VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Horry County

Honorable Larry B. Hyman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SCOTT RICHARD ROWAN,

APPELLANT

APPELLATE CASE NO. 2018-000813

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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State of South Carolina) Court of General Sessions
) 2016-GS-26-00861
County of Horry) 2016-GS-26-00862

State of South Carolina)
) Transcript of Record
vs.)
)
Scott R. Rowan)

April 9 - 12, 2018
Conway, South Carolina

BEFORE:

Honorable Larry B. Hyman, Jr., Judge.

APPEARANCES:

Mary Ellen Walter, Esq.
George Henry Martin, Esq.
Attorneys for the State

John M. Hilliard, Esq.
Sara Brinson, Esq.
Attorneys for the Defendant

Teresa J. F. Bautz, RPR
Official Court Reporter

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Exhibits retained by Clerk of Court.

(WHEREUPON, the hearing commenced at approximately 1:13 p.m.)

THE COURT: Thank you, thank you. Just please be seated. I think we're scheduled to do the pretrial matters this morning -- or this afternoon. And it's my understanding the jury will be coming in. I have to report that we lost a juror after the 45 had been selected and the other jurors excused. A little lady, and that was juror number -- do you know? I'm sorry.

THE CLERK: 228.

THE COURT: A lady that is of Hispanic heritage reported that she couldn't speak English and was able to convey to the clerk that she didn't understand what I was asking. At any rate, that juror, I told the clerk just to excuse her. You know, that's one of the problems we run into when jurors don't understand what we're asking during qualifications and just comes up later. But we have 44, and I hope that will be enough. All right. I think Mr. Hilliard has a number of motions.

Terri, you do have the caption; right?

COURT REPORTER: Yes, judge.

MR. HILLIARD: I need another indictment number, I apologize. I talked to her earlier. There were two indictments, 2016-GS-26-00861 and 2016-GS-26-00862.

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861 is criminal sexual conduct with a minor second degree, and 862 is criminal sexual conduct with a minor third degree.

THE COURT: All right. And have you had an opportunity -- I know there was an amendment that I granted earlier, Mr. Hilliard. And we discussed that in the pretrial conference. Have you had an opportunity to see it?

MR. HILLIARD: I have, judge. The clerk was kind enough to provide those to me before you got here.

THE COURT: All right.

MR. HILLIARD: And we looked at them, and we're all set.

THE COURT: Okay. I just wanted to make sure that you did have -- you had something printed so you could see what the actual amendment was. All right.

Well, first, Ms. Walter, do you have any matter for me from the State?

MS. WALTER: Well, Your Honor, it's tied to the State's motion for compliance with the rape shield statute. We discussed it briefly in chambers. Essentially, the younger victim at the time of the CRC medical exam, which was a month after disclosure, tested positive for chlamydia. We have absolutely no intention of bringing that forward. I believe it's

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clear from the statue and the case law that that should preclude the Defense from introducing evidence of it because --

THE COURT: And I understand the issue is that the Defendant was at or around the time --

MS. WALTER: December 2015.

THE COURT: -- checked or tested by someone. And I don't know what that was about or who did it, but there was some testing. And the Defendant was found to be negative for any sexually transmitted diseases including chlamydia; is that right, Mr. Hilliard?

MR. HILLIARD: Yes, sir. Not only that, judge, but further, we have an expert who will be qualified and will testify to the effect that he has never had chlamydia. Chlamydia, as I understand it from talking to our expert, is something that, once you have it, you have antibodies in your --

THE COURT: And I understand that.

MR. HILLIARD: Yes, sir.

THE COURT: And that's what you tell me your expert is going to testify to?

MR. HILLIARD: Yes, sir.

THE COURT: Okay.

MS. WALTER: Your Honor, if I may just correct something.

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THE COURT: Yes.

MS. WALTER: The test of the Defendant, according to the only piece of paper that I received from Defense, was in December of 2015, which is a full three months after disclosure. And it doesn't have anything about antibodies. So if there is something else that their expert is going to be relying on, we would ask for a copy of that.

THE COURT: Well, the rule requires you to turn over any opinions, as I understand it, if you have filed a Rule 5 motion --

MR. HILLIARD: Yes, sir.

THE COURT: -- requiring the State to produce -- and I'm sorry, I don't have it right before me, but my understanding is that the rule requires you, then, if you have any scientific expert witness testimony, anything like that, to reciprocally provide that. Am I correct in that?

MR. HILLIARD: Yes, sir. And, in fact, we got it today. We will send it on over.

THE COURT: Okay, good.

MS. WALTER: Your Honor, and one other note on this before we get to the actual substance of the argument. If Your Honor decides to let it in, we haven't been notified of any witnesses that would

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actually be able to establish the authenticity of the paper that we got.

THE COURT: And, there again, that would be up to Mr. Hilliard to be able to produce it. You know, he still must comply with the foundational rules and the other rules of evidence in producing it. What we're talking about here is the general --

MS. WALTER: Right.

THE COURT: -- admissibility of that sort of testimony. Now, I'm fully aware of the rape shield. And correct me if I'm wrong, but Mr. Hilliard -- first of all, you don't intend to offer that she at some time tested positive for chlamydia, okay.

MS. WALTER: The only way I'm offering it is if Your Honor makes a ruling.

THE COURT: You don't intend to?

MS. WALTER: But we do not intend to as it stands right now.

THE COURT: Okay. Now, then, that comes back to Mr. Hilliard. And Mr. Hilliard wants to offer it for the purpose of establishing that it was not his client; right?

MR. HILLIARD: Yes, sir, exactly.

THE COURT: Now, let me hear on you that, Mr. Hilliard, how does that -- you know, on the one

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hand, I understand the rape shield. But the State's proof will be proof, as I understand it from what I've heard during our pretrial, was that she does have physical -- there is present physical evidence determined in an examination, a medical examination, that she has endured some sort of penetration; is that correct?

MS. WALTER: A complete transection of her hymen, yes, Your Honor.

