURT: All right, thank you very much.

2 All right, ladies and gentlemen, we're going
3 to proceed with jury selection at this time. When
4 your name is called you can simply stand up where
5 you are and if you are chosen, and both sides have
6 a certain number of what are called strikes, but if
7 you are chosen they will direct you up here to one
8 of the seats in the jury box.

9 Any need for more than one alternate?

10 MS. LIVELY: No, I believe one alternate will
11 be fine.

12 MR. FOX: I think that's sufficient.

13 THE COURT: All right. Thank you very much.

14 THE CLERK: Juror number 201, Joyce Owens.

15 What says the State?

16 MS. LIVELY: Please excuse the juror.

17 THE COURT: All right, you may be seated.

18 THE CLERK: Juror 164, Franklin Lincoln.

19 What says the State?

20 MS. LIVELY: Present the juror.

21 THE CLERK: What says the defense?

22 MR. FOX: Please seat the juror.

23 THE CLERK: Please come and take a seat in
24 the jury box.

25 Juror number 98, Horrance Goss.

1 What say the State?

2 MS. LIVELY: Please excuse the juror from the

3 trail of this case.

4 THE CLERK: You may be seated.

5 Juror number 193, Richard I. Neidert, Jr.

6 What says the State?

7 MS. LIVELY: Please excuse the juror from the

8 trial of this case.

9 THE CLERK: You may be seated.

10 Juror number 128, Amy Inman.

11 What says the State?

12 MS. LIVELY: Present the juror.

13 THE CLERK: What says the defense?

14 MR. FOX: Please excuse this juror.

15 THE CLERK: You may be seated.

16 Juror number 202, John Parker.

17 What says the State?

18 MS. LIVELY: Present the juror.

19 THE CLERK: What says the defense?

20 MR. FOX: Please seat this juror.

21 THE CLERK: Please take a seat in the jury

22 box.

23 Juror number 171, Edward Madden.

24 What says the State?

25 MS. LIVELY: Present the juror.

1 THE CLERK: What says the defense?

2 MR. FOX: Please excuse this juror.

3 THE CLERK: You may be seated.

4 Juror number 121, Douglas Holman.

5 What says the State?

6 MS. LIVELY: Excuse the juror from the trial
7 of this case.

8 THE CLERK: You may be seated.

9 Juror number 176, Sharone McGee.

10 What says the State?

11 MS. LIVELY: Present the juror.

12 THE CLERK: What says the defense?

13 MR. FOX: Please seat the juror.

14 THE CLERK: Please take a seat in the jury
15 box.

16 Juror number 44, Nancy Carver.

17 What says the State?

18 MS. LIVELY: Present the juror.

19 THE CLERK: What says the defense?

20 MR. FOX: Please excuse this juror.

21 THE CLERK: You may be seated.

22 Juror number 132, Ieshia Jenkins.

23 What say the State?

24 MS. LIVELY: Present the juror.

25 THE CLERK: What says the defense?

1 MR. FOX: Please seat the juror.

2 THE CLERK: Please take a seat in the jury

3 box.

4 Juror number 28, James Bradford, III.

5 What says the State?

6 MS. LIVELY: Present the juror.

7 THE CLERK: What says the defense?

8 MR. FOX: Please seat the juror.

9 THE CLERK: Please take a seat in the jury

10 box.

11 Juror number 175, Brandon McCray.

12 What say the State?

13 MS. LIVELY: Present the juror.

14 THE CLERK: What says the defense?

15 MR. FOX: Please seat the juror.

16 THE CLERK: Please take a seat in the jury

17 box.

18 Juror number 262, Barbara Thompson.

19 What says the State?

20 MS. LIVELY: Present the juror.

21 THE CLERK: What says the defense?

22 MR. FOX: Please excuse this juror.

23 THE CLERK: You may be seated.

24 Juror number 47, Barry Causey.

25 What says the State?

1 MS. LIVELY: Present the juror.
2 THE CLERK: What says the defense?
3 MR. FOX: Please excuse this juror.
4 THE CLERK: You may be seated.
5 Juror number 86, Brenda Ford.
6 What says the State?
7 MS. LIVELY: Present the juror.
8 THE CLERK: What says the defense?
9 MR. FOX: Please seat this juror.
10 THE CLERK: Take a seat in the jury box.
11 Juror number 179, Kimbaya McNeal.
12 What says the State?
13 MS. LIVELY: Present the juror.
14 THE CLERK: What says the defense?
15 MR. FOX: Please excuse this juror.
16 THE CLERK: You may be seated.
17 Juror number 271, Cynthia Tuttle.
18 What says the State?
19 MS. LIVELY: Present the juror.
20 THE CLERK: What says the defense?
21 MR. FOX: Please excuse this juror.
22 THE CLERK: Take a seat.
23 Juror number 224, Debra Rogers.
24 What says the State?
25 MS. LIVELY: Present the juror.

1 THE CLERK: What says the defense?
2 MR. FOX: Please excuse this juror.
3 THE CLERK: Please take a seat.
4 Juror number 205, Henry Pausch.
5 What says the State?
6 MS. LIVELY: Present the juror.
7 THE CLERK: What says the defense?
8 MR. FOX: Please seat this juror.
9 THE CLERK: Please take a seat in the jury
10 box.
11 Juror number 114, Lindsey Hart.
12 What say the State?
13 MS. LIVELY: Present the juror.
14 THE CLERK: What says the defense?
15 MR. FOX: Please excuse this juror.
16 THE CLERK: You may be seated.
17 Juror number 192, Lawrence Myers, Jr.
18 What says the State?
19 MS. LIVELY: Present the juror.
20 THE CLERK: What says the defense?
21 MR. FOX: Please seat this juror.
22 THE CLERK: Please take a seat in the jury
23 box.
24 Juror number 240, John Small.
25 What says the State?

1 MS. LIVELY: Present the juror.

2 THE CLERK: What says the defense?

3 MR. FOX: Please excuse this juror.

4 THE CLERK: Please be seated.

5 Juror number 220, Eddie Robinson.

6 What says the State?

7 MS. LIVELY: Please excuse the juror from the
8 trial of this case.

9 THE CLERK: You may be seated.

10 THE COURT: One second, let's make sure. Is
11 that --

12 THE CLERK: Yes, Your Honor.

13 THE COURT: I'm sorry?

14 THE CLERK: Ask the question again.

15 THE COURT: Okay. Just to confirm, is
16 everyone agreeable at this point there are going to
17 only be objections for cause?

18 MS. LIVELY: That's correct, Your Honor.

19 MR. FOX: That's correct.

20 THE CLERK: Juror number 88, Deborah Fox.

21 What says the State?

22 MS. LIVELY: Present the juror.

23 THE CLERK: What says the defense?

24 MR. FOX: Seat the juror.

25 THE CLERK: Please take a seat in the jury

1 box.
2 Juror number 142, Kathy Kavanagh.
3 What says the State?
4 MS. LIVELY: Present the juror.
5 THE CLERK: What say the defense?
6 MR. FOX: Seat the juror.
7 THE CLERK: Please take a seat in the jury
8 box.
9 Juror 258, Marily Tague.
10 What says the State?
11 MS. LIVELY: Present the juror.
12 THE CLERK: What says the defense?
13 MR. FOX: Seat the juror.
14 THE CLERK: Please take a seat in the jury
15 box.
16 One or two, Judge?
17 THE COURT: This will be for the alternate.
18 THE CLERK: Juror number 65, Ronald Crowe.
19 What says the State?
20 MS. LIVELY: Present the juror.
21 THE CLERK: What says the defense?
22 MR. FOX: Seat the juror.
23 THE CLERK: Please take a seat in the jury
24 box.
25 THE COURT: Okay. Any motions or matters

1 concerning the process of selection of the jury,
2 from the State?

3 MS. LIVELY: Not from the State, Your Honor.

4 THE COURT: The defense?

5 MR. FOX: No, Your Honor.

6 THE COURT: Okay, I find the process complies
7 with all the statutory and constitutional
8 requirements and, ladies and gentlemen, you have
9 been selected to be the jury in the case of the
10 State versus Prentis Wayne Love. We're going to
11 ask that you go back to the jury room now and don't
12 talk about the case and we'll have some preliminary
13 instructions for you as soon as we can resolve some
14 other matters and ask you out here. So, thank you.

15 (The jury was excused from the courtroom).

16 THE COURT: All right. Those of you who
17 remain, call back tonight after 6:00, is that
18 right?

19 THE CLERK: Yes, Your Honor.

20 THE COURT: Okay, thank you very much.
21 Appreciate your cooperation. Call back after 6:00.

22 (Jury panel excused from the courtroom).

23 THE COURT: Okay, any pretrial matters?

24 MS. LIVELY: Your Honor, the State filed a
25 motion in limine to exclude any victim's records or

1 anything related to her counseling notes with her
2 counselor Denise Brand. I have never actually
3 provided those to the defense because I did not
4 have them in my possession. I typically in cases
5 like this do not get counselor notes because I
6 consider the testimony of the victim as well as any
7 opinion testimony from the counselor to be a
8 separate and distinct issue regarding counselor
9 notes which I believe to be confidential.

10 Your Honor, the defense did file a motion
11 regarding that issue and in response to his motion
12 whenever I filed my motion in limine to exclude
13 mention of it, Your Honor, in order to try and help
14 with the process of you making a decision regarding
15 those matters the State did provide under seal the
16 records to you regarding the counselor notes from
17 Denise Brand who is the therapist for the child

18 [REDACTED]

19 Your Honor, like I said before, I have not
20 seen these records, they were not in my possession,
21 I advised Attorney Fox that we were going to be
22 sending them to you under seal for the purpose of
23 an in-camera review regarding any potential
24 exculpatory information that would be, at least
25 give the opportunity for the defense to receive

1 that information if there was any exculpatory
2 material, and the State would ask that if the Court
3 has determined there to be any exculpatory material
4 within these counselor notes that that information
5 be disclosed and that the State may address our
6 opinion as to whether or not those records would be
7 inadmissible under a different rule of evidence
8 such as prejudicial issues and those things.

9 So, not being aware of what it was the Court
10 has actually been able to determine by its
11 in-camera review, that would be the initial basis
12 of the State's motion in limine to exclude any of
13 that. The only other issue I believe we have is
14 the fact that the defendant does have a prior
15 criminal history and the State obviously does not
16 intend to bring that into evidence. I have
17 instructed all my witnesses that it is not to be
18 mentioned under any circumstance. However,
19 obviously if the defendant were to decide to
20 testify in his own defense later on in the trial,
21 then we can address the issue again at that time.

22 It is my understanding those are the two
23 motions before the Court regarding the case. Even
24 if a forensic interview was done, Your Honor, there
25 is not a motion regarding the introduction of the

1 actual video into evidence because the child was
2 fourteen at the time of the interview, which does
3 not meet the statutory requirement of forensic
4 interviews and the videotape actually comes in, and
5 so for that purpose there is no motion in regard to
6 that.

7 I did want the Court to be aware one was out
8 there so if and when, while I still bring in my
9 forensic interviewer for her to come in as part of
10 the investigation, the interview was done and she
11 well be limited to time and place in regard to the
12 disclosure as is allowed under the hearsay
13 exception for sexual assault cases.

14 THE COURT: Certainly I'm not going to opine
15 about about the credibility --

16 MS. LIVELY: I'm not qualifying her as an
17 expert. It is one of those situations where if it
18 becomes necessary, but in this particular case I do
19 not intend to even qualify her as an expert, she
20 will be a fact witness only.

21 THE COURT: Okay. Thank you.

22 MS. LIVELY: Thank you.

23 THE COURT: Yes, sir, Mr. Fox.

24 MR. FOX: Your Honor, this initially was my
25 motion to obtain counseling records. My

1 understanding is Miss [REDACTED] who is the
2 alleged victim in this case, after disclosing, was
3 referred to Denise Brand for counseling and it has
4 been ongoing, my understanding. I believe Your
5 Honor has a copy of my motion. I want to emphasize
6 my motion is not limited either to this being
7 produced under Rule 5, I think Rule 5 provides a
8 basis, I think the United States Supreme Court case
9 of Kyle versus Whitley provides a basis, as well as
10 due process, Brady versus Maryland, as well as just
11 general due process consideration.

12 I would also take the position that, and I
13 talked to Miss Lively about how we would handle
14 this situation, it was her suggestion we obtain the
15 records under seal and forward them to Your Honor
16 for review. I was consulted about that and I
17 thought that was a good way to initially address
18 it. I would say, Your Honor, in your evaluation
19 that it should encompass more than material that
20 might be exculpatory. Again, because under the
21 various cases, Kyle v Whitley, the case is cited in
22 my motion as well, in re, Michael H, there may be
23 other reasons why this may be discoverable
24 evidence.

25 Obviously if you find something in there

1 about exculpatory, if she were to say, "By the way,
2 Prentis Wayne Love never did anything to me," of
3 course that would be discoverable. But if there
4 are inconsistencies in there from what she had
5 previously told people and now telling her
6 counselor, that is one example, and I have no
7 indication at this point, but if she were to have
8 competency issues, which was a Family Court case,
9 Michael H., there was an issue of competency as a
10 witness and the court said, "Yes, you can explore
11 that." So, there are many ways it might be
12 discoverable.

13 I would also say to the Court you don't know
14 our case, you certainly can identify as a lawyer
15 and as a judge material that will be exculpatory,
16 what you don't have is some of the other discovery
17 I have, you have not of course spoken to my client,
18 you're not familiar with my theory of defense.
19 There may be material you would not recognize as
20 important, that I would, and so I would ask the
21 Court to take a more expansive view of that.

22 I think clearly it is discoverable material.
23 It may or may not end up being relevant, may or may
24 not be something that is going to be introduced at
25 trial and if there is something, if Your Honor does

1 give me that material and I do intend to introduce
2 something or ask, of course the Solicitor can
3 object at that time and it may be there is a
4 separate objection from the State's side as far as
5 keeping that out.

6 Your Honor, I also just address briefly, I
7 think it was included in the Solicitor's written
8 material, too, Your Honor, she cites the South
9 Carolina case of State v Trotter in which that was
10 the Supreme Court of South Carolina said counseling
11 records are not discoverable under Rule 5 but they
12 limit their theory or their application to Rule 5
13 and they said that is not, counseling notes are not
14 a medical record, they don't qualify under that,
15 but in that case the trial court said, "Look, I'll
16 provide," the objection at trial was this witness
17 can't testify because the person wasn't on the
18 witness list, "Therefore, Judge, we want you to
19 exclude any testimony." Now, I'm basing that
20 objection on South Carolina Rules of Criminal
21 Procedure, Rule 5, and rules of evidence, rather,
22 and the Court said, "I'm not going to exclude it
23 but, counselor, I will give you the records, you
24 can look them over, you can cross-examine this
25 person," he did not do that, so Trotter, I think

1 actually supports my position, the Supreme Court
2 indicated it is discoverable material. It may not
3 be discoverable under Rule 5 but it is under other
4 theory. I think we're entitled to them, Your
5 Honor.

6 THE COURT: Well, thank you for your
7 argument. I agree with you that I don't know your
8 case as well as you do and I certainly have taken
9 that into account when reviewing the record and the
10 decision on the motion regarding the record, so
11 anything further at this time?

12 MS. LIVELY: Your Honor, one of the things
13 that, in regards to Mr. Fox's argument, I
14 understand where he is attempting to distinguish
15 what it is he is asking for here and the thing that
16 the State is concerned about is just like with any
17 of these type cases, where everything comes down to
18 the statement of the victim as well as in exchange
19 for what the defendant's theory may be in the case.
20 If we were to get into all these hearsay statements
21 that are made by the victim and we get into some
22 counseling notes and some records and
23 inconsistencies, if there are any, something other
24 than exculpatory material, then what we're going to
25 have is a State versus Jeffcoat situation where I'm

1 going to stand up and say, well, Your Honor, now
2 that they are trying to show inconsistencies in her
3 statement or some reasons for those
4 inconsistencies, after, you know, disclosure was
5 made, now we might be getting into an issue of
6 whether now I can put up people that can give prior
7 consistent statements of the victim and it becomes
8 a war of the hearsay statements that have been
9 collected over a period of time, so the concern
10 that the State has is how far does that get us if
11 we start to let all these statements in regarding
12 things that happened have been said by various
13 individuals, including the victim and/or the
14 defendant in this case? So that would be my
15 concern, that at what point do we stop?

16 The State understands I'm limited in regard
17 to time and place of what the victim had said to
18 people regarding the sexual assault and I intend
19 to stick by that. That is the reason why in regard
20 to the counseling records which I consider what
21 Trotter calls them, raw data, what the counselor is
22 doing for the focus of therapy, not as an
23 investigatory tool, I do not believe they are
24 appropriate not only for disclosure but as well as
25 impeaching the victim if there is no exculpatory

1 information. That is the position the State would
2 take in regard to that. That is all I would have
3 to say in regard to the records, Your Honor.

4 THE COURT: Thank you, Miss Lively.

5 MS. LIVELY: Thank you.

6 THE COURT: All right. Let me, in light of
7 your argument, I'm going to review some of it.
8 Just bear with me for a few minutes.

9 Okay. Well, based on my review and the legal
10 principles, I find there are some isolated portions
11 of the report that should be disclosed to the
12 defense and what I would like to do is redact of
13 course everything on these particular pages that is
14 not subject to disclosure, which will take a little
15 bit of time to prepare. I don't think any of this
16 material is something the defense necessarily needs
17 before we do the opening statements but I will be
18 glad to take a break and prepare it so you can have
19 it before we begin the case.

20 MS. LIVELY: Fine, Your Honor.

21 THE COURT: Thank you.

22 MR. FOX: That's fine.

23 THE COURT: It shouldn't take very long,
24 thank you, probably about fifteen minutes. Take a
25 fifteen minute recess.

1 (Recessed at 3:35 p.m.).

2 (Resumed at 3:53 p.m.).

3 THE COURT: All right, I have redacted the
4 records and the isolated portions I mentioned that
5 should be disclosed will be available up here for
6 you all to look at. Of course they are under
7 protective order in the sense these isolated
8 portions that, I think twelve lines of the report
9 are all that are subject to disclosure, but
10 nevertheless, they are subject to protective order
11 in that they will not be shown to or disseminated
12 or copied or reproduced or used for any purposes
13 other than the lawyers' eyes only and Mr. Fox can
14 verbally transmit what the disclosed items consist
15 of but the remainder of the records are going to be
16 held under seal until the conclusion of the trial
17 and thereafter unless there is a motion made to
18 disclose or, excuse me, unseal them they will be
19 ordered to be destroyed without infringement,
20 assuming it can be done without infringing on
21 anyone's interest.

22 MR. FOX: Your Honor, just to make a record,
23 we would renew our motion. We understand the
24 Court's ruling and do not take exception other than
25 noting our exception we don't have full disclosure

1 of the record.

2 THE COURT: Sure.

3 MR. FOX: I would also request that the
4 entire sealed record remain a part of the whole
5 record so that if we have an appeal, so any
6 appellate court can make a review of those records.

7 THE COURT: That is what I was intending to
8 articulate earlier, maybe not so well.

9 MR. FOX: I misunderstood.

10 THE COURT: That's okay.

11 All right, I'm going to make Court's Exhibit
12 1 under seal the portions I just disclosed, which
13 is the twelve lines of the records that I did rule
14 were disclosable, that will be held under seal.
15 And of course Court's Exhibit Number 2 will be the
16 remainder of the records under seal for purposes of
17 any appellate review or other post conviction
18 review should we get to that point. Of course I'm
19 not intimating anything on the outcome of the
20 trial, just for the record.

21 (Counseling records marked as Court Exhibit
22 Numbers 1 and 2).

23 Anything else before we bring the jury out?

24 MR. FOX: Not from the defense, Your Honor.

25 MS. LIVELY: Your Honor, I did want to bring

1 up a matter that I was reminded of just a few
2 minutes ago, not in regard to this particular
3 ruling, the State is fine, I have no additional
4 issues regarding that.

5 THE COURT: Yes, ma'am.

6 MS. LIVELY: The actual bond for the
7 defendant needs to be addressed. Also the bondsman
8 who was not aware it was actually going to trial
9 this week just came up and talked to me. He is in
10 the courtroom. He apologized to me, he is not
11 appropriately dressed but he said he was not aware
12 he was actually here because of a trial being
13 started but it is my practice to request that the
14 defendant be taken into custody during the trial of
15 the case. This defendant has a conviction for
16 ABHAN and is actually on probation or parole at
17 this time, so of course that is a concern for the
18 State, and also after speaking with the bondsman he
19 also says he has concerns, once a case is called to
20 trial, regarding staying on the bond, so the State
21 is asking, Your Honor, that the defendant be held
22 at the Georgetown County Detention Center during
23 the trial of the case. As I say, the bondsman is
24 here in the courtroom, if you will stand for His
25 Honor. He did come in and talk to me and relay

1 that information, Your Honor.

2 THE COURT: Okay, thank you.

3 Mr. Fox, yes, sir?

4 MR. FOX: Your Honor, obviously we would ask
5 that Mr. Love be allowed to remain out. He has
6 been charged with these things for well over a
7 year, he has never failed during that time to
8 appear before when required, including today, not
9 once, it has never been an issue with his bond. I
10 realize it is in Your Honor's discretion, certainly
11 there is discretion to detain him and I would ask
12 the Court not to detain him.

13 THE COURT: Okay.

14 MR. FOX: He actually, just for the Court's
15 clarification, he has a bond on the present charge
16 and he has a separate bondsman on the potential
17 violation of probation.

18 THE COURT: Okay.

19 MR. FOX: Which I guess is not technically at
20 issue but Ray Johnson is his other bondsman who I
21 spoke to, Mr. Johnson is willing to stay on the
22 bond, and I recognize he actually is not
23 responsible for this bond on the CSC and lewd act
24 charge.

25 THE COURT: Yes, sir. Okay, I make it a

1 policy that once a case is called for trial the
2 bond is invalidated and therefore he will remain in
3 custody when court is not in session.

4 Anything further before we bring the jury in?

5 MS. LIVELY: I believe, I believe that was
6 all the pretrial motions, Your Honor, to be
7 handled. That is all from the State. Thank you.

8 THE COURT: Do you anticipate the case
9 lasting how long, I guess is my question?

10 MS. LIVELY: Well, Your Honor, I would
11 anticipate that I would be done tomorrow afternoon
12 if I get started and I can, I believe that we
13 should be finished tomorrow afternoon with the
14 State's case, just don't hold me to that.

15 THE COURT: I'm not.

16 MS. LIVELY: But that is my best guess, I
17 think tomorrow afternoon since there is no forensic
18 interview to show and that kind of thing that takes
19 a lot of time. I think tomorrow afternoon.

20 MR. FOX: And, Your Honor, obviously at this
21 point I'm not ready to say what we may or may not
22 have in the way of witnesses.

23 THE COURT: I know.

24 MR. FOX: But I would think if that holds,
25 that we're able to get the State's case by tomorrow

1 afternoon, I would think we either might finish the
2 testimony by tomorrow afternoon or possibly a
3 little bit of time Wednesday morning but I think we
4 can wrap up the entire thing by Wednesday morning.

5 MS. LIVELY: I agree.

6 THE COURT: Okay. And I'm certainly not
7 trying to press anybody or make you commit to
8 something you don't want to at this time.

9 MR. FOX: And while we're on general
10 scheduling, I'm prepared to open, but we prefer,
11 though it is not a lot of material, prefer to be
12 able to look at what has been disclosed and confer
13 with my client before we start testimony. I assume
14 maybe one of the first witnesses, I don't know if
15 Miss Lively plans to start today but my preference
16 would be to perhaps open today but allow me to
17 review this and consult with my client before we
18 take any testimony.

19 MS. LIVELY: What I was going to do, I don't
20 mind tipping my hat on opening and then calling the
21 father of the victim since he was, since he was the
22 initial person that met the defendant, just to kind
23 of establish a time line, so I was not planning on
24 starting with my victim, so I don't know if that
25 assists Mr. Fox in his decision but the State is

1 ready to proceed with that being our first witness.
2 I don't mind telling you that.

3 MR. FOX: My preference, Your Honor, of
4 course would be, we'll do whatever Your Honor says,
5 I would prefer to wait for any testimony until I
6 have a chance to look at that and consult with my
7 client but if Your Honor wishes to go forward with
8 the father that's fine. My personal preference,
9 what I ask is that we be allowed to adjourn
10 overnight other than opening this afternoon and
11 start on the testimony in the morning. It may be,
12 I don't foresee the same issue with the father as I
13 might with the victim but it could be, I don't know
14 yet what he is going to testify to.

15 THE COURT: Right.

16 MR. FOX: There may be an issue there, Your
17 Honor.

18 THE COURT: Okay. Well, we're going to do
19 the opening statements. I guess you can look over
20 the portions that have been disclosed, I can give
21 you a few minutes to do that right now if you want
22 but I would like to go ahead and have that jury
23 hear some testimony just so we can get the trial
24 moving.

25 MR. FOX: If we take just a few minutes so I

1 can consult with my client?

2 THE COURT: Right.

3 MR. FOX: Is it okay if we step back?

4 THE COURT: Sure.

5 (Recessed at 4:05 p.m.).

6 (Resumed at 4:20 p.m.).

7 THE COURT: Okay.

8 MR. FOX: We're ready to proceed, Your Honor.

9 THE COURT: Okay, bring the jury on in.

10 Thank you very much.

11 (The jury returned to the courtroom).

12 THE COURT: Good afternoon, ladies and
13 gentlemen. We're going to go ahead and get started
14 now with the trial of State versus Prentis Wayne
15 Love. Before we actually begin the case I want to
16 give you some preliminary instructions. Hopefully
17 it will demystify the proceedings a little bit.

18 To begin, the first thing I want to do is
19 thank you for your service this week. I know we're
20 taking you away from your families and your jobs
21 and other important aspects of your life and asking
22 you to come up here and serve on a jury and I know
23 it is inconvenient for you but I also know that you
24 are here in part because you understand and respect
25 the right to a jury trial is a valuable and

1 fundamental right that all of us enjoy and you are
2 making it possible for the State and for Mr. Love
3 to have a jury trial this week.

4 As I mentioned this morning, the right to a
5 jury trial was something our founders thought was
6 essential to a democracy and to a fair system of
7 justice. In fact John Adams, one of our greatest
8 founders, said that the right to vote and the right
9 to a jury trial are the heart and lungs of a good
10 democratic government. So, again thank you on
11 behalf of your justice system for being here this
12 afternoon and this week and serving.

13 The second thing I want to do is introduce
14 some of the people in the courtroom who are
15 essential and key participants in the trial this
16 week. You have already met the lawyers, they
17 introduced themselves to you a little while ago and
18 I introduced myself to you this morning and I'm
19 Gary Hill, Circuit Judge from Greenville and I'm
20 glad to be down here with you in Georgetown this
21 week.

22 Some of the other people in this process who
23 are essential include the court reporter Mr. Henry
24 Young who is here to my right and as you can see he
25 takes down every word that is said because Circuit

1 Court is a court of record and he is one of the
2 finest court reporters in the state and I'm glad to
3 be working with him this week.

4 I want to also introduce you to my law clerk,
5 Lindsey Overby, she's in here seated at the bench
6 at this time. She's a lawyer and a graduate of the
7 law school at U.S.C. and she helps me research
8 matters that arise during trial and helps me
9 prepare for trial.

10 The Clerk of Court, who is Miss Alma White,
11 you saw was intimately involved in the jury
12 qualification and the selection process, and then
13 and then one of her assistants Mr. Keith Moore will
14 be here during the trial and he is seated to Miss
15 Overby's right.

16 And then perhaps the most important people in
17 the process are the bailiffs and they are here for
18 your assistance, and the bailiffs are Jackie Orr
19 who is seated back in the back and Mr. Roy Nolan,
20 who is seated here to your left, to my left, and
21 Mr. Little who was in here earlier but you may see
22 him. There he is. Mr. Little is hiding back there
23 in the corner. So, they are here for your
24 assistance.

25 Now, ladies and gentlemen, everybody I

1 introduced and certainly I have done this and
2 certainly the lawyers have done this, we have all
3 taken an oath to do our job and you're going to
4 take an oath to do your job and I'm going to ask
5 Mr. Moore to administer that oath to you at this
6 time, and listen to the words because they are
7 words that have been around a very long time and
8 they sum up pretty nicely your obligations, then
9 I'm going to amplify on that after you take the
10 oath.

11 So, yes, sir.

12 THE CLERK: Ladies an gentlemen of the jury
13 would you please stand and raise your right hand.

14 Do you solemnly swear or affirm that you will
15 truly try the issues joined in this case and a true
16 verdict render according to the law and evidence so
17 help you God?

18 JURORS: I do.

19 THE CLERK: Thank you. You may be seated.

20 THE COURT: All right. Thank you, Mr. Moore.

21 Now, ladies and gentlemen, as I said this
22 morning, if you are selected as a juror, and you
23 have been now, you will be a judge, and there are
24 two judges in this case. There is the judge of
25 the law, that's the role that I occupy, and there

1 is the judge of the facts and that's the role that
2 you fulfill.

3 As the judge of the law I have two main
4 duties. The first duty I have is to rule on the
5 admissibility of evidence during this trial.
6 During this trial there may be objections to
7 evidence and don't hold it against the lawyers for
8 objecting to the evidence, they have a sworn
9 obligation to object to evidence when they think it
10 is improper, but if they do object I will rule on
11 the objection under the law, as the judge of the
12 law. Usually I can do that on the spot, sometimes
13 we have to take a break if things get a little
14 thorny, but nevertheless if I sustain the objection
15 that simply means the objection is upheld and the
16 evidence is not something you can consider. If I
17 overrule the objection that means the evidence is
18 proper and you can consider it in reaching your
19 decision.

20 Now, the second job I have as the judge of
21 the law is at the end of the case after you have
22 heard all the evidence and heard the lawyers'
23 arguments I will instruct you on the law that
24 applies to the facts of this case. Now, you are
25 the judge of the facts and that simply means that

1 your decision as to what the facts are in this case
2 is yours alone. I'm not going to indicate to you
3 what I think the facts of the case are or what you
4 have heard should be. I have no opinion because
5 the Constitution designates the jury as the sole
6 and exclusive judge of the facts in cases tried in
7 this courtroom.

8 Now, ladies and gentlemen, don't interpret
9 anything I do during this trial as indicating any
10 kind of comment or statement on the facts because
11 as I said, I'm to uphold my oath and not do that
12 during this trial, so you as the judge of the facts
13 will have to base your decision as to what the
14 facts are on the evidence and you can only use two
15 things in determining what the facts are. Only two
16 things constitute evidence.

17 The first form or source of evidence is
18 witness testimony. I don't know much about this
19 trial but I anticipate we will have people who come
20 in who have knowledge about the case and are sworn,
21 they will testify about their knowledge. So, sworn
22 witness testimony is the first type of evidence you
23 can use in determining what the facts are.

24 The second is by way of an exhibit. An
25 exhibit is simply a physical, tangible object. It

1 might be a map or photograph or something of that
2 nature but you will know it's an exhibit and you'll
3 know it's evidence and therefore it is something
4 you can use to determine what the facts are because
5 it will be back in the jury room with you at the
6 end of the case and it will have a sticker on it
7 that says exhibit number so and so.

8 So, keep in mind as we go through the trial
9 those are the only things you can use in
10 determining what the facts are. The first is sworn
11 witness testimony and the second is an exhibit.
12 Nothing else constitutes evidence, as I will
13 instruct you.

14 Now, ladies and gentlemen, by necessity you
15 will have to weigh and evaluate the credibility of
16 all the evidence. That simply means for every
17 witness that testifies and every exhibit that is
18 introduced you will have to gauge its credibility
19 or believability. In the case of a witness who
20 testifies I can give you some guidelines for gaging
21 believability. You consider what opportunity they
22 had to know or see or observe about the things they
23 have come here to talk to you about and testify to,
24 you can consider how their evidence stacks up to
25 the other evidence in the case, you can consider

1 their demeanor on the stand, you can consider their
2 interest in the outcome of this case, that is,
3 whether they are biased or prejudiced for someone
4 or some issue in the case. And you can use
5 whatever you use in your day to day life to
6 determine whether you think someone is telling you
7 the truth because you certainly didn't have your
8 common sense evaporate when you walked in the
9 Georgetown County courthouse.

10 Now, ladies and gentlemen, as the sole judge
11 of the facts you have a very great responsibility
12 and your decision as to the facts, as I have said,
13 is yours alone but it is also important for you to
14 understand how final your decision is when it comes
15 to determining the facts. If I make a mistake as
16 to the law it can easily be overturned or reversed
17 on appeal. But a jury's decision as to what the
18 facts are is almost always final and conclusive
19 under our system of justice.

20 So, I know it is hard to sometimes sit and
21 listen for long periods of time so we all know,
22 however, it is when our mind starts to wander that
23 something important happens, so let's try to keep
24 attention throughout the case. And this trial will
25 probably last several days but regardless of how

1 long or short it is, it's a very important matter
2 for both the State and Mr. Love, so please try to
3 keep attention throughout the trial. We'll try to
4 take breaks every now and then to make sure
5 everyone is refreshed and if someone needs a break
6 before we take one or one is scheduled just let us
7 know and we'll try to take it.

8 Now, ladies and gentlemen, this is a criminal
9 case and as I mentioned earlier there are several
10 fundamental principles of criminal law that apply
11 and the first is that Mr. Love is presumed
12 innocent. He doesn't have any obligation to
13 produce evidence or any explanation whatsoever. No
14 one charged with a crime is required to prove
15 themselves innocent or prove themselves not guilty.

16 Mr. Love pled not guilty and that put the
17 burden of proof on the State and the only way the
18 State can gain a conviction is if all twelve of you
19 agree the State has proved each and every element
20 of the crime beyond a reasonable doubt.

21 You will recall there are two indictments at
22 issue in this case and again the indictments are
23 not evidence. They don't constitute proof of
24 anything, the indictment is not a witness, it's not
25 an exhibit, it is not something you can take into

1 account in determining the facts but bear in mind
2 that Mr. Love has pled not guilty and the burden of
3 proof is entirely on the State.

4 Now, how many of you have sat on a criminal
5 trial before as a juror? If you would, just raise
6 your hand.

7 Okay, so, we have two people.

8 JUROR: I ain't never been on a criminal
9 trial but I had jury duty.

10 THE COURT: Okay. So at least one person has
11 sat as a criminal juror before. The rest of you
12 may know from your open experience a little bit
13 about the structure of a criminal trial. Let me
14 tell you about that structure just to demystify
15 things a little further as to what to expect over
16 the next several days.

17 In just a moment you're going to hear the
18 opening statement of the Solicitor Miss Lively.
19 She is going to give a brief synopsis or outline of
20 what she thinks the evidence is going to show in
21 this case in nonargumentative fashion and she goes
22 first because the State bears the burden of proof.
23 Then Mr. Fox on behalf of Mr. Love may give an
24 opening statement or may not because he doesn't
25 have any obligation to produce any evidence or

1 explanation, as I said, but he may give an opening
2 statement as well.

3 And then we'll move into the presentation of
4 evidence by the State. Again, bearing the burden
5 of proof, they are going to go first at which time
6 Mr. Love will be able to confront those witnesses
7 and that evidence. Then after the State completes
8 its presentation of evidence Mr. Love will have the
9 opportunity to, again not the obligation, to
10 produce any evidence he wishes to and then after
11 you have heard all the evidence the case will be at
12 the stage where the lawyers will give you their
13 closing argument, where they will tell you what
14 they think the evidence has shown and what your
15 verdict should be.

16 Then the case will move to the stage where I
17 give you the instruction on the law you are to
18 apply to the facts of the case, then the case is
19 going to be in your hand for a decision as to what
20 those facts are and your application of the law to
21 those facts and you will ultimately reach a verdict
22 in this matter.

23 Now, until we reach that point, ladies and
24 gentlemen, don't talk about this case with anyone,
25 don't discuss it with your fellow jurors until you

1 have heard all the evidence and heard the argument
2 of the lawyers and been given the law you need to
3 apply to those facts because until you have heard
4 all those things you won't have the tools you need
5 to do your job, and it is very important to keep an
6 open mind because these trials are often like
7 puzzles, the lawyers must present them one piece at
8 a time.

9 So, I thank you for your attention to me and
10 at this time we will have the opening statement by
11 Miss Lively.

12 MS. LIVELY: Thank you, Your Honor.

13 May it please the Court, Your Honor?

14 THE COURT: Yes, ma'am.

15 MS. LIVELY: Thank you very much.

16 Ladies and gentlemen of the jury, thank you
17 for your patience. I know it has been a long day
18 and whenever we have a process such as this where
19 jurors are called forward to hear a case involving
20 something like criminal sexual conduct with a minor
21 in the second degree as well as lewd act on a minor
22 immediately the urgency in having these cases heard
23 is something that just jumps out at you. The cases
24 that deal with child victims are sometimes
25 difficult to hear but they happen and that is why

1 we're here, ladies and gentlemen, and all of you
2 are going to have to hear some difficult
3 information but in hearing this information what
4 your job to do is exactly what the judge has said,
5 put all the facts together, and as the sole person
6 from the State I always welcome the responsibility
7 to present this evidence to you through witnesses,
8 investigators and the actual victim in this case
9 [REDACTED] She will testify before all of
10 you as to what happened to her at the hand of the
11 defendant Prentis Wayne Love.

12 Now let me explain the actual statute so you
13 will know as jurors what it is you are going to be
14 looking for because I think it is helpful for you
15 to know what I have to prove beyond a reasonable
16 doubt. The first charge is criminal sexual conduct
17 with a minor in the second degree, and the way our
18 Legislature has divided up our different types of
19 criminal sexual conduct cases in dealing with
20 minors, it deals with the age of the child. First
21 degree would be some type of sexual battery with a
22 child under the age of eleven. That's not what we
23 have here, so we have CSC, which is short for
24 criminal sexual conduct with a minor second degree,
25 which would be sexual battery with a child between

1 the age of eleven and fourteen.

2 The evidence will show and [REDACTED] will tell
3 you that at the age of thirteen she met the
4 defendant. She met him through a Ducks Unlimited
5 function, with her parent there, friends, family.
6 One of these easy going public events. You will
7 learn from her as well as her family members how
8 the defendant became close to them and how he had
9 access to [REDACTED] Minor

10 So, what I have to show you in order to
11 achieve criminal sexual conduct with a minor
12 between the ages of eleven and fourteen is to show
13 there was some sexual battery that occurred at the
14 hand of the defendant on [REDACTED] Minor And the
15 evidence will show that during the time when
16 [REDACTED] Minor knew this defendant from the time she met
17 him when she was thirteen, until September,
18 October, or September of 2010 he did commit sexual
19 battery on her. She had turned fourteen by that
20 time but still that is what I have to show you.
21 Sexual battery can be any type of penetration of a
22 child's genitalia by either an object, by a hand,
23 by a part of the defendant's body on the child.
24 Penetration, however slight.

25 The defendant is also charged with lewd act

1 on a minor. Now, lewd act on a minor is a little
2 bit different because it includes things that might
3 not rise to the level of an actual sexual battery,
4 and let me just break it down for you. Someone
5 touching a child, kissing a child for his own
6 gratification. If you determine that it is, and
7 only you will be the ones to determine what was
8 going on, use your common sense, if he's kissing
9 her, fondling her, touching her in a way that is
10 inappropriate, in a way that is at all sexual in
11 nature, that is what lewd act on a minor is,
12 because sometimes, ladies and gentlemen, there may
13 not be that opportunity for a battery, there may
14 not be that opportunity where the person goes to
15 the next level.

16 So these are the two offenses that the State
17 has to prove to you occurred at the hand of the
18 defendant on [REDACTED] Ladies and gentlemen, you
19 will get to hear from her yourself. You will hear
20 from her family members about how they welcomed the
21 defendant into their home, you will hear how they
22 had the ultimate betrayal at the hand of the
23 defendant. You will hear how [REDACTED] got
24 to know this defendant, how she trusted this
25 defendant, how the entire family did. She babysat

1 his kids.

2 Ladies and gentlemen, once you hear all the
3 evidence and the testimony of the witnesses and
4 especially [Minor] in this case we will prove to
5 you beyond a reasonable doubt that these events
6 occurred.

7 And the other thing I want to make sure that
8 you understand, because it is one of the things
9 that is so difficult with these types of cases,
10 when you're dealing with sexual abuse most of the
11 time, and in a case like this you will hear from
12 [Minor] these events take place in private, you
13 don't usually have video, you don't usually have
14 pictures. The information comes out some other
15 kind of way and that is what happened with
16 [Minor] You will hear that. So, understand
17 that. Abuse happens in private but who do we have
18 that was there, who can tell you what happened?
19 That's [Minor] Who else do we have who can tell
20 you how the defendant had access to [Minor] Her
21 family. So, it will all come together and make
22 sense, ladies and gentlemen. Just listen to the
23 testimony, it is evidence, direct evidence as to
24 what occurred and you will come back with a verdict
25 of guilty on both charges. It will all make sense.

1 Thank you.

2 THE COURT: Thank you, Miss Lively.

3 Yes, sir, Mr. Fox.

4 MR. FOX: Thank you, Your Honor, if it please
5 the Court.

6 Good afternoon, ladies and gentlemen. I also
7 want to quickly thank you for your time and service
8 this week.

9 The judge told you about John Adams. I heard
10 Winston Churchill say three great duties and
11 obligations of any citizen in a democracy is to
12 vote, serve your country in time of war and jury
13 service. I mean, this really is as important as it
14 gets, important to the State of South Carolina, it
15 is certainly important to Mr. Love.

16 There are countries around the world that we
17 would think of as sophisticated, advanced
18 countries, where the right to a jury trial does not
19 exist, where panels of judges who may be educated
20 on the law but come from a particular frame of
21 mind, a particular background, where a panel of
22 judges decide this kind of cases. It is actually a
23 fairly rare thing, what we're doing here today. We
24 take twelve ordinary citizens from different
25 backgrounds and throughout the county, the State

1 intrusts you, we intrust you to come to a just
2 verdict.

3 And remember in your oath, remember that you
4 have no enemies to punish or friends to reward here
5 this week. You are here because you're not
6 involved in this case, you're not related or have
7 any knowledge of Miss [REDACTED] and her family or
8 Mr. Love and his family or myself or the judge, you
9 are here precisely because you don't have any
10 connection to this case. You're not here to reward
11 anybody or punish anybody. You are here to the
12 best of your ability to do justice.

13 But doing justice doesn't necessarily mean
14 automatically convicting somebody. Justice means
15 in our system getting the right answer, getting the
16 right verdict, and if the evidence leads you to a
17 verdict, no matter how emotional this case may be,
18 if the evidence or lack of evidence leads you to a
19 verdict of not guilty, your oath as jurors require
20 you to return that verdict. You have nobody to
21 reward or punish here.

22 Very briefly I want to talk to you about
23 burden of proof. The judge has already told you
24 the State of South Carolina has the burden of
25 proof. Mr. Love has no burden, it is his choice to

1 present testimony, testify or not testify, he
2 doesn't have to prove a thing, partly because it's
3 said it's impossible to prove a negative. It is
4 one thing to try to prove something. It is another
5 to prove something didn't happen, much more
6 difficult.

7 The burden of proof in a criminal case is
8 beyond a reasonable doubt. Judge Hill will define
9 that for you when he gives you his instruction at
10 the end of the case, he will tell you something
11 like a reasonable doubt is a doubt that you can
12 assign a reason to, you have a doubt you can assign
13 a reason to based on what you have heard in the
14 courtroom, based on the evidence and testimony
15 presented, not on something frivolous, not on I
16 think something happened or didn't happen, but
17 based on what you're presented with in the
18 courtroom this week, and then taking the law the
19 judge gives you at the end and applying that
20 testimony, that evidence to the law.

21 But beyond a reasonable doubt is not beyond
22 all doubt. There are very few things you can know
23 in life 100 percent. One thing I know a hundred
24 percent, that none of you were around any of the
25 events that we're going to talk about this week, so

1 you can't know 100 percent, you weren't witnesses
2 to what happened or didn't happen. But you must be
3 satisfied, all twelve of you, beyond a reasonable
4 doubt.

5 If you think about, if you have a car wreck
6 and we're in what we call Common Pleas the burden
7 of proof there is what we call a preponderance of
8 the evidence. You just need to tip the scale in
9 your favor a little bit. In this courtroom you
10 have to tip them a lot, okay? Beyond a reasonable
11 doubt is exactly what it sounds like.

12 I would ask you to keep that in mind as we go
13 forward. As the judge requested, keep an open
14 mind. You're going to hear, it is an emotional
15 case, this isn't an easy case. Our natural
16 sympathy goes out for people that are victims in
17 this kind of crime but you have to determine
18 whether this crime occurred at all, that's why
19 you're here. It is not an easy thing to do but
20 that is what you're here for and that is what you
21 swore an oath to do and that is what I heard you
22 say you would do. I think when you hear everything
23 in this case, not just from the State's side, when
24 you have heard everything we ask you return a
25 verdict of not guilty.

1 THE COURT: Thank you, Mr. Fox.

2 Okay, Miss Lively, you may call your first
3 witness.

4 MS. LIVELY: Thank you, Your Honor. The
5 State will call Anthony Carter to the stand.

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1 ANTHONY E. CARTER, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Thank you. Please be seated and
4 state your name for the record, please.

5 THE WITNESS: My name is Anthony E. Carter.

6 DIRECT EXAMINATION BY MS. LIVELY:

7 Q Thank you. Mr. Carter, where do you live?

8 A Murrells Inlet.

9 Q Okay, and how long have you lived in the
10 Murrells Inlet area?

11 A A little over seven years.

12 Q All right. And are you employed?

13 A At the time, no, ma'am.

14 Q Okay. And is there a reason for that?

15 A Yes, ma'am. I'm under doctor's care, I have
16 had four major surgeries in the last three and a
17 half years.

18 Q And where did you work before you had these
19 medical problems?

20 A I worked for myself and I worked for the
21 Piggly Wiggly at night stocking shelves.

22 Q Mr. Carter, are you married?

23 A No, ma'am.

24 Q And do you have a fiance?

25 A Yes, ma'am.

1 Q What is her name?

2 A Shannon Bellamy.

3 Q Do you have any children?

4 A I have a son and a stepdaughter, I call her

5 my stepdaughter.

6 Q All right. And what is your son's name?

7 A Anthony James Carter.

8 Q How old is he?

9 A Eighteen..

10 Q Okay. And your stepdaughter, what is her

11 name?

12 A [REDACTED]

13 Q How old is [REDACTED]

14 A Sixteen..

15 Q Now, Mr. Carter, do you know the defendant

16 Prentis Wayne Love?

17 A Yes, ma'am.

18 Q Okay. How did you meet the defendant?

19 A I met him through the D.U. organization, he

20 was working for one of the guys in D.U. where we

21 had our meetings at, our weekly and monthly Ducks

22 Unlimited meetings.

23 Q Okay. Are you very active in that

24 organization?

25 A Yes, ma'am.

1 Q All right. And what specifically does that
2 organization do or what is its purpose?

3 A Saving wetlands, educating people on water
4 foul and water foul lands, protecting --

5 Q All right. And do you remember how long ago
6 it was whenever you first met the Defendant Love?

7 A I want to say 2009.

8 Q Okay, all right. And was that at a Ducks
9 Unlimited function? Do you recall?

10 A I wouldn't call it a function. I would say I
11 met him, he was working at a dogs weigh-in.

12 Q What is a dogs weigh-in?

13 A A dogs weigh-in is a dog kennel club in
14 Murrells Inlet that belongs to Harris Willard and
15 we was having one of our weekly meetings there for
16 the D.U. and I'm the chairman over the D.U. Green
17 Wings, which is the kids division of Ducks
18 Unlimited, and Mr. Love was there working for Mr.
19 Willard and we got introduced to each other there
20 and been friends ever since.

21 Q All right. And you said you were friends
22 ever since. Tell the jury how you became friends
23 with Mr. Love, the defendant. What kind of things
24 would you all do together?

25 A Well, it started just as an acquaintance,

1 just helping out through the D.U. organization.
2 Like I said, I'm over the kids' Green Wings and he
3 wanted to get into Green Wings division with us in
4 the Ducks Unlimited and be a part of it with the
5 kids, and through him helping build all the games
6 and helping with all the functions with D.U., we
7 become really close through that time. We hunted
8 together, fished together, he duck hunted with my
9 son basically every day of the duck season, and the
10 same thing, fishing, just seven day a week
11 relationship, twelve, sixteen hours a day
12 sometimes.

13 Q Would he ever spend the night at your house?

14 A His kids have.

15 Q Okay. How many kids does he have, Mr.
16 Carter?

17 A Two.

18 Q And --

19 A Two that I know of.

20 Q All right. And were you close with his
21 children?

22 A Yes, ma'am.

23 Q Okay. Is he married?

24 A I think they are still married. I know he
25 had a wife, I know they had some issues and --

1 Q What is her name?

2 A Tabitha.

3 Q Okay. Did you have an opportunity to spend
4 time with Tabitha?

5 A Yes, ma'am.

6 Q All right. Now, Mr. Carter, you said that
7 he, the defendant, would come to your house
8 sometimes seven days a week during the duck hunting
9 season. How close did you consider you and the
10 defendant at that point after he had spent that
11 kind of time with you?

12 A Well, it wasn't just during the duck hunting
13 season. I mean, it was literally a seven day
14 relationship for several years.

15 Q Where did he live in comparison to where you
16 live?

17 A Probably a half a mile.

18 Q Okay.

19 A From my house. He had to pass my house every
20 day going to and from work, but he helped me out a
21 lot when I was going through my surgeries, any kind
22 of help I needed he would come by and get the
23 trash, take it to the dump for me, things. I was
24 having shoulder surgery on both shoulders and lots
25 of things I could not do and he would come help me

1 do them.

2 Q And is your home in Georgetown County?

3 A Yes, ma'am.

4 Q It is, okay. And how about the defendant's

5 home, was it in Georgetown County?

6 A Yes, ma'am.

7 Q All right. Now, Mr. Carter, did you ever

8 have any functions or times whenever you had the

9 defendant and his wife over to your home?

10 A Yes, ma'am.

11 Q Okay. Could you, do you recall any

12 particular time at the end of 2009?

13 A At the end of 2009?

14 Q Yes.

15 A Well, I had several big barbecues and oyster

16 roasts throughout the year for my fiance's

17 birthday, for my birthday, for all the kids'

18 birthdays, I cooked and celebrated his, his wife's,

19 his kids' birthdays at my house. I mean, it was

20 never ending, all together all the time.

21 Q Okay. And would [REDACTED] be present for

22 those functions as well?

23 A Yes, ma'am.

24 Q All right. How about your son A J, was he

25 there?

1 A A large part of the time. He lives with his
2 mother here in Georgetown but he would come stay
3 with me the whole summer and anything we did during
4 the summer he was present for that, and stays with
5 me every other week, sometimes he stays with me
6 weeks at a time, obviously during duck season he
7 would stay with me every day that he could stay
8 with me for duck season.

9 Q Okay. And, Mr. Carter, was there any type of
10 party or function at your house around New Year's
11 Eve in 2009?

12 A Yes, ma'am.

13 Q Okay. And do you recall who was there for
14 that party?

15 A Several people.

16 Q Do you recall if the defendant was present?

17 A I'm trying to remember in my head whether it
18 was 2009 or 2010.

19 Q Okay.

20 A But, yes, every New Year's function I had he
21 was present from the time I met him, until. Him
22 and his kids, his wife.

23 Q All right. And do you recall whether or not
24 your stepdaughter [REDACTED] would be there?

25 A Yes, ma'am.

1 Q All right. Now, Mr. Carter, do you recall
2 whether or not your daughter, I will call her your
3 daughter, do you consider her your daughter?

4 A Yes, ma'am.

5 Q Okay. That is [redacted] correct?

6 A Yes, ma'am.

7 Q Do you recall if there were ever any times
8 when [redacted] would spend the night over at the
9 Loves' home?

10 A Yes, ma'am.

11 Q And do you know, what was your belief as to
12 why that took place?

13 A Well, [redacted] fell in love with their kids
14 the first time she met them, she took to them and
15 they are very loving kids, easy to, anybody would
16 fall in love with them. She would babysit them and
17 sometimes she would just go spend the day over
18 there, go do crafts, back cookies, gingerbread
19 houses, things like that with Tabitha and the kids
20 and Wayne, and sometimes she would go and spend the
21 night. Courtney, their oldest child, would ask
22 [redacted] to come stay and she would go over and
23 stay with them sometimes.

24 Q And when she would spend the night over at
25 the Loves' home did you have any concerns at that

1 time?

2 A No, ma'am.

3 Q Okay. Now, Mr. Carter, what other type of
4 events did you share with the defendant that
5 included your fiance as well as [REDACTED]

6 A What other type of events?

7 Q What other kind of places would you all go
8 together, for instance?

9 A We spent many a day in the boat in the river,
10 out in Murrells Inlet itself, out collecting Sand
11 Dollars, off sand bars and, you name it, I mean, we
12 would go out to eat, just everything, everything my
13 family done they was a part of it.

14 Q Okay. What about fishing, did you all ever
15 fish together?

16 A Yes.

17 Q Okay. Tell the jury about that.

18 A I fished with Wayne multiple times. I put on
19 a tournament, and this is the sixth year of it now,
20 I put on a tournament out of Wachesaw Landing, it
21 was every Thursday afternoon from the first
22 Thursday of time change, through the end of
23 September every year, it was just a small
24 tournament, 6:00 o'clock to dark tournament one day
25 a week up until present. We do it on Wednesdays

1 now instead of Thursday.

2 Q Who in your family would actually go to the
3 fishing tournament and actively participate?

4 A Me, my son, Shannon, my daughter Minor

5 Q So, Minor would fish?

6 A Yes, very much so. She was, she got real
7 good at it, she's won one several times, beats us
8 old guys out of our money.

9 Q Now, Mr. Carter, what type of boat did you
10 have during those tournaments, that you would go
11 with, where Mr. Love was present?

12 A Well, I have had several boats. I had a
13 larger boat that me and my son and Wayne would go
14 fishing in or I could take the whole family in.
15 And then I had motor problems with it and I had to
16 get a smaller boat and it would only fit two people
17 at a time. It was actually a boat I bought for my
18 son, and me and him rebuilt it together and he just
19 left it at my house because that's the only time he
20 would use it was to come over and stay with me and
21 take it duck hunting or go fishing because of how
22 close we lived to the river, so it stayed at the
23 house and I used it sometimes.

24 Q Who would be, who would be in that boat
25 during the fishing tournament?

1 A A lot of times and [REDACTED] me and my son at
2 other times, sometimes me and my fiance.

3 Q And that is Shannon Bellamy?

4 A Yes.

5 Q That is Brittany's biological mother,
6 correct?

7 A Yes, ma'am.

8 Q Now, Mr. Carter, were there ever times
9 whenever [REDACTED] would go to the tournament but
10 not ride in the boat with you?

11 A Yes, ma'am.

12 Q Okay. Please tell the jury what you recall
13 in regards to times she would go to the tournament
14 and not be in the boat with you.

15 A Well, she become one of the guys. I mean,
16 she fished with me every day of the summer when she
17 was out for school, every day I could take her
18 fishing, four, five, six days a week I would take
19 her fishing and she would fish the tournaments with
20 me and there would be times her mom would have to
21 work so she could fish with me but when her mother
22 was off work she was a big part, still is a big
23 part of the tournament that we put on, it is a big,
24 it's a family thing we do, it is all women and
25 children fish free in it, I mean, it is just a big

1 family function we do every year and times when
2 Shannon would want to fish or my son would be able
3 to come over and fish [redacted] would fish with
4 Wayne.

5 Q The defendant?

6 A Yes, ma'am.

7 Q And when she would fish with Wayne in the
8 boat were they alone?

9 A Yes.

10 Q And where would, where would you and the
11 defendant be during those times whenever [redacted]
12 went on the tournament?

13 A Ninety percent of the time, 99 percent of the
14 time within sight of each other, we all just fished
15 right there around the little marina at Wachesaw
16 but there was several occasions that they
17 disappeared for twenty minutes, thirty minutes,
18 "I'm going to run over here and fish in this creek
19 and see if I can catch a fish." I mean, the
20 tournament we put on is a one fish tournament,
21 basically two and a half hours to have a good time,
22 whoever catches the biggest fish wins a little pot.
23 People would move around. I mean, lots of people
24 fish in it, most of the time in everybody's sight
25 but there is times that you would lose sight of

1 somebody for twenty, thirty minutes at a time,
2 sometimes other people longer but my daughter most
3 of the time never more than thirty minutes.

4 Q Okay. And whenever you would lose sight of
5 her you said never more than maybe twenty or thirty
6 minutes, is that correct?

7 A Yes.

8 Q Now, how familiar are you with the creeks and
9 the channels in that area where you all would be
10 fishing?

11 A Very.

12 Q Okay. So have you been in and out of those
13 creeks and channels?

14 A Yes, ma'am.

15 Q How many times?

16 A Well, I'm 47. Basically I would say 45
17 years.

18 Q Okay.

19 A As I was a little boy I grew up just running
20 those creeks with my dad and granddad, as a
21 teenager and now my kids and everybody else's kids.