THE COURT: Okay. There we are. So, now the question is -- of course, you're going to put in, as I understand it, her testimony that it was at the hands of the Defendant; right?

MS. WALTER: We are putting in testimony from the victim that the Defendant raped her on multiple occasions.

THE COURT: Okay, all right. And then the purpose that you intend to offer this, Mr. Hilliard, is to show that it was not the Defendant; is that correct?

MR. HILLIARD: Yes, sir, that's correct.

MS. WALTER: Your Honor, if I may, though, there are two different issues.

THE COURT: And that's what I'm trying to deal with right here.

MS. WALTER: There are two different issues,

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because one can certainly have a transection of the hymen without chlamydia and can, potentially, I would imagine, have chlamydia without a complete transection of the hymen. So it's two completely different issues.

And the State's position is we're putting in the evidence of the transection of the hymen. We are not entering any evidence about the chlamydia. We're not going to suggest that the Defendant was the source of that disease. And that would be the only way they would be able to then counter that to offer an alternate source of the disease. And I believe that that's fairly clear in the statute and the --

THE COURT: This is the problem I have. You're offering evidence of transection of the hymen --

MS. WALTER: Yes.

THE COURT: -- as part of your case, your proof that she engaged -- or that there was sexual penetration. And she is going to testify that it was the result of force upon her by the Defendant; right?

MS. WALTER: And I think this is where maybe I'm just not making myself clear. The victim would have no way of knowing how her hymen was transected. So she is not going to get up there and say --

THE COURT: But you're offering it as proof of penetration; are you not?

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MS. WALTER: Penetration at some point, yes.

THE COURT: I understand.

MS. WALTER: She will testify separately that the Defendant raped her on multiple occasions, but she would not been be in any position -- I don't think any woman would be in any position -- to testify, my hymen was injured as a result of this sexual act. They simply couldn't.

THE COURT: It's one of two things. You're offering it to bolster testimony or to confirm her testimony, or on the other hand, it has no relevance. Which is it; does it have no relevance to this case or does it?

MS. WALTER: It has relevance because it does establish that at some point there was a penetrating injury. The argument then becomes for the Defense to say, well, there is no evidence that it was from my client, and the State to say, there was an inference that she is saying that she was raped. There is evidence that at some point -- and, quite frankly, I think even Dr. Rahter will testify that there is no way to tell when that injury occurred. So it's not -- we're not making --

THE COURT: Well, how, then, is it relevant?

MS. WALTER: Because it does corroborate that at

some point she had a penetrating injury to her vagina.

THE COURT: Okay. And she is going to testify that it was the Defendant; right?

MS. WALTER: That the Defendant raped her.

THE COURT: Okay. Mr. Hilliard, talk to me.

MR. HILLIARD: Thank you, judge. There is another part to this, judge. Not only does the complaining witness in this case say that the Defendant raped her, she says he gave her chlamydia. That's prior when she discovered that she had chlamydia, she has said on multiple occasions that he gave her the chlamydia.

MS. WALTER: I have never seen that in any of the discovery.

THE COURT: What she said and what's admissible here in this court are entirely different. Now, if she says, yes, he gave me chlamydia, then no question about it, it becomes admissible.

MS. WALTER: I have never seen that in any of my discovery. So if Mr. Hilliard wants to point out where that is, I'm happy to look at it. But I have never heard her say those words.

MR. HILLIARD: If you give me a second, judge.

THE COURT: Certainly, certainly. We got all afternoon.

MR. HILLIARD: Of course, I wouldn't have any way

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to know that if they didn't give it to me. I've never talked to her.

THE COURT: I mean, you know, we have time.

MR. HILLIARD: Okay. And I am in some ways telegraphing my cross-examination.

THE COURT: Okay.

MR. HILLIARD: There is a report of Mr. Jack Johnson provided to us, Horry County Police Department report of investigation, wherein Mr. Johnson -- this is dated October the 1st of 2015, where Mr. Johnson, in speaking -- Officer Johnson, in speaking to Sabrina Houser, who is a contemporary and friend of the complaining witness, in speaking to Sabrina Houser, she indicated that Complainant 1, the complaining witness in this case, disclosed to her that her stepfather had given her an STD.

THE COURT: Well, let me just ask you this, Mr. Hilliard, how is this any different than if we absolutely knew, if this young woman had told the investigating officers, if she without a question had a boyfriend that she was engaging in sexual relations with; okay?

MR. HILLIARD: Yes.

THE COURT: Could you then, under the rape shield, explore that fact?

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MR. HILLIARD: I believe, judge, without directly answering your question, but I believe that the rape shield statute is designed to prevent the Defense from shaming the witness about sexual activity.

THE COURT: Right.

MR. HILLIARD: And we're not -- that's not -- the point of this is that she has chlamydia, a sexually transmitted disease, at a point in time when she claims my client was having sex with her, and he doesn't have the sexually transmitted disease, and our expert will say that he never had it. I don't care if she had sex with somebody, I don't care if she had sex with nobody. In fact, there are ways to get chlamydia without having sex with anybody.

THE COURT: Okay, wait a minute. Now, we're looking at it from a different angle.

MR. HILLIARD: Yes, sir.

THE COURT: Now we're looking at it from a different angle. My understanding of the case law is that things that might be objectionable under the rape shield may be admissible for other purposes; okay?

Now, what you've just told me is that if you have an expert that would say that if your client had had sexual relations with the complainant or the victim in this case, if you will, whatever, he would have had a

sexually transmitted disease; is that where you're going with this?

MR. HILLIARD: It's actually going the other way. But, yes, sir, that part is true, too, that he would have caught it from her.

THE COURT: That's where I'm going.

MR. HILLIARD: Yes, sir.

THE COURT: You're saying that the proof that she has an STD --

MR. HILLIARD: Yes, sir.

THE COURT: -- from whatever source, whatever circumstances, whether it be by sexual intercourse or otherwise --

MR. HILLIARD: Yes, sir.

THE COURT: -- you have an expert that will say if that was her condition, through whatever reason, if your client had engaged with her, that he would have it now or there is a way that you could tell if he ever had it; is that right?