22 Q Are some of those creeks close to the area
23 that you would be fishing, are they winding?

24 A Yes.

25 Q And how would you describe them with regard

1 to the foilage and trees and overhang? Could it be
2 secluded?

3 A Yes. Yes, you could lose sight of somebody
4 from here to those doors back there. I mean, you
5 had to be familiar with Fox Creek and White Creek
6 and Black Creek, it's real winding, turning
7 corners, there might be some places you can see for
8 half a mile but some places you can't see fifty
9 yards.

10 Q Were you all ever close to a place called
11 Sand Island?

12 A Yes.

13 Q And how far, I mean, would you all ever be
14 around that area for the fishing tournament?

15 A Yes, every tournament.

16 Q That is all in the same area?

17 A Sand Island is probably 200 yards from
18 Wachesaw Landing where we put in at. That is, all
19 of that is considered Sand Island and White Creek.

20 Q And Fox Creek?

21 A Fox Creek.

22 Q Okay, all right. Now, through the summer of
23 2010 was this when the tournaments, the fishing
24 tournaments you were talking about were being
25 conducted?

1 A Yes.

2 Q All right. Now, at the end of the summer,
3 right before, we'll say, school was starting back,
4 how were things between yourself and the defendant
5 Mr. Love, your relationship, was it the same, had
6 it changed in any way?

7 A It was pretty much the same. I had a few
8 questions that I didn't really know a lot about.

9 Q Let me ask you this. In regard to the
10 contact that you said was there during the duck
11 hunting season and things like that, was Mr. Love
12 still coming to your home and still spending time
13 with your family?

14 A Yes.

15 Q Okay. And were you still seeing his younger
16 children and still having them even come by your
17 house?

18 A Yes. They spent the night at my house many a
19 time.

20 Q How about [REDACTED] was she still spending
21 time and babysitting their children?

22 A Yes.

23 Q Now, was there a time when -- let me ask
24 this. In September of 2010, can you please tell
25 this jury what plans you had on September the 11th

1 of 2010?

2 A September the 11th, 2010, every year my
3 family goes down to the Dead Dog Saloon, they have
4 a big salute every year for the fallen firefighters
5 on 9/11. We go to it every year, we go eat supper,
6 we donate. Lots and lots of people, big function,
7 lots, just about everybody from the inlet goes and
8 we know most of them. Me, my son, my daughter,
9 Wayne and a few other people was going to the Dead
10 Dog to eat supper and go to the function, it is
11 just a big get together, party, if you want to call
12 it, for the firefighters, and it ended up my fiance
13 Shannon had to work, she couldn't go, [REDACTED] was
14 supposed to go with me but she got a call from her
15 friend Ashley who wanted her to come over and spend
16 the night with her, so she ended up not going with
17 us and it ended up just being me and my son,
18 several other guys, and Mr. Love was supposed to be
19 there but he showed up late.

20 Q Okay. Do you recall approximately what time
21 you actually showed up at the Dead Dog that
22 afternoon?

23 A I would say I got there around 5:00.

24 Q Okay. And did you have any contact with the
25 defendant as to when he was going to show up that

1 day?

2 A Several times. He was actually on the way
3 when I talked with him, he was, he said, leaving
4 work, he would meet me down there, so --

5 Q And how long were you at the Dead Dog Saloon
6 before he actually showed up, if you can recall?

7 A Probably 40, 45 minutes.

8 Q All right. And where was he working at the
9 time, do you remember?

10 A He was working with a, I don't remember if he
11 was still working with the landscape company at
12 that time or the tree service or if he was, I know
13 he had been helping one of our friends who owns
14 Biographics, I know he had been helping him do some
15 sign work, I'm not real sure of where he was
16 working at that time.

17 Q How long did it take you to get to the Dead
18 Dog Saloon from your house?

19 A Five minutes.

20 Q Okay. Now, you already stated that [Minor] 
21 didn't come with you, she was going to go to a
22 friend's, Ashley?

23 A Yes.

24 Q Where was [Minor]  whenever you went to the
25 Dead Dog Saloon?

- 1 A She was at home, she was waiting on Ashley
2 and her mother to come pick her up.
- 3 Q Okay. And tell the jury what the name of
4 that road is that you live on?
- 5 A Hyatt Avenue.
- 6 Q That is the home where she was?
- 7 A Yes, ma'am.
- 8 Q Whenever you left was anyone with [REDACTED] at
9 the house?
- 10 A No, ma'am. She was home alone.
- 11 Q Were you aware at that time what time Ashley
12 was coming to get her?
- 13 A They said they would be there sometime
14 between 5:15 and 5:30.
- 15 Q So, whenever you left [REDACTED] on that
16 afternoon when was the next time you saw her?
- 17 A The next day, I'm pretty sure.
- 18 Q Okay.
- 19 A She come home, she may have spent the next
20 night but I think she only spent that night and
21 come home the next day.
- 22 Q So is it your testimony, your knowledge she
23 did spend the night with Ashley that night?
- 24 A Yes, ma'am.
- 25 Q Okay. Whenever the defendant, or did the

1 defendant finally show up at the Dead Dog Saloon
2 that afternoon on September 11?

3 A After multiple calls, him saying, "I'll be
4 there in a minute, I'll be there in a minute," to
5 multiple calls of him not answering the phone for a
6 period there, until finally he said, "I'm about to
7 pull in the driveway, I will be there in two
8 minutes," and fifteen minute later he showed up
9 finally.

10 Q Okay. And what did you all do that evening
11 at the Dead Dog Saloon?

12 A He pulled up, he wanted to drink a beer, he
13 didn't have any money, he didn't have any money to
14 donate to the firefighters, I loaned him money to
15 donate to the firefighters and give him some money
16 to buy a beer with and he sat down and eat supper
17 with me and my son.

18 Q And at that point in time was everything
19 normal in relation, in the relationship that you
20 had with the defendant?

21 A Yes.

22 Q Okay. What, if anything, changed that
23 relationship between yourself and the defendant
24 Wayne Love?

25 A I don't really think I could nail it down to

1 one thing. Several things changed, his actions,
2 some of the things he was doing.

3 Q Whenever he -- let me just back up for a
4 second. When you state some of the things he was
5 doing, on the night that he showed up at the Dead
6 Dog Saloon was there anything he was doing that you
7 noticed, that bothered you?

8 A Just real jumpy, just -- but he said he was
9 coming from work, he said he was tired but he was
10 just real edgy at the time, you know, but he sat
11 down and eat supper with me and my son, I mean.

12 Q Was he alone?

13 A Yes.

14 Q Did he have, did he have a phone with him?
15 You said he didn't have money. What about a phone?

16 A Yes.

17 Q What is his phone number, do you recall?

18 A I deleted it out of my phone.

19 Q Okay.

20 A I can't really recall his number in my head,
21 to tell you the truth.

22 Q That's fine. Had you ever called his number
23 before?

24 A Yes. Yes, numerous times.

25 Q All right. So, you used to know it, you

1 don't know it now?

2 A I know it, I just can't think of it at the
3 time.

4 Q That's fine.

5 A It is like 2860 or something, I remember, I'm
6 not a hundred percent sure and I logged it in my
7 phone and I never dialed his number, I just hit
8 speed dial for Wayne.

9 Q He was one of your speed dial numbers?

10 A Yes.

11 Q Okay, all right. Now, did you ever see the
12 defendant on the phone that night?

13 A Oh, yes, several times.

14 Q Now, do you remember when he, when his
15 birthday is?

16 A Do I remember when Wayne's birthday is?

17 Q Yes.

18 A Early October.

19 Q Okay. When he had a birthday do you recall
20 that year, which would have been 2010, if he, if
21 you all had a party for the defendant?

22 A For Wayne?

23 Q For Wayne or were you ever at a party for
24 Wayne?

25 A Yes.

1 Q Okay.

2 A Yes. I say party, I mean we had his family
3 over and I cooked and we had a birthday cake and
4 stuff like that, I mean.

5 Q And were there any problems at that time
6 between you and the defendant?

7 A No.

8 Q All right. Now let's move forward a little
9 bit. Tell the jury what happened with [REDACTED] at
10 the end of October, 2010.

11 A [REDACTED] I assume this is what you're
12 talking about, she got caught by her stepmother
13 with a cigarette and a little white pill in her
14 overnight bag that she carried to North Carolina.

15 Q Okay. Let me just back up for a second.
16 Where does her stepmother and biological father
17 live, so the jury knows?

18 A North Carolina.

19 Q North Carolina, okay. And so would she visit
20 her biological father and stepmother at times?

21 A Yes.

22 Q All right. And so now back to what you were
23 telling the jury, in October of 2010 something was
24 found by the stepmother?

25 A She called Shannon, and this is what I was

1 explained, I wasn't on the phone, she explained she
2 found a cigarette and a little white pill in
3 Brittany's overnight bag and assumed it to be a
4 pain pill and her mother took over from there.

5 Q Okay. Was [redacted] in trouble?

6 A Oh, yes.

7 Q What kind of kid had she been up until that
8 time?

9 A Normal kid, loves to text on the phone, still
10 loves to text on the phone. She has always been a
11 good kid. I mean, she spent basically every day of
12 her life around me because I had been out of work
13 since I got hurt in July of 2007 and I had, like I
14 said, several surgeries so I was in and out of
15 therapy, [redacted] was there to help me through a
16 lot of it when her mother would have to work.

17 Q Did you see any of this coming, and what I'm
18 talking about is what just came out from the
19 stepmother, did you see any indication of drugs or
20 smoking?

21 A No. No, never a hint.

22 Q Now, after that came out what did you and
23 Shannon do, if anything, regarding [redacted] being
24 punished?

25 A She was, her phone was taken, she was put on

1 restriction, she was in some pretty big trouble. I
2 mean, I felt pretty let down, this is my little
3 girl I had been around for so long and so many days
4 fishing and hunting, literally she goes duck
5 hunting with me and the guys, she goes fishing with
6 me and the guys. I was actually kind of shocked,
7 if you want to know truth. I mean, I never seen it
8 coming. I mean, she's a normal kid, every kid has
9 their things about them that they do, you know, but
10 never been in trouble, never anything like that.

11 Q Once all this came out and [Minor] was
12 placed on restriction was there anyone else you
13 talked to Wayne about regarding what was found?

14 A Yes, ma'am.

15 Q Tell the jury about that.

16 A Well, Mr. Love at the time was out of work, I
17 had been paying him to work at my house putting up
18 insulation under, under an addition we had built
19 on there, paid him to redo all my flower beds and
20 stuff. Just basically what I could do to help him
21 out, you know. Like I said, we loved his kids, I
22 mean, we fed them and clothed them and treated them
23 like our own. Very open, went over to their house,
24 talked to them about it because we found out that
25 they knew about the pain pill and the cigarettes,

1 and went and had a discussion with them about it.

2 Q Did you specifically talk to the Defendant
3 Love about it?

4 A Yes.

5 Q What did the Defendant Love say to you?

6 A I explained to him it takes a community to
7 raise a child now days, it is not the good old days
8 anymore, you know. He told me he didn't want to
9 get involved, that he didn't feel like it was his
10 place to come to us and tell us anything about it
11 and of course we disagreed with that and that was
12 the end of it. We left their house and went home.

13 Q After you went home and you got that comment
14 from the defendant regarding him not saying
15 anything did any other information, was any other
16 information disclosed by [REDACTED] regarding what
17 had been going on?

18 A Not at the time, no.

19 Q All right. At any point in time, you can't
20 tell me specifics, I just want to know a simple yes
21 or no, at any point in time did she disclose to you
22 anything regarding contact between her and the
23 defendant?

24 A Yes.

25 Q Okay. Now, in that information she provided

1 to you are you aware of timing and place regarding
2 any type of contact between her and the defendant?

3 A Yes, ma'am.

4 Q Okay. Tell the jury just in relationship to
5 time and place what she told you.

6 A Well, her mother found out to begin with.

7 Q Okay.

8 A And her mother called me and would not tell
9 me what happened but later speaking to [REDACTED]
10 that night when she calmed down enough that she
11 could explain the situation, explain what went on,
12 there was three different times that contact had
13 been made between him and her.

14 Q Just in regard to her and talking about
15 contact, timing and place?

16 A In the river, in the boat, between him and
17 her, once on New Year's Eve at his house, and on
18 9/11 in my house.

19 Q When you learned these things what did you
20 do?

21 A My first reaction, when Shannon called me and
22 told me what happened she told me she was going to
23 kill Wayne, that is all I knew, that was all I got.
24 Fortunately I was standing there with two of my
25 best friends. When I got told this she would not

1 tell me why, she just said, "You need to come home,
2 [REDACTED] needs you." I got home, [REDACTED] come
3 running out the door shaking, crying, she couldn't
4 talk. Her mother was gone. She said, "Mama's
5 going to kill Wayne."

6 MR. FOX: Objection, Your Honor, we're
7 getting into hearsay now.

8 MS. LIVELY: Okay.

9 THE COURT: Sustained.

10 BY MS. LIVELY:

11 Q You can't tell me what [REDACTED] said, okay?
12 You have already talked about some things [REDACTED]
13 has told you. As a result of what happened on that
14 particular day what specifically did you do?

15 A Once I found out, talked to Brittany, I
16 picked the phone up and I called Wayne, I told
17 Wayne, I said, "I know what you did, I know what
18 you have been doing, you need to turn yourself in
19 to the law."

20 Q Mr. Carter, up until that day when you
21 learned this information was there any ill will or
22 dislike by you of the defendant?

23 A I paid him \$400 three days before that to
24 redo my flower beds. No, no ill will at all. At
25 numerous times, "I love you like a daddy, you're

1 the dad that's never been in my life." I mean, he
2 wanted to learn everything about what I did and how
3 I did with all these different organizations of
4 raising money and all this tournamnet stuff, he
5 wanted to be a part of that. I mean, he literally,
6 his own words, you know, "You're like a daddy to
7 me," and so, no, no ill will at all, didn't have an
8 inkling that anything like this had happened,
9 didn't have a reason to think it.

10 MS. LIVELY: Thank you, Mr. Carter. Please
11 answer any questions Mr. Fox may have for you.

12 THE COURT: Cross examination.

13 MR. FOX: Thank you, Your Honor.

14 CROSS EXAMINATION BY MR. FOX:

15 Q Mr. Carter?

16 A Yes, sir.

17 Q Forgive me if I jump around a little bit.
18 With regard to you and your wife finding out about
19  you found out there was a cigarette and
20 pill. Did you ever find out what that pill was?

21 A I never found out, no, I did not.

22 Q Okay. And ever get any clue that this was,
23 did you have an opinion whether it was a one time
24 thing or maybe it had been going on prior to your
25 knowledge?

1 A Yes, I did. I was told that by Wayne and
2 Tabitha the night I went over there and confronted
3 them about knowing about the pill and cigarette,
4 they told me they didn't want to get involved.

5 Q So, again, you testified you and your wife
6 took that very seriously, correct?

7 A Yes, very serious.

8 Q Because at that time [REDACTED] was how old?

9 A Thirteen.

10 Q Okay. Now --

11 A Maybe, I think she was thirteen, maybe just
12 turned fourteen, I'm not sure.

13 Q And you said when that came to you, when you
14 found that out, that was just a shock to you?

15 A Yes.

16 Q Okay. Anything in Brittany's behavior that
17 led you to think, "This is a different child from
18 what I'm used to, she's acting different, things
19 are different," anything that, looking back you
20 said, "That might have been a clue"?

21 A There is lots of things I look back on now
22 and see that she was acting different.

23 Q Now, with regard to -- but at the time it
24 got your attention, right?

25 A What?

- 1 Q At the time when her mother, Brittany's
2 mother found -- I'm sorry, was that a stepmother
3 that found the pills and cigarette?
- 4 A Her stepmother.
- 5 Q Her stepmother? At the time the pill and
6 cigarette were found, at that point you didn't have
7 anything that was making you think, alarm bells
8 weren't going off back then, right?
- 9 A No.
- 10 Q I heard you testify about the kind of boat
11 that you had, that you would use in these fishing
12 tournaments.. Do you know what -- did Wayne have
13 his own boat?
- 14 A Yes.
- 15 Q You know him as Wayne, right?
- 16 A Yes, sir.
- 17 Q Prentis Wayne Love but everyone calls him
18 Wayne?
- 19 A Yes.
- 20 Q Did Wayne have his own boat at that time?
- 21 A Yes.
- 22 Q What kind of boat did he have?
- 23 A Fourteen foot aluminum Jon boat.
- 24 Q Describe that for people that don't fish and
25 run around the creeks in a Jon boat. What does a

1 Jon boat look like?

2 A A little small, narrow, aluminum boat, has
3 two seats in it. We took and built a deck in it,
4 put a trolling motor on it, made it into a little
5 fishing boat to fish out of it.

6 Q An open boat, right?

7 A Yes.

8 Q It doesn't have a roof on it?

9 A No, no.

10 Q It doesn't have a cabin?

11 A No, no cabin.

12 Q Fits maybe five or six people on there, maybe
13 a few more, is that about right?

14 A I would say three people.

15 Q Very small?

16 A Four at the max.

17 Q I got you. So that's the boat that when

18 Minor would go with Wayne that is the boat they
19 would take, right?

20 A Yes.

21 Q During any of these times, at anytime when

22 Minor would go fishing, you testified a couple
23 occasions she went off with Wayne, did she ever go
24 off with anybody else besides Wayne?

25 A No.

- 1 Q Okay. What about a fellow named Steve?
- 2 A Steve?
- 3 Q I don't know his last name.
- 4 A I know a Steve Szuch.
- 5 Q Was he ever involved in fishing tournaments?
- 6 A Yes.
- 7 Q To your knowledge did [REDACTED] ever go off
8 with Steve and fish?
- 9 A No.
- 10 Q Did she ever fish when you weren't around,
11 ever go with anybody else, Prentis' family or
12 anybody else?
- 13 A No.
- 14 Q So, just with you and just with Wayne?
- 15 A Just with me, just with Wayne -- there may
16 have been once.
- 17 Q So, maybe there was times when someone else
18 took her out?
- 19 A She may have went one time with my son. I
20 may be wrong there. I don't think she ever been
21 with my son by herself.
- 22 Q Okay. Now, these, the creeks and all, you're
23 fishing on the river, the Wachesaw Landing is on
24 the river, is that correct?
- 25 A Yes.

1 Q Sand Island, you're not on Murrells Inlet in
2 the creeks by the ocean?

3 A No.

4 Q You're not talking about those creeks?

5 A No.

6 Q You testified about how in parts it is very
7 narrow and vegetation and all. If you were back
8 there, and you say 99 percent of the time people
9 just stay close, you can see everybody, correct?

10 A Yes, sir.

11 Q And it wasn't just Wayne that would sometimes
12 go off in creeks, other people would go off hunting
13 for fish, right?

14 A Yes.

15 Q That wasn't unusual?

16 A No.

17 Q You did that yourself?

18 A Yes, sir.

19 Q Go where you think the fish are, right?

20 A Yes, sir.

21 Q Okay. And I imagine these are in places at
22 least some fairly tight turns?

23 A Yes, sir.

24 Q Did you ever come around one of those turns
25 in a boat and suddenly see someone you didn't

1 realize was there when you came around the corner?

2 A Yes.

3 Q It could be sudden, right, because again it's
4 narrow, tight twisted turns, vegetation?

5 A Yes.

6 Q Someone might come up at anytime?

7 A Yes.

8 Q Okay. And it sounds like you were, if I
9 understand you correctly, people in these
10 tournaments were fishing in a fairly small area?

11 A Some of them. Most of them fish right around
12 the marina but there is other creeks you can go in,
13 hundreds of creeks can you go in and fish.

14 Q But you can do that in just a matter of a
15 couple minutes from Wachesaw, if you have a motor
16 boat you can get to places typically where people
17 would fish in, what, five minutes or so?

18 A Five to ten minute run, yes, sir.

19 Q Now, talking about, you also talked about
20 9/11 and 2010 when you went to Dead Dog like you
21 usually did for the function honoring the firemen
22 and you testified about Wayne saying he was coming,
23 saying he was coming, he seemed to take a little
24 bit longer than normal to get there. Did that ever
25 happen to you before with any of your other

1 friends? In other words, someone say, "Look, I'm
2 on the way," then take a little bit longer than you
3 expect?

4 A Yes.

5 Q That's a normal thing that happens all the
6 time, isn't it?

7 A Yes, it's a very normal thing that happens.

8 Q Okay. Now, you all were good friends,
9 families intertwined, the kids played with the
10 kids, you liked their kids, your daughter babysat
11 Wayne's kids?

12 A Yes.

13 Q He was someone that you felt comfortable with
14 to the point of letting your family go down to his
15 house whether you were there or not and his kids
16 come up to your house, correct?

17 A Yes.

18 Q Okay. You testified that at the time that
19 [REDACTED] when it came to your attention and your
20 wife's attention she had been caught with that pill
21 and that cigarette, when that came to your
22 attention, at that time there was nothing from
23 [REDACTED] about any problems with Wayne, correct?

24 A No. At some point in the future there was.
25 At that time, no.

1 Q But whenever that was, it was after being
2 caught with the pill and the cigarette, correct?

3 A Yes.

4 Q Whenever it was she said these things
5 happened, it was after that?

6 A Yes.

7 Q Okay.

8 A No doubt about that.

9 MR. FOX: The Court's indulgence, Your Honor.

10 THE COURT: Yes, sir.

11 MR. FOX: Thank you. No further questions,
12 Your Honor.

13 THE COURT: Redirect.

14 MS. LIVELY: I just have one question:

15 REDIRECT EXAMINATION BY MS. LIVELY:

16 Q Mr. Carter, Mr. Fox was asking you about the
17 creeks and you described how there was overhangs
18 and very narrow. One of the things he asked you
19 was sometimes a boat might come up on you in one of
20 those creeks. Do you recall that question?

21 A I do.

22 Q If you were sitting there in one of those
23 narrow creeks and you didn't have your motor on
24 would you hear another boat coming?

25 A You would hear another boat coming for miles,

1 echoing through those swamps. Sometimes you could
2 hear it with your motor running.

3 MS. LIVELY: Okay, thank you.

4 THE COURT: Recross?

5 MR. FOX: No, Your Honor.

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

8 (Witness excused).

9 THE COURT: All right, ladies and gentlemen,
10 we're going to recess for the evening. Be back in
11 the jury room at 9:15. We're going to resume the
12 case at 9:15 in the morning. Don't talk about the
13 case, do any kind of outside investigation, and
14 hope you have a nice evening. Continue to keep an
15 open mind.

16 (Jury excused from the courtroom).

17 (One juror remained).

18 THE COURT: Okay. Come on up, I ask the
19 lawyers to come up real quick, the juror said she
20 needed to talk to me, I have to do it on the
21 record. Tell me your name.

22 JUROR: Ieshia Jenkins

23 THE COURT: What is your number?

24 JUROR: 132.

25 THE COURT: Yes, ma'am, Miss Jenkins.

1 JUROR: Yes, sir. Earlier I told you I had a
2 doctor's appointment tomorrow, you know, at 8:00 at
3 MUSC.

4 THE COURT: You didn't tell me that.

5 MS. LIVELY: MUSC?

6 JUROR: Do you need me to call and cancel it?

7 THE COURT: I don't know anything about your
8 condition. You told me it was serious, I didn't
9 have any idea it was in Charleston, I thought it
10 was a local appointment. Is it going to cause you
11 an issue?

12 JUROR: I was going because I'm pregnant and
13 my daughter has fluid around her heart.

14 THE COURT: That is what you told me. You
15 did not tell me that it was in Charleston and not a
16 local appointment. That presents a problem. So
17 when do you think you could be back?

18 JUROR: Probably about 10:00.

19 THE COURT: Do you have a local doctor, a
20 local OB?

21 JUROR: The only thing I could think of if I
22 was to call my doctor and ask him if I could be
23 seen in Georgetown in the morning instead of being
24 seen in Charleston, seen at Georgetown Hospital
25 tomorrow.

1 MR. FOX: She may have a hard time getting
2 that arranged. At this time, Your Honor, it is
3 5:30, the appointment is first thing in the
4 morning.

5 THE COURT: Do you think you can be back by
6 10:00?

7 JUROR: Yes, sir.

8 THE COURT: Okay. Well --

9 JUROR: I mean, if I need to cancel --

10 THE COURT: You're asking me to, you're
11 telling me you've got a serious condition so I've
12 got to take you at your word on that, all right?

13 JUROR: Yes.

14 THE COURT: I tell you what, go back over
15 there, they'll let you back in, I'll let you know
16 what we're going to do in just a minute, all right?

17 JUROR: Thank you.

18 (Juror excused from the courtroom).

19 THE COURT: Okay. I don't know what to do,
20 we can excuse her or wait until 10:00.

21 MR. FOX: I don't think there is any chance
22 she gets back here at 10:00.

23 MS. LIVELY: I would be shocked if she gets
24 back here at 10:00.

25 MR. FOX: Driving time, it is a good hour and

1 a half driving time.

2 MS. LIVELY: There is another problem. There
3 always is, isn't there? I was informed by my
4 victim advocate that the third juror on the front
5 row proceeded to take a nap. You saw it?

6 MR. FOX: Coming this way?

7 MS. LIVELY: Yes.

8 MR. FOX: I saw him closing his eyes even
9 when the judge was giving preliminary instructions.

10 MS. LIVELY: So we might want to address
11 that, I'm sure, I don't know. Unfortunately this
12 has happened more than once around here where we
13 have had jurors who like to take a nap during
14 testimony. However Your Honor wants to handle that
15 but it was probably during at least half of his
16 testimony that he was kind of slouched down with
17 his hand over his eyes, basically with his eyes
18 closed. So, under those circumstances I would
19 rather, I would also like to have the Court address
20 that issue because if I'm just getting started, I
21 know they have been here all day but that concerns
22 me because tomorrow is going to be nothing but day
23 long testimony.

24 MR. FOX: Yes.

25 MS. LIVELY: So that concerns me.

1 MR. FOX: I would join in that request, Your
2 Honor. If he's doing that he may or may not be
3 asleep but maybe you can do kind of a general, not
4 pick on any one person but however you think is
5 best.

6 THE COURT: What are you all asking me to do
7 exactly?

8 MS. LIVELY: I will tell you right now,
9 because it was only our initial witness, maybe do a
10 general admonishment, they have been here for a
11 late day, they have been sitting around a lot today
12 but tomorrow for them to come in, you know, just
13 freshen up, maybe. I don't know, whatever, however
14 you feel comfortable. I don't want to point
15 anybody out but it was pointed out to me and I feel
16 like I need to bring it to the Court's attention
17 and just have the Court address it. It might just
18 be because they have been sitting around all day
19 and they're tired, maybe a little bit more stuff
20 going on tomorrow early in the morning maybe will
21 help. We might not be able to because the other
22 juror --

23 THE COURT: I can foresee us sitting around
24 here waiting until 12:00 o'clock until she gets
25 back.

1 MS. LIVELY: I know.

2 MR. FOX: Easily.

3 MS. LIVELY: I would expect probably that
4 would be around the time she would come back
5 because I believe even her getting there and being
6 checked and things they have to do, she being
7 pregnant and her daughter has fluid on her heart --
8 does she have two appointments?

9 THE COURT: I think it is the baby.

10 MS. LIVELY: The baby, I'm sorry, I couldn't
11 tell how far along she might have been.

12 THE COURT: I can't imagine that being a
13 quick in and out appointment.

14 MS. LIVELY: Do you want to give her until
15 like 10:00 to see if she can get here and if she
16 can't we put the alternate in her spot?

17 THE COURT: Let's just bring her back out and
18 tell her to give us an update. Can she call? Who
19 can she call?

20 THE CLERK: She can actually call me on the
21 phone or give her my number downstairs.

22 THE COURT: You can bring her back out. Mrs.
23 Jenkins?

24 BAILIFF: Yes, sir.

25 THE COURT: Thank you.

1 (Juror Ieshia Jenkins returned to the
2 courtroom).

3 THE COURT: Okay, Miss Jenkins, do you have a
4 way to call here and let us know kind of when we
5 can expect you back in case you get delayed? Since
6 it's a medical appointment it may not exactly start
7 on time.

8 JUROR: Yes, sir. I'm supposed to call this
9 number back, right?

10 THE COURT: Mr. Moore can give you several
11 numbers to call. I'm asking have you got the
12 ability to call us, have you got a cell phone?

13 JUROR: Yes, sir.

14 THE COURT: If you will, just as soon as you
15 get out of your appointment and getting ready to
16 get back on the road, if you will call us so we can
17 know when to expect you that will be a good help.
18 I hope everything goes well with your checkup
19 appointment.

20 JUROR: Thank you. I appreciate it.

21 THE COURT: Thank you.

22 (Juror excused from the courtroom).

23 THE COURT: So I guess maybe we just need to,
24 is there a way to contact the other jurors and tell
25 them to be here at 10:00?

1 THE CLERK: I don't think they were
2 instructed to call us back.

3 THE COURT: All right.

4 MR. FOX: Maybe they can get a quick nap in
5 in the morning before we start, Judge.

6 THE COURT: All right. Thank you.

7 MS. LIVELY: Thank you, Your Honor.

8 MR. FOX: Thank you, Your Honor.

9 (Recessed at 5:45 p.m.).

10 (Reconvened at 11:14 a.m., April 24, 2012).

11 THE COURT: Okay, I believe we have everybody
12 we need. Anything before we bring the jury out?

13 MS. LIVELY: Nothing from the State, Your
14 Honor.

15 MR. FOX: No, Your Honor.

16 THE COURT: Okay.

17 MS. LIVELY: You are going to address the
18 issue of trying to stay awake?

19 THE COURT: Yes.

20 MS. LIVELY: That was all.

21 THE COURT: Thanks for reminding me.

22 MS. LIVELY: Thank you.

23 (The jury returned to the courtroom).

24 THE COURT: All right. Good morning, ladies
25 and gentlemen. We're about to begin the testimony

1 again and before we do that I just want to remind
2 everybody how important it is to pay attention
3 throughout the trial and to remain alert, and I
4 know it is difficult to do but it is essential that
5 everyone do that and if you notice your neighbor
6 having trouble focusing you can certainly maybe
7 assist them in maintaining alertness throughout the
8 trial.

9 So, with that, we'll have the State call
10 their next witness.

11 MS. LIVELY: Yes, sir, thank you, Your Honor.
12 The State calls Shannon Bellamy to the stand.

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1 SHANNON BELLAMY, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please state your name for the
4 record, please.

5 THE WITNESS: Shannon Bellamy.

6 DIRECT EXAMINATION BY MS. LIVELY:

7 Q All right, Mrs. Bellamy, if you don't mind,
8 scoot up enough where we can hear you.

9 Thank you.

10 Shannon, where you do live?

11 A Murrells Inlet.

12 Q Is it on Hyatt Avenue?

13 A Yes, ma'am.

14 Q How long have you lived there?

15 A Since 2005.

16 Q And who lives there with you?

17 A My fiance Tony Carter and my daughter

18 [REDACTED] [REDACTED]

19 Q And do you work?

20 A Yes.

21 Q Where do you work?

22 A Posser's Barbecue.

23 Q What do you do there?

24 A Cashier.

25 Q Miss Bellamy, how many children do you have?

1 A I have one daughter and a stepson.

2 Q And your daughter's name is?

3 A [REDACTED]

4 Q [REDACTED] okay. And are you divorced from
5 her dad?

6 A Yes.

7 Q Where does he live?

8 A He lives in North Carolina.

9 Q What part of North Carolina?

10 A Charlotte.

11 Q Okay. And does [REDACTED] have visitation with
12 her father?

13 A Yes.

14 Q Okay. Now, do you know the defendant Prentis
15 Wayne Love?

16 A Yes.

17 Q Okay. Tell the jury how you came to know the
18 defendant.

19 A We initially met him at Shellcrackers, he
20 worked there. That is down from my house. And he
21 was associated with Ducks Unlimited and I'm not
22 sure if Wayne was a member but I know there were
23 meetings together and stuff, so they became friends
24 and that is how I met him.

25 Q Who is in Wayne's family you met?

1 A His wife Tabitha and his children A. J. and
2 Courtney.

3 Q Hold old were the kids?

4 A At the time four and six when I met them.

5 Q Do you remember about what time or when it
6 was that you actually met the Love family?

7 A Either 2008 or 2009, I'm not exactly sure.

8 Q All right.

9 A Probably 2009.

10 Q And after meeting the entire family how often
11 would you and the Love family have contact with
12 each other?

13 A Wayne was around a lot especially during
14 hunting season and stuff but there was a few
15 occasions we had them over to eat and especially
16 birthday parties and stuff like that, holidays, we
17 cook out or something, they would come.

18 Q Whenever you met the defendant Wayne Love how
19 old was your daughter, do you remember, in 2009?

20 A Twelve or thirteen.

21 Q Okay. About twelve or thirteen years old and
22 do you know how old he was at the time?

23 A 29 or 30.

24 Q Okay. Now, was there ever a time when
25 [REDACTED] would spend time over at the Love home

1 without you or Tony being there?

2 A Yes.

3 Q Okay. What was the purpose of that?

4 A A couple times she babysat their kids and a
5 couple times she went over there like crafts with
6 Tabitha and the kids and I think one time she went
7 to cook gingerbread or something, cooking
8 something.

9 Q On any of those occasions did [REDACTED]
10 actually spend the night?

11 A Yes.

12 Q And do you recall when that would have been?

13 A I think there was only a couple. The first
14 time I don't know but she did spend New Year's Eve
15 there.

16 Q Okay. And on New Year's Eve, do you remember
17 when that was?

18 A When it was turning 2010.

19 Q December 31st, 2009?

20 A Yes.

21 Q Into January 1st, 2010?

22 A Yes, ma'am.

23 Q Okay. Now, did you all have any type of
24 function going on at your home for New Year's Eve?

25 A Yes. We had a New Year's party.

1 Q All right. Who all was there?

2 A Wayne and Tabitha, just friends of ours, a
3 couple couples from the neighborhood, people down
4 the street and some friends of Tony's from
5 Georgetown, hunting and fishing buddies, a couple
6 of my girlfriends, and [REDACTED] was there, the kids
7 were there, Courtney and A. J. were there.

8 Q Okay. And was there any alcohol consumed at
9 that party?

10 A Yes.

11 Q Okay. Did you consume alcohol at that party?

12 A Yes.

13 Q All right. How about the defendant, did you
14 observe him drinking alcohol at the party?

15 A Yes.

16 Q And when the party was over where did
17 everybody, or particularly where did the defendant
18 go? Do you recall?

19 A Home.

20 Q Okay. What about [REDACTED] where did she go?

21 A She spent the night with them, they were
22 supposed to do something, Tabitha and her and the
23 kids were supposed to do something so she went home
24 with them and spent the night.

25 Q Okay. Tell the jury how close your home is

1 to where the defendant was living.

2 A Right around the corner, maybe a mile if you
3 actually tracked it.

4 Q Okay, all right. And was [REDACTED] able to
5 drive at that time?

6 A No.

7 Q All right. So, if she went over to the
8 defendant's would you know about it?

9 A Oh, yes.

10 Q And what was your communication like with
11 your daughter during that time? Did you all talk
12 about everything or did you all have a good
13 relationship?

14 A Yes, but she was a teenager so I guess as
15 well as a teenager communicates.

16 Q Okay. Was she allowed to have a cell phone
17 at that time?

18 A Yes.

19 Q All right. Did she have her own telephone
20 number?

21 A Yes.

22 Q What was her telephone number?

23 A 450-0813.

24 Q All right. Now, what type of plan did she
25 have on this cell phone, what could she do on the

1 cell phone?

2 A She was on the family plan but she had
3 unlimited calls and texting, was the only one at
4 the time in the family had texting, talking and
5 texting.

6 Q And was her phone, did it have the capability
7 to take pictures? Do you remember?

8 A I don't believe so, not the first phone, I
9 don't think so.

10 Q Okay. Now, you mentioned the New Year's Eve
11 party. Was there other times that [REDACTED] spent
12 alone with the defendant?

13 A During the fishing tournamnet a couple times
14 when she was in the boat with him.

15 Q Let me back up, then, regarding the fishing
16 tournaments. Were there times you went on these
17 fishing tournaments?

18 A Yes.

19 Q When you would go on these fishing
20 tournaments where would you actually fish from?

21 A In Tony's boat. That was the reason she was
22 in Wayne's boat, we had a very, very small, like a
23 little boat at the time and it was just three
24 people was too crowded to actually fish out of, he
25 was usually by himself so she would fish out of his

1 boat.

2 Q All right. Where would you go on this little
3 fishing tournament, what was the area?

4 A We put in at Wachesaw Landing, I don't know
5 the name of all the creeks and stuff, we were
6 around Sand Island, the creeks and stuff back there
7 but I don't actually know the names, but around
8 that area.

9 Q All right.

10 A There on Wachesaw and Sand Island.

11 Q And what year was this these tournaments were
12 going on?

13 A 2010.

14 Q 2010, okay. You stated that there were other
15 times whenever the defendant would have been alone
16 with [REDACTED] in his boat, is that right?

17 A Yes.

18 Q Okay. Do you remember how many times that
19 happened, approximately?

20 A Not exactly. There were a few. I mean,
21 maybe four or five. I know it was more than two, I
22 don't know more than five or six.

23 Q Okay.

24 A A few.

25 Q All right. And after those times whenever

1 the defendant and [REDACTED] were alone were there
2 other times after those fishing tournaments had
3 taken place whenever the defendant would still be
4 coming by your house, if it was after hunting
5 season at that point?

6 A Yes.

7 Q Okay.

8 A Yes.

9 Q What reasons was he coming by your house?

10 A Him and Tony were friends, he did some work
11 for us in the yard and stuff and they would do odd
12 jobs here and there, they was friends, came over
13 and hang out.

14 Q At anytime during your relationship, your
15 family's relationship with the defendant did you
16 have any problems with him or any problems between
17 him and [REDACTED]

18 A No.

19 Q In September of 2011, September 11th, 2011
20 specifically, do you recall what you were doing
21 that day?

22 A Working.

23 Q Where were you working?

24 A Litchfield Beach Golf Course.

25 Q And what were your hours for that day?

1 A 3:00 to 11:00, that was my normal schedule.

2 Q 3:00 p.m. until 11:00 p.m.?

3 A Yes, ma'am.

4 Q What was the rest of the family supposed to
5 be doing that day?

6 A They were going to the Dead Dog for the
7 firefighter tribute for 9/11.

8 Q Who all was planning on going to that
9 tribute?

10 A Tony, [REDACTED] A. J. and some friends of
11 Tony's, buddies he fished with, Wayne was going
12 with them.

13 Q All right. And do you know about what time
14 they were planning on going?

15 A I think they were planning on going late
16 afternoon or early evening, around 5:00 or so,
17 6:00. I'm not exactly sure.

18 Q Because you had to work?

19 A Yes.

20 Q All right. Whenever you left the home at
21 3:00 o'clock or whenever you left to go to work who
22 all did you leave at your house?

23 A Tony, [REDACTED] and A. J.

24 Q All right. And whenever you got home that
25 night who was in the home?

- 1 A Tony and A. J.
- 2 Q Where was [REDACTED]
- 3 A She had changed her plans and went to spend
4 the night with her best friend Ashley, went to
5 Ashley's house.
- 6 Q What is Ashley's last name?
- 7 A Jenkinson.
- 8 Q Are Ashley and [REDACTED] pretty close friends?
- 9 A Yes.
- 10 Q Okay. And so that day whenever you were at
11 work, at that time did you have any idea of
12 anything that had gone on at your home?
- 13 A No.
- 14 Q All right. Now, Shannon, after the September
15 11th event at Dead Dog that you were not a part of,
16 what was the next thing that happened that
17 concerned you regarding your daughter [REDACTED]
- 18 A She had gone to spend the weekend at her
19 father's house and her stepmother had called me and
20 told me she had found a cigarette and a pill in her
21 bag.
- 22 Q Okay. So on a weekend -- was this one of her
23 normal weekend visitations?
- 24 A She doesn't have set weekends, I have full
25 custody but he does have, if she chooses to go I

1 let her go, there wasn't a set weekend, it was at
2 the end of October.

3 Q All right. And on this weekend who was it
4 that contacted you about this issue?

5 A Her stepmother.

6 Q All right. What did you do as a result of
7 that telephone call that you received?

8 A When she got home I sat her down and talked
9 to her about it and she was put on restriction.

10 Q Okay. Specifically state who you're talking
11 about?

12 A

Min

13 Q was put on restriction?

14 A Yes, ma'am.

15 Q Was this the first time, or not, that you had
16 an issue such as this arise regarding you daughter?

17 A The first time ever.

18 Q Okay. Were you surprised or caught off
19 guard?

20 A A little bit surprised but not really caught
21 off guard. I just kind of thought that was typical
22 teenager trying stuff for the first time.

23 Q How did you remedy it, what was your
24 restriction of her?

25 A I took away her phone, I-Pod. She pretty

1 much was allowed to go to school and come home,
2 couldn't go anywhere with any of her friends or
3 anything, no computer, no anything.

4 Q You just shut her down?

5 A Yes.

6 Q All right. And how long had it been since
7 she had any contact with the Love family? Do you
8 remember by that time?

9 A No, not specifically. I mean, I -- oh, yes,
10 she would have seen them in October because his
11 birthday is October 6th, we went to their house,
12 they had a birthday party for him, but between
13 October 6th and then I'm not sure but --

14 Q Whenever you got all the equipment, I will
15 call it, the phone, I-Pod, all the computer and
16 everything, what did you do with that information,
17 what did you do with her phone and with everything
18 that you received from her?

19 A I went through her phone, I was trying to
20 just check her text messages and that sort of thing
21 but of course being a typical teenager she had
22 erased most of it from her phone.

23 Q All right. Were you able to retrieve
24 anything from the phone that related to the pill
25 and the smoking?

1 A Not on the phone itself. I went on the
2 computer and checked the phone record, I was just
3 going to see who all she was texting, that kind of
4 thing.

5 Q Okay. And what kind of a phone plan, who do
6 you have it with?

7 A T-Mobile.

8 Q And what, with your contract, what are you
9 allowed to do in regards to checking your phone
10 record?

11 A You can see incoming and outgoing calls and
12 texts. You can't actually see the text message but
13 you can see the incoming and outgoing phone
14 numbers.

15 Q Do they give you volume, like how many?

16 A Yes. It lists every one.

17 Q All right. Was this available for [REDACTED]'s
18 phone?

19 A Yes.

20 Q Okay. And did you actually go on the
21 computer and pull the record for Brittany's phone?

22 A Yes.

23 Q All right. And is this something you can get
24 along with a copy of your bill?

25 A They used to send it to you but they don't

1 anymore. I guess you can request it, but you can
2 print it yourself off the computer.

3 Okay. So, everything that you're getting in
4 regard to the record, then, you're able to access
5 by the computer?

6 A Yes.

7 Q Okay. You have done that yourself, right?

8 A Right.

9 Q All right. Let me go back for just a minute,
10 just so we can show the jury a picture of your
11 home, so they can get a visual in their mind.

12 MS. LIVELY: If I may approach, Your Honor?

13 THE COURT: Sure.

14 Q This is 8 and 9, I'm going to show you these
15 two photos and ask you if recognize State's Exhibit
16 8 and State's Exhibit 9?

17 A Yes.

18 Q What is State's Exhibit 8 and 9?

19 A It's the front of my house.

20 Q Is this a fair and accurate representation of
21 what your home would look like in 2010?

22 A Yes.

23 Q Okay.

24 MS. LIVELY: Your Honor, the State would move
25 to offer 8 and 9 into evidence at this time.

1 MR. FOX: Without objection.

2 THE COURT: All right, they are in evidence.

3 (Two photographs marked and received in
4 evidence as State's Exhibits 8 and 9).

5 MS. LIVELY: Your Honor, we do have the
6 ability to actually pull these up for the jury to
7 see on their monitor. So, Miss Pop, will you do
8 so?

9 BY MS. LIVELY:

10 Q What is this black thing with wheels on the
11 front?

12 A Tony's cooker.

13 Q Did you get a lot of use out of that cooker?

14 A Oh, yes.

15 Q Were there several parties and just
16 gatherings of friends in that neighborhood at your
17 home?

18 A Yes.

19 Q Was that a common occurrence?

20 A Yes.

21 Q Was the defendant present at many of those?

22 A Yes.

23 Q All right. State's Exhibit Number 8 is a
24 little bit farther out, which is the one that shows
25 your entire yard and the street, correct, as you're

1 looking at it?

2 A Yes.

3 Q That is a pretty big yard. Is that pretty
4 much your entire lot that you all were on?

5 A The back yard is about the same size.

6 Q Okay, all right. So plenty of room for
7 friends and family?

8 A Oh, yes.

9 Q All right.

10 MS. LIVELY: Okay, thank you, you can
11 actually take those down now.

12 Q Once again where is your house located?

13 A On Hyatt Avenue in Murrells Inlet.

14 Q Is that Murrells Inlet in Georgetown or Horry
15 County?

16 A Georgetown.

17 Q Georgetown County, okay.

18 Now, getting back to the phone records,
19 whenever you pulled up the information that you can
20 pull up regarding incoming and outgoing, you said
21 that you cannot read what is actually the content
22 of the text, is that what I'm understanding?

23 A Correct.

24 Q In regard to your statement and determining
25 volume, were you able to look and determine how

1 many incoming and outgoing texts were going from
2 her phone?

3 A Yes.

4 Q Okay. And was there anything that you saw in
5 regards to looking at those messages that gave you
6 concern?

7 A Yes.

8 Q And what was that?

9 A There were quite a number of incoming and
10 outgoing text messages between her and the
11 defendant Wayne Love.

12 Q How did you know it was her and the defendant
13 Wayne Love?

14 A Because I knew the phone number.

15 Q What is his phone number?

16 A It was 283-2720. I don't know what it is
17 today.

18 Q Okay. And so whenever you saw all the
19 incoming and outgoing data did you actually print
20 that data out?

21 A Yes.

22 Q Okay. And did you provide that information
23 to me?

24 A Yes.

25 Q All right. And whenever you printed out all

1 that data and reviewed it -- do you know an exact
2 number of text messages between the two of them?

3 A No.

4 Q Okay. All right. And in going through all
5 the text messages, if I show you these just to
6 refresh your recollection initially could you tell
7 us a volume of how many text messages were going in
8 and out maybe for just like the month of September
9 of 2010?

10 A Hundreds.

11 Q Between whom?

12 A [REDACTED] and Wayne.

13 MS. LIVELY: Your Honor, if I may approach?

14 THE COURT: Yes, ma'am.

15 Q I'm going to hand you what has been marked as
16 State's Exhibit Number 5 and ask you, it is several
17 pages, ask you if you recognize those documents I'm
18 handing you?

19 A Yes, ma'am.

20 Q And again, in regards to your plan do you
21 have access to those business records as a result
22 of the plan you have with T-Mobile?

23 A Yes.

24 Q Are you able to actually get those records
25 and print them out for your own personal use?

1 A Yes.

2 Q Okay. And in receiving those documents off
3 the computer are you able to alter them in any way?

4 A No.

5 Q And whenever you printed out those documents
6 is there anything on there that you actually put on
7 there yourself regarding you looking at the
8 incoming and outgoing?

9 A I highlighted them and wrote the month.

10 Q That is the only way you modified or
11 documented anything in regard to those particular
12 records?

13 A Yes.

14 Q Okay. Are they a fair and accurate
15 representation of the records that you pulled off
16 the computer, that reflect incoming and outgoing
17 texts for this particular phone with [REDACTED]

18 A Yes.

19 MS. LIVELY: Your Honor, the state would move
20 to enter the, I believe it is Exhibit Number 5,
21 into evidence at this time.

22 MR. FOX: I would object without having the
23 keeper of the business record, someone with
24 T-Mobile come and testify about how it is they keep
25 them on the computer. She can testify how she

1 accessed them off the computer but I would object
2 without having someone from T-Mobile to explain how
3 they accumulate the information, store it and what
4 their process is, because I think it is a
5 prerequisite for introducing business records.

6 MS. LIVELY: Your Honor, these being
7 documents that are a report, that are in a data
8 compilation, which is what it is, this person
9 being, Miss Bellamy has clearly stated this is part
10 of her data plan, this is something she just
11 printed off the computer, it is not something she
12 can alter in any way, it is something that is sent
13 to her, she does not even receive paper documents
14 anymore, she receives everything by computer.

15 Unless there is some type of an indication
16 that the preparation indicates some type of lack of
17 trustworthiness in this particular record, then the
18 fact she can testify as to them being her
19 daughter's number, records that are provided to her
20 through her plan as well as her not being able to
21 alter them in any way, they are printed out, just
22 that, a report, it would be like her walking in
23 here with her telephone bill which we would be able
24 to show to the Court and to the jury regarding her
25 telephone number and the amount of money that she

1 pays to pay her bill or the incoming or outgoing
2 calls, as long as it does not have the hearsay
3 information of the text messages. All we're
4 showing is just the actual data compilation back
5 and forth in the telephone record..

6 THE COURT: All right. Ladies and gentlemen,
7 I'm just going to ask you go back to the jury room
8 for a few moments while we resolve this. Don't
9 talk about the case, continue to keep an open mind.

10 (The jury was excused from the courtroom).

11 THE COURT: My question is wouldn't she have
12 to be the custodian, the actual maker of the record
13 in order for the business record exception to
14 apply?

15 MS. LIVELY: Well, Your Honor, the
16 circumstances with how computerized these records
17 are now days and the fact she has to know enough
18 information about her own personal data that she is
19 seeking in order for her to receive this
20 information, then I don't believe you have to have
21 the custodian of the record. It is not like
22 somebody is at the doctor's office and we're
23 talking about records that are under seal and that
24 nobody has access to. What we have is someone who
25 through her data plan, through having a password

1 protected account can go on the computer and pull
2 up these documents that are in relation to just her
3 incoming and outgoing volume. It doesn't go to,
4 like I said, the actual content of what's being
5 texted back and forth.

6 So, with it being a data compilation it would
7 be like us just bringing in every one of her phone
8 bills to say she had over so many text messages per
9 month. The only difference is she pulled it off
10 the computer because she has access to that herself
11 instead of having brought in her mailed bill which
12 would have exactly the same information on it and
13 that information is sent to her as personal
14 information on her personal, on her personal
15 telephone and there is no concern regarding
16 trustworthiness of this particular document because
17 it is something that she cannot alter, it is
18 something that comes off the computer straight from
19 the website as provided in her contract.

20 We did have her phone dumped which I was
21 going to have one of the detectives come in and
22 testify about that and that obviously is one where
23 I'm going to have the detective come in here and
24 say, "I physically went into the phone, pulled data
25 off the phone using this particular type of

1 instrument," and that information, obviously I'm
2 going to have to have him come in and testify about
3 that because how that was done and the reliability
4 of it is obviously an issue.

5 However, where we have got just the volume
6 and data compilation it is different than dealing
7 with, you know, I'm not going to sit here and say
8 the truth of the matter asserted is that he sent a
9 text, "Please send me a naked picture," that's not
10 what we're able to find out looking at the volume
11 here, we're not able to point out, "Hey, meet me
12 later," on the phone. It is data she is paying for
13 incoming and outgoing on the phone and she can look
14 at that information, is what it is, it is not
15 anything subject to her being able to change, so
16 that is the reason we feel like, even though I
17 understand what you're saying, and that is
18 absolutely related in regard to a particular kind
19 of record, the kind of record we're dealing with
20 here is just a data compilation and there is no
21 concern regarding the trustworthiness of it.

22 MR. FOX: Your Honor, I just reply it doesn't
23 matter if it is a data compilation or memorandum,
24 it is covered by the rule 803(6), it says you've
25 got to have, it can't be introduced, it has to be

1 shown by the testimony of the custodian or other
2 qualified witness unless the source of information
3 indicates lack of trustworthiness. That is the
4 second part. If there is an indication of
5 trustworthiness it doesn't matter if the custodian
6 is here, we never really get to that issue. The
7 rule is very specific, data compilation isn't held
8 to any lesser standard than the other items listed
9 in the rule. It is clear the custodian or other
10 qualified witness, which would be someone who knows
11 how the records are kept, how it's compiled, et
12 cetera, not just how they are accessed, is required
13 under the rule.

14 MS. LIVELY: And, Your Honor, what I'm trying
15 to provide, and I understand exactly what Mr. Fox
16 is saying in regard to custodians or other
17 qualified witness, we look at the situation of
18 whether or not even as a lay witness she would be
19 qualified to say, "I used my password, I know the
20 telephone number, it is part of my data plan, I'm
21 able to access this information, I cannot alter it
22 because it is what it is on the computer," and then
23 that would be enough to establish that she knows
24 what she's pulling off, the information comes from
25 the phone that she is using, or that her daughter

1 is using. That would be my argument in regards to
2 her being qualified to establish that is how she
3 got the record and that is what, and that is
4 information that she accessed through her own
5 personal account.

6 THE COURT: Okay. Well, I understand the
7 theory, however I believe I've got to sustain the
8 objection under the rule. I don't believe
9 foundation has been met. I think the foundation
10 requires someone to come in, whether the custodian
11 or other qualified witness, is the phrase used in
12 the rule, to establish the record was made and kept
13 in the course of regularly conducted activity and
14 was the regular practice of the business activity
15 to make the record and it was made at or near the
16 time of the event and it was made by, information
17 transmitted by a person with knowledge.

18 An Other qualified witness is any person who
19 can credibly testify the record satisfies the
20 requirement of the exception and I don't believe
21 Miss Bellamy would be qualified to testify about
22 T-Mobile's business practices and consequently
23 there is inadequate foundation for the business
24 record exemption to apply, so it would be hearsay
25 and inadmissible.

1 MS. LIVELY: Your Honor, regarding
2 clarification as to what I can ask this witness,
3 she did go into the record and was able to
4 determine that there had been text messages back
5 and forth between her daughter and the defendant in
6 volume, she actually said she took away the phone
7 and she was going to limit, when she got the phone
8 back, how much text messages she can have. This
9 kind of led to the question to the daughter, "Why
10 in the world were you and him having so much
11 contact," and that is where the disclosure came
12 out, so I just need to make sure in regard to your
13 ruling I understand we can't actually put the
14 records in.

15 THE COURT: Right.

16 MS. LIVELY: She obviously did review them,
17 which was the premise for her going to the daughter
18 and saying, "What in the world is this all about,"
19 and then that is where it came out.

20 THE COURT: Well, that testimony about the
21 volume has already come in.

22 MS. LIVELY: Yes, sir.

23 THE COURT: Without objection.

24 MS. LIVELY: Okay. And that is how I will
25 address it, then, whenever I reconvene with my

1 direct testimony.

2 THE COURT: All right. Anything else before
3 we bring the jury back in?

4 MS. LIVELY: No, sir. Let me just, I'm going
5 to retrieve the record.

6 THE COURT: Okay.

7 All right, you can bring the jury back in.
8 Thank you.

9 (The jury returned to the courtroom).

10 THE COURT: Yes, ma'am.

11 MS. LIVELY: Thank you, Your Honor.

12 BY MS. LIVELY:

13 Q Before we broke, Miss Bellamy, we were
14 talking about you reviewing some of your phone
15 records involving [REDACTED]. Is that correct?

16 A Yes.

17 Q All right. And after this incident occurred
18 where she got put on restriction what information
19 did you actually review in order to kind of follow
20 up and see what in the world she had been up to
21 over the past few months?

22 A Her phone calls, incoming and outgoing calls,
23 text messages.

24 Q And once again was there anything that struck
25 you out of the ordinary in reviewing those records?

1 A Yes.

2 Q What was that?

3 A The amount of calls between her and Wayne.

4 Q Okay. Just calls or --

5 A Text messages, there was a few actual phone
6 calls but text messaging mainly.

7 Q And was it one or two text messages that you
8 were seeing?

9 A No, it was hundreds.

10 Q I'm sorry?

11 A Hundreds.

12 Q Hundreds?

13 A Yes.

14 Q When you saw this what did you do, what did
15 you say to [REDACTED]

16 A I asked her what was going on. I mean, what
17 in the world they would have to talk about, talk or
18 text between her and Wayne.

19 Q Okay.

20 A And she initially just tried to blow it off
21 like it wasn't any big deal and I just explained to
22 her that a 30 year old man and fourteen year old
23 child, that is just not normal, that would kind of
24 be like myself texting her friend Ashley who was
25 her age hundreds of times a day and she said,

1 "Well, what in the world would you talk about," and
2 then I said exactly, that is when she got it that
3 that is not normal, that is not right, she realized
4 that age something is wrong.

5 Q And after this conversation with [REDACTED] did
6 she ever disclose anything additional to you?

7 A Yes. When I got across to her why I was
8 asking, that I knew that something like this, that
9 is abnormal, something is not right.