MR. HILLIARD: That's right, yes, sir. That is exactly correct.

THE COURT: Well, now, how about that?

MS. WALTER: Well, let's start with the fact that the expert that's been disclosed to me is not a medical doctor, is not, according to his website where he lists

everything else that he's an expert in, is not an expert in infectious diseases, there is no medical literature --

THE COURT: Well, they got to get over that part.

MS. WALTER: Right, I understand that.

THE COURT: They got to get over that.

MS. WALTER: I understand that. There is no medical literature that I have ever seen that says that it is a 100 percent guarantee that if someone with chlamydia has -- and I'm going to use the right word -- rapes a victim that has chlamydia, whichever way it goes, there is not a 100 percent guarantee that the chlamydia is going to pass.

Additionally, the Defendant told the victim's mother that on at least one or two occasions he had used a condom. So that could also explain -- I also don't think there is any test that says, you have never had chlamydia in your life. It either shows presence or absence at the time.

THE COURT: Well, I mean, suppose he can do that. Suppose he does do that, suppose he does establish expertise, suppose he does, and the witness is going to testify to that.

MS. WALTER: It still doesn't matter. If we're not arguing that he's the source of the chlamydia?

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THE COURT: No, no. The argument is the reverse, the argument is reversed. Not that he was the source of the chlamydia, the argument is that if I had engaged with her, we know that she has chlamydia from whatever source -- it may be through her fault or not -- she may have chlamydia. But if he had engaged with her, he would either have chlamydia, or there is some testing that would show that he had chlamydia.

MS. WALTER: So their expert is going to testify that regardless of whether there was a condom used --

THE COURT: I don't know.

MS. WALTER: Well, no. But, I mean, if this is a basis for admitting the evidence in violation of the rape shield law, I think we need to get this straight. So if their expert is going to say that even if there was a condom used, if one party has chlamydia, it is a forgone conclusion that the other party will have it; is that what their expert is testifying to? Because that's what would be necessary for this logic to work.

THE COURT: And I don't know, I don't know. And I agree with you, I agree with you. That's what I'm looking at. Mr. Hilliard says that's what he's got. And what I'm saying is -- I'm saying, Mr. Hilliard, if that's what you got, then I think this particular piece of evidence then becomes admissible in spite of the

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rape shield.

Because from what Mr. Hilliard's telling me, that it is not necessarily the source of chlamydia, improper sexual conduct or anything else. If his witness says you can get it all kinds of ways, but if you get it and someone engages with you, they are going to get it.

MS. WALTER: And I'm just trying to clarify because I didn't hear Mr. Hilliard say those exact words, but if the expert -- if he is proffering that the expert is going to say that it is a forgone conclusion that sexual intercourse between two people, however it occurs, if one of them has chlamydia, it is a forgone conclusion, without exception, that the other person gets it regardless of whether they use a condom.

THE COURT: Well, I don't think he's got to do that. I think he's got to get medical testimony. I think what he has to do --

MS. WALTER: He's not a doctor, though.

THE COURT: -- he's going to have to show it, that -- what's the standard -- most probable, in his opinion, most probable.

MR. HILLIARD: The reason -- and maybe their witness can testify as to that. And let me say that we're --

THE COURT: I mean, there's nothing that's

absolute, we would never have medical testimony that had to be 100 percent absolute certain. That's not how it works.

MR. HILLIARD: Yes, sir.

THE COURT: To a reasonable degree of medical certainty. Now, I don't know what credentials your client has, but we'll have to see. You know, regardless of my ruling, you still got a high standard. I mean, you still got to meet the standard to have your witness qualified to give an opinion, and then we got to look at the science that he has.

MR. HILLIARD: Yes, sir.

THE COURT: There's a lot to do. I'm -- for the purpose of your argument, I'm willing to say, okay, we assume that you can do that. Now, let's get to the point of whether or not, if you can assume that -- I mean if you can do that, if you can meet the standards, would the testimony be admissible?

MR. HILLIARD: If we go back to and -- if we go back to the rape shield statute itself, it talks about that we can't -- it's designed to shield -- the two things that are happening in this discussion that we're having is the prosecution is trying to use the rape shield statute to keep out admissible evidence --

THE COURT: I understand --

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MR. HILLIARD: -- because it's connected potentially to a sexual act.

THE COURT: -- that your witness is going to say that the presence of chlamydia does not necessarily mean that this Defendant -- I mean, this victim has engaged in any sexual activity.

MR. HILLIARD: I believe that's what --

THE COURT: That it could be the result of many different ways you can contract chlamydia; is that right?

MR. HILLIARD: Well, I don't know that my witness is going to say that, but I do believe that to be true. And I am confident that, based on my understanding of the way things work, that Dr. Rahter would testify to that, that there are ways to get -- the Department of Justice has a...

THE COURT: All right. What about the Finley case? And this is what it says: Specific instances of sexual activity on the part of the victim with persons other than the Defendant may be introduced to show the origin of semen, pregnancy, or disease about which evidence has previously been introduced and proffered, provided that its probative value is not outweighed by its prejudicial effect. There in Finley it says it may be introduced.

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What about that, Ms. Walter?

MS. WALTER: It says it may be introduced if evidence has previously been introduced about it. So, essentially, the State would have to introduce evidence of the semen, pregnancy, or disease.

THE COURT: It doesn't say who introduces it.

MR. HILLIARD: Right.

THE COURT: It just says it's introduced.

MS. WALTER: Right. But if it's -- the idea is that they are piercing the rape shield law, the State, in essence, decides whether or not a piercing is appropriate in its case in chief. If the State decides that the piercing is not appropriate, then we file the motion like we did, and then it's up to Your Honor to determine whether or not that shield can be pierced.

It's our position that the way the case law reads is, unless the State puts forth evidence of semen, pregnancy, or disease, that any other evidence about semen, pregnancy, or disease would be irrelevant.

MR. HILLIARD: There is nothing that says that, unless the State puts it up. Just says if it's up.

THE COURT: Well, if we look at the statute, doesn't it require an offer of proof?

MS. WALTER: It requires ten days notice and an offer of proof and an in-camera hearing with Your

Honor.

THE COURT: That's what I'm talking about.

MS. WALTER: Yes. None of which has been complied with.

THE COURT: So, I mean, when can we do that? When do you got your expert here?

MR. HILLIARD: Well, we can have him under whatever circumstances Your Honor calls.

THE COURT: Let me ask you this. How do you propose to admit the evidence of the chlamydia?

MR. HILLIARD: Through Dr. Rahter, their witness.

THE COURT: Okay.

MR. HILLIARD: And let me say, judge, exactly what you just said is the reason that I don't think the rape shield statute is involved in this situation at all. Because I'm not intending to -- the very first words out of the rape shield statute are, specific instances of sexual conduct.

If I was trying to show that she had sex with Mr. Jones or Mr. Smith, then I would have to bring Mr. Smith and give him ten days notice. And we would talk about Mr. Smith and make a proffer, and then we'd argue about whether that was admissible.

I'm not showing anything about any specific act of sexual conduct at all. So there is no Mr. Smith or

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Mr. Jones that I can bring.

I'm going to show that she has a sexually -- an ordinarily sexually transmitted disease, it's part of their standard protocol. The rape crisis -- you asked me the question about how to prove it, but the rape crisis center does a standard protocol where they check for sexually transmitted diseases every time Dr. Rahter does an examination.

She does the examination, she checks the physical stuff, she sends it off, she gets it back. In this case she gets it back, she has it, and she prescribes medicine for treatment of the sexually transmitted disease.

THE COURT: Wouldn't it be relevant and admissible, Ms. Walter, if he did have chlamydia? I mean, wouldn't you be trying to introduce that now?

MS. WALTER: Well, but the issue is, Your Honor, that chlamydia can be cured with -- and I have my notes someplace -- like two pills or four pills, and it will be gone in a week. So -- and --

THE COURT: But he's saying you can still test for it.

MR. HILLIARD: Yes.

MS. WALTER: I know what his expert is saying. That doesn't mean I agree with it. And I've spoken

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with an actual medical doctor about this. And the whole issue is, he had three months from the time of disclosure until the time that he was tested where he could have treated for that. Or maybe it wasn't from him. That's why if he had chlamydia, yes, we probably would introduce it. But, still, the --

THE COURT: Well, I'm going to hear the evidence before I make a ruling on this. You know, if you've got an expert and the expert can meet the standards and the expert can tell me that if he had engaged with her and she had chlamydia, that he could tell it now, and he doesn't have it, you know, that makes a lot of difference to me.

MR. HILLIARD: Yes, sir.

THE COURT: But I don't know that that's what this expert is going to testify to, I don't know.

MR. HILLIARD: Right.

THE COURT: Until I hear it, you know, we can sit here and go back and forth and hypothesize about what he may say or what he may not say, I don't know. I think I'm going to have to hear it. Now, when you going to have him here for me to hear it?

I would imagine Ms. Walter is going to put Ms. Rahter up fairly quick.

MS. WALTER: Yes, Your Honor. But I would

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actually like this issue resolved before openings. Because, again, if Your Honor is going to rule that this evidence is admissible --

THE COURT: Well, when am I supposed to -- I want to hear what the witness is going to say.

MS. WALTER: I understand that, Your Honor. Defense is the one that had the ten-day -- was supposed to give us ten days notice, written notice. And it wasn't until last week after three e-mails that I face-to-face confronted Mr. Hilliard and said, what is your expert an expert in? Because, again, on his website, nowhere does it say infectious diseases or chlamydia.

THE COURT: Well, doesn't it say that he's supposed to give you ten days notice of...

MS. WALTER: Ten days notice of the evidence that he intends to introduce.

THE COURT: No. It says: Specific instances or opinion or reputation evidence of a victim's sexual conduct are generally not admissible. Defendant must give the State ten days notice that he intends to present such evidence and make an offer of proof before the trial, the judge may admit it.

Now, I don't know if he's offering --

MR. HILLIARD: I'm not.

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THE COURT: -- specific instances or opinions or reputation evidence of the victim's sexual conduct. I don't know if he's doing that, I really don't.

MR. HILLIARD: I'm not.

MS. WALTER: I think Your Honor is reading specific instances far too narrowly. Because then, essentially, Defense would have to say, on April 9th, 2018, the victim had sex with someone else. It can be just generally, she slept with ten -- and this is not my victim, I'm just hyperbolizing here -- it could be that she is a prostitute, she's been a prostitute for ten years and she's slept with hundreds of men.

THE COURT: And the rape shield doesn't allow that.

MS. WALTER: Right. But that's not specific instances. That is general testimony about prior sexual activity.

THE COURT: That's reputation, goes to her reputation.

MR. HILLIARD: Yes, sir.

THE COURT: Which is protected. Here we have -- I'm not at this -- you know, whenever y'all want to do it is fine with me. But I want to hear what this expert's got to say. If the expert says what you tell me he's going to say, Mr. Hilliard, I'm probably going

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to let it in. But if you fail in that, I'm not. I mean, there is no need to put it in unless the evidence goes to specifically exclude any activity by this Defendant.

Now, if this Defendant's contact with the victim is excluded by that evidence and it meets the standard, I'm going to let it in. But if it's just general, maybe, maybe not, I-don't-know-type evidence, I'm probably not going to let it in. I want to know what he's going to say. Do you have a report from him?

MR. HILLIARD: We have -- the report that we have from -- well, let me tell you how this developed, judge, and I get -- let me tell you how it developed so it makes some sense to you, perhaps.

When we found out that the complaining witness in this case had chlamydia, my client went down and took a test for chlamydia. And he didn't have it. But the fact that he didn't have chlamydia at the time that he took the test is exactly like the prosecution says, and that is, well, maybe he got treated for it and didn't have it at the time.