10 Q Okay.

11 A She told me --

12 Q All right. You can't tell me exactly what
13 happened but I need to ask you time and place,
14 okay?

15 A Okay.

16 Q Was she able to give you any information as
17 to the time the first event occurred?

18 A Yes.

19 Q When was that?

20 A New Year's Eve.

21 Q 2009?

22 A Yes.

23 Q And where did this take place?

24 A At their house, at Wayne's house.

25 Q At Wayne's house, the defendant's house?

1 A Yes.

2 Q And was what she told you something

3 inappropriate?

4 A Yes.

5 Q Now, the next time -- was there a next time?

6 A Yes.

7 Q That she disclosed?

8 A Yes.

9 Q Tell this jury the time and place that she

10 disclosed to you in regard to there being another

11 time?

12 A During a fishing tournament when she was with

13 Wayne in his boat.

14 Q When she was alone with him?

15 A Yes.

16 Q After disclosing these things to you did she

17 actually give you a final time whenever there had

18 been some type of inappropriate event?

19 A Yes.

20 Q When was that?

21 A 9/11.

22 Q Did she tell you 9/11 of 2010?

23 A Yes.

24 Q Okay. Where did this happen?

25 A In my house.

1 Q When you learned these things, Shannon, what
2 did you do?

3 A Lost it, went to his house, he wasn't home
4 and I was looking for him.

5 Q Did you ever threaten him, Shannon?

6 A I never found him to threaten him.

7 Q Who did you contact regarding what you
8 learned?

9 A The police.

10 Q Was this matter reported?

11 A Yes.

12 Q And after the matter was reported was there
13 anything that you had to do to follow up or assist
14 in the investigation?

15 A Yes, ma'am. I took her to the Children's
16 Recovery Center.

17 Q Did you know what the purpose of that was
18 for?

19 A Yes. That was, they videotaped, they
20 videotaped an interview.

21 Q And are you aware of anyone else interviewing
22 her before that time?

23 A Just the policeman that came that night.

24 Q Okay. And by that time, according to the
25 information provided to you from [REDACTED] had

1 there been any other inappropriate contacts from
2 the September 11th time, until you called the
3 police?

4 A No.

5 Q And do you remember the day that you called
6 the police when you learned this happened?

7 A October 26, 2010.

8 Q October 26, 2010?

9 A Yes.

10 Q After [Minor] went to the Children's
11 Recovery Center for the forensic interview what
12 else did you do as a mother to assist your child?

13 A I asked the people at the Children's Recovery
14 Center if they could recommend a counselor for me,
15 which they did.

16 Q And have you followed up with that
17 recommendation?

18 A Yes.

19 Q All right. And who is [Minor] seeing?

20 A Denise Brand.

21 Q And how long has she been seeing Denise
22 Brand?

23 A Since December, 2010, until the present.

24 Q Is she still a current client of Denise
25 Brand?

1 A Yes.

2 MS. LIVELY: Just one moment, okay, Miss
3 Bellamy?

4 Miss Bellamy, thank you so much. Please
5 answer any questions Mr. Fox has for you.

6 CROSS EXAMINATION BY MR. FOX:

7 Q Miss Bellamy, you reviewed your daughter's
8 phone records and she had an unlimited plan, right,
9 for calling and texting?

10 A Yes.

11 Q So she had, is it fair to say in a given
12 month -- you reviewed several months worth of
13 records?

14 A Yes.

15 Q Is it fair to say in an average month that
16 she had thousands of calls and texts?

17 A Yes.

18 Q Okay. To any number of people, different
19 people?

20 A Yes.

21 Q Okay. And in fact it's a fairly, if you look
22 at the physical records themselves it is a fairly
23 high stack, isn't it?

24 A Yes, sir.

25 Q Okay. So, Wayne Love was far from the only

1 person she was in contact with on her phone through
2 calls or texts, correct?

3 A Correct.

4 Q Now, with regard to the cigarette and pill
5 that was found when she went up to stay with your
6 ex-husband, did you ever determine what kind of
7 pill that was?

8 A Vicodin

9 Q it was what?

10 A Vicodin.

11 Q Did you ever find out where Tabitha obtained
12 that pill?

13 A You mean [REDACTED] yes, sir.

14 Q I'm sorry, [REDACTED] I apologize. So your
15 daughter got that -- where was that, where did she
16 get that?

17 A Her friend Ashley.

18 Q Ashley Jenkinson?

19 A Yes.

20 Q Was that the only time she had Vicodin?

21 A I don't know.

22 Q Okay. You never found out whether it was a
23 one time thing or ongoing issue?

24 A No.

25 Q Did you ask her?

1 A Yes.

2 Q And what -- did she give you any indication
3 whether it was a one time thing?

4 A I don't remember.

5 Q Was she being open with you about it?

6 A Yes, but she was scared, she knew she was in
7 trouble so I'm not sure exactly how much she was
8 being --

9 Q Now, when you go back to the records, when
10 you pull those records, you just got it, you have
11 your daughter's number indicated for her phone and
12 whoever she was contacting or whoever was
13 contacting her, correct?

14 A Yes.

15 Q In other words, it showed the existence of a
16 text or call but not what was contained in that
17 message?

18 A Correct.

19 Q The call itself, of course you don't know,
20 they don't record the call, you just know that the
21 call happened, correct?

22 A Correct.

23 Q So there is absolutely no way of knowing what
24 the content of that contact back and forth between
25 [REDACTED] and Wayne was?

1 A Correct.

2 Q All right. Now, the fishing tournament, you

3 say there is a lot, basically people that knew each

4 other, right, your husband organized this thing,

5 your fiance organized this thing, there would be

6 friends around. Was it your father would go or

7 Tony's father participated in these?

8 A Tony's fther.

9 Q [REDACTED] would sometimes fish with him,

10 correct?

11 A Tony, yes.

12 Q Or with Tony's father?

13 A No..

14 Q Never with Tony's father?

15 A No.

16 Q Do you know a man named Billy Buckhardt?

17 A Yes..

18 Q Did [REDACTED] ever go fish with him?

19 A No.

20 Q Never?

21 A Never.

22 Q What about anybody other than Tony or Wayne?

23 A No, sir..

24 Q Okay: Did you go to all the tournaments?

25 A No, sir.

1 Q Okay. How many would you say you missed
2 during the course of the tournament season?

3 A I have no way of recalling that. They start
4 usually in April and last through September and I
5 was working, so if I was off I would generally go,
6 so I have no way of knowing that.

7 Q From April to September, right?

8 A Yes.

9 Q Once a week, roughly, on average?

10 A Yes, Thursdays.

11 Q Five or six months worth, say 18 or 20 times,
12 say something like that?

13 A Something like that.

14 Q As far as you know did Minor attend all of
15 them?

16 A No, she didn't attend all of them.

17 Q Okay. When you --

18 MR. FOX: The Court's indulgence.

19 Thank you Your Honor. No further questions.

20 THE COURT: Redirect?

21 MS. LIVELY: Yes, sir, Your Honor, thank you.

22 REDIRECT EXAMINATION BY MS. LIVELY:

23 Q Miss Bellamy, when you were reviewing those
24 records, incoming and outgoing, you already said
25 you saw hundreds between the defendant and your

1 daughter. Right?

2 A Yes.

3 Q In reviewing those records did you see
4 hundreds of text messages between [REDACTED] and any
5 other 30 your old man?

6 A No, ma'am.

7 MS. LIVELY: Thank you.

8 THE COURT: All right. Thank you, Miss
9 Bellamy.

10 (Witness excused).
11
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1 [REDACTED] [REDACTED] after being first duly sworn,
2 testified as follows:

3 THE CLERK: Thank you. Please be seated and
4 state your name for the record.

5 THE WITNESS: [REDACTED]

6 DIRECT EXAMINATION BY MS. LIVELY:

7 Q [REDACTED] can you just scoot up a little bit,
8 if you don't mind, so everybody, everybody can see
9 you?

10 Okay, [REDACTED] where do you live?

11 A Murrells Inlet.

12 Q Is that Georgetown County or Horry County
13 Murrells Inlet?

14 A Georgetown County.

15 Q And how old are you?

16 A Sixteen.

17 Q Are you in school?

18 A Yes, ma'am.

19 Q Where do you go to school?

20 A St. James High School.

21 Q And how are you doing in school this year?

22 A Good.

23 Q Now, there has been a little bit of talk about
24 whenever you found, or a pill was found. I just
25 want to talk about that real quick. Okay?

1 A All right.

2 Q Now, [REDACTED] do you have a drug problem?

3 A No, ma'am.

4 Q When that pill was found where did you get

5 that pill?

6 A Ashley Jenkinson.

7 Q And is she your friend?

8 A Yes, ma'am.

9 Q Why did you get that pill from her?

10 A Experiment.

11 Q And have you experimented with any other

12 drugs?

13 A No, ma'am -- well, cigarettes.

14 Q Cigarettes? How about alcohol, have you

15 experimented with any alcohol?

16 A Yes, ma'am.

17 Q And about how old were you at that time,

18 again?

19 A Thirteen, fourteen.

20 Q Fourteen? Had you ever been in trouble like

21 that before?

22 A No, ma'am.

23 Q Had you ever been kicked out of school for

24 anything before?

25 A No, ma'am.

1 Q Were you a good student back then?

2 A Yes, ma'am.

3 Q Now, [REDACTED] in the fall of 2009 did you
4 have the opportunity to meet the defendant Prentis
5 Love?

6 A Yes, ma'am.

7 Q You did? And do you remember whenever you
8 met him where you were?

9 A I was at my house.

10 Q Okay, all right. And how was he introduced
11 to you?

12 A Tony introduced him to me.

13 Q And Tony is?

14 A My stepfather.

15 Q Not technically your step-dad but you refer
16 to him as your step-dad, is that right?

17 A Yes, ma'am.

18 Q He's not married to your mom, right?

19 A They're engaged.

20 Q How long had he lived with your mom and you
21 out on Hyatt Avenue?

22 A Years, five or six years.

23 Q Okay, all right. And your father, where does
24 he live?

25 A North Carolina.

1 Q And has he remarried?

2 A Yes, ma'am.

3 Q What is your stepmother's name?

4 A Kelly Bellamy.

5 Q What is your father's name?

6 A Timothy Bellamy.

7 Q Do you have any brothers or sisters?

8 A Yes, ma'am. I have a stepbrother Anthony

9 Carter and I have a little sister Katie Bellamy,

10 Summey Freeman and Chance Bellamy.

11 Q Do you like kids?

12 A Yes, ma'am.

13 Q Did you have the opportunity to spend any

14 time with the defendant's kids?

15 A Yes, ma'am.

16 Q What are their names?

17 A Courtney and A. J.

18 Q When you met them how old were they?

19 A I think six and four.

20 Q Did you spend any time with them at their

21 house?

22 A Yes, ma'am, several times.

23 Q Why is that? You're thirteen, four years old

24 and six years old, what are you doing hanging out

25 with little kids?

1 A Well, we had done arts and crafts before,
2 around Christmas time we made cookies, gingerbread
3 houses, and several occasions I would babysit them.

4 Q How would you describe the relationship
5 between you and the defendant's wife Tabitha? Did
6 you all get along well?

7 A Yes, we got along.

8 Q And did you like their children?

9 A Yes, ma'am, very much.

10 Q How about Wayne, how did you feel about him?

11 A We were close.

12 Q At what point in time, if ever, did the
13 relationship between you and the defendant change
14 from him being the father of these kids you would
15 babysit, to something else?

16 A What do you mean?

17 Q Was there a time whenever something happened
18 between you and Wayne at his house?

19 A Yes, ma'am.

20 Q Do you know what I'm referring to?

21 A Yes, ma'am, New Year's Eve.

22 Q New Year's Eve? And let me just back up.
23 You actually had a forensic interview at the
24 Children's Recovery Center in 2010, isn't that
25 right?

1 A Yes, ma'am.

2 Q This is after you admitted everything to your
3 mom, is that right?

4 A Yes, ma'am.

5 Q Was that the first time, at the forensic
6 interview, where you actually sat down and told as
7 much as you could remember about what had happened
8 between you and the defendant?

9 A Well, a couple days before I had told the
10 cops.

11 Q All right.

12 A But that was the first time, yes, that I had
13 ever been interviewed.

14 Q Was that interview a detailed event about
15 everything that had happened?

16 A Very.

17 Q All right. So let me take you back, then, to
18 New Year's Eve 2009. How old were you?

19 A Thirteen.

20 Q All right. And where were you on that night
21 after you had left your home?

22 A His house.

23 Q His house? Who all was there?

24 A Me, Tabitha, Courtney and Aden.

25 Q Where was Tabitha?

1 A Tabitha had went and got in the bed.

2 Q Let me ask you what type home did they live
3 in?

4 A Trailer.

5 Q It was a trailer, what, a single wide, double
6 wide, what?

7 A I think single.

8 Q Okay.

9 A I don't know.

10 Q Was it big?

11 A No. Small.

12 Q And so she goes to bed and where are the
13 children? Are they asleep or running around or
14 what?

15 A I put them in the bed.

16 Q Where did you go after you put the children
17 to bed?

18 A On the couch.

19 Q And where was the defendant?

20 A The defendant had dropped us off at his house
21 and he had went back to my house, I don't know why,
22 I never found out, and then he had returned later.

23 Q Okay. When he returned later tell the jury
24 what happened.

25 A Well, Tabitha was in the bed and he at first

1 just came in the house, he went and changed clothes
2 and we were sitting on the couch..
3 Q Do you know whether or not he had dranked any
4 alcohol that night?
5 A Yes, ma'am, he did.
6 Q Did you actually see him drinking alcohol?
7 A Yes, ma'am.
8 Q Could you smell any alcohol on him?
9 A Yes, ma'am.
10 Q Had you dranked any alcohol?
11 A No, ma'am.
12 Q Now, had you taken any pills?
13 A No, ma'am.
14 Q Now, [REDACTED] when he sat on the couch next
15 to you what did you do?
16 A At first we were watching TV and then later
17 on that night -- later on that night he had kissed
18 me and he tried to put his hand up my shirt.
19 Q A deep breath, okay? When he kissed you what
20 kind of kiss was it?
21 A A french kiss.
22 Q What part of his body touched your body?
23 A His hands.
24 Q And where did his hands go?
25 A They tried to go up my shirt.

- 1 Q What did you do?
- 2 A I told him no and I told him to stop.
- 3 Q Did he stop?
- 4 A Yes, ma'am.
- 5 Q Did he say anything to you?
- 6 A No, ma'am.
- 7 Q What did you do after that happened?
- 8 A I had actually went to sleep and he had got
- 9 on the other couch.
- 10 Q Did he touch you or do anything else that
- 11 night?
- 12 A Later on that night, yes, ma'am.
- 13 Q What happened?
- 14 A I had got up in the middle of the night to
- 15 use the restroom and when I came back in the living
- 16 room he started kissing me again and again tried to
- 17 stick his hand up my shirt and I told him to stop
- 18 and he got back on the other couch and I went back
- 19 to sleep.
- 20 Q Okay. What were you feeling at that time?
- 21 A Scared, nervous. I didn't know what was
- 22 going on.
- 23 Q Why didn't you go home at that time?
- 24 A I don't know, I didn't think about it.
- 25 Q The next day what did you do?

1 A I had stayed at the house with Tabitha and
2 Wayne and the kids and later on that evening my mom
3 came and got me.

4 Q Did you tell anybody that day?

5 A Not that day.

6 Q Now, was there -- how were things progressing
7 between you and the defendant after that point?

8 A What do you mean?

9 Q Did he ever say anything to you about what
10 had happened?

11 A No, ma'am.

12 Q He didn't? When was the next time the two of
13 you all had the opportunity to be alone together?

14 A In the fishing tournament.

15 Q In the fishing tournament, okay. Tell the
16 jury about that.

17 A I don't remember the date, one of the fishing
18 tournaments, mom was not working and so she rode
19 with Tony in their boat and I rode with Wayne in
20 his boat.

21 Q Okay. And do you like to fish?

22 A I used to.

23 Q You used to? And before the fishing
24 tournamnet you were in with the defendant would you
25 fish with your step-dad Tony?

1 A Yes, ma'am, several times.

2 Q Okay. And were you a pretty good
3 fisherwoman?

4 A Yes.

5 Q Now, [REDACTED] whenever you were on the boat
6 with the defendant at this fishing tournament, tell
7 the jury if anything happened on that time.

8 A The first time?

9 Q The first time. We're going in chronological
10 order, okay, the very next time you had an
11 opportunity to be alone with him was that whenever
12 you were on the boat with him?

13 A Yes, ma'am.

14 Q Tell the jury what happened on that time.

15 A He -- at first we were talking, just goofing
16 off and then he started kissing me and he stuck his
17 hand up my shirt and he also tried to get down my
18 pants.

19 Q What did you do?

20 A I told him no.

21 Q Did he stop?

22 A Yes, ma'am.

23 Q Had he been drinking that day?

24 A No, ma'am.

25 Q Where was your step-dad when this was going

- 1 on?
- 2 A They were in the other boat.
- 3 Q Where were you guys in regard to his boat?
- 4 A We were in the river, I don't know the name
5 of the creek.
- 6 Q Okay, all right. Was there any, were there
7 any other boats around you could see?
- 8 A No, ma'am.
- 9 Q Now, after that happened did you tell anyone?
- 10 A No, ma'am. Well, I told Ashley, my best
11 friend.
- 12 Q You told your best friend Ashley?
- 13 A Yes, ma'am.
- 14 Q Did you ever tell your parents?
- 15 A No, ma'am.
- 16 Q [REDACTED] why didn't you tell anybody at that
17 point?
- 18 A I was scared.
- 19 Q Was there a next time whenever you were alone
20 with the defendant?
- 21 A Yes, ma'am. It was in another fishing
22 tournament. Once again my mom was off work and she
23 wanted to go with Tony so I went with Wayne and the
24 same things happened.
- 25 Q Would that be the same exact inappropriate

1 touching?

2 A Yes, ma'am.

3 Q Touching, and you need to be specific, was it
4 the chest area?

5 A Yes, ma'am.

6 Q How about was there any kissing this time?

7 A Yes, ma'am.

8 Q And did he try to touch anywhere else?

9 A No, ma'am.

10 Q And would he ever say anything to you when he
11 did these things?

12 A No, ma'am.

13 Q Did he tell you how he was feeling about you
14 or why he was doing these things?

15 A No, ma'am.

16 Q Did you ever say anything to him?

17 A No, ma'am.

18 Q At this time, by the time this happened the
19 third time were you texting him or having contact
20 with him by then?

21 A Yes, ma'am.

22 Q Okay. And how much contact were you all
23 having?

24 A A good bit.

25 Q A good bit? Would you say you texted him ten

1 times daily, fifty times daily? Give me a general
2 idea.

3 A Around this time not that much, maybe ten or
4 twenty. It wasn't like an everyday thing.

5 Q What kind of things would you text him?

6 A I honestly don't remember. It was
7 conversational.

8 Q Was there a time after that that you were
9 alone with the defendant again?

10 A Yes, ma'am.

11 Q All right. Tell the jury about that.

12 A It was another fishing tournament, it was
13 toward the end, it was one of the last ones I
14 fished with him, and once again the kissing and the
15 trying to go up my shirt.

16 Q And so his hand was actually reaching up into
17 your shirt?

18 A Yes, ma'am.

19 Q What part of your area was he touching?

20 A My breasts.

21 Q Was he kissing you at that time, too?

22 A Yes, ma'am.

23 Q Now, [REDACTED] was there another time where
24 you were alone with this defendant and more things
25 happened?

1 A Yes, ma'am.

2 Q All right. Let me take you to September
3 11th, 2010. Do you recall that day?

4 A Yes, ma'am.

5 Q All right. Tell the jury what you were doing
6 own September 11th, 2010.

7 A That morning Wayne, my stepfather Tony Carter
8 and my stepbrother A. J. Carter were supposed to go
9 to the Dead Dog Saloon for the firefighters and I
10 was supposed to also go. That morning Tony and A.
11 J. were oversleeping so I texted Wayne and I was
12 letting him know, "Hey, they are sleeping, they are
13 going to be late." He then asked me for a nude
14 picture.

15 Q I'm sorry, a what picture?

16 A A nude picture.

17 Q A nude picture of who?

18 A Me.

19 Q Okay. What did you do?

20 A I told him no.

21 Q Okay. And what happened next?

22 A He had asked several times that day, he
23 repeatedly asked me to send him nude pictures.

24 Q What did you do?

25 A I told him no.

1 Q So, you were texting back and forth to him,
2 to the defendant?

3 A Yes, ma'am.

4 Q At one point in time he asked for a nude
5 photo of yourself?

6 A Yes, ma'am.

7 Q Did you ever send that?

8 A No, ma'am.

9 Q Did your step-dad and A. J. finally get up?

10 A Yes, ma'am, they did.

11 Q They did, and where did they go?

12 A They had went down to the Dead Dog Saloon
13 later that evening.

14 Q And --

15 A Around 6:00.

16 Q At that point in time you had decided not to
17 go, is that correct?

18 A Yes, ma'am. My best friend Ashley Jenkinson
19 called me and asked me if I would like to spend the
20 night with her.

21 Q All right. Was that the plan for you?

22 A Yes, ma'am. After Tony and A. J. left my mom
23 had left at 3:00, was already at work and Miss
24 Vickie, her mother, was supposed to be coming to
25 pick me up.

1 Q Ashley's mother is Miss Vickie, right?

2 A Yes, ma'am.

3 Q Okay. So, the only person at home at that
4 time would have been who?

5 A Me.

6 Q All right. Your mom left at 3:00 to go to
7 work. Correct?

8 A Yes, ma'am.

9 Q And you said A. J. and Tony had already left
10 and gone to the Dead Dog Saloon around 5:00 or so?

11 A Yes, ma'am.

12 Q What time was Ashley's mom Vickie suppose to
13 pick you up?

14 A When Tony and A. J. had left she told me she
15 would be there around like fifteen or twenty
16 minutes.

17 Q All right. During all this were you still
18 having communication with the defendant?

19 A Yes, ma'am.

20 Q All right. What was going on with that?

21 A He had actually called me after Tony and
22 A. J. had left and he asked what I was doing and I
23 told him I was packing to go stay with Ashley and
24 he had asked to ride by.

25 Q Did he ride by the home?

1 A Yes, ma'am.

2 Q And when he rode by the home what happened?

3 A I went outside, we were talking, we went back
4 inside.

5 Q Okay. And when you went back inside where
6 did you go?

7 A The kitchen.

8 Q When he was there did you ever ask him or
9 mention the fact he had asked for a nude photo?

10 A Yes, ma'am.

11 Q What did he say to you?

12 A He told me that he just wanted one and he had
13 asked me if he could take it off his phone.

14 Q Okay. Did you let him?

15 A No, ma'am.

16 Q After that conversation what happened next?

17 A He started kissing me, he stuck his hand up
18 my shirt and he also stuck his hand down my pants.

19 Q And when he stuck his hand down your pants,
20 [REDACTED] you have to tell, what did he do when he
21 stuck his hand down your pants?

22 A He fingered me.

23 Q I know asking this is hard but I need to know
24 specifically. When you say he fingered you, where
25 did his finger go?

1 A In my vagina.

2 Q When this happened what did you do?

3 A Nothing.

4 Q While he was doing this what did he do?

5 A He had his hand on his penis.

6 Q Did you see his penis?

7 A Yes, ma'am.

8 Q Where were his clothes?

9 A His pants were pulled down and he had a shirt
10 on.

11 Q When he had his hand on his penis what did he
12 do?

13 A He was ejaculating it.

14 Q And what happened when he was doing that?

15 A Sperm came out.

16 Q What did he do?

17 A He took a paper towel and cleaned his self
18 up.

19 Q Did he say anything to you, [REDACTED]

20 A No.

21 Q What did you do?

22 A Nothing.

23 Q How long did all this take place?

24 A It took place in my house, approximately
25 maybe five or ten minutes.

1 Q Did he leave after that?

2 A Yes, ma'am.

3 Q Did you have any more contact with him that

4 day?

5 A Yes, ma'am, that night I did.

6 Q Okay. Tell us about that.

7 A I don't remember what we had talked about.

8 Q Did you talk to him by phone?

9 A Texting.

10 Q Texting? If you had to guess how many times

11 you all texted each other on that day could you

12 give us a general idea?

13 A That day?

14 Q That day.

15 A Hundreds.

16 Q Now, [REDACTED] were there any other times

17 after September the 11th of 2010 when you had

18 sexual contact with this defendant?

19 A No, ma'am.

20 Q Was that the last time you recall?

21 A Yes, ma'am.

22 Q Okay. Tell us, I'm going to take you back to

23 the beginning, about when you got in trouble for

24 the pill, tell the jury once you got in trouble and

25 you came home what did your mom and your step-dad

1 do?

2 A When I came home from North Carolina that
3 weekend, it was in October and they both sat me
4 down, Tony and my mom Shannon, and they questioned
5 what it was and how I got it and why I was taking
6 them.

7 Q Okay. And did you tell them?

8 A Yes, ma'am.

9 Q Okay. You told them it came from Ashley, you
10 have already stated that?

11 A Yes, ma'am.

12 Q And did you tell them why you were taking it?

13 A No, ma'am.

14 Q Why were you?

15 A Experimenting.

16 Q So, no other reason other than experimenting?

17 A Sure, experiment.

18 Q Now, Brittany, was that when you told your
19 mom and your step-dad about what was going on
20 between you and the defendant?

21 A No, ma'am.

22 Q What prompted you to come out and tell what
23 was going on between you and the defendant?

24 A About a week after I had got caught with the
25 cigarettes and pills my mom had sat me down and she

1 had went through my phone because she had had it
2 and she went through my phone record on the
3 computer and she had asked me why me and Wayne had
4 so much contact with each other.

5 Q Okay, all right. So that was the part of
6 your restriction, was having your phone taken away,
7 right?

8 A Yes, ma'am. I had no phone, no I-Pod,
9 computer, nothing.

10 Q All right. So when your mom confronted you
11 about that what, if anything, were you thinking or
12 were you concerned about?

13 A I was freaking out that she would find
14 Wayne's number and ask me and also that she would
15 find anything else out.

16 Q And at that point in time what did you decide
17 to do?

18 A At first I didn't say anything to her, just
19 kept brushing it off, ignoring her and then I
20 finally broke down and came clean.

21 Q When you broke down and came clean did you
22 tell her about the events that you told the jury
23 about here today?

24 A Yes, ma'am.

25 Q Now, [REDACTED] by telling your mom and your

1 step-dad these things did it get you off
2 restriction?

3 A No, ma'am. I was on restriction for two
4 months, no phone, I-Pod, nothing.

5 Q Did you want to tell them what had happened
6 between you and Wayne?

7 A Yes, ma'am.

8 Q Okay. Why did you finally want to tell them
9 what had happened?

10 A I couldn't take it any more, hold it in, and
11 it wasn't right.

12 Q And why had you waited so long to tell,

13 [REDACTED]

14 A I don't know.

15 Q How did you feel about Wayne?

16 A When I first met him I kind of looked up to
17 him as a big brother and I looked up to Tabitha
18 like a big sister and their kids looked up to me
19 like an older sister to them and then it just grew.

20 Q Did you care about him?

21 A Yes.

22 Q Are you sad this happened?

23 A Yes.

24 MS. LIVELY: One moment, okay?

25 Q [REDACTED] I'm sorry, I need to go back and

1 ask you something. You had talked about giving
2 your interview at the Children's Recovery Center.
3 Do you recall that?

4 A Yes, ma'am.

5 Q Okay. And in describing the different events
6 between, what happened between you and the
7 defendant Wayne was there ever a time when anything
8 other than his hand touched your breast area?

9 A Yes, ma'am.

10 Q And you need to tell us what.

11 A His mouth.

12 Q Did you have your shirt on or off?

13 A It was pulled up.

14 MS. LIVELY: Okay, thank you. Answer any
15 questions the defense may have for you.

16 THE COURT: Mr. Fox.

17 MR. FOX: Thank you, Your Honor.

18 CROSS EXAMINATION BY MR. FOX:

19 Q  the first time anything happened
20 was New Year's Eve, correct?

21 A Yes, ma'am.

22 Q And you were at Wayne and Tabitha's house?

23 A Yes, sir.

24 Q And after Wayne came back and you say he
25 touched and kissed you, what time of night was

1 this?

2 A Past midnight.

3 Q Okay. And your parents had had a party at
4 their house that night, right?

5 A Yes, sir.

6 Q You lived a mile or so down the road?

7 A Yes, sir.

8 Q Okay. You had your phone with you?

9 A No, sir.

10 Q You had a phone in the house?

11 A I did not have a phone at the time, I did not
12 get one until my birthday in February.

13 Q Is there a regular phone in Wayne's house?

14 A Yes, a house phone.

15 Q Where did Wayne go after, after the first
16 time you say he did these things and you said stop,
17 where did he go then?

18 A Are you talking about when he first came to
19 the house?

20 Q That night you're in Wayne's house.

21 A Yes, sir.

22 Q And you decide to spend the night and you say
23 he kissed you and touched you and you said stop
24 that, where did he go then? Did he go back in the
25 bedroom or where?

- 1 A On the couch, in the same room.
- 2 Q After you told him to stop he stopped?
- 3 A Yes, sir.
- 4 Q Did you ask to go home?
- 5 A No, sir.
- 6 Q Okay. How about -- so you went ahead and
- 7 slept through the night, stayed there, got up in
- 8 the morning, right?
- 9 A Yes, sir.
- 10 Q You had plans with Tabitha and the kids the
- 11 next day, right?
- 12 A Yes, sir.
- 13 Q Did you ask to go home the next morning?
- 14 A No, sir, I didn't ask to go home at all.
- 15 Q Okay. At some point you went back home,
- 16 correct?
- 17 A Yes, sir.
- 18 Q Okay. You didn't tell your mom at that time,
- 19 right?
- 20 A No, sir.
- 21 Q You didn't tell your step-dad?
- 22 A No, sir.
- 23 Q Didn't tell anybody at that time. Correct?
- 24 A No, sir.
- 25 Q Okay. Then it was how long until there was

1 another incident with Wayne?

2 A A couple months.

3 Q Okay. In between New Year's and the next
4 fishing tournament when you say this happened again
5 did Wayne, did he ever threaten you?

6 A No, sir.

7 Q Did he ever say, "For God's said, don't tell
8 anybody about this"?

9 A No, sir.

10 Q Did you ever tell anybody?

11 A I told my best friend Ashley Jenkinson.

12 Q Anybody else?

13 A No, sir.

14 Q Did you tell any adult?

15 A No, sir.

16 Q Okay. So, this happened, you say, on New
17 Year's Eve?

18 A Yes, sir.

19 Q You had seen Wayne in between?

20 A Yes, sir.

21 Q The whole family was friends, right?

22 A Yes, sir.

23 Q Your mom and step-dad, Wayne and Tabitha and
24 the kids, you all get along?

25 A Yes, sir.

1 Q Okay. And when it came time to go fishing
2 you went off with Wayne alone?

3 A Yes, sir.

4 Q Okay. Did you ever go off with anybody else
5 alone during those fishing tournaments?

6 A My stepfather.

7 Q Okay. And you say this happened again?

8 A Yes, sir.

9 Q Okay. And again did you tell anybody?

10 A My best friend Ashley.

11 Q You didn't tell anybody else? Now it has
12 happened, you say now it's twice?

13 A Yes, sir.

14 Q Okay. So then you went again on the boat
15 with him alone. Correct?

16 A Yes, sir.

17 Q You kept going on the boat alone with him
18 even though these things are supposedly happening,
19 right?

20 A Yes, sir.

21 Q Okay. And still not telling anybody, any
22 adult about what is happening?

23 A Correct.

24 Q Okay. Now, we come down to 9/11 and nothing
25 is said, he just grabbed you, nothing said?

1 A Correct.

2 Q Okay. Not before or after?

3 A Correct.

4 Q Okay. Not by you, not by him?

5 A Correct.

6 Q And you had unlimited calling and texting on
7 your phone, you were in touch with lots of people
8 all day long. Is that fair to say?

9 A Yes.

10 Q That's what you got it for?

11 A Yes.

12 Q Literally dozens if not hundreds a day?

13 A Yes.

14 Q The way teenagers do. So, did you ever have
15 any of your friends, male friends request a nude
16 picture of you?

17 A No.

18 Q Nobody else made that request?

19 A Yes.

20 Q And in fact somebody sent you a picture,
21 didn't they?

22 A Yes.

23 Q Okay. Now, did you, when you got caught with
24 the Vicodin and the cigarettes, that wasn't the
25 first time you had had Vicodin, was it?

- 1 A No.
- 2 Q And you didn't tell your parents the truth
3 about that, did you?
- 4 A Not at first.
- 5 Q Okay. And when they first asked you about
6 Wayne, was it your step-mom, I'm sorry, your
7 mother, first started asking but you denied
8 anything about that, right?
- 9 A Yes, sir.
- 10 Q You lied to your mom about that?
- 11 A Yes, sir.
- 12 Q At anytime, any of this incidences, all this
13 time and all this contact with Wayne, did he ever
14 make any threats?
- 15 A No.
- 16 Q So, there wasn't anything to prevent you from
17 telling somebody, you knew it was wrong, if these
18 things happened you knew it was wrong, right?
- 19 A Yes.
- 20 Q At the time that you went to the Children's
21 Recovery Center and they did, they interviewed,
22 you, right?
- 23 A Yes.
- 24 Q It was just you and the, the therapist or
25 doctor, you and one other person, right?

1 A Yes, sir.

2 Q Wayne wasn't there?

3 A No.

4 Q Your parents weren't there?

5 A My mom was not in the room.

6 Q Right. In the room with you alone with the
7 interviewer, right?

8 A Yes.

9 Q They gave you all the time you needed to tell
10 them everything you needed to tell them?

11 A Correct.

12 Q Nobody rushed you?

13 A No.

14 Q Nobody tried to tell you, you know, "Don't
15 give us all the information," no one is suggesting
16 to you what to say, right?

17 A No.

18 Q So at that point there were no threats to
19 you?

20 A No.

21 Q Okay. I'm sure it was uncomfortable but you
22 had every opportunity to say anything you needed
23 to, right?

24 A Correct.

25 Q Okay. Did you ever, anybody ever, did you

1 ever get pills from anyone other than Ashley?

2 A No, sir.

3 Q Did you ever take them from anybody?

4 A No, sir.

5 Q You never took them from your family?

6 A No, sir.

7 Q You had mentioned, Miss Lively asked you if

8 you only took the pills and cigarettes, there was

9 nothing else?

10 A Pills, cigarette and alcohol.

11 Q Pills, cigarettes and alcohol, okay.

12 MR. FOX: Thank you, no further questions.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION BY MS. LIVELY:

15 Q [REDACTED] did you want to have to be here to

16 testify today?

17 A No.

18 Q When this came out, as Mr. Fox asked you, and

19 your mother asked you if anything was going on

20 between you and the defendant you said no?

21 A Right.

22 Q Did you want everybody to hear what had

23 happened between you and the defendant?

24 A No.

25 Q Were you embarrassed?

1 A Yes.

2 Q Even though he never threatened you, why
3 didn't you tell anybody?

4 A I was scared, nervous.

5 MS. LIVELY: Thank you. That's all I have,
6 Your Honor.

7 THE COURT: Recross?

8 MR. FOX: No, Your Honor.

9 THE COURT: All right, thank you. You may
10 step down.

11 (Witness excused).

12 THE COURT: Let me talk to the lawyers real
13 quick about scheduling.

14 (Unrecorded bench conference).

15 MS. LIVELY: Your Honor, I'm going to see if
16 Officer John Gregory is here. He would be a pretty
17 quick witness.

18 THE COURT: Okay.

19 MS. LIVELY: They're checking real quick.
20 One moment, Your Honor.

21 THE COURT: Okay.

22 MS. LIVELY: Your Honor, the State would call
23 Ashley Jenkinson to the stand.

24 THE COURT: All right.

25

1 ASHLEY JENKINSON, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please be seated and state your
4 name for the record, please.

5 THE WITNESS: Ashley Jenkinson.

6 DIRECT EXAMINATION BY MS. LIVELY:

7 Q Hi, Ashley. How old are you?

8 A Sixteen.

9 Q And are you friends with [REDACTED]

10 A Yes.

11 Q How long have you known [REDACTED]

12 A Since we were two, so fourteen years.

13 Q Okay. And would you consider the two of you
14 all best friends?

15 A Yes.

16 Q Now, Ashley, where do you go to school?

17 A St. James High School.

18 Q What grade are you in?

19 A Tenth.

20 Q How old are you right now?

21 A Sixteen.

22 Q Okay. So you're the same age, right?

23 A Yes, ma'am.

24 Q All right. Now, Ashley, do you know the
25 defendant?

1 A Yes.

2 Q Okay. Do you know him by Wayne?

3 A Wayne.

4 Q All right. And when did you have the
5 opportunity to meet him?

6 A A couple years ago.

7 Q All right.

8 A At a Ducks Unlimited Foundation.

9 Q When you met him were you with [REDACTED]

10 A Yes.

11 Q And was her family there?

12 A Yes.

13 Q All right. Now, were there any other times
14 whenever you had the opportunity to be around the
15 defendant?

16 A There might have been a couple other times
17 maybe at Brittany's house.

18 Q You may have seen him at Brittany's house?

19 A Yes.

20 Q Now, Ashley, in 2010 about how old would you
21 have been?

22 A Fourteen.

23 Q Fourteen, okay. And you and [REDACTED] were
24 still best friends at that time, is that a fair
25 statement?

1 A Yes.

2 Q All right. Was there ever a time when you

3 learned that [REDACTED] was having some type of a

4 relationship with the defendant?

5 A Yes.

6 Q Okay. Will you please tell me if she

7 discussed with you a time and place where something

8 happened between her and the defendant?

9 A Describe it?

10 Q The first time, don't tell me exactly what

11 happened, tell me where it happened and when.

12 A At the defendant's house on New Year's.

13 Q New Year's?

14 A Of 2010 or 2011.

15 Q 2011 was last year, so think about it.

16 A Yes, 2010.

17 Q So, when this happened how did she, you can't

18 tell me exactly what happened, but it happened at

19 the defendant's house. Is that right?

20 A Yes.

21 Q Okay. Do you remember how long it was after

22 New Year's Day that she told you?

23 A A couple days, maybe a week.

24 Q And when she told you what happened how did

25 she act? I mean, you're her best friend, tell us

1 how she acted about the defendant.

2 A Like she liked him.

3 Q Did you know how old he was?

4 A I knew he was older, a lot older.

5 Q So, she liked him?

6 A Yes.

7 Q Do you know or did you ever see whether there
8 was any communication between them by phone?

9 A Yes.

10 Q Did you see it for yourself?

11 A Yes. She would text him. She would text him
12 and they would talk on the phone.

13 Q Were you present when this would take place?

14 A Yes.

15 Q And did you ever see any of the texts from
16 the defendant?

17 A Yes.

18 Q Okay. And what type of things were they
19 talking about, like going fishing or will you
20 babysit my kids, what kind of things did the text
21 messages say?

22 A Everything. Like what she said, like you
23 said, fishing, they would go out on the boat, and
24 about the kids, they just talked like it was
25 normal.

1 Q And was there another time whenever [REDACTED]
2 told you that something else had happened between
3 her and the defendant?

4 A Yes.

5 Q Okay. Can you tell me when and where?

6 A On a boat a couple months later, probably the
7 beginning of the summer.

8 Q When you say on a boat, did she tell you
9 whose boat?

10 A Yes.

11 Q Who's boat?

12 A Wayne's boat.

13 Q Wayne's boat, okay. And how did she act
14 about what had occurred at that time?

15 A She acted like it was nothing wrong, just
16 that it happened.

17 Q And you're her best friend, now, okay, right?

18 A Yes.

19 Q You all are still friends?

20 A Uh-huh (Affirmative).

21 Q How did you feel about your friend having a
22 relationship with this man?

23 A I didn't think it was right because I knew he
24 was older than her, a lot.

25 Q And whenever she would talk about him how

1 would she act about him, how did she treat him,
2 like a neighbor or a friend or what?

3 A Like a boyfriend almost.

4 Q Did she have any other boyfriends at the
5 time?

6 A Not that I can remember.

7 Q Again you're her best friend, right?

8 A Yes.

9 Q Was there another time that she told you
10 something had happened?

11 A Yes.

12 Q Okay. Can you tell us when that was?

13 A Probably a couple weeks later, maybe a month,
14 on the boat again.

15 Q On the boat again?

16 A Yes.

17 Q With the defendant?

18 A Yes.

19 Q On his boat?

20 A Yes.

21 Q Now, was there, and once again while this was
22 going on, do you know whether she, has she relayed
23 to you she was telling anybody else?

24 A No. I didn't think she was telling anyone
25 else. She didn't tell me she was telling anyone

1 else.

2 Q Did she appear scared or nervous about what
3 was going on?

4 A A little bit. I think she was afraid she was
5 going to get caught.

6 Q Do you know whether, had you ever seen any
7 text messages from the defendant or ever heard him
8 threaten her in any way?

9 A Not that I remember.

10 Q So, how would you actually, if you were
11 talking about [REDACTED] and the defendant, how would
12 you describe their relationship at that time?

13 A Like a normal, like boyfriend-girlfriend
14 relationship, like they would talk and flirt and
15 text all the time.

16 Q Okay. Was there another time whenever
17 [REDACTED] told you about an event that happened?

18 A Yes.

19 Q Between her and the defendant?

20 A On 9/11.

21 Q 9/11, okay. And what was the plan for that
22 day?

23 A I don't remember what she was doing before
24 but I know she was going to come spend the night at
25 my house.

1 Q Okay. And what time were you and your mom
2 going to pick her up?

3 A It was probably around 5:00 o'clock because
4 she got off around 3:30.

5 Q Your mom got off work at 3:30?

6 A Yes.

7 Q And whenever -- and did you actually go with
8 your mom and pick [redacted] up that day?

9 A Yes.

10 Q Did she spend the night with you that night?

11 A Yes.

12 Q Okay. And when she was with you did you
13 learn that anything had happened?

14 A Yes.

15 Q Okay. And where had it taken place?

16 A At Brittany's house.

17 Q All right. And about when had it happened?

18 A Anytime before 5:00 o'clock.

19 Q Before you got there?

20 A Yes, before I got there.

21 Q Now, during the time she was with you did you
22 actually see her phone and observe who she was
23 having contact with?

24 A Yes.

25 Q Who was she having contact with while she was

1 with you that day and night?

2 A Wayne Love.

3 Q And was it like one or two texts? Do you
4 remember kind of the volume, how long it was taking
5 place?

6 A It was all night.

7 Q All night?

8 A Yes.

9 Q Did you ever see any of the texts?

10 A Yes.

11 Q And what did you see?

12 A They were talking about I think how he came
13 over earlier and just like normal stuff, what's up,
14 how are you.

15 Q And has [redacted] told you any other time
16 whenever they have been together, that there had
17 been a time and place, incident between her and the
18 defendant, that you recall?

19 A I think there was once more on the boat.

20 Q All right. Now, tell us about whenever
21 [redacted] got into a lot of trouble because of
22 something that was found that had been yours?

23 A [redacted] got in trouble for having Vicodin
24 that I had given her.

25 Q Okay. And when that happened did she tell

1 you about it?

2 A That she got in trouble?

3 Q Right.

4 A Yes.

5 Q Okay. And did you get in trouble, too?

6 A Yes.

7 Q All right. Did your mom and her mom talk
8 about it, do you recall them actually talking about
9 what had happened?

10 A Yes, because [redacted] had told me that I was
11 going to get in trouble because she told her mom so
12 I went ahead and told my mom.

13 Q Are you all still friends?

14 A Yes.

15 Q Despite this happening?

16 A Yes.

17 Q All right. And, Ashley, at that time do you
18 know whether or not anything regarding the
19 relationship between [redacted] and the defendant had
20 come out?

21 A Yes, I know she told her parents.

22 Q Okay. Was that sometime after she was placed
23 on restriction or before?

24 A It was when she got in trouble she told
25 everything.

1 Q She finally told everything?
2 A Uh-huh (Affirmative).
3 Q That's a yes?
4 A Yes.
5 Q All right. Ashley, based on you being best
6 friends with [REDACTED] and seeing the relationship,
7 do you know whether or not she wanted to get the
8 defendant in trouble?
9 A I don't think she did. I think she was upset
10 about it.
11 Q Okay.
12 MS. LIVELY: Thank you, Ashley. Answer any
13 questions Mr. Fox may have for you.
14 CROSS EXAMINATION BY MR. FOX:
15 Q Ashley, you care an awful lot about [REDACTED]
16 A Yes.
17 Q She's been your best friend forever?
18 A Yes.
19 Q You care what happens to her?
20 A Yes.
21 Q You wouldn't want to see anything bad happen
22 to her?
23 A No.
24 Q Okay. Is it fair to say you would even
25 protect her if you could?

1 A If I could, yes.

2 Q And you say you didn't think this
3 relationship she had, you thought she had with
4 Wayne was a good thing, right?

5 A Yes.

6 Q You thought it was not a good thing?

7 A Yes.

8 Q Did you ever mention it to her parents?

9 A No.

10 Q To your parents?

11 A No.

12 Q Mention it to anybody?

13 A No.

14 Q This went on, this relationship you described
15 went on for many, many months. Correct?

16 A Yes.

17 Q So, that's your best friend?

18 A Yes.

19 Q You would protect her if you could, right?

20 A Yes.

21 MR. FOX: Thank you. No further questions.

22 THE COURT: Redirect?

23 MS. LIVELY: No questions, Your Honor.

24 THE COURT: All right, thank you, Miss
25 Jenkinson.

1 (Witness excused).

2 THE COURT: All right, ladies and gentlemen,
3 we're going to go ahead and break.

4 MS. LIVELY: That's fine.

5 THE COURT: Just be back in the jury room at
6 2:00 o'clock and we'll try to resume the case at
7 that time. Don't talk about the case with anyone,
8 continue to keep an open mind. Thank you very
9 much.

10 (The jury was excused from the courtroom).

11 THE COURT: Okay, see you back at 2:00.

12 MS. LIVELY: Thank you, Your Honor.

13 (Recessed at 12:55 p.m.).

14 (Resumed at 2:12 p.m.).

15 THE COURT: Okay, anything before we bring
16 the jury?

17 MS. LIVELY: Just one moment, Your Honor.

18 THE COURT: All right.

19 MS. LIVELY: The State is ready, Your Honor.

20 THE COURT: Mr. Fox?

21 MR. FOX: The defense is ready, Your Honor.

22 THE COURT: All right. As far as scheduling,
23 what do you anticipate the remaining length of your
24 case to be?

25 MS. LIVELY: We'll be finished today.

1 THE COURT: All right, you can bring the jury
2 in.

3 MS. LIVELY: I'm sorry, to make sure,
4 whenever I say finished, the State will probably
5 rest today. As for closing argument and all that,
6 of course obviously that probably will be tomorrow,
7 depending on the defense.

8 THE COURT: Sure, okay. Thank you.

9 MS. LIVELY: Thank you.

10 (The jury returned to the courtroom).

11 THE COURT: All right, you may call your next
12 witness.

13 MS. LIVELY: Thank you, Your Honor. The
14 State would call John Gregory to the stand.

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1 JOHN GREGORY, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Thank you. Please be seated and
4 state your name for the record.

5 THE WITNESS: John Gregory.

6 DIRECT EXAMINATION BY MS. LIVELY:

7 Q Mr. Gregory, where are you currently
8 employed?

9 A I'm employed at the Georgetown City Police
10 Department as an investigator.

11 Q In your job as an investigator do you have
12 opportunity at times to assist other agencies in an
13 investigation?

14 A I do.

15 Q Okay. And have you had the opportunity to
16 assist Investigator Ginger Pop in the investigation
17 of this particular case?

18 A I did. I was employed as an agent of the
19 Fifteenth Circuit Drug Enforcement Unit.

20 Q The Drug Enforcement Unit?

21 A Right.

22 Q All right. What, if any, specialty did you
23 actually have at that time regarding your working
24 with the Drug Enforcement Unit?

25 A The Drug Unit had a machine called Cell

1 Bright which is a data recovery machine to recover
2 data from cell phones.

3 Q Okay. And Cell Bright, just so the jury kind
4 of understands what you would have to do in order
5 to retrieve the information, describe to the jury
6 what you have to have in hand in order to actually
7 comply with what Cell Bright is requiring you to
8 put into it?

9 A I need the source, which is the cell phone
10 itself, then I have the Cell Bright machine itself,
11 and the Cell Bright machine interfaces with the
12 cell phone and it allows you to get certain things
13 from certain phones. You can get cell phone
14 messages, pictures, contacts, missed calls, the
15 call log off a cell phone.

16 Q Okay. And whenever you used the Cell Bright
17 did you -- how did you learn how to use it?

18 A It was shown to me by another agent from the
19 Horry County part of the 15th Circuit Drug Unit.

20 Q Is it easy to use?

21 A It is fairly easy. You plug the phone in and
22 the phone has what they call auto connect, you plug
23 it in, it starts to interface, it asks you what
24 phone that you're looking for, you scroll down to
25 that phone, you press start and it starts to

1 interface with the other phone.

2 Q Okay. When it is interfacing with the phone,
3 the target of what you're trying to get, what comes
4 out of it? Is there any like hard documentation
5 that comes out as a result of this, the use of the
6 Cell Bright?

7 A It comes out into a report that can be, that
8 reads and it comes out in two forms. It comes out
9 in a web base or it comes out in a PDF base, which
10 means you just take, what it means is you put a
11 thumb drive in so once the machine and the
12 telephone interface, then you send it to the
13 source, which I use most of the time because it is
14 portable, is a machine about yea big, it is
15 portable, so I would use a thumb drive. I could
16 just hand the thumb drive to the person that asks
17 me to do it.

18 Q Okay. You mentioned this briefly but
19 Investigator Pop came to you regarding some
20 assistance with the case against the Defendant
21 Love, is that correct?

22 A Yes, she did, she asked me to download a
23 phone.

24 Q Download a phone, and the phone she gave to
25 you to download, was this the phone belonging to

1 the victim [REDACTED] or the Defendant Love?

2 A She said it was the victim's phone.

3 Q The victim's phone, okay. Did you fully dump
4 the phone? That is what you call getting the
5 information, correct?

6 A Yes, analyze the phone.

7 Q Analyze the phone and retrieve information
8 off the then victim's phone?

9 A I did.

10 Q All right. And was this pursuant to any type
11 of consent by the family or someone to allow you to
12 go into the phone itself?

13 A The question I usually ask, "Do you have a
14 search warrant or consent form?" Investigator Pop
15 informed me she had consent, had a written consent
16 form.

17 Q All right. Based on having consent to enter
18 the victim's phone, did you do so?

19 A Yes, I did.

20 Q All right. And were you able to retrieve
21 some information from the phone?

22 A I received a report back from the information
23 off the telephone.

24 Q Okay. I'm going to approach and show you
25 what has been marked State's Exhibit Number 10 and

1 11 and ask you whether or not you recognize these
2 documents?

3 A Yes. This is the report that came off the
4 telephone and this is color pictures that came off
5 the phone, photos.

6 Q Okay. So, 10, is that, you think that is)
7 your complete report from whenever you did the
8 analysis of the phone?

9 A It is.

10 Q Okay. And then 11 is just a few pages, is
11 that correct?

12 A Yes.

13 Q Is that just a color copy of the same
14 information of a couple pages that is in the State
15 Exhibit 10?

16 A It is.

17 Q Okay.

18 MS. LIVELY: Your Honor, the State would move
19 to offer State's Exhibits 10 and 11 into evidence
20 at this time.

21 MR. FOX: We would object, Your Honor. It is
22 purported to be from Brittany's phone. The only
23 testimony or evidence of that would be another
24 officer told this officer what the origin of the
25 phone was. They haven't laid a foundation for

1 that.

2 THE COURT: You can ask him further
3 foundation if you want.

4 MS. LIVELY: I can ask him some more
5 questions.

6 THE COURT: All right.

7 BY MS. LIVELY:

8 Q Whenever you actually did the analysis of the
9 phone did you have a phone number that you used for
10 that analysis?

11 A On the report it comes out, sometimes it
12 produces a cell phone number which is usually
13 sometimes indicated at the bottom of it, the report
14 here.

15 Q Okay.

16 A And sometimes it puts it out as that or
17 sometimes it is the serial number of the phone, it
18 all depends on which phone it is.

19 Q Okay. Whenever you put the information into
20 the Cell Bright is there any documentation that
21 comes out that confirms it belongs to a Shannon
22 Bellamy or [REDACTED] or anything like that?

23 A No, it does not.

24 Q Okay. So all you do is you just take the
25 phone itself as provided to you by the investigator

1 and just dump what is actually on it?

2 A That's correct.

3 Q So the information that you have is basically
4 what was provided to you by Officer Pop?

5 A It is.

6 Q Okay.

7 MS. LIVELY: Your Honor, if we have to, at
8 this time the State is planning on calling
9 Investigator Pop, we can address it with her during
10 her testimony if the Court doesn't feel there is
11 enough foundation at this time.

12 THE COURT: I'm going to overrule the
13 objection. They're in evidence.

14 MS. LIVELY: Okay, thank you.

15 (Phone records marked and received in
16 evidence as State's Exhibits 10 and 11).

17 BY MS. LIVELY:

18 Q Once you actually provided or got the
19 information that is in Exhibits 10 and 11 did you
20 do any other additional assistance with
21 Investigator Pop in this investigation?

22 A No, I did not.

23 Q Okay. So what was your sole purpose in
24 regard to helping Investigator Pop with her
25 investigation?

1 A Data recovery from the cell phone.

2 Q Okay. And do you know whether or not she had
3 the Cell Bright in order for her to have done it
4 herself?

5 A No, there is only one Cell Bright amongst law
6 enforcement in Horry County and it happens to be
7 owned by the 15th Circuit D.U.

8 Q Is it common occurrence they will come to you
9 to get assistance for something like this?

10 A More than once a week it will usually happen.

11 MS. LIVELY: Okay, thank you very much.

12 Answer any questions that the defense may have for
13 you.

14 CROSS EXAMINATION BY MR. FOX:

15 Q Mr. Gregory, we meet again.

16 A Yes.

17 Q Is this printout everything you're able to
18 get off the phone?

19 A It was, counsel.

20 Q And, so, in looking, it looks like you've got
21 a record of -- are these texts that are, if I show
22 this to you, toward the back, these pages I'm
23 looking at?

24 A Yes.

25 Q And you can actually pull --

1 A If you look at the top, this left corner, it
2 tells you whether incoming or outgoing messages.

3 Q I got you. And was this, I'm sorry, I think
4 I asked this, is this everything you were able to
5 pull off the phone?

6 A Yes.

7 Q If something was deleted off the phone, a
8 message or record of a phone call, would you have
9 pulled that?

10 A It depends on what kind of phone it is.
11 Sometimes with a smart phone you can usually get
12 some of those messages because it is not deleted
13 because a smart phone is basically a computer and
14 although you delete it visually there is still
15 trace evidence and records inside the phone.

16 Q Do you recall, was this a smart phone?

17 A I do not believe it was a smart phone, sir.

18 Q Okay. You were also able to pull off
19 contacts from the phone, phone numbers you put in
20 there for friends and family and that sort of
21 thing?

22 A Yes.

23 Q And that is also what is reflected in this
24 report?

25 A Yes.

1 Q And --

2 MR. FOX: The Court's indulgence, Your Honor.

3 Thank you. I have no further questions.

4 THE COURT: All right. Any redirect?

5 MS. LIVELY: No, Your Honor.

6 THE COURT: Thank you, Mr. Gregory.

7 THE WITNESS: Thank you.

8 (Witness excused).

9 THE COURT: All right, ladies and gentlemen,
10 before we call the next witness there was some
11 inquiry about whether the jurors could take notes.
12 You certainly can take notes if you need. If you
13 need a pad or pencil to take them we'll provide it
14 to you. Just bear in mind that the taking of notes
15 has several hazards. The first hazard is that
16 don't get so engrossed in taking the notes that you
17 forget to pay attention to the witnesses while
18 they're on the stand because one of your jobs is to
19 judge credibility and that often requires your
20 close attention to their demeanor on the stand and
21 how they come across.

22 Secondly, remember that your notes are not
23 infallible, your notes can be wrong and simply
24 because someone has notes doesn't make their memory
25 of the testimony any better than someone who did

1 not take notes.

2 And third, after the case is over, if you do
3 take notes, I'm going to, we will collect them and
4 destroy them.

5 So is there anybody who wants to take notes?

6 All right. Okay.

7 Yes, ma'am, you may call your next witness.

8 MS. LIVELY: Thank you, Your Honor. The
9 State would call Dianne Nordeen to the stand.

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1 DIANNE NORDEEN, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Thank you. Please be seated and
4 state your name for the record.

5 THE WITNESS: Dianne Nordeen.

6 DIRECT EXAMINATION BY MS. LIVELY:

7 Q Dianne, where are you currently employed?

8 A I'm employed with the Children's Recovery
9 Center.

10 Q And what is the Children's Recovery Center?

11 A The Children's Recovery Center is a child
12 advocacy center which serves Georgetown and Horry
13 County. Child advocacy centers are throughout the
14 area, are throughout the United States, and in fact
15 throughout the country, throughout the world,
16 providing forensic interviews and forensic medical
17 exams to children when abuse is expected.