But still, at the time that he found out, took the test, didn't have it. And I'm thinking, all right, well, he doesn't have it, but that doesn't really mean anything. What can we do with that? So we tried to

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figure out how to put that whole thing together, and we found out there is this antibodies thing where you can show whether a person has ever had chlamydia or not.

And so we sent him again for another test to see whether he had these antibodies. He went down, he took the test, he doesn't have the antibodies, and so we had that information.

THE COURT: Well, who gave him the test, and who's going to testify concerning that?

MR. HILLIARD: Well, the problem with that is --

MS. WALTER: And we don't have a copy of that second report.

MR. HILLIARD: I think you do. The second one is, I think, the one they do have. They don't have the third.

MS. WALTER: Okay. So I have one report out of the three that we're now discussing.

THE COURT: Okay. Well, let's go on, okay.

MR. HILLIARD: So exactly the problem we said, that is, that we sent him down to do the test, but they sent it off to New York or New Jersey or North Carolina or somewhere. We can't get those people as witness. We're dealing with a limited budget.

So what I did at that point was said, all right, well, who can I get to do the test that is a witness

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that will come and testify? And this is extraordinarily expensive, which doesn't matter to them. I get that. But in any event, it is.

So we sent him again for a test to test for the antibodies, got a better test, talked to the witness. And we can have him here to testify, again, at an extraordinary $300 an hour, door to door, to come here and to testify. My guy ran out of money, house burned down, doesn't matter.

But the point of it is, he will come and he will testify to the fact that he has -- that the antibodies show that he has never had chlamydia.

Now, the testimony from the State's point of view is, he was -- and we don't know exactly. They said a whole bunch of different things. And when I say they, I'm talking about the victim in this case, which their witness will say doesn't have to remember anything, doesn't have to get it right twice in a row, will testify that she's had sex willy-nilly with this guy like 12 times sometime in between the big time in the report that they have and the indictment that they have.

But she's right, there's nobody that can say that because he's never had chlamydia, that he's never had sex with her. Because we don't know when she got

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chlamydia. We know when she had it, and we know when she said she had sex with him, sort of. But he's not going to be able to come in here and say that the fact that she had chlamydia at some point in time and he's never had chlamydia means that he's never had sex with her. Nobody can say that, you're right.

MS. WALTER: Right. But I'm going to object. The victim is never going to come in and say she had sex with him willy-nilly. She'll say he raped her, not that she had sex with him willy-nilly.

MR. HILLIARD: Subject to debate.

THE COURT: Well, then, Mr. Hilliard, how does this doctor's testimony, then, become relevant if he is going to say -- whether he has it or not doesn't establish anything from a probative standpoint. He could have still had sex with her and she contracted it later. I.

Mean, if this doctor is going to testify that, there's no way that I can look at this and say whether he did or he didn't, then what's the probative value of his testimony?

MR. HILLIARD: Well, it's a combination of things. Part of it is that if, in fact -- as I say, depends in some part on what the complaining witness says. Because we don't know what she says. She said a number

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of different things, which they can explain. But she said a number of different things. We don't know exactly what she's going to say. But one thing that we do know that she has said on one occasion is that my client gave her a sexually transmitted disease, as reported to the police officer.

MS. WALTER: That's not accurate. That was a summary of another witness's testimony.

THE COURT: I understand, I understand. But the officer wasn't talking to the victim.

MS. WALTER: That is correct.

THE COURT: I understand that, I understand that. But according to the officer's report, and if the witness or whoever he was talking to is truthfully reporting to him her conversations with the victim, if that is true, it leads us to the conclusion that that may, in fact, be the testimony of the victim.

MS. WALTER: You're allowing the witness to be impeached by something that someone else said she said.

THE COURT: No, no.

MS. WALTER: Because that's essentially what's happening here.

THE COURT: I don't know what the victim is going to say, I don't know. But what I'm saying is I have no doubt that Mr. Johnson has accurately written down what

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was relayed to him. I have no idea who this third party is. I have no idea. But it was obviously someone who he felt knew something about the case or was in a position to know something about the case. And it is reported to him, and it was significant enough that he wrote it down.

Now, your witness, your victim, may never have said that. Your victim may deny ever having said that. But on the other hand, there is a good chance that your witness may take that exact position. Now, whether she says it on the stand, you elicit it, or anything like that is another question. But what I'm saying is there's a possibility, there's a good possibility based on Detective Johnson's investigation, that that is her position.

MS. WALTER: I have spoken with the victim prior to coming over here at 1 o'clock. The victim is not going to say that the Defendant gave her chlamydia.

MR. HILLIARD: But will she say she ever said the --

MS. WALTER: No.

MR. HILLIARD: Well, how do we know what she's going -- how do we know everything she's going to say if you haven't told her what to say?

MS. WALTER: Well, I don't really need those

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baseless accusations. I have specifically spoken with the victim about this portion of her testimony in nonleading questions and asked her about this issue.

She is not going to claim that the Defendant gave her chlamydia. If the chlamydia is excluded, then there's no reason for anyone to ever say, well, I deny telling that to anyone else. She is not going to claim that.

THE COURT: Well, you know, we're going in circles. It all comes back to one thing, to one thing and one thing only. And there are two issues that I want to hear from this expert. Number one, I want to hear this expert say whether there's any probative value at all to his testimony, whether any conclusion he reaches would be something that would determine or help to determine -- the jury determine whether or not the Defendant engaged in sexual activity with the victim.

You're telling me he's going to say now, you're telling me he's going to say, you know, she may have gotten it later, she may have, you know, not had chlamydia when he had it. All I'm saying is that if she had it when he had sex with her, it would probably show up, or it would show up now on some sort of testing, and that's another issue.

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Now, if that's all he's going to say, if that's all he's going to say, and he's going to say, I don't know if she had it then or not, I couldn't tell you, then, Mr. Hilliard, it has no probative value. There is no probative value to it, by his own admission.

But on the other hand, if he's -- if he can say she had it at a particular time and, yes, if he had had sex with her, it would show up, I think that it becomes a very important issue, and I think it's probative and would probably be admissible, if you can establish that through your expert.

But I'm real concerned now about your saying your expert says, well, you know, all I can say is if she did have it when he allegedly had sex with her, then it would show up, but you know, we don't know; you know, then it just has no probative value to it because there's no basis for the opinion. He can't say.

MR. HILLIARD: Yes, sir. We won't know the answer to that question until after Dr. Rahter and the complaining witness testify. Because, although I understand what the prosecutor says the witness is going to say, I don't know that that's --

THE COURT: Okay. This is the way I'll do it, then.

MR. HILLIARD: Yes, sir.

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THE COURT: I will exclude it from Dr. Rahter's cross-examination and the witness's examination and give you an opportunity then to put up your expert and recall them.

MR. HILLIARD: But it won't -- unless I'm able to --

THE COURT: You can recall them if your expert is able, in an in-camera hearing, to establish the admissibility, the relevance, and the probative value of it, if he can do that, then I will let you recall him.

MS. WALTER: Your Honor, my only issue is that if this evidence is going to come in, the State should have the opportunity to bring it out in our own direct of our own witnesses. I have no problem, I encourage the in-camera hearing. But my suggestion would be to have that in-camera hearing prior to trial, as I think the statute envisions. And that way both parties know going forward, for instance, for their openings, what evidence they expect to come in.

THE COURT: Well, I don't know how to accommodate everyone. Mr. Hilliard says he's got to hear their testimony.

MR. HILLIARD: I agree with that, judge --

MS. WALTER: Well, the expert shouldn't have to

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hear their testimony to be able to testify to medical facts.

THE COURT: The expert's not going to hear their testimony, I'll sequester him.

MS. WALTER: Right. So then --

MR. HILLIARD: I want the Court to hear it. What I would propose is this, judge, because I agree with it. I agree that in order for there to be a context for Your Honor to make a decision about this -- this is the part that I think is important -- I think the Court has to hear, at least on this issue, from Dr. Rahter, from the mom of the complaining witness, and from the complaining witness. Those three people are necessary for Your Honor to hear in order to make a decision, I submit to the Court, on this issue and its admissibility.

THE COURT: So you're contemplating having them heard all in an in-camera hearing?

MR. HILLIARD. Sure, just on this one issue.

MS. WALTER: So, in other words, let's just offer up all of the State's witnesses for direct and cross-examination so that he can put on an expert that he still has not said can say what he is claiming he will say, and then put the victim through it again in front of the jury. So subject a rape victim to two

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sets of cross-examination.

THE COURT: We're talking about a nonjury hearing in camera, and we're talking about for a limited purpose.

What do you need to hear -- Mr. Hilliard, what do you need to hear the witnesses say? Now, we're not going to preview the whole case.

MR. HILLIARD: No, sir.

THE COURT: Mr. Hilliard, tell me what you need to know.

MR. HILLIARD: All right, sir. What I would like to do is I would like the opportunity to cross-examine the -- but again, judge, I'm telegraphing the questions that I'm going to ask.

THE COURT: Not to me because I don't know where any of you are going with this.

MR. HILLIARD: Right. Once I say it, it's said.

THE COURT: I mean, I would like to get a clear perception of where this is going. It keeps changing. It's so fluid.

MR. HILLIARD: All right, sir. Yes, sir. I want to be able to cross-examine the complaining witness about whether or not she told her friend that her father or her stepfather had given her an STD. I want to be able to cross-examine the witness and have her on

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the record one way or the other as to whether she said that to her or didn't say that to her.

I want to be able to cross-examine the mom on the issue of whether she has claimed that the Defendant in this case gave her and her daughter an STD. I want to be able to ask them those questions about the STD aspect of it.

I want to be able to ask Dr. Rahter, who, as a medical doctor, can talk about the things that they are talking about in connection with how these diseases are transferred and how -- I mean, Dr. Rahter is a medical doctor. She can talk about those things, she's an expert in that area. And I certainly believe that she will be honest in that, I don't have any question about that.

So she -- my anticipation was that I would have used her as an expert witness in the area of sexually transmitted diseases, and if the -- in fact, the complaining witness had a sexually transmitted disease at the point in time that she was having sex with the Defendant, that it would have been transferred. That's part of it.

So those are the limited things that I want to ask these witnesses about, and that will set up my expert for the purpose of saying that my client has never

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had --

THE COURT: But we're still left with the time issue.

MR. HILLIARD: Right.

THE COURT: When is your expert going to say, you know, now that I've said all that, it really doesn't make any difference because we don't know when she got chlamydia, we don't know how she got chlamydia, and we don't know when that is in reference to the contact with the Defendant.

MR. HILLIARD: Right.

MS. WALTER: Correct.

THE COURT: There are several acts here, and we don't know if any of them were during the period that she had chlamydia.

MR. HILLIARD: If, in fact, she said that the Defendant gave me chlamydia, he can say with certainty the Defendant did not give her chlamydia. If she says that he did, and my witness will say that he didn't, that's important. And that's what we have.

MS. WALTER: I am telling you, she will not testify to that. And Dr. Rahter will testify that it is imminently possible to have sex with someone with chlamydia and not pass it.

THE COURT: Okay, okay. Well, I think then what

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we're getting into is into the area of impeachment. So I would let you put her on the stand and ask her that question.

MS. WALTER: Ask who which question?

THE COURT: Ask the victim that question. That question meaning, did your stepfather give you chlamydia; is that what you have said and is that your position?

MR. HILLIARD: Well, and let me ask specifically, did you tell this person who says that she told her that, that your stepfather had given you an STD? That's in the report. I have a transcript of the police report where this police officer was interviewing the witness --

THE COURT: Yeah, but she's not testifying to that. I think the issue is whether or not she would say under oath that he did it, and then you impeach her on that.

MR. HILLIARD: Well, yes, sir. But if she said it before, the question of whether she said it --

THE COURT: Good Lord, Mr. Hilliard, if we were all impeached by anything we've ever said, we would be in trouble, you know, if you looked at everything we said to friends and confidantes and everything else. I'm interested in whether or not you can impeach her

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for what she says in this courtroom and under oath.