18 Q Okay. When you say forensic interview, what
19 is a forensic interview?

20 A A forensic interview is a fact finding
21 interview, it is used to elicit a factual and
22 detailed statement from a child without using
23 leading questions.

24 Q Okay. And whenever you do a forensic
25 interview of a child is there certain standards

1 that you have to follow in the state of South
2 Carolina based on Jessie's Law?

3 A Yes. We use a forensic interview called
4 Child First, which was started at Corner House, the
5 first child advocacy center in the United States.
6 A protocol is used with that interview technique
7 called the RATAC II protocol, report, anatomy,
8 touch inquiry, abuse scenario, closure. It is
9 basically a step by step guideline for interviewing
10 children but it is flexible and the stages can be
11 modified as needed and according to the child's
12 direction.

13 Q And is there any type of requirement
14 regarding a record being made of this interview,
15 during the process?

16 A Yes. We record, we audio and video record
17 all interviews.

18 Q Okay. And is it your understanding that such
19 an interview, a video of the interview, if a child
20 is under twelve it would be something that could be
21 used in court?

22 A That's correct.

23 Q Okay. And what is so important about
24 actually doing an audio and videotaping of the
25 interview, of such a detailed interview of a child?

1 A Well, the process itself can take anywhere
2 from twenty minutes to an hour and a half, just
3 depending again on each child and how much
4 information they provide and taking notes isn't
5 always dependable. We don't always gather all the
6 information the child is telling us while we're
7 taking notes. So, we record that interview and we
8 can go back and listen to it later. It is also
9 helpful for law enforcement to view rather than
10 just depending on our reports, they can watch the
11 interview, or an investigative person from the
12 Solicitor's office also preparing for court, it is
13 used to view when both parties are preparing for
14 court.

15 Q If a child is over, is twelve or older and
16 you're dealing with a forensic interview do you
17 treat them any differently than you would maybe a
18 child that was six or seven years old?

19 A No, we use the same protocol for all
20 children. Again, it's a flexible protocol, so with
21 smaller children we may elicit names for body
22 parts, parts of the body that we refer to as the
23 private parts, using an anatomical drawing or an
24 anatomical doll and then of course for an older
25 child, a teenager, we would expect that we can just

1 point to those parts of the body and ask that child
2 what name you have for this part of your body, what
3 name you have for this part of your body, rather
4 than using an anatomical drawing or anatomical
5 doll.

6 Q Okay. In this particular case involving the
7 Defendant Love and [REDACTED] did you receive
8 a referral to Children's Recovery Center for an
9 interview?

10 A I did.

11 Q Okay. And who made the referral to your
12 center?

13 A The referral was made by Donna Sherrill from
14 the Georgetown County Sheriff's office.

15 Q Who is Donna Sherrill?

16 A Donna Sherrill is a victim's advocate.

17 Q Were you aware at the time the referral was
18 made what the basis for the forensic interview was
19 going to be, what the general allegations were?

20 A The information we receive, we have a one
21 page intake form that basically gives us the
22 information about the child, their age, their date
23 of birth, who has custody, and then the referring
24 agency information and then just two or three lines
25 regarding the allegation.

1 Q Okay.

2 A And then that is accompanied by the police
3 report.

4 Q All right. And whenever you receive this
5 information how important is it for you to accept
6 that information but also go into the interview
7 with an open mind?

8 A It is very important. We consider as many
9 hypotheses as needed to give us an explanation, for
10 us to ask the child questions that might help us
11 understand if there is another explanation for what
12 may have occurred or a different understanding
13 about the details of the situation.

14 Q Okay. And whenever you met -- well, when did
15 you meet with [REDACTED]?

16 A I interviewed [REDACTED] Minor [REDACTED] October 29th, 2010.

17 Q Okay. And October 29th, 2010, how old was
18 she at the time?

19 A Fourteen years old.

20 Q Okay. Even though she was fourteen was this
21 interview video recorded and audio recorded?

22 A It was.

23 Q All right. Whenever you performed the actual
24 forensic interview with [REDACTED] Minor [REDACTED] were you able to
25 use the standard protocol that you just testified

1 to the jury about regarding the RATAC method?

2 A Yes, I was.

3 Q And in regard to dealing with [Minor] and
4 just in being able to respond to your questions did
5 she appear to understand what it was you all were
6 talking about?

7 A Yes, she was able to provide coherent and
8 detailed statements to the questions that I asked
9 her.

10 Q Okay. Now, Dianne, in conducting the
11 interview, at the end of your interviews don't you
12 typically draft a report and kind of a synopsis of
13 everything that was disclosed?

14 A Yes, I do.

15 Q Okay. And if no disclosure is made by a
16 child regarding sexual abuse or physical or
17 anything, even maybe alcohol use in general, I'm
18 talking about [Minor] but if no disclosure is
19 made what type of conclusion do you put at the end
20 of your synopsis?

21 A We simply write impression, interview, with
22 no abuse.

23 Q You put whether or not there was an
24 impression, not whether you believe, because you
25 don't do that, is that right?

1 A Tht's correct.

2 Q Okay. After the interview with [REDACTED] were
3 you able to, was there disclosure during that
4 interview?

5 A Yes.

6 Q Okay. And without revealing anything other
7 than time and place, did you get enough information
8 from [REDACTED] to determine when and where
9 particular incidents had occurred?

10 A I did.

11 Q Okay. Tell the jury, based on your forensic
12 interview of [REDACTED] if she provided you with an
13 initial incident, a time and place of an initial
14 incident of abuse?

15 A Yes, she did. It was January 1st of 2010 and
16 the location was the living room in the home of
17 Wayne and Tabitha Love.

18 Q Okay. After the disclosure of that
19 particular event were there any other disclosures
20 of time and place of events that occurred with this
21 particular child?

22 A Yes. The last event occurred September 11th,
23 2010, at Brittany's home and there were three
24 incidents in between January 1st and September 11th
25 which occurred on Wayne Love's boat and my

1 understanding is it was on the Intracoastal
2 Waterway.

3 Q And during the interview what was her
4 demeanor that you personally observed of the child?

5 A She was anxious and fidgety, as many kids are
6 when they are talking about something
7 uncomfortable, but she seemed to be calm and we
8 just went at a pace that was comfortable for her so
9 she was able to provide the details. She wasn't
10 able to provide so many flowing statements I think
11 due to the anxiety level that she was experiencing,
12 but what I generally do when I ask a question,
13 "Tell me about that," that is an open ended
14 question which allows the child to provide what we
15 call a narrative statement about the abuse they
16 experienced and then I follow that up when they
17 stop speaking, then I say what happened next, that
18 allows them to provide more detail, and I did that
19 often with [REDACTED] just to give her reassurance
20 that it was okay to continue talking and to attempt
21 to elicit more details regarding the incident she
22 experienced.

23 Q Was there anybody else in the room with you
24 whenever this interview was being done?

25 A No. The interview is done with just the

1 interviewer and the child in the interview room.

2 It is to prevent outside influence on the child.

3 Q And at anytime during the interview did you
4 leave and then return to the room with additional
5 information or additional questioning of this
6 particular child?

7 A Yes. Toward the end of the interview, after
8 the child has shared the details of their abuse we
9 talk about personal body safety, who is someone
10 they can go to, an adult they can go to that they
11 trust and feel safe with if something else happens,
12 and we talk about that their body belongs to them
13 and no one is allowed to touch them in any way
14 hurts them or in any way makes them feel
15 uncomfortable, and then I have the child write a
16 list of names of all the adults they have in their
17 life who they feel safe with and then I leave the
18 room to speak with the investigator who is in my
19 office watching the interview on a computer screen
20 to see if that investigator, or the victims
21 advocate actually was the one was watching, to see
22 if they have any further questions or if I missed
23 anything during the interview that would be
24 important for me to have, and so I left the office
25 to speak with the victims advocate briefly.

1 Q Okay. Were you able to conclude the
2 interview after that brief moment of separating
3 from the child?

4 A Yes.

5 Q Okay. Do you remember about how long the
6 interview took place?

7 A It took one hour and fifteen minutes.

8 Q Okay. And after you finished the interview
9 did you provide a videotape copy of that to myself,
10 which has since been given to the defense?

11 A Yes.

12 Q Did you do any additional investigation, or
13 it is not actually investigation, you are actually
14 there to do just the forensic interview, is that
15 fair to say?

16 A That's fair to say.

17 Q Are you a law enforcement agency?

18 A I am not.

19 Q Okay. After you finish that information and
20 documented it did you do anything else other than
21 possibly having to come to court in the future in
22 regard to this particular case?

23 A We have just, we have multidisciplinary team
24 meetings where we staff the case with the referring
25 agency and representative from the Solicitor's

1 office and talk about the details of the interview,
2 provide information that, any further information
3 that may be needed, provide a copy of our report
4 and that's it, and that is the extent of our
5 involvement in each case.

6 MS. LIVELY: Okay. All right, thank you Miss
7 Nordeen. Please answer any questions the defense
8 may have for you.

9 THE COURT: Cross-examination.

10 CROSS EXAMINATION BY MR. FOX:

11 Q Miss Nordeen, you say in this interview Miss
12 Bellamy disclosed three areas, you said one time
13 and place was at the defendant's home. Correct?

14 A Yes.

15 Q That was one incident?

16 A That's correct.

17 Q Other times were on the defendant's boat,
18 correct?

19 A That's correct.

20 Q And there were three of those incidents?

21 A That's correct.

22 Q Okay. And the only other one was at Miss
23 Bellamy's home, correct?

24 A Correct.

25 Q Do you know where in Miss Bellamy's home, did

1 she indicate where in her home?

2 A The living room.

3 Q In the living room, okay. Any other
4 disclosures of events, time and place disclosure,
5 any other place other than those three areas we
6 talked about?

7 A No others to me.

8 MR. FOX: Okay, thank you. No further
9 questions.

10 THE COURT: Redirect?

11 MS. LIVELY: One moment, Your Honor.

12 Thank you for your patience.

13 REDIRECT EXAMINATION BY MS. LIVELY:

14 Q I just wanted to review a couple of the
15 things that were in the interview --

16 MS. LIVELY: Your Honor, I believe I am
17 done. I have no redirect for this particular
18 witness.

19 THE COURT: Thank you, Miss Nordeen.

20 THE WITNESS: Thank you.

21 (Witness excused).

22 THE COURT: All right, you may call your next
23 witness.

24 MS. LIVELY: One moment, Your Honor.

25 The State would call Investigator Ginger Pop.

1 GINGER POT, after being first duly sworn, testified
2 as follows:

3 THE CLERK: Thank you. Please be seated and
4 state your name for the record.

5 THE WITNESS: Ginger Pop.

6 DIRECT EXAMINATION BY MS. LIVELY:

7 Q Investigator Pop, where are you currently
8 employed?

9 A I'm with the Georgetown County Sheriff's
10 office.

11 Q And how long have you been working at the
12 Sheriff's office?

13 A Approximately two and a half years.

14 Q Okay. Before you worked at the Sheriff's
15 office where were you employed?

16 A I was employed by the South Carolina
17 Department of Natural Resources.

18 Q And how long did you work for DNR?

19 A I was employed beginning in 1999, so about
20 eleven years, ten and a half years.

21 Q Okay. How familiar are you with the
22 Intracoastal Waterway and the different creeks and
23 canals off the Waccamaw River?

24 A Very.

25 Q All right. And in your job both at DNR as

1 well as the Sheriff's office has that been helpful
2 to you in conducting an investigation such as in
3 this particular case?

4 A Yes, ma'am.

5 Q All right. And did you have an opportunity
6 to be assigned a case involving the defendant Wayne
7 Love in October of 2010?

8 A Yes, ma'am.

9 Q Okay. Please tell the jury how this
10 particular case got assigned to you.

11 A I was assigned this case on October the 27th
12 of 2010. It originally came into the Sheriff's
13 office on October 26 of 2010 and after review it
14 was assigned to me.

15 Q Okay. What kind of a case, based upon the
16 information that was provided to you, what kind of
17 case were you going to be investigating?

18 A A sexual assault case involving a minor.

19 Q Okay. And were you provided information as
20 to a possible suspect in the case?

21 A I was.

22 Q What was the name of that suspect?

23 A Prentis Wayne Love.

24 Q All right. And based upon the information
25 you had was Georgetown County the proper

1 jurisdiction for the investigation?

2 A Yes, it was.

3 Q All right. Who was the first person that you
4 talked to in regards to what your investigation was
5 going to include?

6 A On the date I was assigned the case I
7 contacted the child's mother to get some more
8 information from her about this incident.

9 Q Okay. So initially whenever you receive a
10 case such as this does it make a difference to you
11 whether or not it was a freshly committed crime in
12 comparison to something that may be from a delayed
13 disclosure?

14 A It does make a difference whether or not it
15 is freshly committed or there has been some time in
16 between the actual event and the time it was
17 reported.

18 Q Okay. If this matter had just happened and
19 the victim was at the hospital what would you have
20 done?

21 A I would have gone immediately to the
22 hospital.

23 Q Was that the case here?

24 A That was not the case here.

25 Q Based upon information that you received how

1 much time had passed since the incident, the last
2 contact happened between the victim and the
3 proposed suspect?

4 A I'm not sure if it was in the report or after
5 speaking with the mother but my best recollection
6 was that September 11th was the last contact with
7 the defendant, between the defendant and the child
8 in this case, and this was the 27th of October.

9 Q Okay. So, based upon the information that
10 you were gathering in your investigation what did
11 you do in regard to the child being talked to
12 regarding the incident?

13 A When I spoke to the child's mother on the
14 27th I advised her of the need for a forensic
15 interview to be conducted at the Children's
16 Recovery Center and advised her that I would have
17 the victims advocate or make those arrangements
18 between her and the victims advocate and the
19 Children's Recovery Center to make arrangements for
20 her to be interviewed by them.

21 Q Okay. Why is it you would not have conducted
22 an interview of the child yourself?

23 A The Sheriff's office has a policy that they
24 would like for children of these types of crimes to
25 be interviewed by a forensic interviewer, so that

1 is why we refer them straight over there.

2 Q Okay. So, once the referral was done -- do
3 you remember exactly when it was that the child was
4 going to be interviewed?

5 A October 29th was her scheduled date for her
6 interview.

7 Q Were you able to do any type of investigation
8 between the 27th and the 29th to gather information
9 in this case?

10 A In between those dates typically I will
11 gather as much personal information about the
12 defendant as I can, ensure that the safety of the
13 child is in place, that there are no other suspects
14 that need to be identified, that her safety is no
15 longer in jeopardy.

16 Q Okay. And did you gather any information
17 regarding the proposed suspect in this case?

18 A I had gotten some personal information about
19 him, address, birth date, cell phone numbers, that
20 type of stuff.

21 Q Okay. Did you document that information and
22 save it for the remainder of your investigation?

23 A Yes, ma'am.

24 Q Okay. What was the age of the defendant at
25 the time?

1 A At the time of this report he was thirty.

2 Q Okay. And what was the age of the victim?

3 A At the time of the report she was fourteen.

4 Q Okay. Now, after the forensic interview was
5 completed on October 29th of 2010 were you provided
6 with an actual report or synopsis of the disclosure
7 during that interview?

8 A The victims advocate was able to come back
9 from that interview with an actual audio-video disc
10 recording of that interview of the child in this
11 case.

12 Q Okay. And once you had that information in
13 your hand how did that help you in determining time
14 and place of event for actually following up with
15 your investigation?

16 A After reviewing the interview on that
17 audio-video disc of the CRC interview it revealed
18 several incidents that the child had revealed to
19 the interviewer of events between the defendant and
20 the child.

21 Q Okay. And were those the, the descriptions
22 enough for you to determine timing and place of the
23 actual event?

24 A Yes, they were.

25 Q Okay. And I'm going to show you a couple,

1 I'm going to show you a couple of aerial maps and
2 ask you whether or not, I'm going to show you first
3 of all State's Exhibit Number 6 and then State's
4 Exhibit Number 7. I'm going to ask you about
5 Number 6 first. Were you there whenever this
6 aerial photo was prepared and documented through
7 the Georgetown courthouse office?

8 A Yes, ma'am.

9 Q And that aerial view, is that an accurate
10 representation of the neighborhood and area between
11 the defendant and victim's family?

12 A Yes, ma'am.

13 Q Are you able to look at that and specifically
14 show to this jury where the defendant lived in
15 comparison to where the victim was living?

16 A Yes, ma'am.

17 MS. LIVELY: Your Honor, the State would move
18 to enter State's Exhibit Number 6 into evidence.

19 MR. FOX: No objection.

20 THE COURT: It's in evidence.

21 MS. LIVELY: Okay, thank you.

22 (Aerial photo marked and received in evidence
23 as State's Exhibit Number 6).

24 MS. LIVELY: Your Honor, if I may have the
25 witness step down for a moment so I can publish

1 this to the jury.

2 BY MS. LIVELY:

3 Q Okay. Now, if you don't mind, Investigator
4 Pop, I need you to please come over here.

5 A Yes, ma'am.

6 Q Don't block the jury, okay? Now, just tell
7 them basically what area we're looking at here.

8 A This is going to be an aerial photo. If I
9 may orient myself, Wachesaw Road is over in this
10 area, this is Brookgreen's property, the most
11 eastern section of Brookgreen's property. I'm
12 sorry. This is Wachesaw Plantation area in here.
13 This is the road, I don't know if you're familiar
14 with the stables and the new River Road cut-through
15 there, and there is some stables and a new fire
16 department in that area.

17 Q All right. Can you tell me where Hyatt
18 Avenue is, which is where the victim's family
19 lived?

20 A This is Hyatt here in Murrells Inlet.

21 Q If you will, just flag for me approximately
22 where her home would be, where their home would be
23 on that map.

24 A Right there.

25 Q Okay.

1 A I just put the corner of the sticky on their
2 house.

3 Q All right. And then if you would, please, in
4 regard to where the defendant's home was located?

5 A Yes, here it is.

6 Q If you would please flag the defendant's
7 home.

8 A Again I will be placing the corner of that
9 there.

10 Q Okay. Now, Investigator Pop, did you have an
11 opportunity to drive between the two locations and
12 determine about how far apart they were?

13 A Yes.

14 Q Okay. And how far apart are they?

15 A Approximately two miles, 2.3 miles, it took
16 me about five minutes.

17 Q Okay. So they live pretty, very close?

18 A Very close.

19 Q Okay. And how many ways back and forth are
20 there between the homes? Like if Mr. Love were
21 going to go to work would it be easy for him to
22 drive by the victim's home?

23 A It would be easy for him to do that.

24 Q All right. Okay, thank you very much.

25 A Thank you.

- 1 Q If you will have a seat.
- 2 Were you during your investigation given
- 3 information to lead you to believe that this was,
- 4 that this was a close family friend or just a
- 5 casual acquaintance?
- 6 A I was led to believe he was a close family
- 7 friend.
- 8 Q Okay. And during your investigation, in
- 9 speaking, after having the forensic interview of
- 10 the child as well as the talking with the family,
- 11 were you able to narrow down the times and places
- 12 of each event for your report?
- 13 A I was.
- 14 Q Okay. Well, let's talk about the initial
- 15 event. As part of your investigation what are
- 16 you're looking for in a sexual assault case? What
- 17 information was given to you regarding timing and
- 18 place of the initial event?
- 19 A The first allegation was going to be on New
- 20 Year's Eve, December 31st, 2009, into January 1st
- 21 of 2010 at the defendant's home, inside his home,
- 22 on the couch.
- 23 Q Was that in Georgetown County?
- 24 A That was.
- 25 Q All right. And were you given information

1 and able to determine, based on the forensic
2 interview as well, another place where an event
3 took place in your investigation of sexual assault?

4 A Yes, I was.

5 Q Okay. What were the next times and places?

6 A The second allegation involved a couple times
7 and that was going to be on the defendant's boat in
8 the Waccamaw River area, around Sand Island, near
9 Wacca Wache Boat Landing.

10 Q In regard to that particular area did you
11 have some concerns about possible jurisdiction
12 issues and it being within your county?

13 A Yes, ma'am, that was a concern.

14 Q Okay. So, in doing your investigation were
15 you able to narrow it down, from your interviews,
16 as to the locations of the particular events?

17 A Yes, I was.

18 Q Okay. I'm going to show you now what is
19 marked as State's Exhibit Number 7 and ask you
20 whether or not you recognize this aerial view and
21 if it's an accurate representation of areas on the
22 Waccamaw River within Georgetown County?

23 A Yes, ma'am, it is.

24 Q Okay. And are you, from your experience as
25 an DNR investigator as well as investigator with

1 the Sheriff's office, familiar with this area and
2 does that appear to be an accurate representation?

3 A Yes, is it.

4 MS. LIVELY: Your Honor, the State would move
5 to introduce State's Exhibit Number 7 into evidence
6 at this time.

7 MR. FOX: Without objection.

8 THE COURT: It's in evidence.

9 MS. LIVELY: Thank you.

10 (Aerial photograph marked and received in
11 evidence as State's Exhibit Number 7).

12 BY MS. LIVELY:

13 Q If you don't mind, Investigator Pop, bring
14 that with you and step down so we can show the
15 jury.

16 All right. Now, once again just if you don't
17 mind trying to help the jury acclimate themselves
18 as to what exactly it is that we're looking at
19 here, okay?

20 A Sure. This is the Waccamaw River, this is
21 south heading into Georgetown, this being north
22 heading up into Horry County. You're familiar with
23 Sand Island, this is all Sand Island in here. This
24 is the Waccawachi boat landing. You can see these
25 little white things up here, these are what is

1 basically known as the fingers that go into Sand
2 Island Creek there, Sand Hill Creek, White and
3 Black Creek here.

4 Q Once you received information from both the
5 forensic interview as well as interviewing the
6 step-dad Mr. Carter and Miss Bellamy were you able
7 to narrow down the event that you were looking into
8 in your sexual assault investigation?

9 A I was.

10 Q Okay. Would you please show the jury what
11 areas of the Waccamaw River and Sand Island that
12 you were actually drawn to based on the information
13 you received?

14 A Based on speaking with the parent of the
15 child in this case, the creeks that the child had
16 described to them and they would be typical in
17 these fishing tournaments, what the child called
18 Sand Island Creek but typically encompass these,
19 and another creek the child knew as the first creek
20 to the left from upper Wacca Wache, which is this
21 creek here, which dumps into Black and White Creek
22 right in there.

23 Q If you don't mind, just for general area so
24 the jury can see what you're talking about, will
25 you mark that?

1 All right. That was one event that you were
2 able to determine?

3 A Yes. It was described as creeks around Sand
4 Island, so that would encompass from there to here
5 but she stated it would typically be a creek around
6 Black and White Creek which borders Sand Island
7 property here.

8 Q And were all those areas, once you were able
9 to determine the descriptions given to you, were
10 all those areas within Georgetown County?

11 A Yes.

12 Q Okay. All right, you can have a seat.

13 Now, Investigator Pop, with your unique
14 background and work with DNR, can you give us, just
15 based upon your history with DNR and then with the
16 Sheriff's office, a description of what these
17 creeks look like whenever you are going in and out
18 of them in a Jon boat?

19 A Right. In particular Fox Creek is a very
20 narrow creek, very winding creek, it does have a
21 few sections where it's a little I would call
22 stretched out. It is hard to travel fast in this
23 creek because it is so winding. It does have a lot
24 of trees that have fallen into the creek so you can
25 not maintain a high speed at all, you have to

1 obviously watch out for low lying limbs, trees
2 submerged under the water, is it a very winding,
3 snakey creek.

4 Q Okay. And how difficult is it to find a
5 place of seclusion within these creeks?

6 A Not difficult at all.

7 Q And, Investigator Pop, once you received the
8 information as you stated over and over again,
9 regarding the disclosure and the information from
10 the family, were you able to determine a final
11 event, as a result of your sexual assault
12 investigation, between the proposed suspect and the
13 victim?

14 A I was.

15 Q Will you tell us the time and place regarding
16 the final event?

17 A The last event is going to be September 11th
18 of 2010, which would have occurred at the child's
19 home.

20 Q All right. And after that final event did
21 you have any information that there was any
22 additional contact between the victim and this
23 defendant?

24 A I did not.

25 Q All right. Once you received all this

1 information regarding the allegation, the timing
2 and the place and the people involved, did you
3 compile a case report with all this information?

4 A I did.

5 Q Okay. Did you do anything additional in
6 regard to your investigation, to determine if there
7 was any other evidence out there that could be had
8 as Investigator Gregory was discussing earlier?

9 A Right. On November the 11th, I believe it
10 was, or maybe November the 12th, I did ask Agent
11 Gregory to assist me in some data recovery off the
12 cell phones provided by the child's parent.

13 Q Okay. Did you receive consent from the
14 family in order to conduct this phone analysis?

15 A I did.

16 Q All right. And as a result of the consent
17 from the family what was actually turned over to
18 you for the phone analysis?

19 A From the parents?

20 Q Yes.

21 A They provided me with two cell phones.

22 Q Okay. And whose cell phones were those that
23 you received?

24 A The child's.

25 Q The child's, all right. And do you remember

1 what kind of phones they were?

2 A I honestly don't remember. They were just
3 the little small what I would call, you know,
4 inexpensive, you know, not the most, at least not
5 like an Apple I-Phone or anything, just an average
6 teenager's phone.

7 Q All right. And whenever you provided the
8 phones to Agent Gregory was the sole purpose just
9 for him to actually retrieve whatever data that
10 might have been left on those phones?

11 A Yes, it was.

12 Q Okay. Once again when did you do this?

13 A November the 12th, 2010.

14 Q Okay. And based upon the information you had
15 from your investigation when was the last event
16 between the defendant and the victim?

17 A Well, the last event was September the 11th,
18 2010.

19 Q So, two months down the road you get the
20 phone?

21 A Her parents had brought the phone in November
22 the 3rd.

23 Q Okay.

24 A They brought the phone in on November the
25 3rd, it was placed in evidence and the information

1 was retrieved on the 12th.

2 Q Okay. And at that time were you aware of
3 whether or not the child had maintained the phone
4 in her custody at all by the time you received it?

5 A It was my understanding that she, the phone
6 had been under restriction and she had not had the
7 phone.

8 Q Okay. All right. Now, have you reviewed
9 what is in State's Exhibit Number 10 and Number 11
10 which was retrieved off the phones given to you by
11 the victim's parent?

12 A Yes, I have.

13 Q And in that information were you able to
14 review and determine whether or not the victim had
15 any type of information regarding the defendant in
16 her phone?

17 A She had a picture on her cell phone of the
18 defendant and also his phone number was saved in
19 her contact list.

20 Q Okay. And what is the defendant's telephone
21 number?

22 A 283-2720.

23 Q Okay. And the record that you received, were
24 you able to retrieve any specific text messages or
25 incoming and outgoing messages over the phone?

1 A The data recovery off the phones was very
2 limited in this data recovery report so it was not
3 able to give us, you know, everything that had been
4 deleted or anything like that.

5 Q So the volumes of texting and calls and
6 things like that, that was not something that would
7 come off the phone?

8 A At the time the technology we had, no, it was
9 not able to recover that.

10 Q Okay, fine. Now, Investigator Pop, once you
11 received the final bit of information that you were
12 able to get from the phone were you able to
13 actually meet with and speak with the defendant?

14 A I met with the defendant on November the 2nd.

15 Q Okay. Prior to actually even doing the phone
16 you had already met with the defendant?

17 A Yes, ma'am.

18 Q After meeting with defendant and all the
19 information you retrieved in this particular case
20 did you seek warrants or a warrant in the case?

21 A I also obtained a warrant for his arrest on
22 November the 2nd as well.

23 Q And what was the charge at that time?

24 A Criminal sexual conduct with a minor between
25 the ages of eleven and fourteen in the second

1 degree.

2 Q Okay, all right. And after that particular
3 warrant was served did you conduct any additional
4 investigation in this particular case?

5 A Trying to retrieve the data off the phone
6 would have been an additional item that we tried to
7 do.

8 Q Okay. Was there any need at that point in
9 time for you to get any kind of DNA or forensic
10 evidence in regard to this particular case?

11 A No, ma'am, because of the delayed disclosure
12 the amount of time that had gone between, you know,
13 the last incident on September the 11th, up to the
14 time of the report, by the time I was assigned the
15 case you would not have expected to have been able
16 to recover DNA from that incident.

17 Q Okay. So no attempts were made for DNA?

18 A No, ma'am.

19 Q Okay. And was there any need at all for you
20 to do any type of fingerprint analysis or anything
21 of that nature?

22 A No, because the defendant and the child in
23 this case, both families were so close they were in
24 and out of each other's homes, you would expect to
25 have his fingerprints in the child's home as well

1 as her fingerprints in his home.

2 Q Okay. And you spoke to the family members of
3 the victim in this case, correct?

4 A I spoke with both her parents.

5 Q Both her parents, okay. Based upon all this
6 information, you said that you sought the warrant
7 for CSC with a minor second degree?

8 A Yes, ma'am.

9 MS. LIVELY: One moment, Your Honor.

10 THE COURT: Yes, ma'am.

11 Q And once again, you had mentioned at the time
12 of the victim's disclosure she was fourteen years
13 old. As a part of your seeking the warrant were
14 you able to confirm the age of the victim at the
15 time of the event, up until the time you got the
16 warrant?

17 A Yes. From her date of birth and from the New
18 Year's Eve date, she would have been thirteen.
19 September 11th she would have been fourteen.

20 Q Was she between the eleven and fourteen
21 requirement of that particular charge?

22 A Yes, ma'am.

23 Q The defendant at the time of his arrest was
24 how old?

25 A He was 30 years old.

1 MS. LIVELY: Thank you. Answer any questions
2 the defense may have for you.

3 THE COURT: Cross-examination.

4 CROSS EXAMINATION BY MR. FOX:

5 Q Officer, based on the information you got
6 from the people you talked to and the report you
7 got, there was an incident at Mr. Love's house?

8 A Yes.

9 Q On New Year's Eve, and a couple in the boat?

10 A I think three to four times.

11 Q Okay, and another time at the victim's house,
12 correct?

13 A On Hyatt, yes, sir.

14 Q Okay. Now, any others at all?

15 A Not to my knowledge.

16 Q Now, on Miss Bellamy's phone, the phone you
17 had Officer Gregory do the data recovery on?

18 A Yes.

19 Q I'm sorry, you have them right there. You
20 say Mr. Love was in the contact list. How was he
21 referred to in the contact list?

22 A Wayne.

23 Q And below that?

24 A His phone number.

25 Q Doesn't it also say big brother, like

1 description, big brother?

2 A May I refer?

3 Q You may.

4 A If I may, if you're looking at page 19 of 41,
5 number 181?

6 Q I've got a couple places.

7 A Yes, you do.

8 Q Hold on. Yes.

9 A So --

10 Q Let me ask if you have, it says page 6 of 8?

11 A Yes, I do.

12 Q Is that, does that appear to be about number
13 74, does that appear to be Wayne Mr. Love's -- I'm
14 sorry, go to -- one moment. Page 12 of 41, I'm
15 sorry. Page 12 of 41. It is also in that contact
16 list. Do you have that?

17 A I do.

18 Q Okay. The first one, I think number 105, is
19 Wayne, correct?

20 A Yes sir.

21 Q And appears to have his phone number? That
22 is the number you identified as Mr. Love's phone?

23 A Yes.

24 Q And the notes, what does it say in the note?

25 A On page 12 of 41, number 105, underneath that

1 number it does have big brother.

2 Q Okay. Now, did you go through -- there are
3 several pages of contacts, are there not?

4 A Yes.

5 Q Printed out. Did you go through and see if
6 there are any other adults, any reason to find any
7 other adult in that contact list other than, say,
8 parents?

9 A I would not know if they are adults. It just
10 has names.

11 Q Okay. And there is, I think you said, one
12 picture that was recovered of Mr. Love. Correct?

13 A Correct.

14 Q And that is just a picture of him that looks
15 like the Myrtle Beach Pelican mascot, doesn't it?

16 A I'm not a sports person but it's a duck.

17 Q It might be a duck?

18 A A duck is a duck.

19 Q Something, it is not a real animal?

20 A Correct.

21 Q It's a puppet or a mascot or something,
22 stuffed animal, something like that?

23 A Something, right.

24 Q Nothing strange about that photograph, is
25 there, in your opinion? In your mind anything

1 strange about that photograph, the photograph
2 itself, a photograph of a man?

3 A Hugging a duck or riding a duck, I'm not sure
4 what he's doing. I understand what you're asking,
5 though. It's an adult man --

6 Q Do you think the picture speaks for itself?

7 A Yes.

8 MR. FOX: Thank you. That's all.

9 THE COURT: Redirect?

10 MS. LIVELY: No, Your Honor.

11 THE COURT: Thank you, Miss Pop. You may
12 step down.

13 THE WITNESS: Thank you.

14 (Witness excused).

15 MS. LIVELY: Your Honor, may we approach for
16 a moment?

17 THE COURT: Sure.

18 (Unrecorded bench conference).

19 THE COURT: All right. We're going to take a
20 break about 15 minutes. Don't talk about the case,
21 continue to keep an open mind and please select
22 someone to be the foreperson of the jury and write
23 their name down on a piece of paper and give it to
24 one of the bailiffs, if you would, during your
25 break. Thank you.

1 (Jury excused from the courtroom).

2 THE COURT: Before we take a break let me.
3 just ask Mr. Love some questions if I can get him
4 sworn in.

5 PRENTIS WAYNE LOVE, after being first duly sworn,
6 stated as follows:

7 THE COURT: Okay, Mr. Love, I just want to go
8 over with you some questions about your right to
9 testify or not testify because we may reach that
10 stage of the trial today, we may not, but I just
11 need to make sure that you understand you have the
12 right to take the stand and testify and if you do
13 so you will be subject to being cross-examined just
14 as your lawyer has cross-examined the State's
15 witnesses. And the cross-examination could be
16 questions about anything relevant to the case or
17 anything that might bear on your credibility.

18 In addition, you I'm sure discussed with your
19 lawyer the fact that if you do put up evidence you
20 lose the right to have the final closing argument,
21 your lawyer still gets to make a closing argument
22 but the State would actually have the last word
23 before the jury and they would get to go last in
24 the closing argument phase.

25 You also have the right, Mr. Love, to not

1 testify and if you chose not to testify the Court
2 will tell the jury, as I have already told them,
3 you don't have any burden to produce any evidence
4 and you have a constitutional right to remain
5 silent and that right also guarantees you the right
6 to let the jury not hold it against you for
7 remaining silent and I would tell the jury they
8 cannot take into account whatsoever the fact you
9 have not taken the stand and that you certainly are
10 within your right to do that and they could not
11 draw any inference from it or conclusion
12 whatsoever.

13 Do you understand those things, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And is the State going to seek to
16 impeach Mr. Love with any prior offense if he were
17 to take the stand?

18 MS. LIVELY: Yes, sir, Your Honor. This
19 defendant has a prior conviction which he is
20 currently on either probation or parole for for
21 assault and battery of a high and aggravated nature
22 in the common law which carries up to ten years.
23 He did receive an active sentence at that time and
24 we would be seeking to impeach him in regard to
25 that particular offense.

1 We also have information where he has a
2 breach of trust with fraudulent intent which we
3 would be seeking to impeach him with as well.

4 THE COURT: And what are the dates of these
5 offenses, convictions?

6 MS. LIVELY: The ABHAN, Your Honor, the
7 conviction date, sentence date was March the 15th
8 of 2006.

9 And then the conviction for breach of trust
10 with fraudulent intent was from 2002, June 25th of
11 2002. Let me see if I have got it here. It was
12 actually pled to and restitution ordered on
13 February 6th of 2003 in front of Judge Kittridge
14 and I have the sentence sheet for that as well.
15 All this has been provided to the defense, Your
16 Honor.

17 THE COURT: All right. So, if you did take
18 the stand, Mr. Love, the jury would learn about
19 those prior convictions unless for some reason I
20 ruled they were not admissible under Rule 609, but
21 if you did not take the stand of course the jury
22 would not learn about the prior convictions. Do
23 you understand that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any questions of me

1 about your right to testify or not testify?

2 THE DEFENDANT: No, sir.

3 THE COURT: Okay. Well, you don't have to
4 tell me now what you're going to do but I'm sure
5 you have already talked to Mr. Fox at length about
6 your strategy and your rights and that you
7 understand the consequence of your choice. Okay,
8 thank you very much.

9 All right, we'll take a break until about
10 3:30.

11 MS. LIVELY: Thank you, Your Honor.

12 (Recessed at 3:17 p.m.).

13 (Resumed at 3:36 p.m.).

14 THE COURT: Okay. The jury sent a note that
15 Miss Jenkins, juror 132, had been chosen to be the
16 forelady.

17 (Juror note was marked as Court Exhibit
18 Number 3).

19 THE COURT: Ready to bring the jury out?

20 MS. LIVELY: Your Honor, I want to address an
21 issue just for the record, that several people keep
22 reminding me or telling me they have noticed a
23 certain juror has continued to nod off during the
24 deliberation, I mean not deliberation but during
25 the trial, which concerns me obviously with his

1 ability to continue to be a part of this case as
2 well as deliberate at the appropriate time. If I
3 didn't have my victim's family and other
4 individuals actually tell me and noticing it
5 themselves, I'm focused on what I'm doing so I
6 haven't specifically noticed but I just believe
7 that for the record it is important for me to
8 address that again.

9 THE COURT: Well, I will be glad to bring the
10 gentleman out and ask him, question him.

11 MS. LIVELY: I would like for you to do so.
12 I hate to alienate him but then you gave them
13 another talk to this morning. If that is how he
14 listens, by shutting his eyes, then he needs to at
15 least address that and state that he has been fully
16 listening to all the testimony, because I'm just
17 concerned about, like I said, his being involved in
18 the deliberations at the end of everything.

19 How about you, Mr. Fox?

20 MR. FOX: I haven't noticed. I mean, I have
21 no reason to doubt what people are telling Miss
22 Lively but I haven't noticed, myself, today any
23 problem but I have also been focused on what I'm
24 doing and Mr. Love indicates it might be more than
25 one juror that is an issue, he wrote me a note, so

1 maybe it is more than one person. I don't know who
2 those are.

3 THE COURT: I don't know which juror it is.
4 I mean, I have not seen one who appeared to be
5 sitting with his eyes closed this afternoon but I
6 don't know if I can determine what his name is
7 without bringing all of them back out here and ask
8 him.

9 MS. LIVELY: The individual I have been told
10 of, his last name, his name is McGee, is that
11 correct?

12 DEPUTY SHERIFF: Yes.

13 MS. LIVELY: I don't know his number.

14 THE COURT: That is juror 176.

15 MS. LIVELY: Yes, sir.

16 THE COURT: Okay, Mr. McGee, if you can just
17 bring him out.

18 BAILIFF: McGee?

19 (Juror McGee now present in the courtroom).

20 THE COURT: Mr. McGee?

21 JUROR: Yes, sir.

22 THE COURT: You're not the gentleman I
23 thought. We brought you out here by accident.

24 JUROR: You had me scared.

25 (Juror McGee excused from the courtroom).

1 THE COURT: All right, so it is not Mr.
2 McGee. Is it McCray, number 175? No, it's not
3 him.

4 (Juror Franklin Lincoln present in the
5 courtroom).

6 THE COURT: Are you Mr. Lincoln?

7 JUROR: Yes, sir.

8 THE COURT: How you doing?

9 JUROR: Fine.

10 THE COURT: It appeared this afternoon there
11 were several times you were sitting down and had
12 your eyes closed. Were you asleep or --

13 JUROR: I'm paying attention but my eyes have
14 been messing with me.

15 THE COURT: They have? Have you got a
16 medical condition with them?

17 JUROR: No.

18 THE COURT: Just tired.

19 JUROR: Yes, just kind of tired.

20 THE COURT: Do you work at night?

21 JUROR: No, I stay up late.

22 THE COURT: You stay up late?

23 JUROR: Yes.

24 THE COURT: So, you're telling me, and of
25 course you're still under oath from when you got

1 sworn in yesterday, you haven't missed any of the
2 testimony?

3 JUROR: No.

4 THE COURT: Okay.

5 JUROR: I was paying attention.

6 THE COURT: All right. Well, I understand
7 how people get tired but I have to ask you about
8 that.

9 JUROR: I was just drinking a Coca Cola back
10 there so I could get some caffeine.

11 THE COURT: You're telling me you weren't
12 asleep, right?

13 JUROR: No, huh-uh (negative), no.

14 THE COURT: Were you or --

15 JUROR: I wasn't sleeping, I wasn't sleeping
16 but my eyes were closed, I was paying attention.

17 THE COURT: You're confident you haven't
18 missed any of the proceedings?

19 JUROR: Yes, not the proceedings.

20 THE COURT: All right. Thank you very much.

21 JUROR: All right.

22 (Juror Franklin Lincoln was excused from the
23 courtroom).

24 THE COURT: Okay. Anybody want me to ask any
25 follow-up questions?

1 MS. LIVELY: That's fine, Your Honor, I
2 appreciate you doing that. That is uncomfortable,
3 I know, but I wanted to make sure. Maybe now
4 everyone will --

5 THE COURT: I appreciate that. Mr. Fox,
6 anything you want to add?

7 MR. FOX: No, Your Honor, that's sufficient.

8 THE COURT: I'm just trying to follow the
9 procedure that is set forth in State versus Smith.
10 I find based on his responses that he has not
11 committed any kind of juror misconduct. I find
12 that he stated he hasn't missed any of the
13 proceedings, he heard the testimony and I certainly
14 didn't see or hear him snoring or anything like
15 that or anything that indicated he was in fact
16 asleep so I would have to deem his testimony
17 credible about his state of mind, so anything
18 further before we bring the jury back in?

19 MS. LIVELY: No, Your Honor, the State is
20 ready to proceed.

21 THE COURT: All right.

22 Okay.

23 (The jury returned to courtroom).

24 THE COURT: Okay, ladies and gentlemen, I got
25 your note that you had selected Miss Jenkins to be

1 the foreperson and, Ma'am , you will just be the
2 liason between the Court and jury. If anyone on
3 the jury needs to communicate with me I can only
4 talk to you on the record or through written notes
5 that will be made part of the record, so keep that
6 in mind as far as communication, and during the
7 deliberations you will preside over the
8 deliberations and your vote doesn't count more than
9 anybody else's, you will simply be the foreperson,
10 and thank you for your service.

11 With that statement, call your next witness.

12 MS. LIVELY: Yes, sir, Your Honor. The State
13 would call Dr. Carol Rahter to the stand.

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1 DR. CAROL ANN RAHTER, after being first duly sworn,
2 testified as follows:

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

5 THE WITNESS: Carol Ann Rahter.

6 DIRECT EXAMINATION BY MS. LIVELY:

7 Q Dr. Rahter, where do you currently work?

8 A I'm an emergency physician at Georgetown
9 Hospital Systems, most commonly Waccama Hospital,
10 working the night shift, and I'm also medical
11 director of the Children's Recovery Center.

12 Q And working the night shift, does that mean
13 you were in the middle of sleep whenever we called
14 you today?

15 A Absolutely.

16 Q Okay. Thank you for coming. Now, Dr.
17 Rahter, please tell us your educational background
18 in regards to your being a medical doctor.

19 A I have four years of college and graduated
20 from St. Louis University, then went to medical
21 school at Kansas City, Missouri for four years,
22 then I did a one year rotating internship in
23 Dallas, Texas and then a two year emergency
24 medicine residency in Pontiac, Michigan. I moved
25 to South Carolina in 1990 and became Board

1 Certified in emergency medicine in 1993.

2 Q All right. And have you worked since that
3 time in emergency medicine?

4 A Yes, I have.

5 Q Have you gotten any type of specialties or
6 additional training in regards to any kind of
7 sexual assault or child sexual assault training?

8 A Yes.

9 Q Tell the jury about that.

10 A The Children's Recovery Center was
11 established I believe in 1994 and I went for
12 specialty training in the evaluation and
13 examination of children who have been physically or
14 sexually abused. It is really training that, it is
15 a multidisciplinary training that's twice a year,
16 it is about 40 hours of training. I try to get to
17 one of those seminars a year, so I have had
18 seventeen years of 40 hours of training on forensic
19 interviewing and examining of children that are
20 physically or sexually abused.

21 Q Are these a lot of times intertwined because
22 of the type of cases that come to you in the
23 Children's Recovery Center?

24 A Yes, they are.

25 Q Okay. And are there times whenever you not

1 only conduct the medical but you also do forensic
2 interview of them?

3 A Yes. In the beginning of the Children's
4 Recovery Center I was the forensic interviewer the
5 majority of the time. Fortunately I have two
6 forensic interviewers now, so I do mostly medical
7 exams.

8 Q In regard to medical exams regarding
9 allegations of sexual abuse, about how many of
10 those have you conducted in your career?

11 A Over 2,000.

12 Q And in your work in doing that through the
13 Children's Recovery Center do you have a
14 specialized, any specialized equipment that you use
15 in order to perform this type of examination?

16 A Yes, I do.

17 Q What is that?

18 A it is called a colposcope. It is a big word
19 but basically it is a microscope that is connected
20 to a camera. It is magnified fifteen times and
21 when we do these exams we start at the children's
22 toes, show the toes, the wrinkles on the bottom of
23 their feet, look at, look at the fingerprint, any
24 scars they have on their body. Because it is
25 hooked to a TV, the child gets to look at the whole

1 exam so by the time I actually get to the genital
2 exam they think it is pretty cool, so they are very
3 much more comfortable with it.

4 Q And in regard to using a colposcope how many
5 times has that been a part of your practice in
6 conducting the child sexual assault medical exams?

7 A Every time I have ever done an exam at
8 Children's Recovery Center.

9 Q And in regard to the Children's Recovery
10 Center and using the colposcope there, how do you
11 actually document your findings?

12 A It is all videotaped so it goes onto a disc.

13 Q Okay. That information is not provided to
14 myself in these particular cases, is that correct?

15 A Correct.

16 Q Okay. Now, Dr. Rahter, in regard to it being
17 video recorded, is there anything else you do to
18 document your findings from your examination?

19 A I dictate my findings in the exam right after
20 I finish with the child. That is then transcribed
21 and becomes a part of the medical records.

22 Q Okay. All right.

23 MS. LIVELY: Your Honor, at this time the
24 State would offer Dr. Carol Rahter as an expert in
25 child sexual assault medical examination.

1 THE COURT: Any voir dire?

2 MR. FOX: Being offered as an expert in child
3 sexual assault medical examination, correct?

4 MS. LIVELY: Yes.

5 MR. FOX: No questions, Your Honor, no
6 objection.

7 THE COURT: Okay, she is qualified.

8 Ladies and gentlemen, under the law witnesses
9 typically can only testify as to things they
10 personally observed or otherwise as sensed through
11 one of of their senses. There is an exception for
12 people who by virtue of their education, training
13 or experience have achieved some expertise in their
14 given field and these witnesses who are sometimes
15 called expert witnesses, if properly qualified, may
16 give their opinions about things they have observed
17 or learned about, so unlike other witnesses they
18 are not limited to just testifying about their
19 personal observations, they may in fact give
20 opinions they have drawn from those observations.
21 You as the jury are the sole judge of the
22 credibility of all the witnesses, including expert
23 witnesses.

24 Yes, ma'am, you may continue.

25 MS. LIVELY: Thank you, Your Honor.

1 BY MS. LIVELY:

2 Q Now, Dr. Rahter, just in general for the jury
3 to hear, when you do a sexual assault examination
4 of a child what type of things are you looking for
5 that would be abnormal or something that would
6 raise some concerns for you?

7 A Well, first of all the majority of children
8 that are examined for sexual assault have normal
9 exams and the reason for that is because -- several
10 reasons. We rarely see a child right after the
11 sexual assault occurs. Like once or twice a year I
12 have a child that I see immediately after or within
13 a 24 hour period of time after the child has been
14 sexually assaulted.

15 The second reason is that the tissue down
16 there is, heals very rapidly. It is kind of like
17 the inside of your mouth. When you bite it and it
18 hurts really bad, you kind of have a groove there,
19 three days later it is gone, you can't see
20 anything, it is completely healed. Well, it's the
21 same tissue.. Mucosal tissue that is on the inside
22 of the cheek is also in the vaginal area, so when
23 there is an injury, which there very well might be
24 right after it occurs, by the time we see the
25 children it is normally healed. Sometimes it will

1 heal with a scar and so you can see a scar. The
2 majority of the time when the child is sexually
3 assaulted the exam is normal.

4 Q Just for hypothetical, a hypothetical
5 question, have you actually had a situation where
6 the child denies any sexual abuse but you do find
7 physical evidence of sexual abuse?

8 A Yes. That is why I do an evaluation of a
9 child who is able to speak, do both a forensic
10 interview and medical exam. Sometimes in the
11 forensic interview the child will deny everything
12 and then you will find sexually transmitted disease
13 like gonorrhea or syphilis or herpes or something
14 where you know clearly the child has had some kind
15 of sexual assault or they wouldn't have gotten this
16 infection. So that is why you do both and you kind
17 of put them together to determine if the child has
18 been injured.

19 Q Okay. So part of what you're doing is not
20 only getting information but wanting to seek
21 treatment and help for the child?

22 A Correct.

23 Q Okay. So even if there had been no
24 disclosure would a follow-up at Children's Recovery
25 Center still be referred to you for a medical exam?

1 A Yes.

2 Q With a disclosure obviously you would also
3 receive this referral or the next step would be for
4 you to do the examination. Correct?

5 A Correct.

6 Q Now, whenever you do the medical examination
7 is it actually at the Children's Recovery Center,
8 that facility?

9 A Yes. There is one in Georgetown and there is
10 one in Myrtle Beach.

11 Q Is the culpascope you were describing to the
12 jury actually within that examination room at the
13 Children's Recovery Center?

14 A Yes, it is in my exam room in both
15 facilities.

16 Q Okay. And whenever you do the examination of
17 the child who is normally in the room with you, if
18 anyone?

19 A Well, it is whoever the child wants to be in
20 the room. In the Georgetown facility it is a
21 closet that we made into my medical exam room.
22 Sometimes it is really crowded in there but
23 oftentimes they want their mother in there. Some
24 children don't want anybody in there and if that's
25 the case we usually have one of the staff of the

1 Children's Recovery Center in there with me to
2 assist me but most of the time it's usually a
3 mother, an aunt, a grandmother, somebody like that.

4 Q Okay. Just for the purposes of the jurors'
5 understanding, is this an intrusive gynecological
6 exam?

7 A Everything, we just look at the outside of
8 the body, nothing is placed inside a child at
9 anytime at any age.

10 Q Okay, all right. And the culpascope does not
11 have to be intrusive?

12 A Let me back up. Fifteen years ago we used to
13 do cultures. Now we actually do all those by
14 having them urinate in a cup. In the last five
15 years there is nothing goes inside the child.

16 Q All right. Now, as part of what you might be
17 looking for as a potential injury, what part of the
18 female anatomy do you look at to determine if there
19 has been any type of injury in the vaginal area?

20 A Well, first of all you look at the whole body
21 because you can find things other places, and we
22 don't just assess for sexual abuse, we also assess
23 for physical abuse and neglect, if the child is
24 under weight and so forth, so you look at the whole
25 body. With the culpascope, specifically on the

1 genital exam, you look at the exterior structures,
2 which is the labia majora, labia minora, commonly
3 called the lips of the genital area. You look at
4 the area between the vagina and the anal area to
5 see if there is any scarring. Then you put
6 traction on the labia and actually look at the
7 hymen, which is kind of the opening to the vagina.
8 And when you put traction you can then see into the
9 vagina. Then you examine the anal area to make
10 sure there is no abnormalities there.

11 Q Okay. And just for the, from your experience
12 in child sexual assault medical examinations, is
13 that whole idea of once you have penetration the
14 hymen is always either torn or broken, is that
15 correct?

16 A That is completely a myth. I examine 80 year
17 old women in the emergency department that still
18 have hymens; that have given birth to ten children.
19 It doesn't just go away. That is what people
20 commonly think, that is not at all the case. The
21 hymen changes from the time you're born until the
22 time you die. Certainly the hymen of a fourteen
23 year old is not going to be the same as the hymen
24 of an 80 year old but there is still hymenal tissue
25 there when you die. When a child, prior to having

1 their period, they have a hymen that looks
2 completely different than after they have their
3 period, because after they have their period it
4 gets kind of thickened and stretchy, so that it
5 looks completely different than the hymen of a
6 child who has not yet started their period.

7 Q Okay. Let me get specifically to this
8 particular case, Dr. Rahter, if you don't mind.
9 Did you have the opportunity to conduct a medical
10 sexual assault in regard to, child sexual assault
11 examination of an individual by the name of
12 [REDACTED] in October, 2010?

13 A It was November 4th of 2010.

14 Q So, was that the forensic interview but a
15 week later?

16 MR. FOX: May we approach, Your Honor?

17 THE COURT: Sure

18 (Unrecorded bench conference).

19 BY MS. LIVELY:

20 Q Dr. Rahter, do you mind if I actually have a
21 copy of your notes?

22 A Sure.

23 Q Thank you.

24 MS. LIVELY: All right, back on the record,
25 Your Honor, regarding this matter. Thank you.

1 Q Dr. Rahter, thank you for providing me with a
2 copy of your findings from that date. Once again
3 to be clear, you actually examined Miss [REDACTED]
4 [REDACTED] on November 4, 2010, correct?

5 A Correct.

6 Q And based upon the information you had, and
7 it is actually documented, she had already received
8 her forensic interview, is that right?

9 A Correct.

10 Q Okay. Now, did you or would you have had the
11 opportunity to review the forensic interview by
12 your associate Dianne Nordeen before conducting the
13 medical exam?

14 A I seriously doubt that this was, that her
15 interview was typed up yet. It was only five or
16 six days later and I don't have a whole lot of
17 detail in here like her report would have, so I
18 think I probably just got verbal communication
19 about what the disclosure was.

20 Q Okay. And what is important for you to know
21 regarding the disclosure so that you know medically
22 what to look for?

23 A If there has been a disclosure of actual
24 penile vaginal penetration I do cultures or I test
25 for sexually transmitted diseases. If there is not

1 a disclosure of that type of abuse then we don't
2 put the child through that kind of testing.

3 Q Okay. Was there --

4 A Unless I find something on exam that looks
5 like it is infected.

6 Q Okay. So if you see something that raises an
7 eyebrow you would do it anyway?

8 A Correct.

9 Q Okay. And in this particular case what did
10 you actually test for?

11 A In this case I didn't test for anything.

12 Q Okay. So the information that you were
13 provided did not lead you to be concerned about
14 getting cultures and testing for STD's?

15 A Correct.

16 Q Okay. Still, did you conduct a typical
17 medical examination with a culpascope as you would
18 in every other case?

19 A Yes, I did.

20 Q And based upon your examination of the child
21  at that time what were the results
22 of your examination?

23 A That her physical exam was without
24 abnormalities, which does not rule in or rule out
25 sexual abuse.

1 Q And you have already testified in regard to
2 the anatomy of the female body in that particular
3 area, so in your opinion was this, was the fact of
4 these findings any concern to you in regard to
5 doing any additional follow-ups for STD's or
6 anything like that?

7 A I would expect that her exam would be normal
8 with the disclosure that she made.

9 Q Okay. And once again, were you aware as to
10 the timing of the last event that she claimed had
11 occurred that was sexual in nature, and if you
12 don't know from your note that's fine but do you
13 have any idea?

14 A I know it was over a month prior.

15 Q Okay. In a situation where it was over a
16 month prior and you're not testing for penile
17 vaginal penetration would this be unusual for there
18 to be normal findings?

19 A I would expect the exam to be normal.

20 Q Okay, and it was?

21 A Yes, it was.

22 Q During your medical examination of the child
23 did you retrieve any information from her about
24 time and place of any event?

25 A No, I don't believe she personally told me.

1 I think I got that information from the forensic
2 interviewer.

3 Q That's fair. Once again that --

4 A Sometimes I see children prior to the
5 forensic interview and so I have to ask all the
6 questions myself and if they had gone through the
7 forensic interview and all those questions have
8 been asked I take either the report or verbal
9 report from the forensic interviewer.

10 Q All right. Let me ask you a hypothetical.
11 If a child at the age of fourteen suffered from
12 some type of digital penetration and the disclosure
13 was two months later would you expect to find any
14 physical indication of that assault?

15 A I would not expect to find any abnormalities.

16 MS. LIVELY: Thank you. Answer any questions
17 Mr. Fox may have for you.

18 MR. FOX: One moment.

19 No questions, Your Honor.

20 THE COURT: All right. Thank you, Doctor.

21 THE WITNESS: Thank you.

22 (Witness excused).

23 THE COURT: Okay, the State may call the next
24 witness.

25 MS. LIVELY: Thank you, Your Honor. At this

1 time the State rests.

2 THE COURT: All right. Ladies and gentlemen,
3 the State has completed their presentation of
4 evidence. At this time I have to take a short
5 recess and discuss some things with the lawyers at
6 this stage. Please keep an open mind and don't
7 talk about the case and just return to the jury
8 room for a few minutes. Thank you.