MR. HILLIARD: Well, at this point she knows he didn't give her chlamydia because she knows he never had it.

MS. WALTER: That's -- I have not discussed it with her. And it still doesn't matter because the State does not agree that there is any way to tell that you never had it. It can be cured with -- I just put my notes away -- I think it was --

THE COURT: And I understand that. We all understand, we've beaten it to death, we understand that it can be cured. You can -- it's a virus or whatever, you can take antibiotics and it goes away; okay?

MR. HILLIARD: Yes, sir.

THE COURT: The issue is whether there is scientific evidence to support his expert's position that it is still detectible. Now, I know that there are tests similar for other conditions. I don't know anything about chlamydia or whether it's detectible. I don't know.

I do know if you've had a heart attack, they can draw blood and tell you if you've ever had a heart attack just based on proteins or whatever, the way they do it. I mean, that is within the realm of science.

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It's done every day in the medical setting. It's done. Now, whether or not that is true about chlamydia, I have to see it.

Now, Mr. Hilliard, you know, I don't know what to tell you other than this. Your client -- I mean your witness has formed an opinion.

MR. HILLIARD: Yes, sir.

THE COURT: And he may use anything that is normally used in the field to formulate his opinion. And if we're talking about some sort of forensic expertise he might have, I would say, yeah, you can rely on police reports or whatever. I want to hear what he's got to say.

I want to find out what the -- if he's got an opinion, he's already formed it, and he's formed it on information already available to him. He doesn't need to talk to the victim, he doesn't need to talk to her mother. He has formed his opinion. If he has one, he's got it now. So let's hear what it is, and let's hear what it is in the morning.

MS. WALTER: And, Your Honor, I would also request the other test results that, apparently, he's relying on.

THE COURT: Yeah. And they are entitled to that.

MR. HILLIARD: Sure. We'll give them that, judge.

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That's not a problem.

MS. WALTER: If they actually give it to me now, I'll have my assistant go and make a copy of it.

THE COURT: Well, 9 o'clock in the morning, I want to hear from this expert witness.

MR. HILLIARD: I don't know that I can get him, judge.

THE COURT: Well, what time can you get him?

MR. HILLIARD: I don't know. I have to call him and ask him.

THE COURT: Where is he?

MR. HILLIARD: He's in Charleston.

THE COURT: Well, my God, it's an hour and a half drive. Just tell him to get on his horse and come.

MR. HILLIARD: He's a medical doctor, judge. He's got --

MS. WALTER: He's not. Dr. Bennett is not a medical doctor.

THE COURT: He's not a medical doctor? Is he a medical doctor or not?

MS. WALTER: No.

THE COURT: Where is he, what does he do?

MR. HILLIARD: What he does, he does testing. He does testing. He testifies in family court, he testifies in criminal court. He does blood testing,

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urine testing, hair testing.

THE COURT: Wonderful. I mean --

MS. WALTER: He is not a medical doctor. He had a degree in pharmacology.

THE COURT: And I have doctors who testify all the time that are not medical doctors, they have PhD's. We qualify them as experts, and we qualify them with far less than a PhD.

MS. WALTER: Right. But there is a difference between a PhD and Mr. Hilliard's statement that he is a medical doctor.

MR. HILLIARD: I misspoke. Thank you.

MS. WALTER: He is absolutely not a medical doctor.

THE COURT: And we are beginning to call pharmacists now doctors.

MS. WALTER: Except he is not a practicing pharmacist. And he is under a cease and desist order.

THE COURT: Well, whatever he is, let's see if we can qualify him. Now, I don't understand. We're talking about 18 hours lead time. Why can't -- I mean, why can't he drive up here in 18 hours?

MR. HILLIARD: I'm not saying he can't. I just haven't talked to him. What I envisioned was that he would testify at the end of their case. So the only

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thing he knows from me is --

THE COURT: That's not what the statute says. It says that we will have a hearing on it, okay.

MR. HILLIARD: Well, that's if I am -- and I know we've been down this circle. Let me not even try to go past that. The thing is, in order, I believe, judge, for Your Honor to make an informed decision about this, I need to ask Dr. Rahter like three questions.

THE COURT: No, I'm not going to go there. Your -- if your guy has an opinion, he has formulated it based on a report you've already been given. He doesn't need to go any further than that. And the reason I say that the rape shield requires a hearing, that hearing is required to determine whether or not the rape shield is even applicable, in my view.

MR. HILLIARD: And it's just not.

THE COURT: And then the secondary question is if it is applicable, is this an exception to it.

MR. HILLIARD: The expert doesn't have anything to say about that, truthfully.

THE COURT: About what?

MR. HILLIARD: About whether the rape shield is applicable or not.

THE COURT: No, he's not -- that's my decision.

MR. HILLIARD: Yes, sir.

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THE COURT: That's mine.

MR. HILLIARD: Right, exactly.

THE COURT: What I want to do is hear what he's got to say.

MR. HILLIARD: All right.

THE COURT: I want to hear him.

MS. WALTER: Your Honor, could I get copies of those reports and I'll have Magdalena make copies now?

THE COURT: Well, before we leave. But I want to move on to the next motion, I want to get the next thing in line, okay. What's next?

MR. HILLIARD: Well, if we could start out, judge, as I understand it, the representation made to the Court by the prosecutor, and I ask her to confirm this, that they have run national criminal information computer printouts --

THE COURT: The NCIC's on the victim and all the State's witnesses. And I was informed in chambers that none of them have any convictions; is that correct, Ms. Walter?

MS. WALTER: That is correct. And I would be happy to show Your Honor.

THE COURT: Don't need to.

MS. WALTER: There are no convictions.

THE COURT: You are telling me that there are

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none, and Mr. Hilliard has expressed to me that that's good enough for him as long as he can rely on it and it's part of the record. Right, Mr. Hilliard?