9 (Jury excused from the courtroom).

10 THE COURT: Okay, any motions or matters at
11 this time?

12 MR. FOX: Yes, Your Honor. At this time I
13 move for a directed verdict on both indictments,
14 both the criminal sexual conduct with a minor as
15 well as lewd act on a minor. Basically the State
16 has not met its burden of proof with regard to each
17 element of each offense, they have not proved each
18 element beyond a reasonable doubt.

19 THE COURT: Okay. Mr. Fox, I find the record
20 does contain evidence sufficient to withstand a
21 motion for directed verdict and will be a matter
22 for the jury to decide. I think obviously under
23 Rule 19 I can't weigh the evidence or evaluate the
24 credibility, but only whether any exists. I think
25 there is in the record evidence that I believe

1 would support each element of the crime on both
2 indictments. I respectfully deny your motion.

3 MR. FOX: Thank you, Your Honor. That's all
4 at this point.

5 THE COURT: Does the State have anything at
6 this time?

7 MS. LIVELY: No, Your Honor.

8 THE COURT: How long do you think -- I'm just
9 trying to decide for when we need to break.

10 MR. FOX: Judge, I have two witnesses, I
11 believe, and we can make sure, I believe Mr. Love
12 is going to testify. He of course would be a bit
13 longer. My intention would be to call his wife
14 Tabitha as the other witness, I don't think she
15 will be particularly long, and that might be a good
16 point to break.

17 THE COURT: That sounds good.

18 MR. FOX: We can do Mr. Love and argue and
19 charge in the morning.

20 THE COURT: That sounds like a good plan.
21 All right, you can bring the jury back out. Thank
22 you.

23 (The jury returned to the courtroom).

24 THE COURT: All right, ladies and gentlemen,
25 the State did rest their case. At this time the

1 defense has the opportunity but not the obligation
2 to present any evidence it wishes to.

3 So, yes, sir, Mr. Fox.

4 MR. FOX: Thank you, Your Honor. The defense
5 calls Tabitha Love.

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1 TABITHA LOVE, after being first duly sworn,
2 testified as follows:
3 THE CLERK: Please be seated and state your
4 name for the record.
5 THE WITNESS: Tabitha Love.
6 DIRECT EXAMINATION BY MR. FOX:
7 Q Tabitha, where do you live?
8 A In Murrells Inlet.
9 Q And who is your husband?
10 A Wayne Love, the defendant.
11 Q Okay. How long have you all been married?
12 A Eight years in March.
13 Q Do you have any children?
14 A We do, we have two.
15 Q How old are they?
16 A Courtney will be nine in July and Aden just
17 turned seven.
18 Q Okay. And how long have you lived in the
19 Murrells Inlet area?
20 A Since 2008, so four years.
21 Q And where in Murrells Inlet do you live?
22 A Right now we currently are not at the same
23 place but we did live on Wilco Avenue.
24 Q Back in 2010 did you live on Wilco Avenue?
25 A Wilco Avenue.

1 Q And do you know the Bellamy family?

2 A Yes, sir, I do.

3 Q Okay. You saw Tony and Shannon and [REDACTED]

4 here testify, you know all of them?

5 A Yes.

6 Q When you lived on Wilco Avenue where did they
7 live in relation to you?

8 A Approximately two miles, on Hyatt.

9 Q Just a couple minute drive?

10 A Yes, sir.

11 Q How did you come to meet the Bellamy family?

12 A Through my husband, he was associating with
13 the dad and the mom, with Green Wing, with
14 Shellcracker and dog weigh in, and after they had
15 spent some time together and everything, probably a
16 couple months later that I ended up meeting them.
17 I knew of them but didn't actually meet them until
18 a couple months later.

19 Q Approximately when was that?

20 A November, 2009, I believe, because of a Ducks
21 Unlimited banquet, I believe it was November or
22 either October, I'm sorry.

23 Q As you got to know them how would you
24 describe your relationship with Shannon and Tony?
25 They had two children, right?

1 A They do. One is there part-time. We became
2 very close. [REDACTED] pretty much became a younger
3 sister to me, me and Shannon were pretty much like
4 sisters, we were able to talk, anything I needed to
5 talk to her about I was able to go to her. Tony
6 even, I don't know how to quite describe it, a
7 friend, a person I looked up to.

8 Q What type of things would you all do
9 together?

10 A Cook out, hang out together, going out to
11 eat, every Wednesday night we went out to eat
12 together at the same restaurant, birthday party,
13 Ducks Unlimited, pretty much those kind of things
14 or anything that really involved the kids.

15 Q So it wasn't just the adults that were
16 mixing?

17 A No.

18 Q Hanging out together?

19 A No, not necessarily. Every time there was a
20 family function my children were there and so were
21 theirs.

22 Q Okay. Were they ever over at your house?

23 A A great bit.

24 Q How about Brittany, that would include

25 [REDACTED]

1 A That would include [redacted]

2 Q Was it always the entire families together?

3 A No, not always. A lot of times it was just

4 [redacted] and [redacted] would be over there with

5 just me and my kids a good bit of time, spending

6 time with us. There were times we went to the

7 beach together and sat on the beach, just girls'

8 day, sometimes Aden went with us, my little boy.

9 There was times that I would have a friend over

10 with [redacted] there. There were times, you know,

11 the whole family was there.

12 Q In an average week how many times would you

13 say [redacted] came around or did things with you at

14 your house?

15 A I would say at least once a week she was at

16 my house. If not that, I would see her at her

17 house at least once or twice a week.

18 Q Did she ever babysit for you?

19 A A lot.

20 Q Okay. In the evenings?

21 A Every Wednesday night she actually was my

22 babysitter when we went out to eat. There was a

23 couple times she babysat at my house, there was a

24 couple times we had other things we went and done

25 and she did babysit.

1 Q What did you think of [REDACTED]

2 A A very sweet, loving girl that had some
3 emotional problems that she confided in me about
4 but besides that, a straightforward girl.

5 Q What type of things did she confide in you
6 about?

7 A Things that were going on inside the home,
8 things that she did not want to discuss with her
9 mother, that she felt she could confide in me
10 because of the bond that we had, she knew I
11 wouldn't go back to her mom and tell her, I told
12 her she could talk to me about anything. She would
13 tell me about fighting, about the stress that was
14 going on, problems that she was having at school,
15 anything, things that were going on between her and
16 a friend, boyfriend matters, anything, pretty much
17 like two friends or, you know, siblings would even
18 talk about.

19 Q But you're a good bit older, aren't you?

20 A I am.

21 Q How old are you?

22 A I'm 28.

23 Q She was how old, about, at this time?

24 A Thirteen, fourteen.

25 Q Okay. Did she ever tell you anything that

1 gave you concern?

2 A There was two things that really gave me
3 concern. One was her doing pills and another was
4 that she was on a roof about to jump off.

5 Q Let's start with the pills. Did she indicate
6 what kind of pills she was doing?

7 A Yes, she did.

8 Q And what was that?

9 A Vicodin.

10 Q Did you find out where she was getting these
11 pills?

12 A Yes.

13 Q Did she have a prescription for them?

14 A No.

15 Q Where was it she was obtaining these pills?

16 A Dad's prescription bottles and from a friend
17 Ashley.

18 Q When you say dad, who are you referring to?

19 A Her step-dad, Anthony Carter.

20 Q Okay. Mr. Carter has testified he had
21 multiple shoulder surgeries, correct?

22 A Yes, sir.

23 Q Did she give you any indication of how often
24 or how many pills she was doing?

25 A Not really. There was a time that she had

1 stated she was high from doing them, this was via
2 text directly to me. The time she was up on the
3 roof she had stated she was high on the pills.
4 There was never actually a number.

5 Q Let me ask you this. You mentioned that she
6 texted you. Did you communicate with her,
7 obviously she would come to the house and you all
8 would go do things and you would speak face to
9 face, did you communicate other ways with her?

10 A We texted and called a lot.

11 Q How often would you say that happened on
12 average, say, in a day or week?

13 A We would text at least twice a day and it
14 could be three times back and forth, which would
15 mean probably six at a time. Sometimes on the
16 weekend more.

17 Q Now, tell me about, you mentioned one time
18 she texted you and she was what, she was where?

19 A On the roof top.

20 Q What roof top?

21 A At her friend Ashley's, she had went and
22 stayed the night with Ashley.

23 Q Was there anything more to it than, "I'm just
24 up on the roof"?

25 A No, "I'm about to jump off of the roof."

1 Q What did you do when you got that message?

2 A I responded to her over and over and told
3 her I was going to tell her mom if she didn't get
4 off the roof and pretty much after I threatened her
5 a couple times she dropped the subject. I then,
6 thinking because Tony is a great friend of my
7 husband, I called my husband and told him about it
8 and he called her and talked her out of it. I did
9 not call her mother, I should have but I did not.

10 Q Did you go over to make sure she was okay?

11 A No. I did not know where Ashley lived. At
12 the time I was in Carolina Forest.

13 Q So, you say over the course of time that
14 Ashley was confiding these very serious things to
15 you about pills?

16 A [REDACTED] was.

17 Q Problems in her life, and even at least
18 suggesting she was open to the idea of suicide, you
19 never went to her mother or step-dad?

20 A I did not.

21 Q Why not?

22 A I kept it confidential because I felt that is
23 what she wanted.

24 Q Now, you are aware, you mentioned that Wayne
25 was also -- let me ask you. Was Wayne, would your

1 husband be around when you did these family things?

2 A Some of them, some not.

3 Q Sometimes he was?

4 A Exactly.

5 Q Okay. And were you aware that there was any
6 communication back and forth between Wayne and

7 [REDACTED]

8 A Yes, I was.

9 Q What kind, what was the nature of that?

10 A Texting, calling. He treated her like at
11 sister. When we would go over there to their house
12 to hang out he would carry her on his shoulders,
13 did the same thing to my kids. Other than that I
14 never saw anything out of the ordinary.

15 Q Now, the phones, you had your own cell phone,
16 correct?

17 A I did.

18 Q And Wayne had a phone?

19 A He does.

20 Q Did you ever have a mixing of those phones,
21 did you use his phone, he use your phone?

22 A Oh, yes.

23 Q Tell us how that was.

24 A If there was one phone laying around and it
25 went off we either one would grab a phone closest

1 to us and look at it. There was never a trust
2 barrier there that said, "Okay, you can't look at
3 my phone." If it was a friend that may text I knew
4 who they were, a lot of times I would respond back
5 or I would answer the phone. There was times he
6 would leave his phone there and just go out for the
7 day. Yes, we both answered each other's phone, we
8 still do to this day.

9 Q Were there any of those times Wayne was ever
10 involved in those communications with [REDACTED]

11 A Yes, there was.

12 Q Do you have any estimate how often that may
13 have happened?

14 A I say probably about 25 or 30 percent of the
15 time if Wayne was at home and the phone was there I
16 would grab it.

17 Q And that may be [REDACTED] on the other end?

18 A Exactly.

19 Q Whether a text or phone call?

20 A Exactly.

21 Q So, if someone was to pull records of calls
22 to and from your husband's phone, some of those,
23 the person actually using that phone at least a
24 chunk of the time might be you?

25 A Oh, yes.

1 Q Okay. Now --.

2 MR. FOX: One moment.

3 Q Now, you and Wayne were together, living as

4 husband and wife, living in Murrells Inlet New

5 Year's Eve, 2009-2010?

6 A Yes, sir, we were.

7 Q Okay. Tell me what you remember you did that

8 night.

9 A There was a New Year's party, my kids and my

10 whole family were invited over, we went over, I did

11 consume I know at least two drinks.

12 Q You say you were invited over. Where?

13 A To the Bellamy house.

14 Q Okay.

15 A I did consume some alcohol, I admit that. My

16 husband did also. We danced around, done stuff in

17 the back yard, shot guns off at midnight, pretty

18 much, you know, just spent the time together, had a

19 cookout, pretty much that is what we did that

20 night. We probably were there until probably about

21 1:00 o'clock.

22 Q Okay. What happened at 1:00 o'clock?

23 A We left and went home.

24 Q Who was we?

25 A My husband, I and my two children.

1 Q Anybody else?

2 A No, sir.

3 Q Anybody come by later?

4 A Not that I recall.

5 Q Anybody there other than your husband and
6 your two children in the morning when you woke up?

7 A Not that I recall.

8 Q Did you have any plans to do anything New
9 Year's day with [Minor] [REDACTED]?

10 A I do not recall that. It has been some time.
11 Normally that day I would text her and let her
12 know, "Let's do this," or call her mom and ask her
13 if she could come over. I mean, during Christmas
14 holidays we did do a lot of stuff together.

15 Q But did [Minor] [REDACTED] spend New Year's
16 Eve, 2009-2010 at your home?

17 A No, sir, she did not.

18 MR. FOX: Thank you. Please answer any
19 questions the State has.

20 THE COURT: Cross-examination.

21 MR. FOX: Your Honor, I'm sorry, I have one
22 further questions.

23 THE COURT: Yes, sir.

24 BY MR. FOX:

25 Q Miss Love, you have a record, don't you?

1 A Yes, sir, I do.

2 Q Okay. What is that for?

3 A I have a record from six years ago of assault
4 and battery high and aggravated nature.

5 MR. FOX: Okay, thank you.

6 CROSS EXAMINATION BY MS. LIVELY:

7 Q How did you know that [REDACTED] was
8 claiming that she was sexually assaulted by your
9 husband in the home while you were sleeping on New
10 Year's Eve, 2009?

11 A I found that out when the mother came to my
12 house threatening. I found that out on October
13 25th, 26th, the day, because they came to my house
14 the day before asking questions and about
15 cigarettes, the next day mom came to the house by
16 herself.

17 Q And you obviously immediately went to the
18 police to tell them, "There is no way possible
19 because I was there all night long and that child
20 never spent the night in my home," didn't you?

21 A She did not tell me the allegations. She
22 told me she was hunting for my husband.

23 Q Okay. Well, did you learn about this
24 information a month later?

25 A Once the information was provided he had

1 already went to the cops about it.

2 Q Okay. I'm asking about you, Miss Love,
3 you're here testifying on behalf of your husband.

4 Correct?

5 A Right.

6 Q Okay. At what point in time did you go to
7 the police to declare that you were an alibi
8 witness for your husband for that night because he
9 was with you all night and [REDACTED] was
10 never there?

11 A I never did, I did not know the whole
12 statement.

13 Q Okay, all right. So are you saying that now
14 during this trial is the first time you are hearing
15 that he sexually assaulted her at your home?

16 A No. I have heard it since the beginning of
17 the time he got locked up.

18 Q Okay.

19 A And at that point it had already been made a
20 point to the police.

21 Q Did it seem important to you?

22 A Yes. I have been steadily in touch with the
23 lawyers, back and forth with my witness, with
24 anybody that I felt was important, any questions I
25 had. I contacted the bondsmen, anything I had

1 questions about, you know, I would call lawyers and
2 ask them, several times I sat in with lawyers to
3 find out what my place could be.

4 Q I mean, you said you have got a conviction
5 for ABHAN, correct?

6 A Yes, ma'am, I do.

7 Q So you have been through the system?

8 A Yes, ma'am.

9 Q You know how it works?

10 A Yes, ma'am.

11 Q You know how important it is to provide any
12 piece of information that could be helpful to an
13 investigation especially if it might mean that your
14 husband could be acquitted of such a serious crime
15 of sexual assault, correct?

16 A Right, and I was told that the only
17 information I needed to provide was to the lawyer
18 who would be investigating that on my behalf, on my
19 husband's behalf.

20 Q Okay. All right. Now, you agree that you
21 were very close with the Bellamy family pretty
22 early on whenever your husband actually met Tony
23 Carter at Ducks Unlimited meetings, correct?

24 A Yes, ma'am.

25 Q Okay. And there were times whenever you all

1 would spend time together over at the Bellamy house
2 and there were times whenever they, [REDACTED] would
3 come over to your house and spend time with you?

4 A Yes, ma'am.

5 Q Okay. And during that time you stated that
6 [REDACTED] got to the point where she looked up to
7 you kind of like a big sister and confided in you
8 some things, right?

9 A Yes, ma'am.

10 Q All right. Now, you also mentioned that she
11 considered your husband a great friend. Is that
12 right?

13 A She looked at us as a brother and sister,
14 great friend, yes.

15 Q Okay. As a parent yourself of two children
16 and raising two children yourself was there no time
17 whatsoever when you became concerned about this
18 great friendship between your husband, a 30 year
19 old man, or 29 to 30, and this fourteen year old
20 girl?

21 A No, because pretty much the same relationship
22 they had, I had also.

23 Q Okay. And in that relationship you were
24 aware that they had actually gone fishing together
25 and they would be alone in the boat together during

1 this fishing tournament, is that fair?

2 A That is true.

3 Q And you had no concerns?

4 A No, I did not.

5 Q All right. And as time progressed and there

6 was a continued relationship between [REDACTED] and

7 your husband was there no time whenever you got any

8 indication that there might have been something

9 else going on between the two of them?

10 A Not at all.

11 Q Well, you have been sitting in here during

12 the whole trial and everybody's testimony, right?

13 A I have.

14 Q How did you feel about Ashley's description

15 of it being a boyfriend-girlfriend relationship?

16 A I pretty much laughed at the matter because

17 that was the first time I have ever seen Ashley

18 with my own eyes, so it kind of stunned me, okay,

19 "You said that you're such great friends with my

20 husband, you know my husband by being around, but I

21 have never seen you."

22 Q Now let's get to the situation where you're

23 talking about [REDACTED] Minor [REDACTED] telling you about the pills,

24 okay?

25 A Uh-huh (Affirmative).

1 Q All right. Now, I understand that you said
2 that she admitted to you she had taken some pills,
3 correct?

4 A Correct.

5 Q The Vicodin?

6 A Uh-huh (Affirmative).

7 Q And according to your testimony, you took
8 that confidential information and basically let
9 that trump any parental need you would have to
10 share this information with her parents. Is that a
11 fair assessment?

12 A I did and I do realize it was a mistake.

13 Q That was a mistake, okay. Well, let me ask
14 you this, then. In regard to her telling you that
15 she is on the roof and going to jump, your response
16 to that is that you sent text messages and tried to
17 talk her out of it. Right?

18 A Correct.

19 Q And then instead of calling the police or her
20 parents you contact her great friend and your
21 husband the defendant, didn't you?

22 A Yes, I did.

23 Q Because you knew out of anybody he had the
24 most influence over [REDACTED] at that time,
25 didn't you?

1 A I knew as a brotherly friend, contact, that
2 [REDACTED] normally did pay attention when he talked.

3 Q So, [REDACTED] pretty much did whatever it was
4 that Wayne felt she should do?

5 A Not necessarily that. If she was having
6 problems Wayne would say, you know, "You shouldn't
7 be handling things that way." A lot of times she
8 mainly argued, she is not very open to taking
9 suggestions, you have to pretty much put it in her
10 head, and I had already been pretty much telling
11 her over and over she shouldn't do it and
12 threatening to call mom but I fell since Wayne was
13 clear, in that area of where he worked and her
14 being in Surfside because that was the only place I
15 knew, she was somewhere in Surfside, that pretty
16 much, you know, he might could get to her faster if
17 he felt the need of it. I mean, of course, I
18 didn't know exactly where I was.

19 Q You have a child that is telling you she's
20 taking Vicodin pills and she's on the roof of a
21 house and you don't call the police?

22 A No, I did not because I know police do not
23 take it seriously a lot of times.

24 Q So you take that upon yourself, to make that
25 assumption?

1 A I have been through a lot myself.

2 Q Okay. And so the person that you called,
3 once again, is the defendant, your husband, to go
4 and talk to [REDACTED]

5 A To call her, yes.

6 Q Okay. And once again, when you have a
7 fourteen year old child who is threatening suicide,
8 at what point in time did you ever decide, "This
9 has gone too far, this is a good family, they pay
10 my husband to do work at their house, feed my
11 children, I need to go and talk to them and tell
12 them what is going on with their daughter"?

13 A My question to you --

14 Q No, you need to answer my question first,
15 then maybe we can talk.

16 A I'm sorry. I did not decide that. I didn't
17 think it had gotten that far because we had spoken
18 to [REDACTED] and she was calm and level headed, so
19 no, I did not think we needed to push it that far.

20 Q At what point in time have you brought up
21 this situation where she was going to jump from the
22 roof?

23 A I told her mother that the night that she
24 confronted me about the cigarette and the pills.

25 Q Okay. Now let's talk about September the

1 11th of 2010. You have now been in here long
2 enough to hear the allegations of whatever happened
3 on that particular day?

4 A Yes, ma'am, I have.

5 Q Okay. All right. And your husband had plans
6 to go with Mr. Carter and A. J. and originally

7  to the Dead Dog Saloon for their
8 celebration. Is that right?

9 A That is not correct.

10 Q That's not correct?

11 A That is not.

12 Q Okay, now you have information that you want
13 to share with all of us regarding the September
14 11th event as well?

15 A Yes, ma'am.

16 Q Well, please share, please tell us exactly
17 what it is you can enlighten us about now that
18 we're on the day of trial, Miss Love, what happened
19 on that day?

20 A On that day my children, my husband and
21 myself, we went to Dead Dog around 11:00, 12:00.
22 We were there with the firefighters and everybody.
23 We then left after there and went home with
24 friends, I do have friends that were there at my
25 house and watched the Carolina football game. My

1 husband does not miss a game. He did not leave the
2 house after that point, he was at home.

3 Q So, once again you come to us on the day of
4 trial to provide us with alibi information that you
5 were with your husband all day on September the
6 11th of 2010, today is April the 24th of 2012 and
7 this is the first time we're hearing that your
8 husband was with you all day and never with the
9 Bellamy family?

10 A The information was provided to the defense.

11 Q To the defense, to your lawyer?

12 A Yes, it was.

13 Q Okay, all right. Well, then, let me ask you
14 if I can make this assumption, okay? The text
15 messages between the telephone number that your
16 husband has and [REDACTED] on the day of
17 September 11th, 2010 --

18 A Uh-huh (Affirmative).

19 Q Over 140 messages, that was between you and
20 her?

21 A No, not all of them.

22 Q Okay. Between who?

23 A My husband and her.

24 Q Okay. And you have friends that you say that
25 you were with that day that were also with your

- 1 husband, that will say you were with him all day
2 long?
- 3 A Yes, ma'am, I do.
- 4 Q Okay. What are their names and telephone
5 numbers?
- 6 A She's actually sitting in the courtroom.
- 7 Q What is her name?
- 8 A Regina Frye.
- 9 Q Okay. All right, who else?
- 10 A It was her husband, I'm not sure if he was
11 there the whole time because he does work. And her
12 three children --
- 13 Q Okay.
- 14 A -- were at my house watching the football
15 game.
- 16 Q Okay. I'm talking about Dead Dog, how long
17 were you all at Dead Dog together?
- 18 A She did not go to Dead Dog with me, she met
19 me at the house, at the football game.
- 20 Q What time was the football game?
- 21 A The football game started 12:00 o'clock, we
22 were late getting there, we got there at 1:00
23 o'clock at my house.
- 24 Q At anytime at all on that date, September
25 11th, 2010, did your husband leave your sight?

1 A He did not leave.

2 Q He never left?

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

4 Q Okay. And once again this is the first time
5 we're hearing all this?

6 A Yes, ma'am.

7 Q Fair enough. That picture of your husband
8 where he is sitting on a duck, did you send that to
9 [REDACTED] on September 12th, 2010, or did he?

10 A I do not know about the picture. I did not
11 know about the picture at all.

12 Q Okay. Were you with your husband whenever he
13 asked for [REDACTED] to send him a nude picture of
14 herself?

15 A I was with him and I do not recall that
16 message being sent.

17 Q Now, whenever, about the September 11th,
18 2010, whenever you said you were with your husband,
19 at that point in time was your husband still doing
20 work for the Bellamys?

21 A He had done work off and on. I am not for
22 certain if he was still working over there because
23 he was actually doing air brushing, air brushing
24 the week and the weekend, that week of Labor Day,
25 so, yes, he could have went over there during the

1 week and done some work but he had done work for
2 them, just not that day.

3 Q Okay. As of that date had you all had any
4 type of falling out or problems with the Bellamys?

5 A None that I can recall.

6 MS. LIVELY: One moment.

7 Q Now, Miss Love, what I want to know, on
8 September 11th, because this is the first time I'm
9 hearing you, bear with me for a minute so I can get
10 an idea of your time line, you said that you all
11 were watching a football game about 12:00 or 1:00
12 o'clock on September 11th?

13 A Right.

14 Q Okay. And were you watching it at your
15 house?

16 A At my house.

17 Q At your house. Who was playing?

18 A It was the Carolina football game and if I
19 recall right it was the Bulldogs, Georgia Bulldogs.

20 Q And if the game started around noon, then do
21 you recall about what time it was when the game was
22 over?

23 A Around 4:30, 5:00 o'clock.

24 Q And at 4:30, 5:00 o'clock, once the game was
25 over what did you do?

1 A Our friends and us, we sat there and pretty
2 much we finished all the food and everything, we
3 hung out together.

4 Q At your house?

5 A At my house.

6 Q So is it your testimony that Wayne never left
7 your house and went to the Dead Dog Saloon that
8 night?

9 A He did not.

10 Q I just wanted to be sure.

11 A Yes.

12 Q I'm just curious, Miss Love, just one more
13 thing. Did you not think it was somewhat
14 inappropriate for your husband to be texting
15 [REDACTED] like over a hundred times in a day?

16 A I did not realize it was a hundred times in
17 day. I did realize they did text an awful lot
18 because he would sit there and text her in my
19 living room with me right there next to her. I did
20 not realize it was that many times but, no, I did
21 not think nothing of it. Like I said, I also was
22 doing the same thing with her, you know, off and on
23 texting her. I mean, we were close friends, I
24 mean, there is nothing wrong.

25 Q Did you ever provide [REDACTED] with any

1 alcohol?

2 A No, I did not.

3 Q Are you still on probation for that ABHAN?

4 A Yes, ma'am, I am.

5 Q You are? Assault and battery of a high and
6 aggravated nature?

7 A Yes, ma'am.

8 Q How many years probation?

9 A It's five. I have another year and a half.

10 Q Was there anyone else other than Regina that
11 you say was at your house, and the children, to
12 watch that South Carolina game?

13 A Her husband was at several football games, I
14 can't recall if he was at that actual one.

15 Q What is his name?

16 A His name is Trey and last name is Frye.

17 Q Okay.

18 MS. LIVELY: Thank you.

19 THE COURT: Redirect?

20 MR. FOX: Just a moment, Your Honor.

21 REDIRECT EXAMINATION BY MR. FOX:

22 Q Tabitha, did you ever see any adult give
23 alcohol to [REDACTED] in your presence, that you saw
24 yourself?

25 A I have seen alcohol in her hand, I did not

1 know who gave it to her.

2 Q Now, you're in your late twenties now?

3 A I am.

4 Q At some point you were a teenager, correct?

5 A Yes.

6 Q Either in your own life or with other
7 teenagers that you have known is it your experience
8 that teenagers don't always want to reveal things
9 to their parents?

10 A Oh, yes.

11 MS. LIVELY: Objection, Your Honor She's
12 asking for some type of supposition.

13 MR. FOX: I'm asking from her experience,
14 Your Honor, her own personal experience.

15 MS. LIVELY: Speculation.

16 MR. FOX: I will withdraw it.

17 BY MR. FOX:

18 Q Now, you testified [REDACTED] told you about
19 some difficulty she was having in school and with
20 her family and other things, correct?

21 A Correct.

22 Q Did that have any bearing on your decision
23 not to, specifically her difficulties with her
24 family, not to inform her parents about the things
25 she was revealing to you, the pill use, suicide, et

1 cetera?

2 A A lot. I feared for [REDACTED] I really did.

3 MR. FOX: Thank you. No further questions.

4 THE COURT: Recross?

5 MS. LIVELY: None, Your Honor.

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

8 (Witness excused).

9 THE COURT: Okay, let's adjourn. We're going
10 to adjourn for the day. Let's be back in the jury
11 room at 9:30 in the morning. Don't talk about the
12 case, continue to keep an open mind and we'll
13 resume the case tomorrow.

14 (The jury was excused from the courtroom).

15 THE COURT: Okay, anything before we recess
16 for the evening?

17 MR. FOX: No, Your Honor.

18 MS. LIVELY: Your Honor, the only thing I
19 would like to say, the State was never provided
20 with any alibi witness testimony. That is
21 obviously what the defense witness was called to do
22 and at this point in time I'm going to have my
23 investigators try to follow up some of this
24 information and I'm just going to ask the defense
25 to provide me with telephone numbers of who these

1 witnesses were who were supposedly there, that said
2 the defendant never left and did not go to the Dead
3 Dog Saloon, so my investigators can do a follow-up
4 investigation. That may delay me getting started
5 in the morning because I may now have to call
6 rebuttal witnesses. I'm going to ask for that and
7 bring that to the Court's attention.

8 MR. FOX: I'm sorry, I don't mean to talk
9 over Miss Lively. Just so we're clear, that
10 information did not come out in response to my
11 questions.

12 MS. LIVELY: She said she told the lawyers
13 and everybody else who was asking all along for a
14 year and a half.

15 MR. FOX: There was a previous lawyer
16 assigned to this case. I can only say I think from
17 my question it was clear why she was called,
18 whatever good that may do my case, and she did not
19 give that information in response to a question
20 from me, so I'm aware of my responsibility to
21 reveal alibi defense, I didn't do it because I did
22 not intend to present an alibi defense.

23 MS. LIVELY: I'm just asking for some leeway,
24 I'm going to need to have my investigators follow
25 up on it. Typically we're given time, place,

1 information according to the rule so that we can
2 follow up and determine the reliability of any type
3 of an alibi claim by the defense and I'm not
4 saying, I understand Mr. Fox is correct, Richard
5 Colvin did originally represent this defendant but
6 this case has been pending for such a long time,
7 the defendant was arraigned months ago, so that's
8 the reason why this is coming out of the clear blue
9 for me, so I would just like to have the
10 opportunity, I'm going to have my investigator talk
11 to Miss Frye and get information and talk to her
12 husband and follow up in regard to the alibi
13 information so that I can be prepared. I'm
14 obviously going to have to call rebuttal witnesses
15 in regard to this information that has been
16 provided to the State in the middle of trial. I
17 just want to give the trial judge a heads up.

18 THE COURT: I think what Mr. Fox is saying,
19 he didn't raise any alibi defense or elicit any
20 testimony, that came out on cross-examination.

21 MS. LIVELY: No, Your Honor, she testified
22 that on the September 11th information, he asked
23 her about September the 11th and she said he was
24 with her the whole day, that is what I'm talking
25 about, and also she said on the night of New Year's

1 Eve that [REDACTED] never came home with them.

2 MR. FOX: I would say that is not really
3 alibi, saying someone wasn't there. We already know
4 there is no question with regard to New Year's Eve
5 he was in his own home, that's not the question,
6 it's not really an alibi because the allegations
7 are it occurred in his own home, the testimony was
8 [REDACTED] wasn't there, it not really an alibi.

9 MS. LIVELY: If she's saying that he was with
10 her and not with the victim, the victim was not
11 there, that is splitting hairs but that pretty much
12 being an alibi, she was with, she was with the
13 defendant and the victim wasn't there.

14 MR. FOX: She was saying the defendant was
15 home, [REDACTED] not.

16 MS. LIVELY: Either way, especially with
17 regard to the September 11th claim by this witness,
18 the State is just going to probably need a little
19 bit of time to follow up.

20 THE COURT: Okay.

21 MS. LIVELY: If the Court will give me,
22 indulge me in that regard.

23 THE COURT: Sure.

24 MS. LIVELY: And maybe we can have the, it is
25 already 5:00, it is a little before 5:00 today,

1 maybe if we can have the jury come back at 10:00 in
2 the morning.

3 THE COURT: They're gone, I told them to come
4 back at 9:30.

5 MS. LIVELY: That's fine. If we can get
6 enough done without tonight, then we'll just do it.

7 THE COURT: Okay. Just let me know.

8 MS. LIVELY: Yes, sir, thank you.

9 THE COURT: Thank you, ma'am.

10 All right, see you back in the morning.

11 MR. FOX: Thank you, Your Honor.

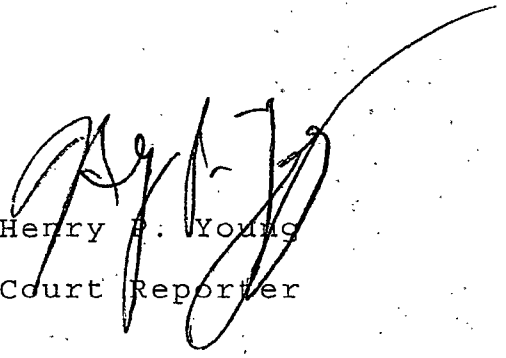
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Georgetown County, South Carolina, on the 23rd and 24th days of April, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 28, 2012



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
2011-GS-22-00432

COUNTY OF GEORGETOWN

STATE OF SOUTH CAROLINA,

-vs-

PRENTIS WAYNE LOVE,

Defendant.

April 23/25, 2012

B E F O R E:

HONORABLE D. GARRISON HILL

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

CANDICE A. LIVELY, Esquire
Attorney for the State

JONATHAN ERIC FOX, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

VOLUME II of II

1 (Reconvened at 10:04 a.m., April 25, 2012).

2 THE COURT: Okay. We had some delay getting
3 all the jurors assembled. We have everybody we
4 need, so anything before we bring the jury?

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

6 THE COURT: Okay, yes, ma'am?

7 MS. LIVELY: If you will allow me a moment.

8 THE COURT: Sure.

9 MS. LIVELY: I'm sorry, I had to get my
10 computer up here.

11 Your Honor, the State does have a couple
12 matters I want to address with the Court.

13 THE COURT: Okay.

14 MS. LIVELY: As you recall, late yesterday
15 afternoon the defense called witness Tabitha Love
16 to the stand, at which time she provided under
17 direct examination an alibi to the date of
18 September the 11th, 2010, for the defendant,
19 stating that he was, they had gone to the Dead Dog
20 earlier that day before the Carolina football game,
21 then they went home, watched the Carolina football
22 game all day, that he never left the home again.

23 Your Honor, I did attempt cross-examination
24 without having the opportunity to have my own
25 investigators follow up on this alibi which I was

1 never provided notice of and I will gladly provide
2 to the Court that document that shows first of all
3 this defendant was arraigned, which is standard
4 with our office, September 8th of 2011 and was
5 notified that the case was being called to trial.

6 Then, Your Honor, an acknowledgement of
7 discovery document was signed by defense attorney
8 Eric Fox on February 9th, 2012, and along with that
9 notice, at the bottom it says, "Please acknowledge
10 receipt of copies of the above documents at the
11 bottom of the place provided and return a signed
12 copy to this office. Also enclose and serve timely
13 a notice of mutual reciprocal discovery motion,"
14 which obviously as the Court knows would include
15 the Rule 5 request for any type of alibi, mental
16 issues with the defendant. That was not provided
17 to the State.

18 The State is also entitled to a fair trial in
19 this matter.. Under the circumstances, Your Honor,
20 whenever I cross-examined Tabitha Love regarding
21 her alibi I did not have benefit of knowing and
22 following up on this alibi information. At that
23 time I did ask the Court at the end of the day
24 yesterday if the State would be allowed to follow
25 up, talk to the witness that was in the courtroom

1 who Tabitha Love actually mentioned was also there
2 during the day, to prove or disprove the alibi.

3 Your Honor obviously told me that was my
4 right and allowed me to then leave and we did
5 follow up, Your Honor, until about 7:00 o'clock
6 last night. Myself, Investigator Pop and Steven
7 Brown with our Circuit, 15th Circuit investigators'
8 office did meet with Regina Frye did speak with
9 her. She provided a written statement which I have
10 now provided to the defense regarding the
11 information for the alibi.

12 Also, Your Honor, upon leaving the courthouse
13 myself I witnessed that Tabitha Love was
14 continuously on the phone. This was also witnessed
15 by Investigator Pop. It was her idea as well as
16 Steven Brown, my investigator, to pull the phone
17 record from the jail and at which time the phone
18 records between calls with this defendant and his
19 wife, it is clear from these records that this
20 whole matter was planned by the defendant and his
21 wife in regard to what she would say and how it
22 would be said.

23 Your Honor, I am asking the Court, since we
24 have not moved on from testimony, and as a remedy
25 for the State in regard to not being provided

1 proper notice, whether it was from this attorney or
2 the prior defense counsel, either way, that Tabitha
3 Love take the stand and I be allowed to continue to
4 cross-examine her regarding this new information
5 that I received and follow my investigation of this
6 alibi I was not provided notice of.

7 THE COURT: Okay. Thank you, ma'am.

8 MS. LIVELY: Thank you.

9 THE COURT: Mr. Fox?

10 MR. FOX: Yes, Your Honor. It is absolutely
11 true I did not provide any notice of alibi, I'm
12 aware of that requirement under the rules, no
13 question I received that request in getting
14 discovery from the Solicitor's office. The simple
15 reason I did not do that I did not believe that was
16 an issue.

17 I guess I have to address each of the three
18 instances a little bit. On the issue of New Year's
19 Eve, I didn't feel that was an alibi since Mr. Love
20 wasn't somewhere else with some other people. It
21 was a question, I may have been splitting hairs, it
22 wasn't my intention, but the testimony that I
23 believe will come out was that Miss Minor
24 [REDACTED] was not at the defendant's home, not that
25 he was off somewhere, he couldn't have done it, but

1 I guess it may be splitting hairs. I didn't see
2 that as an alibi issue.

3 With regard to the instance that allegedly
4 occurred on the boat, there was never an alibi
5 issue there. I don't want to preview what Mr. Love
6 is going to testify about because he hasn't
7 testified, I'm saying there was no alibi in any of
8 the incidents that occurred during the fishing
9 tournaments.

10 That leaves what we're talking about today,
11 the 9/11 incident. I think we have a difference of
12 opinion on how that information came out, I guess
13 we may have to refer to the record, I do not recall
14 asking Miss Love, as sure as I can be I did not ask
15 her about that issue about what she was doing or
16 where Wayne was that day. I know recollection is
17 that that was brought out in cross-examination.
18 There was no intent by me to stonewall or surprise
19 the Solicitor with that testimony and I guess, and
20 I don't doubt that Miss Lively remembers it
21 differently, and if I'm wrong I'm wrong but I think
22 the record reflects it another way. If it was
23 asked on direct examination it possibly makes it an
24 issue but if it was asked on cross-examination I
25 don't believe it is an issue. I didn't offer any

1 alibi testimony, is my position.

2 Now, again, if the record reflects
3 differently and I remember it incorrectly, I'm not
4 trying to deceive anybody. My recollection is that
5 information was elicited on cross-examination, so
6 it wasn't put in evidence, didn't need to be
7 provided by me, by the defense, I don't need to
8 provide notice of something I don't introduce in
9 evidence, just like, you know, if there is a
10 medical report or something that I don't intend to
11 introduce, if I don't intend to make it a part of
12 my case, if it comes out on cross-examination I
13 violated no rules by not providing that document.

14 That brings us to the jail calls. It is
15 standard, maybe not in every case but it is
16 certainly something that occurs to law enforcement
17 and the Solicitor in a great number of cases where
18 a defendant is incarcerated for more than a day to
19 go and see if there is any incriminating evidence
20 by pulling jail calls. This case is a year and a
21 half old. They certainly had knowledge, I mean,
22 I'm very sure Mr. Brown and the Sheriff's office,
23 Miss Lively has had cases where they have done
24 this, where they pulled jail calls. Not like it
25 wouldn't have occurred to them until yesterday, so

1 to me we don't even have to get to the issue, they
2 certainly weren't provided to me until literally
3 just this moment, although requested under Rule 5
4 and all discovery motions.

5 MS. LIVELY: Just so, I don't mean to
6 interrupt you but I do want to be clear, those jail
7 calls are from last night. No other jail calls
8 were pulled, so I would be clear, I got it this
9 morning, he got it within the time I could burn him
10 a disc.

11 MR. FOX: Okay.

12 MS. LIVELY: Okay.

13 MR. FOX: I wasn't aware of that. I don't
14 think we have to get to that issue. First, Your
15 Honor, the Court has to decide whether I violated;
16 intentionally or not, whether there is any
17 violation of the requirement to notify the State of
18 an alibi defense. My position is there wasn't and
19 we didn't present any evidence of that, of an
20 alibi. Therefore we don't even have to get to this
21 issue. If that is the case there is no right for
22 them to recall Tabitha Love. There is no reason to
23 get into these jail calls. If it is done, if in
24 fact the Court determines that we did and there is
25 a violation, then of course I would need time to...

1 listen to this before we can proceed this morning.
2 My position is there was no violation, we didn't
3 elicit any evidence about it, that was done on
4 cross-examination and therefore there is no
5 violation of Rule 5.

6 THE COURT: So, would you be seeking an
7 instruction on alibi?

8 MR. FOX: I am not. Of course, Your Honor,
9 if you feel the evidence presented is a factual
10 issue and that justifies a charge you are
11 certainly, that would be in your discretion, but we
12 did not, again, at least up to this point have not
13 introduced any evidence.

14 THE COURT: You won't ask for one, is that
15 what you're telling me, you wouldn't want me --

16 MR. FOX: Mr. Love has not testified yet. I
17 expect if he does he is going to say he was home on
18 September the 11th.

19 THE COURT: Doesn't that get back to the very
20 question Miss Lively is raising, that there was
21 going to be an alibi?

22 MR. FOX: Your Honor, I can say this.

23 THE COURT: Hold on a minute.

24 MR. FOX: I'm sorry.

25 THE COURT: You should have notified her

1 pursuant to the rule?

2 MR. FOX: This is how that happened, Your
3 Honor. I guess I have to get into some of my
4 conversations with Mr. Love. We can do this, we
5 can take testimony. One reason I didn't have Miss
6 Frye testify about that, about 9/11, or the wife,
7 ask the question about it, because my understanding
8 was Mr. Love actually had left later, that he had
9 been at Dead Dog earlier as you heard testimony
10 about, earlier in the day, he had gone to watch the
11 game, my understanding was he had left the home
12 later. That was incorrect. I had been told that
13 when this came up yesterday and Miss Love and Mr.
14 Love and myself discussed it he said, "No, I was
15 home," so that was my misunderstanding.

16 As I say, it wasn't deliberate, it may have
17 been poor on my part but I truly thought that was
18 not an issue because my understanding was Mr. Love
19 had in fact been back out of the house at some
20 point, didn't have a specific alibi, we were
21 talking about around 5:00 p.m., late afternoon on
22 September 11th was the key time and frankly, well,
23 with my understanding that it was just about the
24 football game, the football game would have been
25 over mid afternoon, 3:00, 3:30, I didn't think Miss

1 Love provided him with an alibi. If I was correct,
2 if he was off somewhere, somewhere off after that I
3 didn't think his wife could give an alibi because
4 the football game didn't even come past the time
5 that was at issue.

6 THE COURT: May I see the statement Miss Frye
7 gave?

8 MS. LIVELY: Absolutely. I do want to have
9 it made at a Court's exhibit, Your Honor.

10 THE COURT: Sure.

11 THE COURT: I'm going to take a recess, I
12 would like to listen to the recordings if you have
13 another copy of those.

14 MS. LIVELY: Yes, sir. Your Honor, because
15 Mr. Fox hasn't had a chance to listen to it and
16 before we get the jury and everything going, I kind
17 of debated on how to do this but I feel like in an
18 effort to make sure that the Court is completely
19 aware of everything, when you hear this other issue
20 I was going to bring up in regard to Tabitha Love,
21 she actually is instructing the defendant how he is
22 to testify in regard to what happened September
23 11th and tells him, "You better stick with it,
24 otherwise I'm going to get in trouble for perjury,"
25 so it's out there, and so that is going to be

1 another reason why I feel like I can recall this
2 witness and there are some pretty critical issues
3 but Mr. Fox has the recording, I'm more than happy
4 to provide you with my copy. We have it on the
5 computer downstairs.

6 THE COURT: How long does it take?

7 INVESTIGATOR POP: The entire recording is 14
8 minutes and 45 seconds.

9 MS. LIVELY: So, it is not overly long. I
10 actually marked seven minutes is where I was going
11 to go in regard to impeachment of Tabitha Love but
12 I will be glad to provide this to you. Do we want
13 to make this as a Court's exhibit as well?

14 (Regina Frye statement marked as Court
15 Exhibit Number 4).

16 (Jail phone recording marked as Court
17 Exhibit 5).

18 MS. LIVELY: Your Honor, we have a secure
19 call platform which actually documents the calls
20 and I'm going to make a copy of it and give it to
21 the Court as well just as guidance as to -- this is
22 just a call log, basically. It is what is on the
23 disc, Your Honor, that is the calls that were
24 pulled with this defendant's PIN number from the
25 jail, and if we need to, if we are going to have,

1 if the Court determines that it is something we can
2 address before the jury we're prepared to
3 authenticate it and have my investigator as well as
4 the jail explain how PIN numbers are assigned and
5 how we know it would be this defendant that we're
6 dealing with.

7 THE COURT: Okay.

8 MS. LIVELY: Okay.

9 THE COURT: All right, let's take a recess
10 while we review this and Mr. Fox will have a chance
11 to review it, too, during the recess.

12 MS. LIVELY: Yes, sir, thank you very much.

13 (Brief pause).

14 THE COURT: Okay, I had a chance to review
15 the CD with the recordings which is made Court's
16 Exhibit 5, as well as Court's Exhibit 4, the
17 statement by Miss Frye.

18 Does anybody wish to be heard further before
19 I rule on the State's request?

20 MR. FOX: I do inquire whether Your Honor has
21 checked the trial transcript with regard to how
22 this supposed alibi information was brought out,
23 whether by cross or direct examination. I do think
24 that is an important distinction as to how that
25 information was brought out. If it was

1 cross-examination, again our position is we didn't
2 introduce it, the State is stuck with the answer
3 they get, we're not into rebuttal issues. If in
4 fact it did come out on direct examination there is
5 still an argument not to introduce it but it is a
6 different analysis. However, we ask the Court
7 whether you have done that and if not would request
8 that you do so.

9 THE COURT: Well, I have not done that but I
10 frankly view it as a separate issue at this point.
11 I think the issue now is whether the State's sole
12 request as I understand it was whether they could
13 recall Miss Love to the stand.

14 Is that right?

15 MS. LIVELY: Your Honor --

16 THE COURT: If she could be recalled and
17 continue to be cross-examined.

18 MS. LIVELY: The thing is the State is
19 looking for a remedy for the alibi that came out,
20 that we were not provided notice of, and that
21 clearly was an alibi statement by the witness and
22 whether the defense had intended to ask the Court
23 to charge the jury that or not, it is in front of
24 the jury. It can't be, I mean, taken away once
25 it's out there, so she clearly stated he was with

1 her that holiday and that put the defendant
2 somewhere else than the crime and the time line
3 that we're looking at is, from what my witnesses
4 have testified to, is whenever the mother went to
5 work at 3:00, around 3:00 and then around 5:00
6 o'clock or so whenever the victim was alone at the
7 house, until her friend Ashley Jenkinson's mother
8 came and picked her up. So, obviously it is right
9 in the time line that she said after the Carolina
10 game which was at noon, "He never left the house,
11 he stayed with me."

12 So, that is where we're at, so what I asked
13 specifically on the record whenever I left last
14 night was based on this information it does meet
15 the terms of an alibi, the State wants to get
16 information regarding this and be allowed to follow
17 up. If I get that information, I'm not asking for
18 any kind of sanction, I'm not saying the defense
19 attorney knew or should have known, I'm not going
20 to go down that route, I'm saying as a remedy to
21 the State, since we haven't called any additional
22 witnesses and the defense hasn't, the defense is in
23 their case in chief right now, that I should be
24 allowed to continue to cross-examine Miss Love
25 based on the alibi information that she produced on

1 the stand without providing any notice. That is
2 all I'm saying. And the thing is, Your Honor, if I
3 had been given notice of the alibi obviously I
4 would have done exactly what I did last night and
5 follow up with Regina Frye, which you have a
6 statement from her, and I would have had benefit of
7 cross-examining Tabitha Love regarding that
8 statement.

9 MR. FOX: Judge, I think we're arguing
10 backward, though. Rule 5, and specifically in the
11 reciprocal discovery request, says the State
12 requests written notice of defendant's intention to
13 offer an alibi defense. I had no intention, I did
14 not offer an alibi defense, I'm under no obligation
15 to provide them, to guess what my witnesses might
16 say on cross-examination. I mean, I can't do that,
17 that is impossible, and I think it is an important
18 determination as to how that information came out.
19 If I didn't elicit it, if my witness didn't put it
20 out as part of my case I'm under no obligation to
21 provide any notice and the Solicitor is stuck with
22 the answer she gets on cross-examination, she can't
23 say, "Well, I didn't expect that answer and now I'm
24 going to go back and do these other things, we're
25 going to recall this witness and introduce other

1 testimony." So, I think it is an important
2 distinction as to how that came out. I'm under no
3 obligation to anticipate what might happen under
4 cross-examination, I can't do it.

5 MS. LIVELY: What we're dealing with here
6 today, we had the wife of the defendant who has
7 specifically testified as to time and place event
8 which we have been very clear about on the record
9 regarding access to the child and timing of the
10 event.

11 MR. FOX: In response to the State's
12 question.

13 MS. LIVELY: Your Honor --

14 THE COURT: Well, let's just, I will just,
15 Mr. Young can queue it up and I can look at it.

16 (Brief pause).

17 THE COURT: In reviewing the transcript it
18 appears Mr. Fox asked about the New Year's Eve time
19 frame and there was testimony about that, that Miss
20 Love was at the Bellamy house and probably stayed
21 there until 1:00 o'clock, when they left and went
22 home, and stated she was with her husband and two
23 children, and Mr. Fox asked, "Anybody there other
24 than your husband and your two children in the
25 morning when you woke up," and the answer was, "Not

1 that I recall."

2 And then later he asked about, "Did [REDACTED]
3 Bellamy spend New Year's Eve, 2009-2010, in your
4 home?" Answer, "No, she did not."

5 Then he asked about her conviction and then
6 cross-examination commences, so that is what the
7 record reveals.

8 MS. LIVELY: Your Honor, regarding September
9 11th, was there any questions from the defense
10 regarding the September 11th event?

11 THE COURT: Not that I can find.

12 MS. LIVELY: On direct? Nothing about the
13 Carolina game or anything?

14 THE COURT: No, I did not see anything. That
15 comes up much later during the cross-examination,
16 which is what, as I mentioned yesterday, I recalled
17 it coming, I didn't recall it coming up on direct
18 but certainly my memory isn't perfect but it
19 doesn't appear anything in the record that shows it
20 did but as I earlier stated, I believe the issue at
21 this point is whether Miss Love can be recalled for
22 cross-examination based on the evidence, and I'm
23 referring to Court's Exhibits 4 and 5 that the
24 State collected during the overnight recess, I
25 don't view that as having any link to a Rule 5

1 violation or the propriety of an alibi defense. It
2 seems to me the question really boils down to
3 whether or not the State can recall the witness to
4 delve into those newly discovered matters, but I'm
5 certainly willing to hear any arguments you all
6 wish to make in that regard.

7 MS. LIVELY: Yes, sir. First of all I just
8 want to tell the Court that I apologize for
9 misinterpreting when it came out. From whatever I
10 was listening and, you know, and being in the
11 middle of the heat of trial and everything, my
12 thing was I believed at some point in time she had
13 mentioned something about him staying and watching
14 the football game. That is whenever I started
15 trying to look up whatever time the game happened.
16 That might be because by the time I got up and
17 started to cross-examine her, like I said, I was
18 right in the thick of it, so under those
19 circumstances I just want to make sure I'm clear.
20 Like I said, we're just here trying to find out the
21 truth at this point. This is the point that I am
22 trying to make in regards to the problems they
23 have. The problem that I have right now is that
24 throughout the cross-examination, whenever that
25 newly discovered evidence came out and it is

1 clearly an alibi by the defense, the Court has
2 already ruled it is not a Rule 5 violation
3 regarding when it came out, under those
4 circumstances, with that newly discovered evidence
5 and with the fact it does rise to a level of an
6 alibi, clearly that is what it is. Whether it is,
7 whether the defense is going to ask for you to
8 charge it or not, the jury has already heard it.

9 At the end of my questioning of her I asked
10 the Court to allow me to do the investigation that
11 I would have done if this had been disclosed and if
12 the defense had knowledge of it, just like any
13 other type of alibi notice that would have been
14 given ten days ahead of time prior to the trial.
15 That is what I was asking the Court to do. Since
16 this defense witness is the one that provided this
17 information I am asking the Court to allow me to
18 impeach her based upon my follow-up investigation
19 from the alibi information that was disclosed with
20 or without the defense's knowledge at the time of
21 my cross-examination and if the Court is at this
22 point determining that that is not a remedy
23 available for the State, then we haven't moved on
24 to any other testimony and the defense still has
25 its case open, then what I will be seeking to do is

1 obviously through rebuttal addressing new
2 information that was brought up during the defense
3 case.

4 So, either way, what I plan on doing is I'm
5 going to go there, I'm trying to determine the best
6 way to handle it and I believe that because we have
7 someone who is still under oath, who was being
8 cross-examined, this information came out, I ask
9 the Court to allow me some leniency in retrieving
10 information regarding her statement, and also what
11 she's doing, she is perpetrating a fraud on the
12 Court at this point. We clearly have got someone
13 who planned this out and made these statements and
14 bringing this information out clearly knowing what
15 she is saying is false, so under those
16 circumstances that is the reason why I'm asking the
17 Court to allow me to impeach her under
18 cross-examination, knowing this information that I
19 have, especially because she doesn't have clean
20 hands in regard to what has occurred at this time.

21 THE COURT: Thank you.

22 Mr. Fox?

23 MR. FOX: The fact Miss Love gives testimony
24 that isn't complying with the Solicitor's version
25 of the facts doesn't make it perpetration of fraud

1 on the Court, otherwise we couldn't have trials.
2 If the jury comes back with a not guilty verdict
3 does that mean all the State's witnesses are going
4 to be perpetrating fraud on the court? That is
5 just a nonargument in my view. She has testified,
6 she is under oath, the jury can decide the weight
7 and value of that testimony.

8 Now, in terms of the remedy, Your Honor has
9 decided there is not a Rule 5 violation, you know,
10 the witness was finished and I don't know if
11 excused or not. The State had their full chance to
12 cross-examine. As they say, you're stuck with the
13 answer you get sometimes. I don't know that the
14 remedy is to allow them to recall her and
15 cross-examine her further. If rebuttal is
16 appropriate, then I would say that is the way to
17 address it, Your Honor.

18 THE COURT: All right. Well, pursuant to the
19 discretion I have under the rules of evidence I'm
20 going to allow her to be recalled if the State
21 wishes to recall her at this time or call her
22 later, that is up to them in terms of their trial
23 strategy choices but I would certainly allow her to
24 be re-examined at this time before we move on to
25 another witness if the State chooses to do that.

1 MR. FOX: Yes, sir.

2 MS. LIVELY: Yes, sir, Your Honor, that is
3 what the State would choose to do at this time.

4 THE COURT: Okay. We'll bring the jury in.

5 MR. FOX: Could I please go to the restroom
6 before we bring the jury out?

7 THE COURT: Sure.

8 MR. FOX: Your Honor, if I may, when the jury
9 comes out I assume the Solicitor is going to play
10 the CD from the jail in cross-examining Miss Love,
11 I would request the entire 15 minutes be played,
12 not just an excerpt. I think the jury needs to
13 see, if you take it in isolation it sounds one way,
14 when you hear the whole thing I think it takes on a
15 very different tone. That is my opinion, anyway,
16 but I think the jury is entitled to hear the whole
17 thing and have it in context. It is about, it's
18 less than a minute, Your Honor has heard it, it is
19 a very short segment of that entire disc that is an
20 issue but I think the jury needs to hear the entire
21 thing, I would make that request, Your Honor.

22 MS. LIVELY: I was just going to ask her
23 specific questions and give her an opportunity to
24 either admit or deny making the statement, to
25 impeach her, and if she denied it I was going to

1 play it. I was kind of going to use, if that was
2 her initial statement, was her testimony, because I
3 don't have a prior inconsistent, I was going to
4 follow along with the guidelines provided for prior
5 inconsistent statement, to give her an opportunity
6 to respond.

7 THE COURT: I think that would be the
8 appropriate way to do it.

9 MS. LIVELY: Yes, sir.

10 MR. FOX: Yes, Your Honor.

11 THE COURT: Okay, bring the jury on in,
12 please.

13 (The jury returned to the courtroom).

14 THE COURT: All right, ladies and gentlemen,
15 I apologize for the delay in getting started this
16 morning. We had a matter arise that we had to
17 spend some time resolving. Hopefully that will
18 streamline things as we go forward, so I know it is
19 puzzling and frustrating to sit back there not
20 knowing exactly what is going on but we appreciate
21 your patience.

22 All right, yes, ma'am, Miss Lively.

23 MS. LIVELY: Yes, sir, thank you, Your Honor.
24 As you recall, at the end of the close yesterday
25 afternoon we were cross-examining defense witness

1 Tabitha Love. The State asked the Court to allow
2 us to recall her as a witness and continue with our
3 cross-examination at this time.

4 THE COURT: Okay. Miss Love, come forward
5 and, ma'am, you are still under oath.

6 FURTHER CROSS EXAMINATION BY MS. LIVELY:

7 Q Miss Love, yesterday whenever we were talking
8 about the September 11th incident that has been
9 testified about for the past couple days you
10 provided me with some information regarding where
11 your husband was on that day. Do you recall that?

12 A Yes, ma'am, I do.

13 Q Okay. And that would be September the 11th
14 of 2010. Correct?

15 A Yes, ma'am.

16 Q All right. And your testimony, if I recall,
17 was that you all had gone to the Dead Dog sometime
18 earlier that morning and then went home and watched
19 the Carolina football game, Carolina versus
20 Georgia. Is that correct?

21 A That is correct.

22 Q All right. And that Carolina football game
23 was at 12:00 o'clock on September 11th, 2010, is
24 that correct?

25 A That's correct.

1 Q Then after that football game your testimony
2 to me was that you and your husband stayed at home
3 for the rest of the night. Right?

4 A Yes, ma'am.

5 Q Okay. Now, you remember, the Court has told
6 you you're under oath, right?

7 A Yes, ma'am, I do.

8 Q Now, is there anything about that testimony
9 that you wish to change right now?

10 A No, ma'am.

11 Q All right. You mentioned to me that a Regina
12 Frye was with you on that day as well. Is that
13 right?

14 A Yes, ma'am, as far as I can recall. I did
15 mention that, though.

16 Q Okay. I told you specifically tell me the
17 names of people who were there with you and you
18 said Regina Frye, her husband and their kids?

19 A I said that the husband might not have been
20 at that one because he does work. Most of the
21 games Regina was there, she might not have been
22 there at that one but as I recall she was there.

23 Q All right. Let's back up a minute, okay?

24 A Uh-huh.

25 Q So now you're saying she might not have been

1 there?

2 A As far as we can recall, my husband, I, even
3 asking her, she did recall being there when I spoke
4 to her because she initially told me she wanted to
5 be here because she was at my house that day.

6 Q You all talked about this yesterday, didn't
7 you?

8 A Before that time, before that time also.

9 Q You all looked up the football game on the
10 internet, didn't you, to see when the game was
11 being played, didn't you?

12 A I did not.

13 Q You did not?

14 A No, ma'am.

15 Q You just off the head remembered at 12:00
16 o'clock noon Carolina played Georgia on September
17 11, 2010?

18 A I do recall it but Regina did look it up.

19 Q And whenever you talked to Regina about it,
20 isn't it true in your statement yesterday, and we
21 can have the court reporter go back and look it up,
22 that Regina Frye was with you and your husband on
23 the date of September 11th, 2010, watching the
24 Carolina football game?

25 A Yes, ma'am, as far as my memory goes, yes,

1 ma'am.

2 Q So your memory is faltering from yesterday?

3 A No, ma'am. I remember her being there.

4 Q You remember her being there, okay. Let's
5 stick with what we remember, okay?

6 A Okay.

7 Q Thank you. Now let's talk about some
8 conversations that you had last night.

9 A Okay.

10 Q Now, last night you had some conversations
11 with the defendant your husband, is that correct?

12 A Yes, ma'am, I did.

13 Q Okay. And those phone calls were made to the
14 Georgetown Detention Center, is that right?

15 A From there, yes, ma'am.

16 Q Okay. And in regard to those calls between
17 yourself and your husband you discussed your
18 testimony, did you not?

19 A I told him that I told the truth during the
20 trial.

21 Q Well, thank you, I appreciate that but I'm
22 just asking you if you discussed your exact
23 testimony?

24 A Yes, ma'am.

25 Q And in your exact testimony isn't it true

1 that you told him, "No, you did not go back to the
2 Dead Dog Saloon on September the 11th," whenever he
3 told you he thought he had?

4 A He asked me, "Did I," and I said, "No, you
5 didn't," because I did not remember and I just
6 clarified, "No, you didn't."

7 Q Okay. And clearly in your response to him
8 you said, "If you say you went, then I'm going to
9 jail for perjury." Didn't you say that?

10 A I'm not sure if those were the exact words
11 but I told him to say what he believed, I did not
12 tell him to lie, I told him to, "Say what you
13 believe," and I said, "But if you do change it they
14 will get me for perjury."

15 Q Well, why are you scared of perjury? Do you
16 know what perjury is?

17 A Yes, for lying under oath. The reason I'm
18 scared of that, because after yesterday afternoon
19 you all scared me half to death following me to my
20 house and stuff like that. That is what scared me,
21 I have been shaken up ever since, I didn't know
22 what was going on.

23 Q All right. Well, let's clear that up, we
24 don't want the jury to be confused. Isn't it true
25 that when you provided information to us that

1 Regina Frye was going to also be a witness
2 regarding the issue of what you're claiming is an
3 alibi for your husband, that I then asked to be
4 able to speak with Miss Frye?

5 A Yes, you did.

6 Q Okay. And in speaking with Miss Frye, in
7 receiving information did you not provide a
8 statement to the defense attorney regarding her
9 statement to us?

10 A This morning.

11 Q Okay. And this was after you had all these
12 conversations with your husband last night, right?

13 A Yes, it was.

14 Q Okay. So, this is before you even knew
15 exactly what Regina was going to come back and say
16 today, is that right?

17 A No, but it was after I spoke to Regina a
18 short period of time last night.

19 Q Were you ever threatened by anybody from my
20 office?

21 A No, not from your office.

22 Q Okay. Whenever somebody from my office went
23 with Regina it was to pick up her clothes from her
24 home, from your place where she was staying because
25 she didn't want to stay with you, is that correct?

1 A That is correct.

2 Q So she came back and actually stayed here in
3 Georgetown simply waiting for today, is that
4 correct?

5 A That's correct.

6 Q What scared you, you knew that everything you
7 had been saying was getting ready to blow full wide
8 open in front of this jury, is that not correct?

9 A No. That didn't scare me.

10 Q Is there any part, I'm going to ask you one
11 more time, in your testimony that you want to
12 change?

13 A No, ma'am.

14 Q So you're still standing by the fact that
15 Wayne was home with you all day on September the
16 11th?

17 A Yes, ma'am.

18 Q And you love your husband, right?

19 A Yes. We have our problems but, yes, I love
20 him.

21 Q And clearly you talked to him for no less
22 than fourteen minutes off and on last night about
23 your testimony and his testimony, what your
24 testimony had been and what his testimony was going
25 to be today?

1 A It was not me saying what he needed to say, I
2 told him to say what he believed in. I did tell
3 him, you know, "No, you didn't go to Dead Dog," but
4 I told him to stay calm, I told him, you know, he
5 was with me, just to keep going, you know, don't
6 give up, but it was never exactly saying for him
7 not to say certain things or get on the stand and
8 lie or anything like that.

9 Q Because if he gets up there and says anything
10 different than you, you didn't say, "They're going
11 to know I'm confused," "They're going to get me for
12 perjury," isn't that right?

13 A Yes, because that's what had been brought up
14 to me, not by you all, but yes.

15 Q I didn't threaten you with perjury, did I?

16 A No.

17 MS. LIVELY: One moment.

18 Q And once again in regard to the, you stating
19 that your husband was home with you all day on
20 9/11, didn't you have Regina come and spend the
21 night with you the night before you were going to
22 testify and discuss what your testimony was going
23 to be?

24 A She did spend the night with me, she needed a
25 place to stay with her coming down from Columbia.

1 We did not discuss my actual testimony. We did go,
2 she wanted to see what the file had in it because
3 she had not seen anything, she did go over the file
4 with me, she picked out stuff that stood out to
5 her, took notes, she also took notes yesterday. It
6 was not as setting up a testimony.

7 Q She was just practicing?

8 A I would guess so.

9 Q Okay, thank you.

10 MS. LIVELY: One moment, Your Honor.

11 Q I just want to be clear on something before I
12 stop questioning you right now, okay?

13 A Uh-huh (Affirmative).

14 Q The exact words regarding testimony of
15 September the 11th, 2010, your husband was asking
16 you, "Didn't I go back to Dead Dog with Tony and A.
17 J.," and you said, "No, you did not. If you say
18 you went, then I'm going to jail for perjury." Are
19 those the words that you used?

20 A That is the words that I recall but I did not
21 say right after that fact but yes, those words were
22 in that area.

23 MS. LIVELY: Thank you.

24 THE COURT: Mr. Fox.

25 REDIRECT EXAMINATION BY MR. FOX:

1 Q Tabitha, why did Regina Frye need to stay
2 with you?

3 A She had nowhere else to stay.

4 Q Where is she from?

5 A Columbia.

6 Q Is she a friend of yours?

7 A We have been friends for a long time.

8 Q Okay. Since I have been representing your
9 husband have you been a part of some of the
10 discussions in preparation for this trial?

11 A Yes, I have.

12 Q Have I spoke to you about your recollection
13 of different events?

14 A Somewhat.

15 Q In the course of those discussions did Regina
16 Frye's name ever come up?

17 A Yes.

18 Q What is your understanding for why she came
19 down here?

20 A To be a witness on our side.

21 Q Is that because of conversations I had with
22 her?

23 A You did have conversations with Regina
24 yourself.

25 Q And from your own knowledge was it my

1 intention once she got here and I spoke to her
2 further, was it your understanding whether she was
3 actually going to be a defense witness or not?

4 A She was not going to be.

5 MS. LIVELY: I object to leading, Your Honor.

6 MR. FOX: Okay.

7 Q So, where has she been during the trial of
8 this case?

9 A Right beside me.

10 Q Okay. So did she come down to Georgetown at
11 my request or your request?

12 A At both.

13 Q Now, have you had the opportunity this
14 morning to listen to a recording of your call to
15 your husband last night, from your husband last
16 night?

17 A I did.

18 Q Have you had a chance to listen to the whole
19 thing?

20 A Yes, sir, I did.

21 Q Okay. And did you recognize the voices on
22 that recording?

23 A Yes, I did.

24 Q And who was on that recording?

25 A My husband and myself.

1 Q Okay. I'm going to show you what is marked
2 for identification a defense exhibit. Tell me if
3 you recognize that?

4 A I do.

5 Q And what is that?

6 A That's the recording of our conversation last
7 night.

8 Q And is this the one that we listened to this
9 morning?

10 A That is somewhat.

11 MR. FOX: At this time I would like to
12 publish this recording to the jury.

13 MS. LIVELY: Your Honor, I'm going to object
14 because there are details on there that could be
15 problematic if heard by the jury. As Your Honor
16 knows, you actually listened to it yourself.

17 THE COURT: All right, let me ask you all to
18 come up here real quick.

19 (Unrecorded bench conference).

20 THE COURT: Okay, ladies and gentlemen, we'll
21 take a brief recess while we consider this issue.
22 Don't talk about the case. Continue to keep an
23 open mind.

24 (The jury was excused from the courtroom).

25 THE COURT: All right, the question is --

1 MS. LIVELY: Yes, sir.

2 THE COURT: -- the admissibility of the
3 recorded conversation? I think the State's concern
4 and it is one I shared, there were statements made
5 on the recording that referenced plea negotiations
6 or plea offers and while we were at the bench
7 conference the question became the admissibility of
8 Mr. Love's prior statement and so I will be glad to
9 hear either side on that issue.

10 MR. FOX: Since I'm the one seeking to admit
11 it I will speak first. There are very short
12 portions, it's about a seventeen minute tape, there
13 is a short portion where there is a plea
14 discussion. We redact statements all the time,
15 whether it is a written statement or an audio
16 statement, transcript. That easily can be
17 identified, we can stop it and go past that. It is
18 probably a fifteen or twenty second snippet out of
19 the whole thing, easily addressed.

20 In terms of the admissibility, we can
21 authenticate it, if I have to I can get the
22 investigator that pulled it off. I think the
23 witness authenticated it was her voice on there,
24 she can say it contains the entire conversation,
25 she is familiar with the conversation from being a

1 participant and in listening to it again this
2 morning, I think we can authenticate it, I think it
3 is relevant to show the whole picture. She's been
4 asked about this conversation, about her statements
5 regarding perjury and I think the jury is entitled
6 and we're entitled to present the entire picture of
7 that conversation, have that testimony put in
8 context, so I think it is clearly admissible and we
9 can easily address the question of redacting that
10 small portion is concerned.

11 THE COURT: I just don't understand, are you
12 offering it to show a consistent statement she
13 made, or inconsistent statement?

14 MR. FOX: No, I'm just offering it as to put
15 in context what she has been asked about. The
16 Solicitor has asked her about this recording, I
17 guess it constitutes a statement, in
18 cross-examination the State has inquired about that
19 and I'm simply trying to present the context of the
20 whole picture. The information is there, it has
21 already been asked about, I'm simply trying to --

22 THE COURT: Yes, Miss Lively?

23 MS. LIVELY: We addressed this before at the
24 start of this particular witness, as to how I was
25 going to handle it in regard to impeachment of the

1 witness. We're trying at this point to, or what
2 Mr. Fox is proposing to do is actually bring in
3 extrensic evidence on a witness regarding a
4 statement that now she's admitting to and is
5 consistent with what she said on the recording, so
6 the recording itself is extrensic evidence of
7 everything that was said. I don't see how that
8 comes in because it is a collateral issue regarding
9 this particular witness. It is not a defendant's
10 statement at this point in regard to this
11 particular witness.

12 If the defendant were to get on the stand and
13 there was issues regarding a prior statement by a
14 party opponent defendant then we might have to, you
15 know, get back into this issue again but, Your
16 Honor, in regard to what I questioned her about,
17 she's clearly responded. I was given the
18 opportunity to impeach her on it, what she said was
19 in response, then to put the tape in, and he's on
20 recross at this point, he is putting in a recording
21 under that limited scope of recross regarding what
22 I questioned her on and as I stated before, she's
23 had opportunity to respond, she explained her
24 statement and as a witness that would be extrensic
25 evidence and it shouldn't come in.

1 THE COURT: Okay. Well, under Rule 613(B),
2 assuming that the theory of admissibility by the
3 defense is that it was some kind of inconsistent
4 prior statement, she's admitted to making the
5 statement, so extrinsic evidence of the
6 conversation on the phone to her husband at the
7 jail would be inadmissible under 613(B). There is
8 no way under Rule 801 it would come in, that I'm
9 aware of, and under 801(D) there are only four ways
10 a prior statement of a witness, not a party but a
11 witness can come in and I don't see the foundation
12 being laid for any of the four, so I would sustain
13 the objection to the playing of the conversation
14 that includes statements of this witness.

15 MR. FOX: Well, Your Honor, just to put on
16 the record my argument under 801(D), statements
17 which are not hearsay would be (D)(1)(B), this
18 would be evidence regarding a statement, a prior
19 statement consistent with declarant's testimony
20 offered to rebutt an expressed or implied charge
21 against the declarant. Which is exactly what we
22 have, that she has committed perjury in her
23 testimony.

24 There were questions on cross-examination
25 yesterday about how this is the first time the

1 story has ever been told, the testimony has ever
2 been given, so it would be offered for that reason,
3 to rebutt it, to reply to the charge of recent
4 fabrication.

5 THE COURT: How does that meet the foundation
6 that requires prior statement of the events, that
7 fabrication arose?

8 MR. FOX: It was made last night. I think
9 the charge was made today, based on questions by
10 the State, that the implication of the witness'
11 recent fabrication has been renewed today.

12 THE COURT: So, if you're asking for it to be
13 admitted under that rule, what is the conversation
14 last night consistent with?

15 MR. FOX: Well, it's consistent with her
16 testimony yesterday and today.

17 THE COURT: Okay. So --

18 MR. FOX: And to rebutt a charge that she has
19 fabricated her testimony.

20 THE COURT: So when did the motive of
21 fabricating arise?

22 MR. FOX: Well, the implication is it arose
23 when she testified both yesterday and this morning.

24 THE COURT: How would her motive be different
25 today than it was yesterday? Isn't that the key

1 question?

2 MR. FOX: Well, I don't know there would be
3 any difference but the charge, the implication is
4 the same again today, that was clearly the tone and
5 direction of the questioning from the prosecutor in
6 cross-examination, that Miss Love has come to court
7 both yesterday and today because it carried over,
8 but that she has lied and tried to get others to
9 change their testimony and that that is a recent
10 concoction on her part.

11 THE COURT: Of course the witness' statement
12 normally can be corroborated by proof of a prior
13 statement consistent with the witness' testimony,
14 however 801(D)(1)(B) permits and grants nonhearsay
15 status to prior consistent statements that are
16 offered to rebutt expressed or implied charge
17 against the witness of recent fabrication or
18 improper influence or motive. In order for the
19 prior consistent statement to be admissible
20 pursuant to this rule the statement -- well the
21 following elements have to be present. First, the
22 declarant has to testify and be subject to
23 cross-examination, which obviously Miss Love is.

24 Second, the opposing party, here the State,
25 must explicitly accuse Miss Love of recently

1 fabricating the statement. Here the State is not
2 accusing her of fabricating the statement she gave
3 last night, they are implicitely perhaps accusing
4 her of fabricating her testimony yesterday, so that
5 element has not been met.

6 The third, the statement must be consistent
7 with declarant's testimony. I suppose there were
8 parts of the conversation recorded last night that
9 the defense may argue to be consistent with her
10 testimony this morning and yesterday, so that
11 element is met.

12 And fourth, the statement must have been made
13 prior to the alleged fabrication or prior to the
14 existence of the alleged improper influence or
15 both. First of all the alleged fabrication was
16 testimony yesterday. The statement made last night
17 obviously occurred after the alleged fabrication.

18 In addition, the statement did not occur
19 before the existence of the alleged improper
20 influence or motive arose. The improper influence
21 or motive would be to falsify testimony to aid her
22 husband, and that motive is the same yesterday as
23 it was last week or last month, as it is today, so
24 the recorded conversations or statements of Mrs.
25 Love made last night would not be admissible under

1 rule 801(D)(1)(B).

2 Okay, anything else before we bring the jury
3 back in?

4 MS. LIVELY: Nothing from the State, Your
5 Honor.

6 MR. FOX: No, Your Honor.

7 THE COURT: All right, thank you.

8 (The jury returned to the courtroom).

9 THE COURT: Okay, yes, sir, Mr. Fox, you may
10 continue.

11 MR. FOX: Thank you, Your Honor.

12 BY MR. FOX:

13 Q Miss Love, with regard to Regina Frye, did
14 you ever suggest to her that she shouldn't talk to
15 the police or the Solicitor's investigators?

16 A No, I did not.

17 Q Did you ever do anything to interfere with
18 her talking to the police or the Solicitor's
19 investigator?

20 A No, I did not.

21 Q Did you ever tell Regina Frye what she needed
22 to say if she were called as a witness?

23 A No, I did not.

24 MR. FOX: Thank you. Please answer any
25 further questions from the Solicitor.

1 MS. LIVELY: None, Your Honor. Thank you.

2 THE COURT: Okay. Thank you.

3 (Witness excused).

4 THE COURT: Okay, you may call your next
5 witness.

6 MR. FOX: Thank you, Your Honor. The defense
7 calls Prentis Wayne Love.

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1 PRENTIS WAYNE LOVE, after after being first duly
2 sworn, testified as follows:

3 THE CLERK: Thank you. Please be seated.
4 State your name.

5 THE WITNESS: Prentis Wayne Love.

6 DIRECT EXAMINATION BY MR. FOX:

7 Q Mr. Love, where do you live?

8 A In Murrells Inlet.

9 Q Get closer to that microphone.

10 A Yes, sir.

11 Q Where do you presently live?

12 A 5098 Highway 17.

13 Q How long have you lived in the Murrells Inlet
14 area?

15 A Four years.

16 Q Did you live somewhere previous to where you
17 live now?

18 A Yes, sir.

19 Q And where was that?

20 A [REDACTED], Murrells Inlet.

21 Q And is that anywhere near Hyatt Street or
22 Hyatt Avenue in Murrells Inlet?

23 A Yes, sir, it is.

24 Q Approximately how far?

25 A A mile and a half, two miles, depending on

1 which route you take.

2 Q So, there is more than one way to get from

3 your old house to that house on Hyatt?

4 A Correct.

5 Q And were you living in that house near Hyatt

6 Avenue in 2009, 2010?

7 A Yes.

8 Q Who did you live there with?

9 A My wife and two kids.

10 Q Did you, do you know the Bellamy family?

11 A Yes, I do.

12 Q Tell me how you came to know the Bellamy

13 family.

14 A Well, to start with I was working at

15 Shellcrackers doing weigh in for Harris Willard, I

16 met Tony Carter, the father, as I was working there

17 with Ducks Unlimited and met his wife or fiancée and

18 his daughter.

19 Q And that would be [REDACTED]

20 A [REDACTED] yes, sir.

21 Q And when was that, roughly?

22 A 2008, 2009.

23 Q Describe how that relationship developed or

24 what was the nature of that relationship as time

25 went on.

1 A It started out as acquaintance, we talked
2 every now and then when we saw each other at
3 Shellcrackers on Wednesday nights for the meetings.
4 Then it went a lot farther, I opened up to Tony and
5 it was more like a father-son relationship that we
6 had, I opened up to him because I didn't really
7 have a father figure growing up and everything that
8 he was doing as far as the attention and the
9 guidance that he was giving me was given like a
10 father figure, so I took to Tony very close.

11 Q What about with the rest of the Bellamy
12 family?

13 A Miss Bellamy, the mother, I didn't really
14 discuss much with. I talked to her when I was
15 there with, you know, the wife, the kids, I don't
16 know much about her. Brittany, the daughter, Tony
17 introduced us and I came to be like a big brother
18 to her.

19 Q What does that mean to you, you were like a
20 big brother to her?

21 A She could confide in me, she could ask me for
22 anything and I would help her in any way that I
23 could. I just, a big brother role to me is someone
24 that is going to be there for her or for them and
25 do whatever they needed as a brother.

1 Q Can you give any specific examples of that
2 and what that might entail?

3 A One, one I recall is she would text, she
4 would text my wife and she would text me about
5 taking pills and being on a roof, and it hurt a lot
6 to know she was doing that. I asked her why, what
7 was the reason, and the only thing she could keep
8 telling me was that all the time she was taking the
9 pills or doing stupid stuff like that is because of
10 the family fighting and the argument.

11 Q And then what is your response when you get
12 that kind of message or communication, what is your
13 response to that?

14 A I told her she needed to get down, it wasn't
15 worth it.

16 Q Anything more than that?

17 A No.

18 Q Did you find out what happened to her?

19 A I never -- as far as I know she got off the
20 roof, she quit taking pills.

21 Q Did you do anything to follow up when you got
22 that information that she was troubled, she is
23 doing things that are dangerous for a thirteen
24 year old? What did you do to follow up with that?

25 A I didn't really follow up to it. I would ask

1 her how she's doing, is she okay. Other than that
2 I really didn't pursue it, I let it go in one ear
3 and out the other.

4 Q Was that something that, that kind of
5 situation with someone you knew, was that something
6 that was new to you, that kind of situation?

7 A Yes.

8 Q You indicated that [REDACTED] would text you?

9 A Correct.

10 Q Tell us how that would happen.

11 A She would text numerous of times. She would
12 text me while she was at school, she would text me
13 after school. She just, like I said, I was that
14 brotherly figure to her, or big brother, so she
15 would always text, see how I was doing, how the
16 kids were doing, how my wife was doing, just to
17 have, you know, contact with her brother.

18 Q Would you ever initiate contact, would you
19 ever text her first?

20 A There was times that I would text her to see
21 how she was doing or if Tony was around because I
22 would call and he wouldn't answer his phone or
23 something like that.

24 Q Do you have any idea how often you would have
25 text or communication with [REDACTED] on average, say

1 in a week?

2 A In a week? It varied. It all depended on
3 what was going on with her, depending on when I
4 would get a text from her.

5 Q So there might be gaps of time?

6 A Most definitely. She could text me one week
7 three or four times a day for three or four days
8 straight, then I might not hear from her for a
9 week, week and a half unless I'm over, physically
10 over at their house with Tony, Shannon and them and
11 she will mention something to me then.

12 Q Now, as you got to know the Bellamy family
13 better did your families do things together?

14 A Yes, sir.

15 Q Describe that.

16 A We would have cookouts, parties, go out to
17 eat. It was like a big family get-together every
18 time. My kids looked up to Tony and Shannon and

19 [Minor] My daughter loved [Minor]

20 Q Did [Minor] do things with your family?

21 A Oh, yes, she would come over and cook out, do
22 cookies, of course, play with my daughter, every
23 weekend my daughter would go, "Can [Minor] come
24 over and play?"

25 Q How old is your daughter, was she at that

1 time?

2 A She was six.

3 Q Talking specifically around basically through
4 the year 2010, so two years ago.

5 A Okay.

6 Q Your daughter was six then?

7 A Yes, sir.

8 Q And how old was [Minor] then?

9 A Thirteen, fourteen..

10 Q When [Minor] would come over to your house
11 were you always around?

12 A No, sir.

13 Q Now, I heard about these fishing tournaments.

14 A Correct.

15 Q Tell me what you remember about the fishing
16 tournaments.

17 A I worked for J. Allen Landscaping and also
18 did air brushing, so it was hard for me to do the
19 tournaments sometimes but there would be times that
20 I would go out fishing for the tournament, I love
21 to fish, I mean, something that runs in my family.

22 Sometimes [Minor] would go with Tony if Shannon
23 was working or she would be in the boat with me.

24 Q How did that work, why would she sometimes be
25 with you?

1 A She was with me because either Tony had
2 Shannon in the boat with him or A. J. his son or
3 someone else was riding along with him.

4 Q So, would her parents know if she went off in
5 the boat fishing with you?

6 A Yes, they would.

7 Q Now, again, during this period of 2010, two
8 years ago, the best you remember how often were
9 those tournaments?

10 A Every week.

11 Q During warm weather, basically?

12 A From daylight savings, from the start of
13 daylight savings, to four months after.

14 Q Okay. So, every week, so four times a month,
15 maybe 15 or so tournaments?

16 A 15, 20.

17 Q Okay. As best you can remember how many of
18 those do you think you participated in?

19 A Two, maybe three tops.

20 Q How many times did [REDACTED] go with you?

21 A That I can recall, I know of two.

22 Q And would it just be the two of you?

23 A Correct.

24 Q What kind of boat do you have?

25 A I had a fourteen foot flat bottom Jon boat

1 with three seats in it, which the front of it
2 wasn't a seat until we made it into a platform and
3 it made it a two seat boat.

4 Q Is it like benches across the width of the
5 boat?

6 A Yes, sir. In the back is the bench seat and
7 it had a pedestal seat in it so I could rotate
8 while I'm driving, there was no room to sit
9 anywhere else in the back because of the big seat.
10 Up front was the pedestal we put on the deck of the
11 boat, so the only thing left was the center and
12 that is where the live well and the tackle and
13 everything was there, so there was really no room
14 to sit right there in the center seat, so you
15 either sit in the front of the boat or the back of
16 the boat.

17 Q And just for people that aren't familiar with
18 that, when we say fourteen foot, how wide is that
19 boat?

20 A Two and a half, three foot tops.

21 Q All right. So, narrow and long?

22 A Yes, sir.

23 Q Now, during the times that [REDACTED] fished
24 with you where would you go?

25 A We would pull out of Waca Wache Marina, which

1 is where we started the tournament, we would go
2 into the marina, fish there, or we would go to a
3 couple little creeks that were close by because at
4 the time I had just bought the boat and the motor
5 was still not running properly so I could not run
6 five or six miles up river to fish or anything like
7 that so I always stayed right around the marina.

8 Q Could you go back, though, in any of those
9 areas, some of these winding creeks we heard about?

10 A Yes, sir, I could.

11 Q And could you get, because of the nature of
12 the vegetation and everything, could you get out of
13 sight of other boats?

14 A Yes, sir.

15 Q Could other boats do the same?

16 A Yes, they could.

17 Q Was that unusual, for boats, in looking for
18 fish in a tournament, to get off the main channel
19 and go back into the creeks?

20 A Yes, sir.

21 Q It was unusual or not unusual?

22 A It was not unusual.

23 Q Okay. Did anything happen between you and
24 [REDACTED] during any of these fishing tournaments
25 when she was on your boat?

1 A No, sir.

2 Q Did you do anything to 

3 A No, sir.

4 Q Did you kiss her?

5 A No, sir.

6 Q Did you hug her?

7 A No, sir.

8 Q Did you fondle her breasts?

9 A No, sir.

10 Q Did you try to put your hand inside her
11 pants?

12 A No, sir.

13 Q Did you ask her to do any of those things?

14 A No, sir.

15 Q Did you talk to her about anything sexual?

16 A No, sir.

17 Q Did you talk about movies or pictures or
18 things you had seen on the internet of a sexual
19 nature?

20 A The only thing that was brought to me from
21 her was nude pictures.

22 Q I'm sorry, go ahead.

23 A She texted me and asked me -- actually to
24 begin with she started with my wife, she texted my
25 wife and asked her what she should do, that her

1 boyfriend at the time asked for a nude picture.
2 She texted my wife, my wife said no, my wife told
3 me and I asked what's going on and she told me that
4 her boyfriend had asked for a nude picture and she
5 asked me what did I think, I told her, "No, you
6 shouldn't do it."
7 Q Did you ever ask her to send you a nude
8 picture of herself?
9 A No, I did not.
10 Q Did she ever send you a nude picture of
11 herself?
12 A No, sir, she did not.
13 Q Did you ever send her any sexy pictures of
14 yourself?
15 A No, I did not.
16 Q Speaking of pictures, what has been marked as
17 State's Exhibit 11, which were pulled off
18 Brittany's phone, there are some pictures there.
19 Do you see any that have you in them?
20 A The very first one.
21 Q All right, tell me what you see there.
22 A That is a duck's head or something.
23 Q Do you know when that picture was made?
24 A No.
25 Q Is it a real duck?

1 A No.

2 Q All right.

3 A It's like a mascot or something.

4 Q Do you know how that picture got on
5 Brittany's phone?

6 A No, sir.

7 Q Anything about that picture that embarrasses
8 you?

9 A No, sir.

10 Q Do you care if anybody sees that picture?

11 A No, sir.

12 Q Let me get back to the boat, we got off on
13 the nude photograph. So, during a couple times
14 that [REDACTED] you -- and how long would the
15 tournament last, you went out, you left Waca Wache
16 and you went out to fish, about how long would that
17 be each time?

18 A Normally the tournaments started at 5:00,
19 5:30, they would go until dark, so at the beginning
20 of the tournament it was be back by 7:00, 10
21 minutes to 7:00.. Later on the tournaments would go
22 until 8:30, 9:00 o'clock, until dark.

23 Q During any of these tournaments all that time
24 there was nothing sexual that transpired between
25 you and [REDACTED]

1 A No, sir.

2 Q All right. Now, do you recall New Year's Eve
3 of 2009, going into 2010?

4 A Yes, sir.

5 Q Do you recall what you were doing that
6 evening?

7 A Yes, sir.

8 Q Please tell us.

9 A New Year's Eve we went over to Tony and
10 Shannon's for a party, for a New Year's Eve party,
11 had a blast, alcohol was consumed by me and
12 everybody else there at the party. I mean, it was,
13 started at I would say 6:30, 7:00 o'clock that
14 night, we had food, I mean, went out that day and
15 picked oysters out of the inlet because there was a
16 lot of us liked oysters. We did that. After the
17 oysters, eating oysters and everything, it was dark
18 and we started listening to fireworks going off.
19 Midnight come around, me, Tony, Shannon, 
20 my wife, even my two youngest kids shot off a
21 shotgun at midnight for New Year's. After that,
22 1:00, 1:30 we went home, me and my wife and two
23 kids.

24 Q How did you get to and from that party?

25 A I drove.

1 Q Your vehicle?

2 A My vehicle, yes, sir.

3 Q Anybody come home with you?

4 A No, sir.

5 Q Did [redacted] come home with you that

6 night?

7 A No, sir.

8 Q Was she in your home at anytime overnight?

9 A Of New Year's, no, sir.

10 Q Would you know if she was there?

11 A Yes, sir.

12 Q Did you have, other than being at the party

13 for any time that you saw [redacted] did you have

14 any physical contact with [redacted]?

15 A No, sir.

16 Q Did you hug her?

17 A Not that I recall.

18 Q Did you hug her in a romantic or sexual way?

19 A No, sir.

20 Q Did you kiss her?

21 A No, sir.

22 Q Did you try to kiss her?

23 A No, sir.

24 Q Did you ask to kiss her?

25 A No, sir.

1 Q Did you fondle her in any way?

2 A No, sir.

3 Q Did you try to fondle her in any way?

4 A No, sir.

5 Q Did you ask to fondle her in any way?

6 A No, sir.

7 Q Did anything at all of a sexual nature occur

8 between you and Minor on New Year's Eve that

9 year?

10 A No, sir.

11 Q Now, on 9/11, later that year, still 2010.

12 A Correct.

13 Q Do you recall that day?

14 A Yes, sir.

15 Q How come you can remember that day?

16 A Because that was the tribute to the fallen

17 soldiers at Dead Dog.

18 Q Tell us what you did on that day.

19 A I went to work for a short period of time

20 that morning, I only had a few yards, I think it

21 was like two or three yards I had to go finish up

22 from Friday before, got back to the house, got the

23 wife and kids and went to Dead Dog that day, I

24 guess it was around lunch time. Went back home,

25 did watch the Carolina-Georgia game because I am a

1 big Carolina fan. After the game was over we
2 stayed there.

3 Q Do you recall who was there?

4 A At the house to watch the game? My wife, my
5 two kids, me and Regina.

6 Q Did you see [REDACTED] on 9/11, that
7 day?

8 A No, I did not.

9 Q Anywhere that day?

10 A No, I did not.

11 Q Did you have any communication from her that
12 day?

13 A Not that I recall.

14 Q Why was it as a thirty your old man that you
15 were having this texting and calling and this
16 communication with this thirteen year old girl?

17 A Because she was, like I said, she was like a
18 daughter, a sister to me, she looked up to me.

19 Q In your mind was there anything romantic
20 about that relationship?

21 A No, never.

22 Q Was there anything that was stimulating to
23 you sexually about that relationship?

24 A No.

25 Q Did you ever wish there could be something?

1 A No.

2 Q Did you ever suggest to her that there be
3 anything more than being a big brother?

4 A No.

5 Q Now, Mr. Love, you have got a criminal
6 record, do you not?

7 A Correct.

8 Q Could you tell us what that's for?

9 A Breach of trust for under 5,000 and assault
10 and battery high and aggravated nature.

11 Q Okay.

12 MR. FOX: Please answer any questions the
13 Solicitor has.

14 THE COURT: Cross-examination.

15 MS. LIVELY: Thank you, Your Honor.

16 CROSS EXAMINATION BY MS. LIVELY:

17 Q Mr. Love, let's be clear. Your prior
18 convictions make you a felon, isn't that correct,
19 you're a convicted felon?

20 A Correct, for the breach of trust, yes, ma'am.

21 Q Thank you.

22 MS. LIVELY: If I may approach and retrieve
23 some documents, Your Honor.

24 THE COURT: Sure.

25 Q Now, wherever you met [REDACTED] in 2009 she

1 was only thirteen years old, right?

2 A Correct.

3 Q How old were you?

4 A I was 28, going on 29.

5 Q And clearly whenever you met her there was
6 quite a maturity difference between the two of you,
7 would you agree?

8 A Yes, ma'am.

9 Q And your attorney just asked you why a thirty
10 year old man would be texting and having a
11 relationship with such a young girl?

12 A Yes, he did.

13 Q Correct. And your response, basically she
14 looked up to you, you were sort of a brother figure
15 as well as a friend?

16 A Correct.

17 Q Okay. And in regard to being this person
18 that she could confide in because she had, you
19 said, some family arguing and things going on, so
20 she felt that she could come to you and talk to you
21 about anything?

22 A Correct, she could come to me or my wife.

23 Q Or your wife, okay. And in coming to you and
24 talking to you about anything, then you knew
25 probably from the conversations you had with her

1 that you were her only outlet in regards to
2 problems that she was having and questions she had.
3 Is that a fair statement, like for instance the
4 drugs?
5 A Okay.
6 Q You knew about it?
7 A Correct, I did know about the drugs.
8 Q A young man asking her, according to what
9 you're saying, to send a nude picture of herself,
10 you knew about that?
11 A Correct.
12 Q You said you knew about her supposedly being
13 on a roof high?
14 A Yes, sir, or yes, ma'am.
15 Q Considering suicide, obviously?
16 A Uh-huh (Affirmative).
17 Q Is that a yes?
18 A Yes, ma'am.
19 Q And your responsibility as a mature adult who
20 she trusted was to ignore it. Correct?
21 A No, ma'am.
22 Q Okay. So your response to help this teenager
23 who had some issues, who you had befriended her
24 family and eaten dinner with them was to not tell
25 her family. Correct?

1 A Correct..

2 Q Does that sound like something a teenage
3 friend would do for another friend or something a
4 mature father of two would do for a fourteen year
5 old?

6 A A teenage friend.

7 Q A teenage friend, because in your mind you
8 considered yourself her teenage friend, didn't you?

9 A No..

10 Q Well, you just said it was more like being a
11 teenage friend, how you treated her, how you
12 responded to her cries for help. Isn't that true?

13 A I responded to her as a big brother, yes.

14 Q A big brother, okay. But would you agree
15 it's not being a very mature and caring big brother
16 by not tell parents or people who could help her?

17 A Yes, it was a mistake, I should have said
18 something.

19 Q Okay. But instead you continued this
20 isolated relationship. I know you said your wife
21 was somewhat involved, too, but you continued this
22 isolated relationship that was more like a teenage
23 boy and a teenage girl between yourself and
24 [REDACTED] and you even put yourself alone in places
25 with this child at different times, like fishing.

1 Correct?

2 A Yes, we did fish together.

3 Q Okay. So you admit to being alone with her
4 in creeks for an entire day, up until dark at times
5 with this troubled young teenager?

6 A No, ma'am, it wouldn't be all day. It would
7 only be for an hour, hour and a half to start with.

8 Q But you would be alone with her?

9 A Correct, but there was people in sight.

10 Q And during this time when you would have had,
11 if you were in a creek, an opportunity to get close
12 to her and touch her and kiss her and reassure her,
13 you're telling us that did not happen?

14 A I'm telling you it did not happen.

15 Q If it had happened would you admit it to us,
16 Mr. Love?

17 A Yes, I would, if I had done something I would
18 admit it.

19 MR. FOX: I object to that question. She
20 just asked if he stopped beating his wife, that is
21 an improper question, I ask that be struck, and the
22 response.

23 THE COURT: Overruled.

24 Q Well, let me ask you this. If [REDACTED] had
25 come on to you sexually would you provide us with

1 that information?

2 A If she was to come on to me?

3 Q Yes.

4 A Yes, because she never did.

5 Q She never did, okay. And would you consider
6 her an immature, inexperienced young girl?

7 A No, I would not say she was immature. I
8 would say that she was very smart, intelligent, so
9 I would not say she was immature. There were some
10 problems with her, yes, I do admit that, but
11 immature, no.

12 Q So, problems that the two of you all
13 discussed at length that she was having, fair to
14 say?

15 A What do you mean?

16 Q I'm talking about the pills again and the
17 problems at home.

18 A Correct, yes, she would confide in me and
19 talk about that, yes.

20 Q Okay. Now, on New Year's, 2009 --

21 A Uh-huh (Affirmative).

22 Q -- the thing that it appears that we can all
23 agree on is that you were at the Bellamy home for
24 the New Year's Eve party and there were several
25 people there, right?

- 1 A Correct.
- 2 Q And [REDACTED] was there, right?
- 3 A Correct.
- 4 Q Your wife, your kids and Tony Carter;
5 everybody, and there was drinking going on.
6 Correct?
- 7 A Yes.
- 8 Q Okay. And so you all left after midnight, so
9 you were there for the actual, you say you all shot
10 off the shotgun or something?
- 11 A Yes. We didn't have fireworks, we pulled out
12 the shotguns me and his son went duck hunting with
13 and shot them up in the air for fireworks instead.
- 14 Q All right. So, after you do this, and you're
15 saying that you went home and that [REDACTED] did not
16 go home with you and your wife and your kids,
17 correct?
- 18 A Correct.
- 19 Q Okay. So, you're saying that it would have
20 been impossible on that evening, and I'm asking,
21 just clearly, you're saying that it was impossible
22 that evening for you to have had intimate contact
23 with [REDACTED]
- 24 A Impossible?
- 25 Q I'm asking you.

1 A No, nothing happened.

2 Q I'm just asking you to answer, I know you're
3 saying nothing happened but I'm asking you that
4 night you're saying she didn't go home with you?

5 A Correct.

6 Q Is it possible you were intoxicated and you
7 don't recall her going home --

8 A No.

9 Q -- with you all?

10 A No, it's not possible.

11 Q So you're saying that she did not go home
12 with you that night and you did not touch her in
13 any way?

14 A That's what I'm saying, it did not --

15 A She has spent the night over at your house
16 before, correct?

17 A Not that I can recall.

18 Q Not that you can recall? So, you deny you
19 kissed her and put your hand up her shirt?

20 A Yes, ma'am.

21 Q All right. Well, she turns fourteen in
22 February of 2010, correct, do you recall?

23 A As I recall, yes.

24 Q Okay. She's turning fourteen at this point
25 and before the fishing tournaments you and her are

1 basically, like you said, just kind of a brotherly
2 love type situation?

3 A Correct.

4 Q All right. And you are at that time
5 communicating to and with her by phone. Is that
6 true?

7 A She would text me or she would call me, yes.

8 Q Okay. But you would text and call her back?

9 A Correct.

10 Q Okay. And what is your cell phone number?

11 A It was 283-2720.

12 Q 2720. What was her cell phone number?

13 A In honesty I could not tell you.

14 Q Okay. But you did have her saved as a
15 contact in your phone, didn't you?

16 A That's correct.

17 Q That's correct. And she had you saved in her
18 phone as big brother?

19 A Correct.

20 Q All right. So both of you all are in phones
21 and so probably you would hit Brit and just do
22 either a call or respond text to her, is that fair
23 to say?

24 A If she would text me it would show up and all
25 I would have to do is hit reply.

1 Q And clearly, and I will be glad to show you
2 the records, clearly you were pretty consistent in
3 responding to any texts that she would send you.
4 Would you agree with that statement?

5 A Yes, I would. It might not have been right
6 away but, yes, if she would send me a message I
7 would respond.

8 Q Okay. And most of the times would you agree
9 that it was within one to five minutes?

10 A Sometimes.

11 Q Okay. Do you remember ever sending her any
12 unsolicited texts, meaning that you initiated the
13 text communication?

14 A I might have sent her a text saying, "Hey,
15 how are you today, is everything going okay?" It
16 was always a question of what's going on, just to
17 check and see how she was if something happened the
18 day before, so for instance, if she got caught for
19 doing something or got in trouble at school and her
20 mom found out the next day, "Hey, how's it going,
21 are you okay," that kind of message, yes.

22 Q Well, let me go back, then, to the September
23 11th date, okay? Before I get to that, the nude
24 pictures, you said that Minor first texted your
25 wife about whether or not she should respond to

1 this teenage boy about sending a nude picture and
2 that your wife then asked you about it?

3 A Correct.

4 Q That's correct, I want to make sure I'm
5 clear. Okay, so your wife comes to you and says,
6 "Hey, [REDACTED] has texted me about whether or not
7 she should send a nude picture to some boy"?

8 A Yes.

9 Q Okay. And you choose to respond to [REDACTED]
10 about a nude picture on behalf of your wife, is
11 that what I'm understanding?

12 A No.

13 Q Okay. Because --

14 A [REDACTED] --

15 Q Go ahead.

16 A -- texted my wife and was wondering about how
17 to send, you know, picture sending and everything
18 and wanted to know what my wife thought about this
19 guy asking her for a nude picture. My wife then
20 told me about it and I kind of got upset, I got
21 upset because my little sister is getting a text,
22 even though she's not my blood sister she was like
23 a sister to me, was getting a text from some guy
24 wanting a nude picture.

25 Q Was it because you were jealous?

1 A No, not at all. I have nothing to be jealous
2 over, I've got a wife and two kids.

3 Q I understand, I understand but I'm just
4 trying to figure out why you jumped in to respond
5 to this nude picture request instead of your wife?

6 A Because right after the text went to my wife
7 it came to me and she asked for my opinion and my
8 opinion was, "No, do not send a nude picture. Why
9 does he want it?"

10 Q Well, why would a man want a nude picture of
11 a little girl?

12 A Any teenager would do that, I can understand
13 what you're asking on that.

14 Q Did you ever ask her to send a nude picture?

15 A No, I did not.

16 Q Let's get to September 11th, then. All
17 right, September 11th you're telling this jury that
18 you never saw [REDACTED] that day?

19 A I never saw [REDACTED] that day.

20 Q You also said you never communicated with her
21 that day?

22 A Correct.

23 Q Okay.

24 A That I can recall, I did not.

25 Q I'm just repeating your statement you just

1 gave on direct.

2 A That's what I'm saying, I cannot recall ever
3 communicating with her that day.

4 Q Okay.

5 MS. LIVELY: May I approach, Your Honor?

6 THE COURT: Sure.

7 Q I will show you what is marked for ID State's
8 Exhibit Number 5 and ask you, regarding this
9 highlighted portion right here, whose telephone
10 number do you see listed on this document?

11 MR. FOX: Your Honor, I'm going to object to
12 that. It is not in evidence and there is, first of
13 all there is not a foundation about whether he can
14 identify it, there is not a foundation for that, it
15 is not a record in evidence, that is specifically
16 not in evidence.

17 MS. LIVELY: I'm using it for impeachment
18 purposes based on his statement he never had
19 contact with the victim that day. He can either
20 admit or deny whether or not he is familiar with
21 this.

22 MR. FOX: I'm sorry, they have records have
23 not been authenticated, it is not admissible, Your
24 Honor. It is a back door way to try to get in
25 evidence.

1 THE COURT: All right, I sustain the
2 objection.

3 MS. LIVELY: Thank you.

4 BY MS. LIVELY:

5 Q Mr. Love, you heard the testimony from Miss
6 Bellamy regarding contact that she had with you.
7 Correct?

8 A Correct.

9 Q Okay. I mean, you have been in here
10 obviously for the entire trial so you're aware of
11 all the testimony regarding constant contact
12 between you and her, correct?

13 A Correct.

14 Q And did it surprise you to hear when [REDACTED]
15 said that you all had over a hundred texts on the
16 date of September 11th, 2010?

17 A Yes, it did.

18 Q It surprised you, and why did it surprise
19 you?

20 A Because I never texted her that much.

21 Q You didn't?

22 A No, I did not.

23 Q Okay. But you admit that your number is
24 283-2720?

25 A Yes.

1 Q So you would deny texting her from 8:00
2 o'clock that morning, until 11:59 a.m. on September
3 11th, 2010, over a hundred times?

4 A Yes.

5 Q I'm sorry?

6 A Yes, I am.

7 Q Now let's talk about when you went to Dead
8 Dog. You said you went that morning prior to the
9 Carolina game which was at noon, is that right?

10 A Correct.

11 Q And then in the afternoon you stated that you
12 stayed home and you never left?

13 A Correct.

14 Q Do you recall actually telling Investigator
15 Pop that you actually did go to the Dead Dog Saloon
16 that evening?

17 A No, I do not recall telling her.

18 Q You don't recall that?

19 A No.

20 Q So you don't remember telling her that you
21 had gone there that evening and that [redacted] had
22 texted you and asked you to stop by and bring her
23 some cigarettes?

24 A No.

25 Q And so you deny that you went there and

1 actually had dinner with Mr. Carter and some of his
2 friends?

3 A Correct.

4 Q And you discussed with your wife about how
5 you should testify today regarding that issue,
6 didn't you?

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

8 Q You didn't talk to her yesterday?

9 A I talked to her last night on the phone,
10 correct.

11 Q Okay. Regarding the fact you needed to say,
12 "I stayed home that afternoon," right?

13 A No.

14 Q No?

15 A When I called my wife last night from the
16 jail she was messed up, she was in a panic and I
17 asked her what's going on, she said that she was
18 still at the courthouse because of the incident
19 with Miss Frye and I said, "What do you mean, what
20 is going on?" She said, "I can't talk, call me
21 back." Then 30, 45 minutes later I called back,
22 the phone had not been recharged, money had not
23 been put on the phone yet as of 7:30. I guess time
24 wise I say a quarter to 8:00, 8:15, somewhere in
25 that time range because there is no clock in the

1 holding cell I'm in, I called her back and asked
2 her what's going on, what happened. She told me
3 that at that time that Miss Pop and a couple other
4 people came to our place where we're staying,
5 grabbed her stuff and escorted her back to the
6 Georgetown area. I said, "Okay, what's the reason
7 and why?" She says, "I don't know, I can't explain
8 it." I said okay and I asked her, I said, "How did
9 you feel about yesterday, about the trial?" She
10 said, "I felt really good." I said, "You did very
11 good, I was proud of you." I said, "9/11, you were
12 right." I said, "At one point I thought maybe I
13 did leave," and she said, "No, you didn't, we
14 stayed there with the kids." I said okay, she
15 said, "If you were to say that you did leave, then
16 they would get me for perjury." So did I leave?
17 No, I did not leave and it is not because of what
18 my wife said.

19 Q All right. Okay, so let me back up, then.
20 You did talk to Investigator Pop in November of
21 2010 regarding all of these issues. Correct?

22 A I remember talking to Officer Pop, correct.
23 The date, I do not recall because it's been awhile.

24 Q And what you're telling me now is that you
25 deny saying that you went to the Dead Dog later.

1 that day and [REDACTED] had texted you and asked you
2 to come by and bring her cigarettes?

3 A Yes, I'm denying that.

4 Q Okay.

5 MS. LIVELY: Your Honor, may we have a brief
6 recess so I can address this issue? I do have the
7 recorded statement to play for the jury.

8 THE COURT: All right.

9 MS. LIVELY: It might be -- well, actually
10 I've got it queued up but I don't know, just that
11 particular statement in regard to a prior
12 inconsistent statement is what I would be playing
13 that portion for, I'm not intending to play the
14 entire statement.

15 THE COURT: I think, I will certainly take
16 blame for it but I think we have probably imposed
17 on the jurors' patience enough this morning. I'm
18 going to let you all take a lunch break, just come
19 back at 2:00 o'clock, don't talk about the case,
20 continue to keep an open mind.

21 (The jury was excused from the courtroom).

22 THE COURT: Okay. Do you want to discuss
23 anything before we break?

24 MS. LIVELY: No, Your Honor, we can go ahead
25 and break. Like I said, I have got it queued up,

1 what I can do when we come back, if Your Honor
2 needs to hear any portion of it I can play it, that
3 is my position regarding it. He has denied it,
4 clearly that would fit the rule in regard to a
5 prior inconsistent statement. I will proffer that
6 statement so Your Honor can make that judgment as
7 to whether it is actually an inconsistent statement
8 with what he said and I'm prepared to do that. I
9 can do it now or do it when we come back from
10 lunch. I know it's gotten late.

11 THE COURT: All right. Mr. Fox, anything you
12 want to say?

13 MR. FOX: No, Your Honor. I have to hear the
14 proffer, I understand the issue of a prior
15 inconsistent statement, but not at this time.

16 THE COURT: I mean, it would be a statement
17 of a party?

18 MS. LIVELY: That's true, Your Honor.

19 THE COURT: Thank you. All right, we'll
20 break until 2:00.

21 MS. LIVELY: Yes, sir, thank you.

22 THE COURT: Thank you.

23 (Recessed at 12:40 p.m.).

24 (Resumed at 2:15 p.m.).

25 THE COURT: Anything before we bring the jury

1 back?

2 MS. LIVELY: Your Honor, the State, before we
3 recessed, was going to actually play a portion of a
4 Mirandized statement. I questioned the defendant
5 in regards to the September 11th event where he
6 denied having communication with [REDACTED] on that
7 day, denied going to the Dead Dog later that day to
8 meet Tony and A. J., which is the father or
9 stepfather of [REDACTED] and her brother. While I
10 was talking to my investigator and we were going
11 back through Mr. Love's statement there is also
12 another point where I asked him, "Did she ever
13 spend the night at your house," and he said, "Not
14 that I can recall," and I have, and I did check
15 with the court reporter to make sure that that is
16 the question I asked, and on page 66 of his
17 transcript it does show that was the question and
18 the defendant denied it, said, "Not that I can
19 recall it," and in his statement to Investigator
20 Pop he clearly said, "On nights she would spend the
21 night at our house," he clearly did admit she had
22 spent the night at his house before, so those are
23 the two matters which I intend to impeach the
24 defendant on and I have queued them up based on
25 where they are in the statement and will be

1 prepared to play them before the jury. If the
2 Court wants me to proffer them I can allow the
3 Court and the defense to hear them at this time.

4 THE COURT: They are recorded statements?

5 MS. LIVELY: I'm sorry?

6 THE COURT: This is not a written statement?

7 MS. LIVELY: This is an audio statement, yes,
8 sir.

9 THE COURT: Okay. I didn't know anything
10 about that.

11 MS. LIVELY: Yes, the defendant gave an
12 audio, video recorded statement to Investigator Pop
13 on November the 2nd of 2010. Basically for the
14 most part until the defendant has testified now
15 pretty much a self serving statement, that is the
16 reason why I did not even seek to introduce it
17 during my case in chief. I intended, if it came up
18 during his testimony, if he decided to testify,
19 then I would just use that Mirnadized statement and
20 any of his comments to Investigator Pop for
21 impeachment purposes only.

22 THE COURT: Mr. Fox?

23 MR. FOX: Just addressing the different,
24 clearly the difference between a recorded
25 statement, and I will just address the specifics

1 without regard to it being Mirandized, with regard
2 to [Minor] spending the night, his testimony today
3 was, "Not that I can recall." That's not a denial,
4 it's, "I can't remember." I don't think that is
5 inconsistent from previously telling the officer
6 that she did. He said, he didn't say no, he said,
7 "I can't remember." That is not inconsistent.

8 The other is about any contact with [Minor]
9 or with Tony and E. J. I listened to the part
10 about Tony and the Dead Dog. I don't think there
11 is any question about not having contact with
12 [Minor] I think it is clear in his previous
13 statement and what he testified today there is
14 possibly an inconsistency that can be played so I
15 don't have an objection to that part.

16 Not meeting Tony and E J, I would ask to
17 proffer that simple segment because simply what I
18 heard, my interpretation was he was talking about,
19 in that audio he was talking about what he
20 testified to, which was going in the morning or
21 around midday and meeting them, not in the evening.
22 So I would just ask the Solicitor to proffer that
23 because I'm not sure there is an inconsistency on
24 that particular point, Your Honor.

25 THE COURT: You're not requesting nor do you

1 see any reason to have a Jackson v. Deno hearing on
2 these statements, is that correct?

3 MR. FOX: Your Honor, I think you certainly
4 need to make a finding. I'm not, I think the Court
5 certainly needs to make a finding but I believe at
6 the beginning the tape is very clear that he is
7 Mirandized, asked questions about that, he
8 understands his rights, the right to speak to a
9 lawyer and all those things. I think Your Honor
10 does need to make a finding, perhaps that very
11 beginning needs to be played so you can make that
12 finding. I don't contest it but I think the Court
13 has to make a finding on it.

14 THE COURT: You're not contesting, you're not
15 requesting there be testimony about that?

16 MR. FOX: That's correct, Your Honor.

17 THE COURT: Okay.

18 All right, yes, ma'am?

19 MS. LIVELY: Yes, sir, Your Honor. I can, if
20 it will help the Court in just hearing how the
21 Mirandized statement was provided to the defendant
22 just for the record and have that played I can do
23 that. If they are not contesting it and the Court
24 doesn't see a need to and they are not claiming it
25 was an involuntary statement at this time I will

1 just play the part I'm intending to play based
2 upon, you know, it being a prior statement by the
3 defendant.

4 THE COURT: Okay.

5 MS. LIVELY: And what I will do is, I'm going
6 to play, since I have it queued up in the earlier
7 part, this will actually be the statement he made
8 regarding [REDACTED] ever spending the night. And I
9 don't have it in front of me, I can get it for the
10 Court but it is my understanding how the case law
11 reads in regards to prior inconsistent statements,
12 it can be an outright denial or it can even be an I
13 don't recall, I don't remember the situation, and
14 that has been held to include what is under the
15 pervue of an inconsistent statement and I might, I
16 had to deal with this issue before in a case I had
17 about four or five months ago, I don't have that in
18 front of me but I can get it for the Court. That
19 is my understanding of a prior inconsistent
20 statement as well. It can be from a flat out
21 denial or it can even be from an, "I don't recall,
22 I don't remember," because I specifically then did
23 ask him about the interview that he had with
24 Investigator Pop and he says, you know, "I don't
25 recall, I don't remember making a statement," and

1 in regard to that, that would then be where I could
2 say well, didn't you say like on September 11th
3 that you actually went into, that you received
4 communications from [Minor] and that you went to
5 the Dead Dog to meet Tony and A. J.?" "No." So,
6 I'm going to play it and let the Court hear for
7 yourself, you know, the two parts that I'm talking
8 about.

9 The first part is -- let me make sure I'm
10 plugging this in right.

11 (Audio tape of statement played to the
12 Court).

13 MS. LIVELY: That was regarding her spending
14 the night.

15 The other statement regarding the September
16 11th event, I have to be real careful because there
17 is a lot of statements about his prior record in
18 here. That was a statement regarding communication
19 as well as talking to Tony and A. J. before going
20 to the Dead Dog.

21 THE COURT: Okay.

22 MS. LIVELY: Those are the two places, Your
23 Honor, where the State is going to impeach the
24 defendant regarding his current testimony.

25 MR. FOX: Your Honor, I would say with regard

1 to the no contact testimony, no contact with
2 [REDACTED] on 9/11, I agree he testified this morning
3 he did not have contact and you can hear for
4 yourself what he said to the officers in that. I
5 think that is probably an inconsistent statement.
6 Your Honor can decide whether saying I don't recall
7 is the same as a denial, which makes it
8 inconsistent.

9 And in terms of I think the last portion, in
10 terms of meeting Tony and A. J., it is not clear
11 from that statement when they're talking about, I'm
12 not sure there has been an inconsistency shown on
13 the issue of whether he went down to the Dead Dog
14 Saloon. He talked about it but didn't give a time
15 frame, which is the whole point of the testimony.
16 I don't think there is an inconsistency shown
17 there.

18 So, that will be our position on those, Your
19 Honor.

20 THE COURT: All right. Well, I find that
21 they're admissible either under 801(D)(1)(A), which
22 is prior inconsistent testimony, and Rule 613.
23 They are clearly admissible under 801(D)(2) as a
24 statement offered against a party, so anything
25 further as far as the voluntariness, being

1 Mirandized? Do you want to listen to that?

2 MS. LIVELY: Yes, I can put that up real
3 quick to hear it and we can even, for the Court we
4 can actually provide the Mirandized statement
5 signed by the defendant and Miss Pop as a Court's
6 exhibit or we can just agree to enter it into
7 evidence. The only thing is that I always am
8 worried about doing anything like that, and the jury
9 seeing the Miranda statement and being like, you
10 know, they are going to hear obviously there was a
11 statement given by the defendant.

12 THE COURT: We'll make it a Court's exhibit.

13 MS. LIVELY: Okay. I think it is clearer,
14 easier for the jury. I will show this to opposing
15 counsel.

16 Your Honor, I will start at the very
17 beginning if the Court wants to hear the time the
18 defendant was actually read those rights and then
19 signed.

20 THE COURT: Yes, ma'am.

21 (Audio tape of statement played to the
22 Court).

23 MS. LIVELY: Your Honor, that was the extent
24 of it, the rights being read to him and then the
25 defendant signing it where it is indicated, which

1 is on the Court's Exhibit and the witness is Ginger
2 Pop, who Investigator Pop, like I said, being my
3 lead investigator, has been here the whole time,
4 she is available if the Court needs me to proffer
5 any additional information.

6 THE COURT: Okay. Any objection to the
7 portion she wants to introduce?

8 MR. FOX: No, Your Honor.

9 THE COURT: I understand the State has
10 demonstrated by proof beyond a reasonable doubt
11 that the statement was made after he was adequately
12 advised of his constitutional rights against self
13 incrimination, that he was provided a written
14 statement which is signed and also originally
15 advised and there was no indication he was
16 impaired, intoxicated or otherwise unavailable to
17 completely exercise his will and choice and there
18 is no evidence that he was threatened in any way,
19 therefore I find the State has met its burden of
20 proof to have the statement introduced and of
21 course the jury will have to determine whether the
22 defendant made the statement but it can be
23 admitted.

24 All right, anything else?

25 MS. LIVELY: Your Honor, no, the State is

1 ready to proceed at this time with continuing with
2 the cross-examination.

3 THE COURT: Okay. Mr. Love, if you want to
4 resume your seat up here, sir.

5 You can bring the jury on in.

6 (The jury returned to the courtroom).

7 THE COURT: Yes, ma'am, Miss Lively.

8 MS. LIVELY: Thank you, Your Honor.

9 BY MS. LIVELY:

10 Q Now, Mr. Love, whenever we broke for lunch we
11 had gone through quite a few things. I'm just
12 going to back up on a couple matters regarding your
13 testimony earlier. One of the things that I had
14 asked you was whether or not [REDACTED] had spent the
15 night over at your house and you stated, "Not that
16 I can recall," is that correct?

17 A That is correct.

18 Q And then in relation to that we have been
19 talking about the New Year's Eve party that had
20 occurred in December of 2009. Do you recall that?

21 A Yes, ma'am.

22 Q All right. Then another time I went on to
23 the September 11th event where the allegation is
24 that you went to [REDACTED]'s house when her step-dad
25 and mother weren't there and had some type of

1 sexual contact with her there and you said you
2 never went by her house. Is that right?

3 A Correct.

4 Q As a matter of fact, when I asked you did you
5 have any contact or communication with her that day
6 you denied having any contact or communication with
7 her. Is that right?

8 A I did say I could not recall any contact with
9 her that day.

10 Q Okay. You said you did not communicate with
11 her that day?

12 A That I can recall, correct.

13 Q That you could recall, okay. And then at
14 that point in time I asked you whether or not you
15 remember having given a statement to Investigator
16 Pop after being Mirandized in November of 2010. Do
17 you recall me asking you about that?

18 A I do recall that.

19 Q And that was actually, would have been pretty
20 close in time to that September 11th tribute event
21 that we're talking about, wouldn't you agree?

22 A Two months away, yes, ma'am.

23 Q Two months away and we're looking at right
24 now about a year and a half away from whenever
25 all this stuff had happened. Right?

1 A Yes, ma'am.

2 Q All right. So, we've got this statement from
3 you and in the statement to Officer Pop you
4 discussed these issues I have asked you, didn't
5 you?

6 A From what I recall.

7 Q I'm sorry?

8 A The one that I recall from listening to it
9 just shortly a while ago, yes, I recall saying it
10 now.

11 Q Okay. Let me -- I appreciate that.

12 MS. LIVELY: Your Honor, at this time I want
13 to publish to the jury the statement by Mr. Love,
14 the defendant, regarding the two matters that I
15 have just questioned him about.

16 THE COURT: Okay, ma'am.

17 MS. LIVELY: Thank you.

18 (Portions of taped interview played to the
19 jury).

20 BY MS. LIVELY:

21 Q Now, Mr. Love, in that statement that you
22 gave to Investigator Pop, again that was only two
23 months after all these things had happened.
24 Correct?

25 A Correct.

1 Q So, if we wanted to look at when your
2 recollection of what had actually occurred would
3 have probably been better it would have been at
4 that time in November of 2010 than a year and a
5 half, which would be now. Would that be a fair
6 statement?

7 A I'm confused on that.

8 Q Would your recollection of what happened two
9 years ago be better a month after it happened or
10 two years after it happened?

11 A A month after it happened if anything
12 happened.

13 Q All right. And clearly in your statement to
14 Investigator Pop you did say [Minor] would spend
15 the night at your house on occasion and it was
16 never a problem, right?

17 A At first I said I did not recall but now
18 after hearing that, yes, I did say that.

19 Q All right. And then also in regard to the
20 September 11th event where you said earlier in your
21 testimony that you had absolutely no communication
22 with [Minor] that day, and truly looking back at
23 that statement you did have contact with her.
24 Isn't that true?

25 A As I said before, first I did not recall, now

1 hearing it, yes, I did say it.

2 Q You did say it, all right. And in that same
3 statement you're saying that you had just talked to
4 Tony and that you were on your way to the Dead Dog
5 tribute and she said, "Well, will you bring me some
6 cigarettes," and you are like, "No, I'm on the
7 way." Isn't that a fair assessment?

8 A Yes, that is what I said.

9 Q Okay. Now, whenever you were talking about
10 the New Year's Eve incident, one of the things that
11 I was wanting to go back and ask you about was you
12 stated that you had been drinking that night. I
13 mean, it was a New Year's Eve party, correct?

14 A Correct.

15 Q And you said you don't remember or you said
16 that [REDACTED] did not go and stay at your house
17 that night, that it was just you, your wife and
18 your kids. Is that correct?

19 A Correct.

20 Q Okay. And I do understand that you had quite
21 a bit to drink that night.

22 A I had a few. I wouldn't say that I was
23 intoxicated but yes, I did have a few.

24 Q Okay. And whenever you actually went home
25 were you the one that drove your wife and children

1 home after drinking that alcohol?

2 A Yes, I was.

3 Q Okay. And under those circumstances would
4 you agree that would be a poor decision?

5 A That was a very poor decision.

6 Q Okay. And in fact in making a poor decision
7 such as that wouldn't you agree that possibly being
8 intoxicated you made another poor decision and that
9 was fondling [REDACTED]?

10 A No, I can't say that I did that.

11 Q You can't say that you did that or you won't
12 say that you did that?

13 A I didn't do that, she was nowhere around.

14 MS. LIVELY: One moment, Your Honor.

15 Q Just a couple more, all right? Now, earlier
16 you testified that on September the 11th that you
17 were at home watching the Carolina game with your
18 wife and kids and was Regina Frye with you all
19 during that time as well?

20 A As far as I can recall, yes, ma'am, she was.

21 Q Okay. As far as you can recall. Can you, in
22 regard to that, do you agree that is a pretty
23 important date in your life at this point in time?

24 A 9/11, yes, ma'am.

25 Q Okay. So if you really tried hard to think

1 about it and really focus on it, okay, can you tell
2 us yes or no whether or not Regina Frye was there
3 with you that day?

4 A I'm almost 99.9 percent positive she was
5 there.

6 Q All day?

7 A For the football game.

8 Q For the football game, okay. And then you
9 never left from the football game, is that right?

10 A Correct.

11 MS. LIVELY: Thank you.

12 MR. FOX: Redirect, Your Honor?

13 THE COURT: Yes, sir, Mr. Fox.

14 REDIRECT EXAMINATION BY MR. FOX:

15 Q Mr. Love, with regard to New Year's Eve, when
16 you left to go home that night did anyone know you
17 were leaving, the other people at the party,
18 anybody see you leaving?

19 A Not that I can recall.

20 Q Do you recall anyone trying to stop you from
21 leaving, saying, "No, man, we'll get you a ride
22 home, we'll take you home, you're too drunk to
23 drive"? Did anybody stop you from driving?

24 A No, sir.

25 Q Now with regard to 9/11, now that you have

1 heard what you have told the police back in 2010
2 does that refresh your memory?

3 A Yes, it does.

4 Q Okay. Now, specifically with 9/11, have you
5 heard anything, does your recollection change in
6 any way about whether you saw [REDACTED] in person on
7 9/11, 2010?

8 A No, sir, I did not see her.

9 Q Any doubt in your mind at all about that?

10 A No doubt.

11 Q And when we're talking about, you heard again
12 what the police asked you, about making plans with
13 Tony and A. J. and that sort of thing, when was
14 that during the day you were talking about, when
15 you were planning to meet A. J. and Tony at Dead
16 Dog, when were you talking about that?

17 A That was that morning, around lunch.

18 MR. FOX: Nothing further.

19 MS. LIVELY: Nothing further, Your Honor.

20 THE COURT: Thank you, Mr. Love, you may step
21 down.

22 (Witness excused).

23 THE COURT: All right, you may call your next
24 witness, Mr. Fox.

25 MR. FOX: The defense rests, Your Honor.

1 THE COURT: All right. Ladies and gentlemen,
2 I'm just going to have to ask you to go back to the
3 jury room for a moment while we take up a matter.
4 Don't talk about the case, continue to keep an open
5 mind.

6 (The jury was excused from the courtroom).

7 THE COURT: All right, motions at this time?

8 MR. FOX: Yes, Your Honor. At this time I
9 renew the motion for directed verdict as to each
10 indictment. The reasons stated now at the
11 conclusion of all the evidence or at least at the
12 conclusion of the State's case, I mean the State
13 and defense's case, that at this point there is no
14 evidence, the State has not satisfied its burden of
15 proof as to each element beyond a reasonable doubt.

16 I would also renew the previous objections we
17 made as to evidence being admitted. On those bases
18 I would ask the Court to direct a verdict on each
19 indictment, Your Honor.

20 THE COURT: All right. Thank you, Mr. Fox.
21 I respectfully deny the motion.

22 MR. FOX: Yes.

23 THE COURT: Is the State going to have reply
24 testimony or evidence?

25 MS. LIVELY: Yes, sir, Your Honor, the State

1 is going to call Steve Suzch, S-u-z-c-h. I
2 provided that name to Mr. Fox earlier. He will
3 specifically be called for the very limited purpose
4 of the September the 11th Dead Dog Saloon issue and
5 then also we are calling Regina Frye on the same
6 issue.

7 THE COURT: Okay. All right, anything else
8 before we bring the jury back out?

9 MR. FOX: No, Your Honor.

10 MS. LIVELY: Not from the State, Your Honor.

11 THE COURT: Okay, then they can come on back
12 out.

13 (The jury returned to the courtroom).

14 THE COURT: All right, ladies and gentlemen,
15 as you saw, the defense has rested. That means
16 they have concluded their presentation of evidence.
17 I told you a little bit about the structure of a
18 criminal trial when we started this case. I did
19 not go over with you one nature of the criminal
20 structure which you are actually going to see in
21 this case but it is the fact that the State does
22 have the right to call reply witnesses under
23 certain circumstances and my understanding is the
24 State is going to do that in this case and, Miss
25 Lively, you may call your first reply witness.

1 MS. LIVELY: Thank you, Your Honor. The
2 State would call Regina Frye to the stand.

1 REGINA FRYE, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Thank you. Please be seated and
4 state your name for the record, please.

5 THE WITNESS: Regina Frye.

6 DIRECT EXAMINATION BY MS. LIVELY:

7 Q Regina, spell your last name.

8 A F-r-y-e.

9 Q All right. Regina, how do you know the
10 defendant in this case?

11 A I met him through his wife.

12 Q And that would be Tabitha Love?

13 A Tabitha Love, yes.

14 Q Now, Regina, why are you in town this week?

15 A I was called by the defendant's wife and
16 asked to come down, that she needed me and that I
17 may have to testify.

18 Q Okay. When was the first time you talked to
19 her about testifying here in court?

20 A Monday.

21 Q Monday, this week?

22 A This week.

23 Q Okay. Now, Regina, in that conversation what
24 information were you ready to provide to the Court
25 on behalf of the defendant?

1 A The only thing that I thought I was here for,
2 based on talking to Tabitha, was his birthday
3 party.

4 Q Okay. When is his birthday?

5 A August -- October, I'm sorry.

6 Q October?

7 A October 6th, I believe.

8 Q When was the first time that you heard
9 anything about the date September 11th, 2010, in
10 regard to this defendant?

11 A Well, I heard about it on Monday.

12 Q Okay.

13 A But I heard about it one other time previous
14 but I don't know an exact date.

15 Q That's fine. Did you talk to Tabitha about
16 the day of September 11th, 2010, and why that date
17 was important?

18 A Yes, I did.

19 Q Okay. Tell the jury what it is that your
20 testimony is regarding September the 11th, 2010, as
21 you relayed it to Tabitha?

22 A That September 11th, 2010, was not an
23 important date to me and I think that it was
24 football season and we got together and watched
25 football games but September 11th was just like any

1 other regular date to me.

2 Q Okay. Let me specifically ask you, okay?

3 When you and Tabitha talked about September 11th,
4 2010, and the Carolina football game how did you
5 know what time and who Carolina played?

6 A I looked it up on line.

7 Q You looked it up on line?

8 A I did.

9 Q When you looked it up on line and you talked
10 to Tabitha about it again were you or were you not
11 at her home on September the 11th, 2010, for that
12 game?

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

14 Q And did you provide that information to
15 Investigator Pop?

16 A I did.

17 Q Now, Miss Frye, did we force you to come in
18 here and testify today?

19 A No, ma'am, absolutely not.

20 Q Do you want to be here?

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

22 Q Okay. When you discussed what you were going
23 to testify about if you testified on behalf of the
24 defendant, was it ever discussed what time you
25 needed to be at their home?

1 A Yes, ma'am, it was.

2 Q Is it your testimony you were not there?

3 A Yes, ma'am.

4 Q Did you see Wayne Love that day at his house?

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

6 MS. LIVELY: Thank you.

7 THE COURT: Cross-examination?

8 MR. FOX: Yes, Your Honor.

9 CROSS EXAMINATION BY MR. FOX:

10 Q Miss Frye, you and I spoke before, hadn't we?

11 A We spoke on Monday, yes, sir.

12 Q All right. And Tabitha called you first,

13 didn't she?

14 A She did.

15 Q And said, "Mr. Fox would like to talk to

16 you"?

17 A Yes, sir.

18 Q What we spoke about was specifically New

19 Year's Eve, wasn't it?

20 A Yes, sir.

21 Q And you told me that the best you could

22 recall you had been with Wayne and Tabitha on New

23 Year's Eve, spent the night, because you had come

24 down and you were friends with Tabitha and Wayne,

25 correct?

- 1 A Right.
- 2 Q And did you not tell me on Monday when we
3 spoke that you had been, New Year's Eve, you seemed
4 to know what time we were talking about and that
5 you had spent the night, correct, with the Loves?
- 6 A Correct, but when you asked me the question
7 you said it wasn't this New Year's Eve, it was the
8 year prior.
- 9 Q We'll get to that, that is exactly right.
10 But what you told me at first was, "I was there, I
11 spent the night, no Minor [REDACTED] that night,"
12 correct?
- 13 A The New Year's I spent the night?
- 14 Q I'm talking about when we had the
15 conversation that is what we talked about, correct?
- 16 A Correct.
- 17 Q And based on that, before we hung up the
18 phone I asked you to come down to Georgetown from
19 Columbia, did I not?
- 20 A You did not.
- 21 Q Okay. Did Tabitha?
- 22 A She did.
- 23 Q And you came?
- 24 A Correct.
- 25 Q No subpoena, you just came?

1 A Correct.

2 Q When you got here on yesterday we spoke
3 again, right?

4 A We did.

5 Q And we talked again about New Year's Eve,
6 right?

7 A Correct.

8 Q And in the course of that conversation we
9 figured out we were talking about a different New
10 Year's Eve, didn't we?

11 A Yes, sir.

12 Q And you told me, "Look, I don't think it was
13 that '09-'10 one, right?

14 A Correct.

15 Q At that point I said, "I don't think you need
16 to be a witness," correct?

17 A Correct.

18 Q And we talked a little bit in general, I
19 didn't ask you about 9/11, did I?

20 A No, sir, you did not.

21 Q Okay. And then once you knew you weren't
22 going to be a witness where have you been for the
23 last two days?

24 A When I came to town I stayed with Tabitha and
25 after I talked to the investigator last night --

1 Q Before that.

2 A Before I came to town?

3 Q You have been in the courtroom the last two
4 days, right?

5 A Yes, I have.

6 Q You have heard pretty much everything that's
7 been said in court from yesterday morning until
8 now, right?

9 A Yes, sir.

10 Q Okay. Now, at the end of court yesterday,
11 based on testimony that was given the Solicitor and
12 Solicitor's office, Ginger Pop wanted to speak to
13 you, correct?

14 A That is correct.

15 Q And they spoke to you, right?

16 A They did.

17 Q Where did they take you?

18 A Downstairs into the Solicitor's office.

19 Q Who was there?

20 A Investigator Pop and another detective, I'm
21 not sure, I don't recall his name, I think it was
22 Brown.

23 Q Steve Brown?

24 A I think so.

25 Q Investigator for the Solicitor's office?

- 1 A Yes, sir.
- 2 Q You were downstairs in the Solicitor's
3 office?
- 4 A Yes, I was.
- 5 Q How long were you there?
- 6 A A good two hours.
- 7 Q Okay. At the end of that time what happened?
- 8 A I asked to be separated from Tabitha Love.
- 9 Q Was that their idea?
- 10 A No, it was not.
- 11 Q Did Tabitha make any threats to you?
- 12 A She did not.
- 13 Q You came down here as friends, correct?
- 14 A I did.
- 15 Q You came down here to testify potentially on
16 her husband's behalf, correct?
- 17 A I didn't know that I was going to have to
18 testify because I didn't, I didn't know --
- 19 Q Initially when you came down, when you made
20 the decision to come down Tabitha asked you to
21 come, that was after you and I had spoken on the
22 phone, correct?
- 23 A Correct.
- 24 Q Was it not your understanding that you might
25 have to testify about, now it turned out the wrong

1 New Year's Eve, not to have you testify but at the
2 time you left Columbia to come here did you not
3 understand you would probably be sitting right
4 there talking about New Year's Eve?

5 A When I spoke with her I was under the
6 impression that she wanted me down here to be with
7 her as a friend.

8 Q Okay. So, you didn't understand you were a
9 potential witness at that point?

10 A That is correct.

11 Q Okay. But no question you and I spoke about
12 it and we talked about New Year's Eve?

13 A That is correct, we did speak about New
14 Year's Eve.

15 Q Okay. And you say that 9/11, 2010, was not a
16 particular day to you --

17 A Correct.

18 Q -- in your life, okay. So if Tabitha needed
19 to talk to you about the time things happened and
20 jog your memory, that is understandable because it
21 wasn't a date that stood out in your mind, isn't
22 that fair to say?

23 A Fair to say.

24 MR. FOX: Thank you. I have no further
25 questions..

1 THE COURT: Redirect?

2 MS. LIVELY: That's all, Your Honor, with
3 this witness.

4 THE COURT: Thank you, Miss Frye.

5 THE WITNESS: Thank you.

6 (Witness excused).

7 THE COURT: You may call your next witness.

8 MS. LIVELY: The State calls Steve Szuch to
9 the stand.

10 Your Honor, may Regina Frye be excused?

11 THE COURT: Any objection?

12 MR. FOX: No.

13 THE COURT: All right, thank you.

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1 STEVEN SZUCH, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Thank you. Please be seated and
4 state your name for the record, please.

5 THE WITNESS: My name is Steven Szuch.

6 DIRECT EXAMINATION BY MS. LIVELY:

7 Q Will you spell your last name?

8 A S-z-u-c-h.

9 Q Okay. Mr. Szuch, are you a Georgetown
10 resident?

11 A Yes, ma'am.

12 Q And do you work here?

13 A Yes, ma'am.

14 Q How do you know [REDACTED] Tony Carter
15 and Shannon Bellamy?

16 A, I met Tony about fifteen, sixteen years ago
17 when we was working together at Hoover Chrysler
18 Dodge here in Georgetown.

19 Q Okay, and have you all been close since?

20 A Yes, ma'am.

21 Q All right. Now, you were contacted kind of
22 late in the game regarding this particular case
23 yesterday, is that a fair statement?

24 A Yes, ma'am.

25 Q Okay. Are you aware of everything that has

1 gone on between the Defendant Love and --

2 A Only what I was told between now and last
3 night and what I heard today.

4 Q Okay, all right, that's fair. Now, Mr.
5 Szuch, did we have an opportunity to speak this
6 morning regarding the scope of your testimony?

7 A Yes, ma'am.

8 Q Okay. I'm just going to ask you about a
9 particular event on September 11th of 2010.

10 A Yes, ma'am.

11 Q What were you, what were the plans for you
12 that day that you can recall?

13 A Well, usually every Saturday me and my
14 daughter and her boyfriend, we usually do yard
15 sales and then, you know, if we decide to go to the
16 mall or whatever, so it was that day we did yard
17 selling and then we ended up going, it was either
18 the mall or Bass Pro Shop, I really can't remember.
19 Then on the way back I called Tony and asked Tony
20 what he was doing, he said, "Well, we're out at
21 9/11," so we stopped coming back from, like I say,
22 I can't remember if the mall or Bass Pro Shop, and
23 we stopped at Murrells Inlet, 9/11.

24 Q Okay. 9/11, you have heard the testimony,
25 are you talking about the tribute?

1 A Yes, ma'am.

2 Q Is that the tribute for firefighters?

3 A Yes, ma'am.

4 Q Now, the tribute, where was it being held?

5 A At Dead Dog Saloon.

6 Q At Dead Dog Saloon? Whenever you went there
7 was it before lunch or after lunch?

8 A It was after lunch, ma'am.

9 Q It was after lunch?

10 A Yes, ma'am.

11 Q Do you recall approximately when it was that
12 you would have gotten there?

13 A I'm going to say somewhere between 4:30 and
14 6:00, I'm going to say, I mean roughly. I really
15 can't remember but I know it was late in the
16 afternoon.

17 Q Okay. What was going on whenever you got to
18 the Dead Dog?

19 A It was people everywhere.

20 Q Okay. And was there food being served?

21 A Yes, there was food being served in Dead Dog
22 like they do every year.

23 Q Okay.

24 A I mean, I met up with Tony and A. J. and we
25 were standing in line, then the next thing I know I

1 see Wayne come up and he asked Tony for some money
2 and Tony handed him some money.

3 Q Okay. All right. And are you sure this was
4 at the September 11th tribute?

5 A Yes, ma'am. I been going there, this is,
6 this year coming up will be the fourth year for me.

7 Q And whenever -- you said you saw Tony and
8 A. J. there. Correct?

9 A Uh-huh.

10 Q That's a yes?

11 A Yes, ma'am.

12 Q All right. And then after you met up with
13 them are you sure that the person that showed up
14 and talked to Tony Carter was the defendant Wayne
15 Love?

16 A Yes, because he asked Tony for some money.

17 Q Okay. You specifically remember that?

18 A Yes, ma'am. We was standing in line waiting
19 to get our food.

20 Q Okay.

21 A Yes, ma'am.

22 Q Do you know how long you stayed?

23 A Me?

24 Q Yes, how long did you stay?

25 A It was probably an hour and a half or so,

1 maybe not even that. I would say that long because
2 my daughter wanted to get home and all that.

3 Q Whenever the defendant came up and asked Mr.
4 Carter for some money did you notice anyone that
5 seemed to be with him at that time?

6 A No. I didn't pay all that attention, ma'am,
7 because there was people everywhere.

8 Q All right.

9 MS. LIVELY: Okay, thank you. Answer any
10 questions the defense may have for you.

11 CROSS EXAMINATION BY MR. FOX:

12 Q You say you saw Mr. Love, I can't really
13 remember, between 4:30 and 6:00, he came up and
14 asked for money from Tony. What did he do after
15 that?

16 A He stood there and talked in line.

17 Q And you were there for about an hour and a
18 half?

19 A Yes, I would say, yes.

20 Q Could you see Mr. Love from time to time
21 while you were there?

22 A Yes.

23 Q Okay. So, while you were there Mr. Love was
24 there?

25 A I can't say the whole time but I know there

1 was times that I did see him, yes, sir.

2 Q Fair enough. Now, you have known Mr. Carter
3 for fifteen or sixteen years?

4 A Yes, sir.

5 Q Okay. Close to him?

6 A We're friends, yes, sir.

7 Q Okay. Know his family?

8 A Yes, sir.

9 Q Okay. Know his daughter?

10 A Yes, sir.

11 Q [REDACTED] I'm talking about, I guess
12 stepdaughter?

13 A Yes, sir.

14 Q You know [REDACTED]

15 A Yes, sir.

16 Q Okay. How does Tony regard [REDACTED] from
17 your observation? It is not his blood relative,
18 right?

19 A He treats her like a daughter, like his own.

20 Q So, she is important to him?

21 A Yes, sir.

22 Q Tony is important to you?

23 A Yes, sir.

24 Q Were you aware at anytime that [REDACTED] had
25 disclosed to her family that somebody had sexually

1 assaulted her?

2 A I did not know, I mean in the last couple
3 years Tony didn't want to talk about it and I, that
4 is how we left it, I left it alone about that.

5 Q So you didn't know details but were you aware
6 that was out there?

7 A Not all, not everything what's going on now,
8 no, I didn't, no.

9 Q Are you saying that you didn't know the
10 specifics or are you saying you weren't even aware
11 there was this issue that his daughter had said --

12 A I knew about the issue. That is about as far
13 as it went.

14 Q Okay, thank you. That is what I was getting
15 at. So you have known that for how long?

16 A Probably, let's say maybe a year to six
17 months, if that.

18 Q Okay. So for a year you have known that?

19 A Maybe. I can't recall.

20 Q Okay, fair enough. Anyone ever -- withdrawn.
21 What time did you get up that morning, 9/11/2010?

22 A The yard sales start about 7:00 o'clock in
23 the morning, sir.

24 Q So you usually went to the yard sales? How
25 do you know you went to one that day?

1 A Because we usually go every Saturday.

2 Q Usually? Does usually to you mean every
3 Saturday?

4 A Just about, yes, sir.

5 Q Does that mean every Saturday without fail or
6 sometimes you miss one?

7 A Sometimes I miss one.

8 Q Okay. So how do you know you didn't miss one
9 that Saturday?

10 A Because I was at 9/11, I ended up at 9/11
11 that Saturday so I know because, I mean, there was
12 a church right there on Murrells Inlet that had a
13 big yard sale that we stopped at before, I mean
14 before we come back through.

15 Q Okay, fair enough.

16 MR. FOX: The Court's indulgence.

17 THE COURT: Sure.

18 Q How long were you at that yard sale?

19 A Well, we start here in Georgetown and work
20 our way all the way up to Murrells Inlet sometimes,
21 sir.

22 Q Are yard sales still going on at 3:00 and
23 4:00 o'clock in the afternoon?

24 A No. At that time I was probably at the mall,
25 just leaving the mall or Bass Pro Shop.

1 MR. FOX: Thank you. No further questions.

2 MS. LIVELY: No other questions, Your Honor.

3 THE COURT: All right, thank you, sir.

4 THE WITNESS: You're welcome.

5 (Witness excused).

6 THE COURT: Okay, any further reply?

7 MS. LIVELY: No further reply from the State;
8 Your Honor.

9 THE COURT: All right. Ladies and gentlemen,
10 I'm going to ask you to go back to the jury room
11 briefly and don't talk about the case, continue to
12 keep an open mind.

13 (Jury excused from the courtroom).

14 THE COURT: All right. Any motions at this
15 stage?

16 MR. FOX: Your Honor, now I believe we're at
17 the conclusion of all the evidence, I renew the
18 previous motions for directed verdict as to both
19 indictments and again for the reasons stated, the
20 burden of proof, you have to prove the elements of
21 each charge beyond a reasonable doubt. I also
22 renew, renew any previous objections, Your Honor,
23 and move for directed verdict.

24 THE COURT: Okay. I respectfully deny the
25 motion.

1 Is there any requests to charge that either
2 side specifically wishes me to make as far as --

3 MS. LIVELY: Your Honor, typically I do ask
4 for the charge in regard to no corroboration
5 necessary in sexual assault cases. I think the
6 section is 16-3-57. It's the specific statute that
7 incorporates criminal sexual conduct cases, all the
8 CSC with minor cases, it is specifically that
9 statement that no corroboration is necessary in
10 regard to a sexual assault case. I'll pull that
11 up, I have the exact Code Section I'm referring to
12 and that I typically request especially when we
13 have a case such as this where everything involves
14 testimony and there is not actual DNA evidence or
15 other physical evidence, it is completely based on
16 testimony of witnesses as well as the victim in the
17 particular case.

18 MR. FOX: Your Honor, I actually have it, I
19 know what she's talking about, I believe it is
20 16-3-657. I think that refers to testimony of the
21 victim need not be corroborated in prosecutions of
22 CSC. It does not apply to those ones not in those
23 sections, lewd act with a minor I believe is not
24 one of those included.

25 MS. LIVELY: That's correct. Only with

1 regard to CSC cases, it is not in regard to lewd
2 act.

3 MR. FOX: I would, Your Honor, there is also
4 case law to say it is not error if Your Honor
5 chooses not to charge it. It's within your
6 discretion, it is not error if you do, it is not
7 error if you don't, and I would ask Your Honor not
8 to or at least make clear it is specific to the CSC
9 charge.

10 MS. LIVELY: Your Honor, I think it would be
11 quite simple for the Court to do that in regard to
12 charging on the CSC with a minor second degree,
13 that you could say pursuant to this particular
14 section no corroboration of the victim's testimony
15 is necessary in a prosecution, or whatever the
16 language is with regard to that. Typically what I
17 do in cases like this I usually have lewd act with
18 minor as a direct indictment or an additional
19 indictment anyway because obviously sexual
20 gratification, fondling cases go hand in hand
21 within the actual battery offense, so what I
22 typically do, I can provide a copy of that to Your
23 Honor, is have the CSC minor second degree typical
24 charge that is used and then have the no
25 corroboration statute actually directly follow that

1 in regard to that particular statute and clearly
2 encompassing just the sexual battery element.

3 THE COURT: All right. I'm aware of the case
4 law on it and it is discretionary and I choose not
5 to charge that. I just think it is a best practice
6 not to. You certainly can argue that.

7 MS. LIVELY: Yes, sir.

8 THE COURT: All right.

9 MS. LIVELY: Okay.

10 THE COURT: I'm convinced, persuaded by the
11 views of Justice Pleicones on that particular
12 issue.

13 MS. LIVELY: Your Honor, is it at this point
14 in time which you will actually provide us with
15 what your proposed charges are?

16 THE COURT: Yes, I have it right here.

17 MS. LIVELY: Other than that specific
18 request, that is typically what I ask to have, but
19 everything else regarding I'm assuming prior
20 inconsistent statement, you know, expert witness
21 testimony, testimony of lay witnesses,
22 circumstantial, direct, all that kind of stuff,
23 standard things, I'm not asking for anything
24 additional other than that one I had mentioned.

25 THE COURT: I will let you look at the

1 charge. I don't know about alibi. What do you
2 want me to do about that?

3 MR. FOX: I'm not making that request.
4 Judge, I think arguably there has been testimony
5 about it so, you know, I think my understanding of
6 an alibi charge would be if it is raised it is not
7 for the defendant to prove an alibi, but the State
8 to disprove, my understanding. I'm not requesting
9 one, I will address our remarks based on your
10 decision to charge or not to charge.

11 THE COURT: Miss Lively?

12 THE COURT: Are you saying, Mr. Fox, it is a
13 strategic decision on your part and your client's
14 wishes?

15 MR. FOX: Your Honor, truthfully, I don't
16 know it is going to change how I argue, to be
17 honest with you. It wasn't my intention, as we
18 discussed in other matters, to specifically bring
19 it up. I didn't think it actually applied. He
20 doesn't deny he was with her during the alleged
21 incidents on the boat, he denies doing anything but
22 he doesn't claim he was somewhere else and couldn't
23 have done it, so it is not an issue with those
24 incidents.

25 With regard to New Year's Eve, I don't mean

1 to split hairs but it didn't occur to me that was
2 actually an alibi to say, "The victim wasn't there,
3 I was home." You know, it is not going to change
4 how I argue. Now, he has testified he was not with
5 her and was at home on 9/11, so that testimony is
6 there but --

7 MS. LIVELY: Your Honor, would you provide me
8 with what your proposed alibi charge would be so
9 that I can look at it and see whether or not the
10 actual information that came out during the trial,
11 because I was kind of a little bit thrown by the
12 whole potential alibi issue, I didn't have a lot of
13 research on it so I would like to look at it and
14 just see what you would propose to put in and see
15 whether or not because of the way everything
16 unfolded, if it would be helpful to the jury or not
17 to have that information.

18 THE COURT: Right.

19 MR. FOX: I would agree..

20 THE COURT: I'm going to have to have some
21 statement in the record from you, Mr. Fox, and your
22 client that it's a strategic decision on your part
23 to not want me to charge alibi and I may have to
24 charge it anyway but the only way I'm going to
25 consider not charging it is if your client and you

1 make that statement, and I don't know if you, if
2 that is your strategy, but that is the only way I
3 would consider not charging it.

4 MR. FOX: Yes, sir, just I would need to see
5 your proposed charge and make that decision based
6 on that.

7 THE COURT: I will pull it up and print it
8 out and give it to you. Let's take a break until
9 about 3:30, all right?

10 MS. LIVELY: Yes, sir.

11 THE COURT: And let you look at it.

12 MR. FOX: While we're here and on the record,
13 our preference would be to argue and charge in the
14 morning, in part because it's going to be 3:30 or
15 so before we start doing that and I think it is a
16 fair estimate that it will be well after 4:30
17 before we would actually be giving the case to the
18 jury. In part, it has been another long day and
19 another long week, in part because we have had
20 problems with jurors, though I haven't seen it
21 today, jurors nodding off, I would ask that we stop
22 and let the jury go home and get refreshed, give
23 myself a chance to gather my notes and thoughts
24 overnight and start first thing in the morning and
25 argue, charge and get it to the jury.

1 THE COURT: What is your position on it, Miss
2 Lively?

3 MS. LIVELY: Well, I mean, I'm ready to
4 proceed just because it is all fresh in my mind
5 right now but, you know, I don't want the jury
6 nodding off but they have actually seemed to perk
7 up at this point, so I will leave it to your
8 discretion, Your Honor, what you feel is best.

9 THE COURT: How long do you anticipate your
10 closing argument to be?

11 MR. FOX: Judge, I intend to keep it fairly
12 simple, so I would think 15 or 20 minutes at the
13 very outside. I surely don't intend to go on a
14 long spew. I think probably fifteen minutes is
15 pretty safe, give or take just a little.

16 MS. LIVELY: That is for you?

17 MR. FOX: For me, yes.

18 MS. LIVELY: I wish I could say the same,
19 Your Honor. I tend to be a little bit more long
20 winded than that but I will try to not ramble on as
21 much because I typically will go on probably 30 to
22 45 minutes.

23 MR. FOX: Don't hold me to 15 but I would say
24 generally speaking this is one time I intend to be
25 a little brief.

1 MS. LIVELY: There is just a lot of
2 testimony. I could probably, you know, keep it to
3 around 30 minutes with everything that I have out
4 there since there wasn't a lot of technical
5 evidence, it is all about credibility, I could
6 probably limit my closing to probably around that
7 amount of time.

8 THE COURT: 30 minutes, 45 minutes?

9 MS. LIVELY: Yes, sir, I'll try.

10 MR. FOX: Again, at that point, with your
11 charge we're well over an hour at that point.

12 THE COURT: Yes, I would have to agree with
13 Mr. Fox. The charge probably takes about 20
14 minutes and so we're after 5:00 o'clock getting it
15 to them. My experience is that it is
16 counter-productive, so they are going to be worn
17 out and probably won't be as efficient and fresh as
18 they would be in the morning, so I think we'll just
19 ask them to come back out and start back in the
20 morning.

21 MR. FOX: Thank you, Your Honor.

22 MS. LIVELY: That's fine, Your Honor.

23 THE COURT: And you all can look at the
24 charge.

25 All right.

1 (The jury returned to the courtroom).

2 THE COURT: It's almost, it's 3:25 and we
3 have left in the case the closing argument of the
4 lawyers and the instruction on the law. By the
5 time we got through with all that it would be
6 approaching 5:00 o'clock and I know you all
7 probably have obligations tonight or other things
8 you would rather be doing during the evening than
9 deliberating so I think we're going to start that
10 in the morning when everybody is fresh, and I
11 apologize for the herky jerky nature of the
12 proceedings today. It was just unavoidable and I
13 appreciate your understanding.

14 I told you Monday we do our best to respect
15 your time and you probably don't think we have been
16 doing that but we have been out here working on
17 various aspects of the case that had to be resolved
18 outside your presence. I know that is frustrating.
19 Somebody wanted to compare jury service to sitting
20 in an airport waiting for an unscheduled flight to
21 leave. I'm sure that's probably how you felt
22 today.

23 So, I appreciate your good will and patience
24 on that and we'll just come back in the morning at
25 9:15 and we'll try to get under way at that time,

1 and don't talk about the case, don't do any kind of
2 outside investigation and continue to keep an open
3 mine.

4 Thank you very much. Have a good evening.

5 (The jury was excused from the courtroom).

6 THE COURT: Okay, thank you very much. We
7 have the proposed verdict, we have the proposed
8 verdict form and alibi instruction up here if you
9 all want to see that. We'll see you in the
10 morning.

11 MS. LIVELY: Yes, sir.

12 (Recessed at 3:26 p.m., April 25, 2012).

13 (Reconvened at 9:45 a.m., April 26, 2012).

14 (CD excerpts were marked as Court's Exhibit
15 Number 7).

16 THE COURT: Okay. As far as the alibi
17 instruction and instruction on the substantive
18 elements of the offenses, is there anything either
19 the State or the defense wishes to place on the
20 record?

21 MS. LIVELY: In regards to the charges, Your
22 Honor, no, the State is fine with what the Court
23 has chosen to charge the jury. I do have just one
24 little clean up matter that I need to do and I
25 talked to the court reporter this morning.

1 Yesterday whenever we actually, I put in certain
2 portions of the defendant's interview, the
3 Mirandized statement where the Court made a finding
4 it was voluntary and met everything that needed to
5 be met in regards too Jackson v. Deno.

6 THE COURT: Yes, ma'am.

7 MS. LIVELY: We did not put the entire
8 interview in, it was never my intent to do it only
9 because I was just using it for impeachment
10 purposes. However, I needed to make sure for the
11 record that we actually make it a Court exhibit.
12 We have done so, Court Exhibit Number 7, and for
13 the record it has been done, I have put it in this
14 folder, it is now marked and I'm going to hand it
15 up to the Court.

16 THE COURT: All right.

17 MS. LIVELY: I wanted to make sure for the
18 record that that had been done.

19 and that would be all for the State, Your
20 Honor.

21 THE COURT: Thank you.

22 Mr. Fox?

23 MR. FOX: Yes, Your Honor. I reviewed Your
24 Honor's proposed instructions to the jury. I have
25 no objections or additions in addition to that. My

1 mind having cleared after court yesterday, I do
2 request that Your Honor charge alibi. I think it
3 is justified we make that specific request, Your
4 Honor.

5 THE COURT: Okay, I will charge it. If you
6 all will give me back the charge, I don't think I
7 kept a copy of what I gave you.

8 MS. LIVELY: The alibi charge or all the ones
9 you handed --

10 THE COURT: All the ones I gave you.

11 MS. LIVELY: Yes, sir.

12 THE COURT: All right, anything else before
13 we bring the jury in? I was advised we had all
14 them present, there was someone late.

15 MS. LIVELY: I'm ready, Your Honor.

16 MR. FOX: Ready, Your Honor.

17 THE COURT: Do you waive opening on the law?

18 MS. LIVELY: Yes.

19 THE COURT: All right. Okay, yes, sir, bring
20 the jury out.

21 (The jury returned to the courtroom).

22 THE COURT: All right, good morning, ladies
23 and gentlemen. We're at the stage now where we
24 will have closing argument. After we have closing
25 argument I will give you instructions on the law,

1 then the case will be in your hands for a decision,
2 to reach a verdict.

3 So, Mr. Fox, yes, sir.

4 MR. FOX: Thank you, Your Honor, may it
5 please the Court.

6 Good morning, ladies and gentlemen. You're
7 about at the time of the case where the case will
8 be in your hands. I do thank you again, it has
9 been a long week and I do appreciate it. I know
10 when you drew up a list of a thousand things you
11 wanted to do this week jury service wasn't one of
12 them but it certainly should be very clear to you
13 by now why it is extremely important to both the
14 State and the defense.

15 We have rules that govern a football game.
16 If you watch a football game or play in a football
17 game there are rules about what you can and cannot
18 do, you have a referee to enforce those rules. We
19 have the same thing here. The way the rules are I
20 have to talk first, closing argument, Miss Lively
21 gets to go next, I don't get a chance to come back
22 up and respond.

23 So, part of what I'm going to do, Miss Lively
24 does not need me to speak for her and I don't mean
25 to put words in her mouth but I do have to at least

1 anticipate things she is going to say and argue to
2 you because I don't get a chance to come back and
3 say, "Hey, wait a minute, it is like this." So,
4 again, I'm not trying to do her job, she doesn't
5 need any help, but I'm going to have to address
6 some of those things.

7 The judge will define for you at the end of
8 the case the law that applies, again explain
9 reasonable doubt. He will say reasonable doubt is
10 something that leaves, the absence of reasonable
11 doubt would be you're firmly convinced of the
12 defendant's guilt. In other words, to get beyond a
13 reasonable doubt based on the testimony you have
14 heard and the evidence, the physical evidence
15 you're going to have in the jury room with you, if
16 you are not left firmly convinced of the
17 defendant's guilt, Mr. Love's guilt, in other
18 words, if you're not convinced beyond a reasonable
19 doubt you must return a verdict of not guilty.

20 I heard a lawyer when I first started
21 practicing say something to a jury in a situation
22 like this I thought was very interesting and
23 instructive. He pointed out, of course you all
24 know South Carolina was a colony of Great Britain,
25 our legal system is based very much on the British

1 model. I don't know if it is still true but in
2 colonial days in the British system there were
3 three verdicts in a criminal trial. Guilty, which
4 is convinced beyond a reasonable doubt the man is
5 guilty, they did it. Innocent or not guilty, which
6 is we're convinced he didn't do it. And then not
7 proven.

8 Not proven was for that situation where the
9 jury thought, "Well, we can't say for sure that man
10 is innocent but we don't believe we've got enough
11 evidence to say he's guilty, we have not been
12 convinced beyond a reasonable doubt." It had the
13 same effect of a not guilty verdict.

14 In South Carolina, in the United States over
15 the years we simply merged those two verdicts, not
16 proven and not guilty. What does that mean for you
17 all? Obviously if you're convinced, firmly
18 convinced beyond a reasonable doubt that Wayne Love
19 has done these things then you're duty requires you
20 to return a verdict of guilt. But if you feel and
21 you're convinced he is innocent or that the State
22 simply has not met its burden of proof, that you're
23 not sure, you've got doubts about it, it's not
24 proven, your duty requires you to return a not
25 guilty verdict, and the judge will explain that.

1 Now, you've got two different charges, you've
2 got to reach a verdict on each one, criminal sexual
3 conduct with a minor, lewd act. Again, you may
4 decide based on the evidence that he is guilty of
5 both, not guilty of both or guilty of one and not
6 guilty of the other. I'm going to ask you find he
7 is not guilty of both but again, the verdict must
8 be unanimous, whatever it is, guilty or not guilty,
9 and it must be a separate determination for each.

10 Unanimous does not mean that you all are
11 unanimous in what your doubts may be, okay? If you
12 have a doubt based on the evidence and the
13 testimony about the guilt of Mr. Love that's a not
14 guilty. One juror's doubt does not have to be
15 based on the same evidence and testimony as
16 another. You do not have to be unanimous about
17 what those doubts are but the verdict itself must
18 be unanimous.

19 Now, enough of the preliminaries. When you
20 boil it down it is obviously a very emotional and
21 very powerful case. If you are a parent, if you
22 know anyone, if you know any young girls, twelve,
23 thirteen, fourteen years old, you can't help but be
24 concerned and moved by the allegations in this
25 case. It makes your blood curdle. But your

1 verdict cannot be made on the basis of emotion or
2 sympathy. You are not here to reward or punish
3 anybody. You are here to make an impartial
4 determination.

5 I will address at the end why someone might
6 make up these allegations, might lie. The case
7 itself in terms of the evidence is fairly
8 straightforward. This is not a case like on CSI
9 with DNA, fingerprint and ultraviolet light finding
10 hair and fibers and that kind of thing. It is just
11 not that kind of case. It is really testimony. I
12 mean, you've got these photographs, they may help
13 paint a picture for you, I don't think either of
14 those photographs really get you very far in
15 determining it did or didn't happen but it may help
16 you get the picture, you have photographs of
17 Brittany's house.

18 The evidence is all from the witness stand
19 and it really comes down to [REDACTED] and
20 Wayne Love. You are the sole judge of the
21 credibility and believability of the witnesses. I
22 am very sure you're going to hear the argument with
23 regard to Wayne Love and his wife Tabitha, "Well,
24 they have a motive to lie, don't believe them,
25 they've got a motive to lie."

1 Well, undeniably they do. Any defendant who
2 comes into this courtroom and is facing a prison
3 sentence has a motive to lie, there is no getting
4 around that. But if you stop your analysis there,
5 if you say, "Well, he's just going to lie because
6 he's facing, he doesn't want to go to prison, he
7 would lie about anything," if that is as far as you
8 get then you're violating your oath and you're
9 standing our criminal justice system right on its
10 head because you have now taken away the
11 defendant's right to get on the stand and testify
12 and speak to you and be evaluated like any other
13 witness.

14 So, yes, I can't tell you to ignore it and
15 say that is not an issue at all but if that is the
16 end of your thought process on it then you are
17 really destroying the criminal justice system.
18 Every defendant has that issue and, yes, the other
19 witness we called was his wife Tabitha, she clearly
20 loves him. Whatever else you may think or decide,
21 clearly she loves him, clearly she supports him,
22 clearly she does not want him to go to prison.

23 But again, base your decision about her
24 credibility and on what she told you and how she
25 told you, her demeanor, her consistency, the things

1 you would do with any witness, the things you do in
2 your everyday life, how did this person talk to me,
3 how did they address me, their body language, those
4 type things you do every day, not what is her
5 relationship to the defendant, at least not solely
6 on what is her relationship to Mr. Love.

7 We don't walk around in our lives with an
8 unknown person 24 hours a day so that if we ever
9 get in trouble there is going to be an impartial
10 witness. The people that we interact with in our
11 daily lives are our friends and loved ones and our
12 co-workers and people that know us. Obviously if
13 we ever find ourselves in court the people that are
14 going to be witnesses for the most part are going
15 to be people that know us and very frequently are
16 going to be family members. Don't punish a
17 defendant for that. If you choose not to believe
18 Miss Love because you don't find her believable,
19 well, that certainly is within your purview, but
20 not simply because she's his wife.

21 Now let's talk about some of the other
22 witnesses, and I need to get to Minor the big
23 one, at the end. Regina Frye was here yesterday
24 and Regina Frye thought she could remember after
25 much prodding that 9/11 in 2010 that she was not in

1 fact at the Love household watching the Carolina
2 football game. Okay. Well, Miss Frye also, when I
3 got to question her, told you that she had in fact
4 had a conversation with me, that she is friends
5 with the Loves, she and I spoke earlier this week,
6 we talked about actually the New Year's Eve party
7 that we heard about and we have talked about that
8 and based on that conversation and at my request,
9 although through Tabitha Love, at my request she
10 came all the way down here from Columbia to
11 possibly testify about New Year's Eve and the fact
12 that her memory was that New Year's Eve Minor
13 Bellamy wasn't around and she told you then when
14 she got here I talked to her some more and we
15 determined that in fact she was mistaken, she has
16 the wrong New Year's Eve, couldn't remember. Okay?

17 Well, that's not helpful to anybody, it is
18 certainly not helpful to my case and it doesn't
19 help anybody to come to a conclusion, so now she is
20 not my witness, but she stayed, you have probably
21 seen her sitting in the courtroom next to Miss
22 Love this week.

23 Then she says after court on, I guess that
24 was Tuesday, today is Thursday, that the
25 Solicitor's office and Ginger Pop from the

1 Sheriff's office decided they wanted to talk to her
2 and they took her downstairs and for two hours they
3 took her down in the office and they talked to her
4 and talked to her and at the end of that long talk
5 she now remembered that not only New Year's Eve but
6 now she has decided she wasn't at Wayne's house on
7 the date of the Carolina-Georgia game.

8 Well, frankly I don't know she remembered
9 that. I think you have a great deal of reason to
10 question what she remembers about anything based on
11 her initially being sure enough that she was at
12 New Year's Eve, on the relevant New Year's Eve,
13 that I asked her to come down here, and being
14 mistaken about that, I think you can certainly
15 question whether she remembers accurately.

16 She certainly said, "Yes, sometimes I went to
17 watch ballgames and I might have been there, I
18 don't think I was there." I don't think she really
19 gets you very far at all, I think you can dismiss
20 her completely, I think my impression is she's got
21 inhale and exhale written on her hand to remind her
22 to breathe.

23 But the other witness Steve Szuch who was
24 here yesterday, and Mr. Szuch was a very likeable
25 guy, I think he was the last witness, and he spoke

1 also about 9/11, and Mr. Szuch said, you know, he
2 is a friend of the Bellamy family, knows Tony
3 Carter and that he talked about going to the yard
4 sales, Murrells Inlet all along, then he was at
5 Dead Dog Saloon late in the afternoon. That's the
6 whole point, what time was he there, did he see
7 anybody there? He says, "I was there in the late
8 afternoon, I saw Wayne Love there." Of course that
9 is an issue because Wayne said, "I did not go down
10 to Dead Dog later in the day," he was there
11 earlier, so that is a big issue, obviously.

12 Now, interesting about that, I think it is
13 also possible, given the passage of time, it is
14 hard to remember exactly when. I would say that is
15 true about Wayne, clearly at times when he
16 testified he said, "I can't recall certain things,"
17 and then Miss Lively would play conversations he
18 had with Ginger Pop back when this was all fresher
19 in his mind, and he said, "Okay, yes, I remember
20 that." That is perfectly normal, I think, for
21 anybody because we're talking about events that are
22 two years or more old, at least a year and a half
23 and some of them going on two years, plus.

24 But Mr. Szuch, I wondered about that with Mr.
25 Szuch. I mean, he has got the time a little bit

1 off, but interesting, one thing I do know is
2 [redacted] said on 9/11 that Wayne came over to her
3 house about 5:00, and again we can allow for a few
4 minutes either way, no one expects her to pinpoint
5 that but number one, you have got Wayne that says,
6 "I was home at 5:00," his wife says he was home at
7 5:00. But, you know, if he doesn't remember and
8 he's not right, there is somebody else that says he
9 was not, and he says without question, Wayne says
10 without question, "I was not down at the Bellamy
11 house and I was not with [redacted] I did not see
12 her."

13 There is somebody else that said that at
14 least late in the afternoon, and that is Steve
15 Szuch. Steve Szuch said, "I got there at Dead Dog
16 about 4:30, not long after I got there I saw Wayne,
17 Wayne came up and asked Tony for money, I stayed
18 about an hour and half and I saw Wayne throughout
19 that time." So, you've got two ways to get to
20 Wayne Love not being with [redacted] at 5:00 o'clock
21 on 9/11, in the afternoon. You've got Wayne
22 saying, "I wasn't even there."

23 There are some questions about a conversation
24 he had with his wife in the jail, he is asking,
25 "Did I leave, I don't remember?" She said, "No,

1 you were here watching the game." But he had those
2 questions from Miss Lively to Tabitha Love, so I
3 think maybe Wayne doesn't remember exactly but
4 Steve Szuch seemed to remember, so even Steve Szuch
5 said, "He wasn't here," I mean, "He was here at
6 Dead Dog," but he wasn't at the Bellamy house, "I
7 saw him at the Dead Dog at 5:00 o'clock."

8 Now, I will talk about Tabitha first.
9 Tabitha Love testified, she testified, she doesn't
10 claim to know whether -- well, back up. She does
11 say on New Year's Eve, three different times we
12 talked about, New Year's Eve, 2009-2010, the boats,
13 and then the 9/11. And Tabitha says, "Look, I was
14 with him, we went to this party at the Bellamys, we
15 came home and [REDACTED] did not come with us." She
16 was very sure about that and you can judge with all
17 these witnesses, you can judge how definite were
18 they, how sure were they, what was the opportunity
19 to know, to have knowledge of what they're
20 testifying about, what was their demeanor, how were
21 they in response to different questions, did they
22 stay consistent, again the things you would do with
23 anybody, and I think Tabitha Love was all those
24 things in terms of believability.

25 So, yes, she is Wayne's wife, yes, she loves

1 him, doesn't want anything bad to happen to him but
2 I thought she was very definite all through her
3 testimony about things and very open. For example,
4 when she was asked by the Solicitor, "Well, didn't
5 you talk to Wayne about perjury and didn't you talk
6 to him when you talked from the jail, didn't you
7 talk to him about the Dead Dog game, the ballgame
8 and whether you left or didn't leave, you have
9 already testified this way," she admitted, "I might
10 be up for perjury if I testify a different way."
11 She's a lay woman, she's not a lawyer, she
12 shouldn't be judged on that basis alone,
13 inconsistent testimony wouldn't be a basis for
14 perjury but she was very open about that. She
15 didn't try to deny having that conversation and she
16 also told you, "I also told him," in response to
17 Miss Lively's question, she also said, "And I told
18 Wayne tell the truth, don't worry, you're going to
19 be all right." I think when you kind of put all
20 that in context it makes her more believable.

21 She also, she doesn't know anything about the
22 different fishing tournaments, she wasn't around.
23 The nature of those allegations, at least the
24 timing of them, make it very difficult to defend,
25 quite frankly, and there is no requirement that

1 they be able to say on this specific day at this
2 tournament this happened, but it makes it a little
3 hard. Wayne said, "They had these tournaments,"
4 and Tony said also, "Had these tournaments about
5 once a week every week for several months, 15, 20
6 tournaments during the season and I went to some
7 but most of them I didn't."

8 If you had particular dates, specific dates
9 it would be much easier if you're defending a case
10 and say, "Wait a minute, I don't know where I was
11 on that day or not," but Wayne admitted it, "Yes, I
12 would go out with [redacted] sometimes if somebody
13 else was in her dad's boat, that was fine and
14 everybody knew that, we did that two or three
15 times, no one had a problem with it."

16 No one had a problem with Wayne at all, no
17 one saw anything, they were friends and very close
18 friends, these families were like family together,
19 the daughters were friends with the adults and the
20 kids were friends with the kids and the adults did
21 things with each other and they were back and forth
22 to each other's house, sounds like a real good
23 friendship, no one had any issues with Wayne at
24 all, didn't have any issues with [redacted] going out
25 and spending time with him in the boat, saw nothing

1 that set off alarm bells. People can be fooled
2 about that, that is for sure, people that have evil
3 intentions toward young girls don't typically
4 advertise it but there was nothing that set off any
5 alarm bells for anybody in the Bellamy family.

6 And again, think about Wayne Love's
7 testimony. Let's talk about Wayne now. How was
8 Wayne's demeanor when he testified? Yes, again, he
9 is a defendant facing very serious allegations,
10 facing going to prison, that is certainly a
11 motivating force in your testimony.

12 I tell you what is another motivating force,
13 is not going to prison for a crime you didn't
14 commit. That is a motivator, too. So you decide
15 how was he when he testified, not just to me, that
16 is the easy part, when your own lawyer is asking
17 you questions, you ask the easy questions and you
18 lead him through and that is the easy part.

19 But how was he both with that and how was he
20 in cross-examination? Was he believable, was he
21 credible about things, was he consistent about
22 things? Did he a couple times say, "I don't recall
23 about that," but when one of those was about having
24 contact with [REDACTED] on 9/11, first he said, "I
25 don't think I did, the best I can recall I didn't."

1 But when Miss Lively was able to show him or play
2 him that, a bit of that interview he had with
3 Ginger Pop when he was first contacted about all
4 this, shortly after all these events he said, "Oh,
5 yes, now that refreshes my memory, I know that, of
6 course I couldn't deny I know it at that point, I
7 was on tape, this is what she did," she called him,
8 had contact, call or text about, "Bringing me a
9 cigarette." He said, "I'm not bringing you a
10 cigarette, I'm on my way somewhere else, it's not
11 going to happen." He didn't recall that.

12 Did he deny they had had conversations
13 through text and the phone back and forth? He
14 described that relationship, everybody described
15 that relationship as a big brother, big sister
16 relationship. Might be that is a little strange?
17 I think it is not unusual for teenagers for good
18 reasons and bad not to want to confide in their
19 parents, sometimes because they don't want their
20 parents to know what they're doing and sometimes
21 because they don't want to disappoint their parents
22 and sometimes both, but probably all of you as
23 teenagers had certain things you did not tell.
24 They weren't real bad things, part of that is just
25 becoming an independent person, there is nothing

1 sinister in and of itself having someone other than
2 your parents you can confide to and talk about
3 your troubles to. If some of the troubles are with
4 your parents, not because they are bad people, but
5 if some of your problems are with your parents,
6 you're not happy at home, you don't like being told
7 what you can do or can't do, that is normal
8 teenage stuff.

9 It wasn't just like it was Wayne Love as a
10 confidant. She had Ashley Jenkinson, her own age,
11 who was a friend, and Tabitha, and I'm sure there
12 are other people. Those are the relevant people in
13 this trial but it is not like it was just Wayne and
14 some master puppeteer manipulating her to get her
15 confidence so he could manipulate her. "Yes, I had
16 much contact with her, usually back and forth, it
17 usually started with [REDACTED] contacting me, really
18 all of it, how you doing, what's up?"

19 There were some more dramatic things, he
20 admitted about her taking pills and being up on a
21 roof, it was just a text, maybe she was just being
22 dramatic, maybe she was up on the roof, and Tabitha
23 admitted that was not the best way to do it. They
24 saw themselves more as confidants and felt they
25 could do more to help her through whatever issue

1 she had as a confidant, big brother, than tell the
2 parents. That ain't the way to do it. As a parent
3 that is not the way to do it but it is also not a
4 sinister thing, it was not done to hurt anybody, so
5 it may have been dumb, even immature, but it wasn't
6 criminal.

7 You had hoped you were going to get through
8 this trial without hearing about that stupid
9 picture again, you will have it for yourself, "Why
10 is Mr. Fox talking about that stupid picture that's
11 on Brittany's phone," with Wayne Love and the duck
12 or pelican, whatever the heck it is. You will see
13 it. "Why did he talk about that again?" I'm going
14 to let you in on a secret. When I was
15 cross-examining Ginger Pop the other day, in the
16 time it took me to walk from that chair to about
17 here I lost my train of thought and I could not
18 remember what the next brilliant question that I
19 was going to ask her that was going to just blow
20 this case wide open and so rather than let you all
21 see that and scrambling and trying not to look like
22 a complete fool, as I glanced about the courtroom I
23 saw those phone records and I said let's see where
24 that goes, and I thought I could at least get an
25 admission that I knew there were no nude photos of

1 Wayne or anything inappropriate, thought I could at
2 least go in that direction, and I couldn't even get
3 Ginger Pop to concede that there was nothing
4 strange about this photograph.

5 You know, we went back and forth, and even
6 though I was doing that, I thought this is really
7 silly, I can't believe we're having this dialogue
8 about this stupid picture of a man with looks like
9 either a stuffed animal you get at the state fair
10 or maybe to me it looks like the Myrtle Beach
11 Pelican head. If you have ever been to a Myrtle
12 Beach Pelican game, it looks like a mascot head or
13 something, but stuffed animal, something like that,
14 and she couldn't even concede that there was
15 nothing strange or weird about that, she said, "I
16 don't know, it's a man with a duck." The answer is
17 not what is important, the attitude is what is
18 important. She finally concedes the picture speaks
19 for itself.

20 The reason I bring that back up with you is
21 this. Tabitha Love, when Miss Lively
22 cross-examined her, one of her big lines of
23 questioning was, "Why haven't you told anybody, you
24 say Wayne was with you on 9/11 and never left, you
25 say that [REDACTED] didn't spend the night on New

1 Year's Eve, why haven't you told anybody all this
2 time?"

3 Well, I don't think it is at all far fetched
4 to imagine the reception she would have gotten
5 either the day after Wayne was arrested or a week
6 or a month or a year later if she had walked into
7 Ginger Pop's office or the Solicitor's office and
8 said, "Listen, Wayne was with me on 9/11, he never
9 left, he couldn't have done this, Wayne was with me
10 on New Year's Eve and [REDACTED] was not there, he
11 couldn't have done it." Do you really think you
12 would have seen this, "Well, thank God, now we
13 know, thank you, Miss Love, for coming down here
14 and setting us straight, we can put this case
15 behind us now, God bless you, Miss Love, for
16 straightening us out, case dismissed"? Would
17 anybody think that would have been the reaction?
18 At best it would have been a polite, "No, thank
19 you, ma'am, don't let the door hit you in the butt
20 on the way out." At worse there would have been
21 threats and intimidation about perjury and
22 obstruction of justice. She did what she was
23 supposed to do, she told her husband's lawyers and
24 she came to court and put her hand on the Bible and
25 swore an oath to tell the truth and she told you

1 the truth and that is the way it is supposed to
2 happen.

3 So that is just fluff and nonsense about her
4 waiting to come. If she hadn't told anybody
5 before, fine, she hadn't, at least not the
6 Solicitor, and of course she had no opportunity to
7 tell any of you before now.

8 What it all boils down to really, though, is
9 [REDACTED] and Wayne and their testimony. The rest
10 really helps fill in the gaps, it helps paint the
11 big picture, but that is really what it boils down
12 to. You had a chance to hear them. It is not fun
13 for anybody, thank goodness I have never been a
14 criminal defendant but have been a witness in the
15 chair sitting there, and I tell you the microphone
16 is this big in your mind, not a comfortable feeling
17 sitting in this chair and answering questions even
18 when you're not in trouble. I have no doubt it was
19 unpleasant for everybody, including [REDACTED] to
20 sit in that chair and testify.

21 I debated whether to even bring, to address
22 it this way but there is no way around it. The
23 elephant in the room is, whether anyone said it or
24 not, you will probably hear it from Miss Lively,
25 the elephant in the room is why would [REDACTED] lie?

1 Well, I don't have to give you an answer to that.
2 The defendant, any defendant, including this one,
3 has no burden of proof, he doesn't have to offer
4 you a reason why any witness would come in and lie
5 about it but, you know, it's there. You're going
6 to have that, I have been thinking about that from
7 the beginning of this case, no question in my mind,
8 whether the Solicitor mentioned it or not, you're
9 going to go back in that jury room and you're going
10 to say to yourselves and among yourselves why in
11 the world would [REDACTED] lie about this? I
12 don't know.

13 I don't think it's as simple as, "Well, she's
14 got caught with a Vicodin." It is very hard to
15 comprehend but a Vicodin and a cigarette and she
16 may be in trouble with her family, that might be a
17 part of it, I don't think it is that simple but I
18 have no way of knowing.

19 There is some testimony that maybe there were
20 some family issues but again it doesn't sound like
21 really any more than normal teenage stuff but I
22 know and probably most of you know from your own
23 experience that there is no human being on earth so
24 overwrought and dramatic and tense and troubled
25 sometimes as a thirteen year old girl. It is just

1 kind of the nature of the beast and I know, I don't
2 know why they do it but I know sometimes they do
3 lie about stuff like this and sometimes once things
4 are out there it is easier, as strange as that
5 seems, to stay with that even all the way through
6 coming to court than not.

7 Now, that's not logical, it doesn't make
8 sense. Why would someone start a situation that is
9 going to end with them having to go get interviewed
10 and examined and talk to all these strangers and
11 come into court? It makes no sense. But thirteen
12 year old girls don't always make sense. I know it
13 happens and we see it.

14 I love history, you see it through history,
15 you might have read about the Salem Witch Trials in
16 school back in Massachusetts in the 1690's when all
17 these twelve, thirteen, fourteen year old girls got
18 in some trouble because they were out late and
19 doing things they weren't supposed to do and not
20 worshipping the right way and might be sexual in a
21 way at that time would seem bad and they made all
22 these allegations and it wasn't just about witches,
23 it was about abuse and it went on and on and on for
24 a very long time, to the point where people were
25 hanged. It made no sense, I'm pretty sure there

1 were no witches in Massachusetts in the 1690's and
2 yet people followed all the way through and, I
3 mean, as a lawyer we could sit through any number
4 of those.

5 Now, that doesn't matter, the fact other
6 people might lie doesn't mean [REDACTED]
7 does, of course other than it does happen and there
8 is no logical explanation for it. I don't have one
9 for you. I don't have any reason why she would
10 lie. And of course the defendant, maybe Wayne has
11 that motivation, you can't get around that either
12 but does everything else back that up, does
13 everything else back up her allegations? And I
14 don't think that it does.

15 I think a lot of the things that we spent
16 time on, I'm just about done, ladies and gentlemen,
17 in cross-examining Wayne and testimony, a lot about
18 the contact between them and the number of texts
19 and phone calls and things, I don't know exactly
20 what that was, the mother said a very large number,
21 Tabitha said, "Look, a lot times I had Wayne's
22 phone, we were at home, either one of us would pick
23 up the phone."

24 I don't know how you decide, we know, some
25 idea from that phone number, we don't know which

1 ones, how many are from Wayne and not from his
2 wife, but he admitted, yes, lots of contact. It
3 gets to be kind of like I was referring to what the
4 reaction would have been if Tabitha had gone down
5 and talked, tried to give her husband an alibi with
6 the police, what the reaction would have been.

7 Perception is hard once you get allegations
8 in any criminal case, certainly in one like this
9 where the natural sympathy is with someone who says
10 they were abused, but perception is hardened. One
11 of those is Wayne Love is a nasty pervert predator.
12 I hate to say it in those exact words but that's
13 the perception. "Look at how much contact and look
14 at how often he was texting [REDACTED]

15 Well, things, when you get in those
16 situations sometimes from the prosecution point of
17 view things tend, they want to present you with the
18 most sinister interpretation. My grandfather used
19 to tell about the story, he said, there was a
20 farmer and the farmer had trouble with his shed,
21 people kept coming to his shed and taking tools and
22 sometimes a little minor vandalism all around his
23 farm, he was just furious and he was convinced it
24 was this teenage boy down the road and he called,
25 he never found anything, never could catch, he

1 tried to catch him in the act, couldn't catch the
2 person, never did find the stolen stuff but he was
3 just convinced it was this teenage boy he would
4 tell the police and they would say why do you think
5 it was that boy? He would say because he looks
6 like a thief and walks like a thief and talks like
7 a thief, and sometime later they discovered who
8 really was doing it and it was not the teenage boy,
9 no question about it, and then the teenage boy
10 became a teenage boy again.

11 I think a lot of what we have involving this
12 case with Wayne and they want to make him look
13 sinister and evil and predatory, because the
14 preception is already there and he looks like a
15 thief and he talks like a thief and he walks like a
16 thief. So, I simply ask you to pay very careful
17 attention to the judge's instructions and think
18 very hard about what you have heard and render a
19 fair verdict, a just verdict.

20 Justice, as I told you before, doesn't just
21 mean conviction. Justice is getting each case
22 right one by one and we get justice in general at
23 the end. I think the right verdict in this case is
24 not guilty.

25 Thank you, ladies and gentlemen.

1 THE COURT: Thank you, Mr. Fox.

2 Miss Lively.

3 MS. LIVELY: Thank you, Your Honor.

4 One thing about going second is the feeling I
5 have to immediately kind of junk everything I was
6 thinking about the night before that I was so
7 convinced was going to sound fantastic and you guys
8 were going to immediately believe everything I said
9 and you would be done with it, then I get caught up
10 in some of the things the defense said. The reason
11 why is as I sit here sometimes and using my common
12 sense and trying to pull myself away from being,
13 you know, a state prosecutor, I also, I used to be
14 a defense attorney, I also used to do family law,
15 so I have been in domestic court and, you know, so
16 I have seen it from all sides and that kind of
17 helps me sometimes to understand one of those
18 things you sometimes lose when you go straight into
19 prosecuting cases, that there are other sides to
20 the story, but when it comes down to it as jurors,
21 as a prosecutor, as a defense attorney, as
22 witnesses in a case, the one thing that never fails
23 is whenever you listen to everything and use your
24 common sense.

25 I mean, you've got to go with your gut

1 sometimes because really what happens is you can
2 get caught up in the idea of, you know what, if
3 there is just a little bit of maybe, could of or
4 would of, is that what I focus on, or do I focus on
5 what is reasonable, okay? That is what reasonable
6 doubt is. It is not an impossible doubt, it is
7 what is a reasonable doubt, okay?

8 So, that is what I have to always want to
9 start backing out on, so the only thing I do want
10 to just respond to real quick, he had mentioned
11 Investigator Pop and whether or not Tabitha should
12 have just gone to her immediately. I understand
13 why she probably didn't.

14 But this is the thing. The reason why
15 investigations happen the way they do, I don't know.
16 whether or not all of you watch any of these
17 investigation shows but there is actually one out
18 there called like the first 24 hours or something
19 like that, because the first 24 or 48 hours
20 whenever something is reported is so crucial and
21 that's the reason why if Tabitha had gone in there
22 and, I don't know, this is all a what if that the
23 defense brought up I want to address real quick,
24 then I will get into what I want to talk about. If
25 she had gone in right then and said, you know, "My

1 husband was with me all day on September 11th," the
2 reason why I emphasize September 11th as the most
3 important time because that is when we have the
4 most egregious conduct, that is the one where we
5 have the actual digital penetration of a fourteen
6 year old child, okay, so I'm going to focus on that
7 one.

8 If she had said, "You know what, he was with
9 me all day, he didn't go back to the Dead Dog
10 Saloon and also Regina Frye was there with us."
11 Regina might not be in a situation where she had to
12 sit there and look it up on the internet and
13 determine whether or not a Carolina game even
14 happened on that day, and if so, what time and what
15 time she needed to be there in order for it to fit
16 the story.

17 So, you can try and make Ginger Pop out to be
18 the evil person who is out there just trying to
19 lock up anybody who is claiming to be a pervert, or
20 you can have her out there doing, getting
21 information and reacting to what you get, that is
22 what it is. So, if I had to deal with Tabitha
23 getting on the stand and saying, "I recorded that,
24 he was with me all day," and Ginger went up there
25 and said, "Did you all see this guy here September

1 11th, do you remember him?" "No, No." "Mr. Szuch,
2 do you remember seeing him there?" You know, "No,
3 no." Well, guess what, they would have had a
4 pretty good airtight alibi.

5 But that is not what we have. We have people
6 who have been working on their story up until the
7 day of trial, we have people who are working on
8 their story up during the trial, up until right
9 before the defendant got on that stand. I mean,
10 come on, let's use our common sense. That is what
11 was going on.

12 But this is what I want to do. I tried to
13 break it down so I could get through it quick
14 enough to where I don't lose anybody today because
15 this has been a long week, it's a lot longer than
16 we thought it was going to be but it is truly, as
17 Mr. Fox said, it is so important because the
18 charges deal with a lot of things that are just so
19 crucial in what happens in our society, the reality
20 as we know what happens and that is sexual abuse
21 happens, so it doesn't necessarily have to be from
22 a crazy person that is looking at kids when they
23 are out playing in kindergarten. That is not it.
24 A lot of times it is not the freaky person that you
25 expect to see, the person with the pedophile face.

1 What we have is people who become opportunistic,
2 who are in a situation when opportunity arises and
3 they take it. That is it. It is as simple as
4 that.

5 So, what I have done, I will pull this up, I
6 was going to do a Power Point, if you don't mind
7 turning it on, Keith.

8 What I wanted to do is kind of help you all
9 follow along, too, in some of the stuff I'm going
10 to say so we can kind of go through it. I want to
11 kind of bring it all together for all of you and
12 try to keep it as simple as I could.

13 The charges against the defendant. Now, what
14 I have is he has two charges, and clearly the
15 charges, and we talked about it over and over
16 again, but the charges are real important for you
17 to understand so you can also see what the State
18 has had to prove beyond a reasonable doubt.
19 Remember, reasonable, not beyond all doubt, and
20 remember the first thing I told you all whenever I
21 started this case, that sexual abuse happens in
22 private. That's the reason why we don't have
23 pictures. I mean, this isn't a child pornography
24 case. You know, if we had gotten nude pictures or
25 if Minor might have sent one to the defendant,

1 you know, but because of his, you know, being an
2 upstanding guy and telling her, "Maybe you
3 shouldn't do that," he was trying to be a big
4 brother to her, according to him, thank goodness we
5 don't have a nude picture of the victim floating
6 around on the internet.

7 Okay, so what we have is criminal sexual
8 conduct with a minor second degree. I have that up
9 here on the screen for you, too, but the State has
10 to prove each element of every crime so the
11 elements, being sexual battery, what is a sexual
12 battery? That is one item I had mentioned to you
13 before, too, any type of penetration, however
14 slight, of the victim, and sometimes people look at
15 me and say how do you just throw that stuff out
16 there? Well, you know, it's the law. I have to
17 present you with what the judge is going to charge
18 you with later, so I can't sugar coat it, I'm going
19 to have to, fortunately [REDACTED] before she got up
20 here in front of you people you had no idea who she
21 was, what you were going to think of her.

22 I said, "I'm sorry I have to ask you the
23 questions, you're going to have to stay." So I'm
24 not trying to be brutal, I'm not trying to offend
25 anyone, I'm doing what the law requires me to do, I

1 have to say these things.

2 So, sexual battery in this particular case,
3 that would be the digital penetration of [REDACTED]
4 on September the 11th by the defendant and no one
5 has said the victim was not eleven to fourteen
6 years old. We clearly have the date and time and
7 age of everybody, obviously the defendant was 29 to
8 30 years old at the time, okay?

9 And that the perpetrator was older than the
10 victim. This says for criminal sexual conduct with
11 a minor, second degree, consent is not a defense.
12 That is why you haven't heard it. And, so, if she
13 had been laying there asking him for a type of
14 sexual activity he could not do it, she cannot
15 consent, period.

16 Also in regard to what I said with the State
17 saying that she can't consent, there is another
18 thing that the State says. In a sexual battery
19 case such as this we do not have to show specific
20 corroboration of the event. Again, remember I told
21 you there is not going to be necessarily pictures.
22 If there were you would have seen them. There is
23 not going to be audio taped conversation of, "I
24 love you, thank you for yesterday, that was the
25 best sexual experience I have ever had." We're not

1 going to have that. If we did I would have
2 presented that to you.

3 For that reason, because sexual abuse happens
4 in private, because of the whole nature of him
5 baiting her, texting her, having this inappropriate
6 relationship with her, it happens in private.

7 [REDACTED] had a crush, she was completely enveloped
8 in this relationship. So that's the reason why our
9 state legislature has seen the wisdom in cases like
10 this, because there are victims out there, to say
11 no corroboration is needed in a CSC with a minor
12 second degree case because the victim, we don't
13 want them to be scared to come forward, we want to
14 be able to stop sexual abuse in our state of South
15 Carolina, okay? So, that is why this case is all
16 about credibility.

17 The other charge, lewd act on a minor, this
18 is kind of an interesting charge, it kind of sits
19 out there separate and distinct. It is in a whole
20 different section of our law and when you look it
21 up, if you were to look it up, it kind of goes
22 under crimes against virility, morality and
23 decency. It is kind of one of those things where
24 we're trying to include anything and everything
25 that someone might do to a child and maybe doesn't

1 quite cross that line of the sexual battery. What
2 we're talking about is, "Come sit on my lap, let me
3 kiss you, fondle you, put my hand up your shirt."

4 Now, does that mean when you're giving a
5 child like a five year old a bath and you're
6 washing this child that that is sexual? No. That
7 is where your common sense comes into play, ladies
8 and gentlemen, that is what I'm talking about. It
9 has to clearly be for sexual gratification
10 purposes, meaning he touched her chest not to fix
11 her bathing suit, but it is because it was
12 something he sexually wanted to do.

13 He didn't kiss her, french kiss her because
14 that's how he learned to do it whenever he was
15 growing up, when you love somebody, brotherly love,
16 it's because the next step was going to be sexual
17 gratification. That is what lewd act means and
18 that is what she described to you. That is how the
19 progression of the events between the defendant and
20 the child. Minor came about. It was the little
21 things at first and that is something that a
22 thirteen, confused young thirteen, fourteen year
23 old girl, which Mr. Fox stated, you know, they are
24 just out there, drama, the whole thing, but one
25 thing that was very clear in just about everything

1 [REDACTED] did was she was pretty closed off. She's
2 not the kind of person that was out there, you
3 know, talking to everybody, doing wild and crazy
4 things, she was real close to her friend Ashley and
5 she was really close to the defendant.

6 So, the State has, based on the information
7 you have, from what happened between the two of
8 them, clearly these acts were not innocent, they
9 were for a sexual purpose, okay? So, that was the
10 other charge that I talked to you about initially.

11 Then, the relationship time line. This is
12 the thing. You know, the time line is so important
13 because it kind of shows the progression or gradual
14 progression of things between [REDACTED] and the
15 defendant. What happens is they meet sometime in
16 the late fall of 2009, okay? So really, you know,
17 the consistency was that they really didn't have a
18 long time to get to know each other, it was like
19 they almost jumped into this whole taking Prentis
20 Love and his wife and kids into their family but I
21 think it is, you can hear from what Tony said and
22 Shannon, they just kind of do all kind of functions
23 in the Murrells Inlet area, they have all kind of
24 friends, they have people coming by all the time,
25 they go to these functions every year, and it is

1 one of those type of very open families and I think
2 overly trusting and that is the reason why whenever
3 the defendant got into this family, I mean, they
4 paid him to do landscaping, they did things, they
5 kept him around, they were still paying him to do
6 landscaping even up until three or four days before
7 [REDACTED] discloses what happened. These people
8 have no reason whatsoever to get up here and put
9 themselves through this before you.

10 December 31st, 2009, [REDACTED] spent the night
11 at the defendant's home, he kisses her and molests
12 her breasts. That is what [REDACTED] is telling you.
13 She hadn't been drinking that night. The people
14 who had been drinking, the defendant and his wife,
15 and drove their children home. A good thing it's
16 not a far drive. That is the reason why I wanted
17 to show you all the map.

18 Yes, I don't have pictures of them in some
19 type of compromising position but what I wanted to
20 do was I wanted to show you guys, look, these
21 people are so close to each other they are riding
22 by each other's houses all the time. That just
23 kind of shows why there was a constant contact. It
24 wasn't that I thought it was going to be such a
25 huge revealing thing but, you see, every time the

1 defendant would leave his home, I mean, he would
2 take a road and, you know, get out to 17, he is
3 driving past the victim's house, you know, two
4 miles away. So, he had constant ability to ride by
5 there, to do what, to see if Tony is home, to see
6 if Shannon is home. He didn't even have to do that
7 because he is texting [redacted] hundreds of times a
8 day.

9 Then [redacted] turns fourteen and the fishing
10 tournament. There is absolutely no one saying that
11 they were not alone during these fishing
12 tournaments, okay? That, we all can agree on. On
13 those occasions [redacted] tells you he kisses her
14 again, puts his hand up her shirt and molests her
15 breasts and tries to put his hand down her pants
16 but she pulls away and says no. Okay?

17 And because he is in a situation where
18 somebody might turn the corner in the creek, these
19 winding creeks that I wanted Investigator Pop to
20 explain to you, he probably knew, "This isn't a
21 time for me to push it because in my two and a half
22 foot wide boat," which I'm sorry, that scares me to
23 think they were actually letting a child go in a
24 two and a half foot wide boat, okay, and I know, I
25 mean, I think some stuff people are out there on

1 the river on, that is why I don't go out there with
2 my children anymore, we've got this, so we've got
3 about this wide and you've got these two people on
4 there, they are fishing, he's made some type of
5 makeshift plank up front or something, so they are
6 pretty, I mean, they are packed in there, so, you
7 know, there is not going to be a whole lot of
8 opportunity to have a wonderful relationship and
9 sexual experience with somebody in a two and a half
10 foot wide boat and when you're in these winding
11 creeks and somebody comes around the corner real
12 quick but it's secluded and you can take that
13 chance. Yes, ladies and gentlemen, because he had
14 an opportunity, he had that opportunity and he took
15 it.

16 Now we're getting into September 11th, 2010,
17 [REDACTED] tells you she's home, her mom has gone to
18 work, Tony and A. J. have already left to go to the
19 Dead Dog, she is sitting there and she texts the
20 defendant and his response, according to her, and
21 believe him or believe her, who has the motive to
22 lie here, "Are you home alone? Have Tony and A. J.
23 already gone?" And he goes by the house, knowing,
24 "I don't have long at all because Ashley's mom is
25 getting ready to come pick her up, she's going to

1 go spend the night at Ashley's house that night."
2 She tells you it only takes five to ten minutes for
3 him to do the deed and this time no one is around.
4 He is inside the home, no one is creeping around
5 the corner of a creek, he has her completely under
6 his control, his wife is not in the bedroom while
7 they're up on New Year's Eve and he's going to take
8 a chance on the couch. He is in that home alone,
9 he's already called Tony, Tony tells you, "Man,
10 where are you, where are you, we're already at Dead
11 Dog, what's going on, what's going on?" He hadn't
12 gotten there yet. He knows Shannon is at work,
13 she's not going to accidentally walk in on them.
14 And she confirms by talking to [REDACTED] she's
15 waiting on Ashley's mom to get off work and come
16 there. He has just enough time and no
17 interruptions. Opportunity, ladies and gentlemen.
18 Okay?

19 So, that is where we have the digital
20 penetration, the fondling, he kisses her and then
21 he actually, finally the sexual gratification with
22 this fourteen year old child.

23 Now, the relationship, according to the
24 defense, brotherly love, great friend, confidant,
25 but I finally got the defendant to say, "Yes, it

1 was more like a teenage boy and teenage girl." I
2 mean, that speaks volumes. Maybe his mentality is
3 that of a teenage boy, that is why he thought it
4 was okay. According to what we are saying, big
5 brother, yes, boyfriend, girlfriend, Ashley said
6 they were talking all the time, said it was like
7 boyfriend, girlfriend.

8 Without a doubt, without a doubt it was an
9 inappropriate relationship. What 29 or 30 year old
10 man has a reason to text someone up to fifty and a
11 hundred times a day back and forth? How many times
12 can you ask somebody how they're doing? It just
13 doesn't make sense. Use your common sense, ladies
14 and gentlemen, but he was definitely a family
15 friend and he took advantage of that. Undisputed
16 fact, [REDACTED] was a minor, the defendant was 29
17 years old, up to 30.

18 The Defendant Love is a convicted felon,
19 breach of trust over a thousand and assault and
20 battery of a high and aggravated nature. He's been
21 in the system, he knows how it works. Tabitha
22 Love, she's got a conviction for assault and
23 battery of a high and aggravated nature.

24 The defendant and [REDACTED]'s family were
25 close. They all agreed [REDACTED] was a smart girl,

1 we know the defendant was at Brittany's house in
2 2009, [REDACTED] and the defendant were alone in his
3 boat during three fishing tournaments, without a
4 doubt he had access to her those three times.

5 There was a 9/11 tribute at the Dead Dog
6 Saloon in 2010, no one said that wasn't true, we
7 just have people all over the place at all
8 different times. And then [REDACTED] got in trouble
9 for having Vicodin.

10 Okay, I think that is all of those things
11 that we can say, so what do you have to consider as
12 jurors, other than using your common sense and what
13 I have said? Credibility, ladies and gentlemen,
14 that is what this case is about, credibility. The
15 State's witnesses, no one has a criminal record, no
16 one has a motive to lie, no inconsistent statement,
17 no change in testimony, all of them corroborate the
18 time and place of the assaults.

19 Let's look at the defense witnesses. We have
20 criminal records, the defendant is a convicted
21 felon, inconsistent statements all over the place.
22 I don't normally get that but it was all over the
23 place. Planned testimony. Regina Frye, I mean, I
24 wasn't going to call her as a witness, Tabitha told
25 me, "She's right there. What is her name? Regina

1 Frye. Really? Can I talk to her?" I mean, what
2 is she going to tell me, she was there, too. I
3 mean, yes, you might say we don't believe anything
4 Regina said, I mean, but is that the point? She
5 wasn't my witness. I'm trying to get to the truth
6 here as well, ladies and gentlemen, so that's the
7 reason why I called her, that is why we talked to
8 her. If I didn't do that I wouldn't be doing my
9 job, I wouldn't be doing justice for that child.

10 So, she told you, "We talked about my
11 testimony, we looked up the Carolina game, we
12 talked about when I needed to be there."

13 Lack of recollection on the crucial issues?
14 That would be Wayne. Now, if you think about it,
15 the things he doesn't recall are the times he would
16 have that direct access to [REDACTED] "I don't
17 recall her ever spending the night." "Well, let me
18 refresh your memory, Mr. Love. You said she would
19 spend the night at a minimum, she called and you
20 would say come on over." Oh, we don't want that
21 coming out. But he had to concede he had told that
22 to Investigator Pop.

23 Another crucial issue, he didn't remember
24 going back to the Dead Dog that Saturday on
25 September the 11th, and I will talk to you about

1 that. Tabitha actually makes a comment about
2 perjury. Ladies and gentlemen, it is so clear what
3 was going on, she's trying to protect her husband,
4 but liars lie for one reason, it's because the
5 truth is going to get them in trouble, period.
6 They have something to hide.

7 The defendant's inconsistent statements, I
8 broke them down for you. The statement he actually
9 gave within a month or month and a half from the
10 time whenever the disclosure came out and he was
11 talking to Ginger, and you all heard it, when
12 [Minor] would spend the night she would sleep on
13 the couch, so matter of fact, "It was not an
14 unusual occurrence, she would call and ask to sleep
15 over and I would say come on."

16 All right, trial testimony. "Mr. Love, tell
17 us about [redacted] spending the night." "I don't
18 recall [redacted] ever spending the night at my
19 house." That is a pretty big discrepancy, it is
20 not like I don't know if she spent the night on
21 February the 2nd or not, I said, "At all?" "No, I
22 don't recall that."

23 All right. Then we have another inconsistent
24 statement. I'm asking about contact with [redacted]
25 on September the 11th, I'm just trying to get him

1 to say or trying to get him to admit that, you
2 know, "You at least texted her?" I mean, we have
3 [Minor] and her mom say, you know, when they
4 looked up the record, and she testified to it,
5 there was over a hundred texts that day on
6 September 11th. Ashley said, "God, the whole time
7 after we would pick up [Minor] she was just
8 texting all night long." "Did you look at any of
9 those texts?" "Yes." "Who were they from?" "The
10 defendant."

11 Okay, trial testimony. "I never communicated
12 with [Minor] on September 11th, 2010, I never left
13 home after the Carolina game, the game was at
14 noon."

15 All right. His statement to Ginger Pop only
16 a month and a half or so later. In response to
17 questions regarding contacts with [redacted], "Yes,
18 [Minor] texted me and asked me to bring her
19 cigarettes. I told her no, I said I had spoken to
20 Tony and was on my way to Dead Dog."

21 Guess what, ladies and gentlemen, if you're
22 leaving your house watching the Carolina game and
23 you're with your wife and you're on your way to
24 Dead Dog, guess what road you're going down?
25 You're going right past the victim's house. She

1 texts you and said, "Bring me cigarettes." Why
2 would she say, "Bring me cigarettes"? Because
3 she's home alone. If her mom or dad was there,
4 step-dad, do you think she would expect him to pull
5 up in the driveway with a pack of cigarettes for
6 her? Absolutely not. Why? Because when she got
7 busted for cigarettes and a Vicodin she got her
8 phone taken away from her, her life, okay, and for
9 a thirteen and fourteen year old girl her phone is
10 like losing a limb, okay?

11 But she asked him to bring her some
12 cigarettes, she was home alone. He had just talked
13 to Tony, he knew he was already gone to Dead Dog,
14 he was on the way, and the time line, ladies and
15 gentlemen, I did not narrow down the time line, and
16 the reason why is because it's not necessary. And
17 let me tell you why. We know it was after the
18 Carolina game, so it was probably about 3:30 or
19 4:00, we know her mom was gone by 3:00, we know
20 that Tony was already at the Dead Dog, he went and
21 when Steve Szuch got there, you can ask to listen
22 to his testimony again, he said, "I don't remember
23 exactly but I remember in the afternoon I was there
24 for maybe an hour and a half, I don't know, 4:30,
25 5:00, and I was probably there until about 6:00 but

1 I know I saw Wayne there because he came up and
2 asked to borrow some money."

3 I mean, isn't the issue here that he went to
4 the Dead Dog that afternoon when he is saying, "I
5 never left my house, I stayed with my wife that
6 night, I never left my house," because if he left
7 his house he would have driven right past and had
8 five or ten minutes to sexually assault [REDACTED]
9 [REDACTED], which is what he did. That is why, that
10 is why he has to convince you he never left his
11 house.

12 Alibi witness Tabitha Love. "I was with
13 Wayne all day, we watched the Carolina game at
14 noon, he never left the house after that." Really?
15 Why are you just now telling me this? "Was anybody
16 else there?" "Regina Frye will testify she was
17 there on 9/11, 2010, with me and Wayne." Regina?
18 "I was not at their home on September 11, 2010, I
19 did not see Wayne Love on September 11, 2010, I
20 don't want to be here." Oh.

21 Tabitha Love, this week she and Regina
22 looking at the Carolina games to determine what
23 time she needed to be there. She calls her
24 husband, the defendant, "Didn't I go back to the
25 Dead Dog with Tony and A. J?" Tabitha, "No, you

1 did not. If you say you went with them I'm going
2 to jail for perjury." How much more clear can it
3 be? You can put whatever spin on it you want, they
4 are lying to you, and why? Because they have a
5 reason to lie, ladies and gentlemen.

6 I will tell you as a prosecutor that is the
7 first time I have ever had the opportunity to put
8 someone's testimony in who said, "I could get
9 caught for perjury." It is interesting to have
10 someone actually, even a lay person, throw that out
11 there in the middle of a trial.

12 Now, I will read the list of State's
13 witnesses so you can remember who they were. I
14 don't expect you will want to go back and listen to
15 anyone's testimony, which is your right, you are
16 weighing the testimony here because you have to
17 believe beyond a reasonable doubt that these
18 matters occurred, okay? So, I have listed them so
19 you can remember who they are.

20 Now, the thing is, another reason why, and
21 you have got eyes, I'm going to be fair here, I
22 have to explain some inconsistencies that we have
23 put up there that is confusing, that I think is
24 going to maybe give you all some doubt, because
25 right now everything looks pretty reasonable about

1 what has come out, everything kind of falls into
2 place in regard to our witnesses and what they told
3 you, which is direct evidence but guess what,
4 State's witnesses and inconsistencies. None, none,
5 none. We have already gone through that.

6 It is important for you to understand the
7 motive issue that Mr. Fox is talking about that I
8 have come back to is that there is no motive, there
9 is no reason why a fourteen year old girl would
10 want to be sitting in here talking to all of you
11 about a sexual experience she had with a 30 year
12 old man. She has been victimized by him already,
13 she had to come in here and face him, face all of
14 you and be victimized again.

15 Now, I'm almost finished. Our
16 inconsistencies, as I said, none. Disclosures of
17 the sexual abuse, consistent. New Year's Eve on
18 the couch in the living room, three times on
19 defendant's boat, afternoon of 9/11, 2010, hundreds
20 of texts between them. She was alone, he drove by,
21 took the opportunity. So, who corroborates these
22 times and places? Shannon, Ashley Jenkinson,
23 Dianne Nordeen.

24 Dianne Nordeen, she doesn't have a dog in
25 this fight. What she does is she gets a referral,

1 she sits the kid in there and she starts asking
2 them stuff like what do you call your personal
3 private parts, what do you call this, has anybody
4 touched you and made you feel uncomfortable or
5 something you didn't want to do? That is where, I
6 mean, that is the time, if she's going to say, "I
7 don't want to talk about it, I don't want to talk
8 about it," she can just stop dead right there.

9 But the reason why we do the forensic
10 interview and we don't have Ginger Pop doing it, we
11 don't have mom sitting her down and talking to her
12 about it, we don't have, you know, her counselor
13 coming in, and I didn't bring her in to testify
14 either because we want the initial fresh interview
15 of the child so we can try and get details.

16 Ginger Pop didn't do anything else on her
17 investigation until she got that interview from
18  because she didn't know what to follow up
19 on. It is just an allegation at that point, just
20 like if Tabitha walked in there and said, "Hey,
21 I've got witnesses here for an alibi, Miss Pop, can
22 you go check this out?" If she didn't and I had
23 her on the stand and said, "Why didn't you go talk
24 to Regina Frye, you were provided that
25 information?" "Because I have a one track mind, I

1 want to hook him up."

2 I mean, ladies and gentlemen, that is not
3 what our job is here and that is not, that is not
4 our focus. We're here to get to the truth and
5 we're here because of the victim and they don't
6 have anything to gain by testifying. If nothing
7 else, they're embarrassed, you know, mom has to sit
8 up there and say, "I should have known, I didn't
9 look at her phone, boy, I will never do that
10 again," the guilt, you know, she's a parent, she
11 loves her daughter. Tony Carter, you know, he
12 found out someone molested his stepdaughter. How
13 bad do you think he felt, he was paying the
14 defendant to clean and cut his grass, imagine the
15 guilt. I mean, you don't want to think someone you
16 trust would do that but they can and he did.

17 Reasonable conclusion. The defendant took
18 advantage of a young and insecure teenager,
19 insecure teenager. He knew she was having problems
20 at home, a lot of teenagers do, she didn't trust
21 her mom. He becomes her friend, he's baiting her,
22 he's bringing her in. Someone doesn't have to be
23 the devil to have evil intent. He sees an
24 opportunity and takes it.

25 He had the inappropriate relationship with a

1 thirteen year old, no matter how you look at it.
2 She has a crush, she talked about it with her
3 friend Ashley, Ashley is the first one that learns
4 about it and Ashley says, "I thought it was weird,
5 I mean, he is older but she talked about him like
6 he was her boyfriend." He's taking the time,
7 building trust with the victim and her family. He
8 would have never stopped, ladies and gentlemen,
9 [REDACTED] had he gotten her to a point where she
10 wasn't going to tell somebody unless she knew she
11 was about to get busted, when her mama took that
12 phone from her and she looked at her with those
13 eyes that your mom might look at you with and
14 said, "I am going to look at your phone and we're
15 going to find out every single person you have had
16 contact with, we're going to find out everything
17 that's been going on with you for the past few
18 months, you're going to counseling, you're doing
19 this, you're doing that," you're sitting there and
20 the next thing you know is like, "Holy crap, I've
21 got to alert all my friends, and the other thing
22 I've got to do I better give it up because if I
23 don't and my mama finds out," you heard her say it
24 herself, she was going to kill her. She was
25 scared.

1 So, logically enough, the fact that her
2 step-mom found that pill in North Carolina is the
3 reason why [REDACTED] at this point never had, I'm
4 not making any conclusion but you can use your
5 common sense, it never got any farther. Thank you,
6 thank you, Ashley Jenkinson for giving your friend
7 up.

8 Now, he counted on her to never tell, he
9 never counted on her coming in here and doing this.
10 The only reasonable conclusion, he's guilty, ladies
11 and gentlemen. I mean, he is. He had a
12 relationship with a child, had opportunity to take
13 advantage of it, you know, sometimes he was
14 drinking and, you know, that maybe kind of lessened
15 his inhibitions.

16 And the duck photo, I will tell you the
17 reason we put it in, it was on her phone, it's not
18 a big deal but the thing is it is a little weird.
19 I don't know, you might think it's fine, that's
20 fine. My thing with the duck photo, we pulled
21 everything off the phone but of course she had
22 already deleted some things. The kind of phone she
23 had, it wasn't one when you dump it you're going to
24 get all the text messages and everything like that,
25 but the thing is that was, you know, I guess maybe

1 I'm a little jaded, but what grown man sends a
2 picture of him sitting on a duck to a girl unless,
3 you know, he is thinking of himself as kind of a
4 kid himself. You know, I'm putting it in, you can
5 break the pieces down and it might not make sense
6 but when you look at everything together there is
7 only one conclusion, he was having a sexual
8 relationship with this child and, like I said, it
9 wasn't going to stop. If he cared about this girl,
10 if he was truly a big brother and he thought she
11 was on the roof high he would have called the
12 police, he would have called her parents, but he is
13 not a mature grown man doing that. No, he's a
14 buddy, "I'm not going to tell your parents,
15 Minor we'll talk about this later." He texted
16 her.

17 Then, you know, I mean, it is what it is, and
18 the other thing is, the nude photo thing, then I'm
19 going to finish because I know I get long winded,
20 but the nude photo thing was so bizzare. She
21 first, according to the defense, you know,
22 according to them she sent Tabitha a text, "Hey,
23 this teenage boy wants a nude picture, what do you
24 think I should do?" Tabitha doesn't respond, she
25 tells Wayne, "Why don't you deal with this."

1 That's just bizzare.

2 I'm going to tell you right now if somebody
3 sent me a text about them sending a nude picture,
4 the last thing I'm going to do is give it to my
5 husband for him to deal with. I mean, I don't get
6 it. It makes no sense. It's because it didn't
7 happen that way, it's because the defendant said
8 exactly what [REDACTED] said he said, "Hey, send me a
9 naked picture." This was on September 11th. "No."
10 "Are you alone?" He had worked himself up, he knew
11 she was alone and he wanted that nude photo, he was
12 baiting her, he was bringing it up to a point where
13 at some point it was going to be more than what it
14 was. By then it had gotten too far, he sexually
15 assaulted her, it is clearly a sexual battery, he
16 had been fondling her, he is nothing but guilty,
17 not not proven, he is guilty. There is no other
18 reasonable explanation for everything.

19 I want to thank you so much for listening,
20 for your patience. I know it is not easy but it is
21 so important, so crucial. Every single one of you
22 has such an important role in this case and I want
23 to thank all of you all for listening to us, even
24 when you didn't want to. I appreciate it."
25 Remember your oath, weigh the evidence and come

1 back with a guilty verdict.

2 I'm going to get out of the way and turn it
3 over to the Honorable Judge Hill and move all my
4 stuff.

5 Thank you, Judge.

6 THE COURT: Thank you Miss Lively.

7 Ladies and gentlemen, you have heard all the
8 evidence in the case, you have the heard arguments
9 of the lawyers. It is now my duty to instruct you
10 on the law that applies to this case and it is your
11 duty to find the facts from all the evidence in the
12 case and to those facts you must apply the law as I
13 give it to you and you must follow the law as I
14 give it to you and you should not be concerned with
15 what the law should be but with what it is and you
16 must not be influenced by any personal likes or
17 dislikes or opinions or undue sympathy or
18 prejudices, and that means you must decide this
19 case solely on the evidence and according to the
20 law.

21 Now, you will recall you took an oath to do
22 just that when we began this case on Monday, and in
23 following my instructions you must follow all of
24 them and not single out some of them or others,
25 because they are all equally important. You must

1 not read into any of these instructions or anything
2 I may have said or done during the course of this
3 trial as indicating to you what I think the facts
4 are or what I think your verdict should be because
5 I told you at the beginning you were the sole judge
6 of the facts under our constitution and system of
7 justice and I'm not allowed to have an opinion as
8 to the facts of this case and you and you alone are
9 the exclusive judges of what the facts are.

10 Just as I know you would not interfere with
11 my right as the judge of the law to tell you what
12 the law is, I'm not going to interfere with your
13 right as the judge of the facts to tell you what
14 the facts are.

15 Now, how do you decide what the facts are?
16 You do that by weighing and evaluating the evidence
17 you have heard during the course of this trial. It
18 is entirely a mental process. It is certainly not
19 a physical experiment where I give you a set of
20 scales you take back to the jury room and weigh
21 evidence. Of course that is not what I'm talking
22 about. What I'm talking about instead is weighing
23 evidence in the sense of determining, based on what
24 you have heard during this trial, what rings true
25 to you and what you think is the truth based on

1 your good common sense, sound judgment and your
2 sense of logic and reason.

3 Now, you determine what the facts are from
4 the evidence and I told you at the outset that
5 evidence consists of two sources, sworn witness
6 testimony and exhibits. I believe we have had both
7 in this case and it is from those two things and
8 those two things alone that you must determine what
9 the facts are. Everything else is not evidence.

10 While the lawyers in this case have argued to
11 you about what they think the evidence showed, they
12 are not witnesses, so what they say is not in
13 itself evidence, so if you remember something
14 differently from the way the lawyers remembered it
15 your memory controls. Likewise, anything you may
16 have seen or heard when court is not in session is
17 obviously not evidence and anything that may have
18 been stricken from the record is not evidence
19 either.

20 Now, there are also two types of evidence.
21 What I'm talking about now, ladies and gentlemen,
22 is direct evidence and circumstantial evidence.
23 Direct evidence is direct proof of a fact such as
24 the testimony of an eyewitness. Circumstantial
25 evidence is indirect evidence, or put another way,

1 circumstantial evidence is proof of a chain of
2 facts and circumstances from which you could find
3 that another fact exists even though that fact had
4 not been proven to you directly. The law makes no
5 distinction as to what weight you are to give
6 either direct or circumstantial evidence. You can
7 consider both types of evidence and give the
8 evidence in this case whatever weight you think it
9 deserves.

10 Now, ladies and gentlemen, it is up to you to
11 determine whether a fact has been proven by direct
12 or circumstantial evidence and in making that
13 decision you must consider all the evidence in
14 light of reason, common sense and experience. I
15 told you at the beginning of this as judge of the
16 facts you would also be a judge of the credibility
17 of every witness who testifies and every exhibit
18 that has been introduced. That means that you
19 determine whether those things are worthy of
20 belief.

21 I gave you some guidelines you could use in
22 determining at the outset the credibility of
23 witnesses who testified. I'm not going to repeat
24 that because I know you heard me the first time but
25 I will tell you this. You can believe everything a

1 witness says or you can believe nothing a witness
2 says. You can believe part of a witness' testimony
3 and disbelieve other parts. You can believe one
4 witness over several or several over one. But
5 you're the sole and exclusive judges of the
6 credibility of each witness and each exhibit and I
7 know you will not perform this task arbitrarily,
8 but instead you will have a sound reason and
9 logical basis for decisions you make as to
10 credibility.

11 Now, ladies and gentlemen, if you find that
12 witnesses have made statements before this trial
13 that are not consistent with statements they made
14 testifying at the trial you may use this evidence
15 to decide whether to believe the witness. You may
16 also use evidence of any of the other statements to
17 determine the truth of those statements but it is
18 up to you to decide what evidence to believe. If a
19 witness has been shown to testify untruthfully
20 concerning any matter you may consider this in
21 determining whether to trust the witness' testimony
22 as to other matters.

23 Now, this is a criminal case, as you know,
24 and I told you at the beginning and I will instruct
25 you again now that the mere fact that the defendant

1 Mr. Love was arrested and charged and indicted
2 doesn't constitute evidence of anything or create
3 even a suspicion of guilt. The indictment is
4 simply the formal written document that allows the
5 State to go forward and notifies the citizen of
6 what he is charged with and is the way the case is
7 brought into court.

8 Mr. Love pled not guilty to the indictments
9 and that plea puts the burden of proof on the
10 State, and one charged with committing a crime is
11 never required to prove himself innocent or prove
12 himself not guilty. It is an important and
13 fundamental rule of law that no matter what the
14 charge may be a citizen will always be presumed
15 innocent of the crime for which the indictment was
16 issued unless and until guilt has been proven by
17 evidence satisfying you of guilt beyond a
18 reasonable doubt.

19 The presumption of innocence does not end
20 when your deliberations begin but instead it
21 accompanies a defendant into the deliberations
22 themselves and throughout the trial and can only be
23 removed if and only if you find the State has met
24 its burden of proving each and every element of the
25 crime beyond a reasonable doubt. The presumption

1 of innocence is not just some legal technicality,
2 it is a fundamental right to which every citizen is
3 entitled and you must treat it accordingly.

4 Now, ladies and gentlemen, there are two
5 indictments in this case and you will have to
6 consider and weigh the evidence as to each
7 indictment and determine whether the State has met
8 its burden of proof as to each element of each
9 crime and you must consider the indictments
10 separately, and that means that you must weigh the
11 evidence as to one indictment and determine whether
12 the State has met its burden of proof and not let
13 your decision on that indictment affect your
14 decision on the other indictment. You must give
15 the defendant individual and separate consideration
16 as to each indictment.

17 Now, you have heard me use the term
18 reasonable doubt, so what does that term mean? The
19 law defines reasonable doubt as the kind of doubt
20 that would cause a reasonable, sincere, honest and
21 conscientious person to hesitate to act in an
22 important matter in their own affairs. Proof
23 beyond a reasonable doubt is proof that leaves you
24 firmly convinced of the defendant's guilt, and
25 there are few things that can be known with

1 absolute certainty so in criminal cases the law
2 does not require proof that overcomes every
3 possible doubt.

4 If based on your view of the evidence you are
5 firmly convinced that Mr. Love is guilty of the
6 crime charged you must find him guilty. On the
7 other hand, if you think there is a reasonable
8 possibility that he is not guilty you must give him
9 the benefit of the doubt and find him not guilty.

10 A reasonable doubt may arise from the
11 evidence or from a lack of evidence and a defendant
12 is entitled to every reasonable doubt that may
13 arise in a case and that simply means that if as to
14 any issue of fact that is essential to a conviction
15 you have a reasonable doubt as to how that issue
16 should be resolved it is your duty to resolve that
17 doubt in favor of Mr. Love.

18 In order to establish a criminal conviction
19 the State is always required to prove intent beyond
20 a reasonable doubt. Criminal intent is something
21 that can't be proven to a mathematical certainty.
22 Obviously we can't dissect someone's brain and
23 determine what they might have had in mind at a
24 particular moment in time, so the law allows
25 criminal intent to be inferred from the

1 circumstances.

2 It is not necessary to establish intent by
3 direct and positive evidence but it may be
4 established by inference or circumstantial evidence
5 in the same way as any other fact, by taking into
6 consideration the acts of the party and all the
7 facts and circumstances. Criminal intent is a
8 mental state, a conscious wrongdoing. It is up to
9 you to determine what the defendant intended to do
10 based on the circumstances.

11 Now, in this case we have two indictments, as
12 you know. The first is second degree criminal
13 sexual conduct with a minor. In order to convict
14 Mr. Love of this charge the State must prove two
15 things beyond a reasonable doubt. First, the State
16 must prove beyond a reasonable doubt that Mr. Love
17 engaged in a sexual battery with the victim. A
18 sexual battery is defined as sexual intercourse,
19 connilingus or any intrusion however slight of any
20 part of a person's body or of any object into the
21 genital or anal openings of another person's body
22 except when the intrusion is accomplished for
23 medically recognized treatment or diagnostic
24 purposes.

25 Second, the State must prove beyond a

1 reasonable doubt that the victim was at least
2 eleven years old but not more than fourteen years
3 old at the time of the sexual battery. Consent,
4 willingness and indifference or ignorance on the
5 part of the minor, if any, as to what was taking
6 place does not in any way affect the crime of
7 criminal sexual conduct with a minor because an
8 unmarried woman under the age of fourteen cannot
9 legally consent to sexual intercourse.

10 The defendant is also charged with lewd act
11 on a minor, and a minor is a person under the age
12 of eighteen. The state must first prove, in order
13 to convict Mr. Love of this offense, must first
14 prove beyond a reasonable doubt that the defendant
15 was over the age of fourteen. Next, they must
16 prove that the defendant willfully and lewdly
17 committed or attempted a lewd or lascivious act on
18 or with the body or its parts of a child under the
19 age of sixteen years with the intent to arouse,
20 appeal to or gratify the lust, passions or sexual
21 desires of the defendant or the child. Willfully
22 means voluntarily and intentionally with the
23 specific intent to do something the law forbids.
24 Lewd means obscene, lustful, indecent, lecherous.
25 Lascivious means intending to incite lust, obscene

1 or tending to deprive the morals with respect to
2 sexual relations.

3 Now, ladies and gentlemen, a statement
4 allegedly made by the defendant has been admitted
5 into evidence in this case. While the Court has
6 determined that the statement is admissible, you
7 the jury make the ultimate decision of whether the
8 defendant made the statement. if the defendant did
9 make the statement you must determine whether the
10 statement was made by the defendant voluntarily and
11 of his own free will, and that means the statement
12 was not caused by pressure or force or fear, threat
13 or coercion or intimidation or by hope of a promise
14 of leniency or a reward of any kind.

15 In determining whether a defendant made a
16 statement and whether it is voluntary you should
17 consider the characteristics of the defendant and
18 the details of the questioning. You may consider
19 the age of the defendant, his education, the
20 defendant's mental capacity, his intelligence, his
21 background, environment, place and length of
22 detention, the nature of the questioning, the
23 advice or lack thereof to the defendant of his
24 constitutional rights, including the right to
25 remain silent, that this statement could be used

1 against him in a court of law, the right to have a
2 lawyer present, that if he could not afford a
3 lawyer a lawyer would be appointed to him free of
4 charge and that he could stop making the statement
5 at anytime.

6 You must carefully consider all the
7 surrounding circumstances before you give any
8 weight to an alleged statement. The State has the
9 burden of proving beyond a reasonable doubt that
10 the statement was voluntary. If you determine it
11 was you may give the statement any further
12 consideration you deem proper and if you determine
13 the statement was not the free and voluntary
14 statement of the defendant you should not consider
15 it at all.

16 Now, the defendant has raised the defense of
17 alibi. In order to establish an alibi it must be
18 shown that the defendant was at another specified
19 place at the time the crime was committed and that
20 it was therefore impossible for the defendant to
21 have been at the scene of the crime. Mere denial
22 of presence at the scene of a crime does not
23 constitute alibi. There is no burden on the
24 defendant to prove an alibi. The burden is on the
25 State to prove beyond a reasonable doubt that the

1 defendant actually was present at the scene of the
2 crime, actually participated in it and was not
3 somewhere else. In other words, the State has the
4 burden of disproving the defendant's alibi defense.

5 Now, that covers the substantive law in this
6 case and let me just give you some closing remarks
7 on your deliberations. You don't serve as jurors
8 to be partisans or advocates for either the State
9 or defense. You were chosen because both sides
10 believed you could be fair and impartial and you
11 could decide this case without any kind of
12 preconceived notions or prejudices or other ideas
13 that you brought in with you. Both sides believe
14 you can be fair and impartial and decide this case
15 solely on the evidence and according to the law,
16 and that means you are to use your experiences in
17 life and your good common sense and your sense of
18 logic and reason and you bring those things to bear
19 on the evidence you have heard and once you do that
20 you will be able to determine what the facts are
21 and when you determine what the facts are you take
22 the law I have just given to you and you apply it
23 to those facts and you will be able to reach a
24 decision and a verdict.

25 If you looked up the word deliberation in the