MR. HILLIARD: That is correct, Your Honor.

THE COURT: Okay.

MR. HILLIARD: That is correct. And then we also had, judge, the body cam that we talked about in chambers.

THE COURT: Yeah. There was a cutoff of the body cam. The State says that was the end of the video or audio, whatever it was. The body cam ended when the one that you've been provided ends; right?

MS. WALTER: The body cam -- what I did was I talked to Detective Johnson. The original, for lack of a better word, has been purged off their system for quite some time. Detective Johnson makes copies of the body cams that he provides to the solicitors. His copy is exactly what we have. So beyond what we have, nothing exists.

THE COURT: There is nothing else?

MS. WALTER: There is nothing else to give.

THE COURT: Okay, all right.

MR. HILLIARD: Thank you, Your Honor. We renew, judge, our motion about joinder of the cases. You've already ruled on that.

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THE COURT: Right.

MR. HILLIARD: But just for the purposes of this record, we renew that motion, and we'd ask you to separate the cases.

THE COURT: The two charges?

MR. HILLIARD: The two charges, yes, sir, on the two victims. Our motion to limit the testimony to the timeframe of the indictments. We have a written motion to that effect, which we passed up to the Court. Will you make that part of the record?

THE COURT: Yes. Was it not filed?

MR. HILLIARD: No, sir, we haven't filed it. We brought it today.

THE COURT: Let me find that one, and I'll certainly make it part of the record.

MR. HILLIARD: Shall I pass it to the court reporter, judge?

THE COURT: This is the one limiting their testimony to events that occurred within the timeframe presented by the State's amended indictments; is that correct?

MR. HILLIARD: Yes, sir.

THE COURT: Okay, all right. Let me hear you on it.

MR. HILLIARD: Well, I think you've already ruled,

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judge, that they are going to -- my position is that the State's testimony or what we've been shown by -- tomorrow at 9:00, judge, he'll be here.

THE COURT: Good. See how easy that was?

MR. HILLIARD: Didn't know. I don't want to promise something I can't deliver. That would be bad.

So, motion to limit testimony to the timeframe of the indictment. Based on the fact that, according to the information that we have, the prosecuting witness in this case will say that her stepfather, the Defendant, started giving her beer and marijuana when she was ten years old and started rubbing on her and that sort of thing. And those activities are not contained, that timeframe, is not within the indictment.

THE COURT: Yeah, but that doesn't curiate the offense either. That goes to a Lyle-type analysis, it's other bad acts. I think it comes in under the res gestae. I think it's admissible.

MR. HILLIARD: Thank you, judge.

THE COURT: Now, is there any evidence of penetration, anything of that nature, outside of the indictment period?

MS. WALTER: I don't believe so, Your Honor.

THE COURT: Okay, all right. What we're talking

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about is kind of warm-up activity, for lack of a better phrase, would you say grooming?

MS. WALTER: Yes.

THE COURT: That sort of testimony?

MS. WALTER: Yes, Your Honor.

THE COURT: And I would allow it as -- well, I'll hear from you, Ms. Walter.

MS. WALTER: Well, you anticipated my argument. I do believe that it is part of the grooming behavior because, essentially, it's let me give you beer, let me give you marijuana, I'm going to earn this trust, and it builds from there. I do not believe that there will be any testimony regarding penetration outside of the indictment period. But, certainly, what happened leading up to the actual crime is very probative and relevant and not unduly prejudicial.

THE COURT: Okay. Well, I think it comes under the res gestae. And if I look at it from a 403 analysis, I think that its probative value, that is, it goes to show his intent, his -- it supports the repeated nature of this. It goes to the fact that he was in a position of a parent over this child and control over the child. It perhaps might even suggest why there was a delay in reporting and that sort of thing.

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I think that it has probative value, and considering the overall nature of this thing, its probative value substantially outweighs the prejudicial effect that it might have. The actual allegations are much greater than this giving someone beer or giving someone marijuana when they are a minor. I think it goes way beyond that. Okay, all right. Thank you.

MR. HILLIARD: Thank you, Your Honor. We have a motion for the Government to refrain from using the term victim in talking about the --

THE COURT: You know, Mr. Hilliard, as best I can, I will refer to them as the alleged victim. You can refer to them as alleged victim. You know, victims, defendants, I don't think it prejudices anyone. I am very careful about explaining to the jury that what an indictment is and how nothing -- no presumptions or prejudice should arise from that.

I try my best to protect the Defendant in every case. And I will make sure that I tell the jury that that is just a term of art used in the Court, it means an accused person and nothing more, and that the State still has the burden of proof beyond a reasonable doubt because he has a presumption of innocence. I will tell them all of that. But I'm not going to bog down the Court with semantics when these words are used every

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day in court. Okay. Thank you.

MR. HILLIARD: Thank you, Your Honor. Also, judge, the motion, our motion to exclude their expert testimony, I think, is at this point premature. We're not really able to do that until we find out what he's going to say, much in the way that Your Honor has talked about our expert from today.

THE COURT: Okay.

MR. HILLIARD: So we're -- we would hold that motion until such time as the expert's here and we can --

THE COURT: All right.

MR. HILLIARD: -- do an in-camera hearing on it.

MS. WALTER: I don't believe I got that one, Your Honor. I don't believe I have that motion. I'm sorry, I do. It was in the file from this morning.

MR. HILLIARD: And then we have the voir dire to talk about. There's one other thing, judge, that I wanted to -- and I was -- I was holding this piece of evidence because I did not want to, again, telegraph to the opposition connected to...

THE COURT: Yes, sir, Mr. Hilliard.

MR. HILLIARD: Thank you, Your Honor. Judge, I didn't want to go into this today, but I don't think I have really any choice at this point. It's where the

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mom and daughter allege that the STD that they say they both have came from my client. It's an e-mail from the mom's lawyer in a domestic case to me that existed prior to this.

At the very bottom of it, judge, and it's not -- I should have marked it then, I didn't. But, anyway, it is to the effect that they both allege that they have STDs which came from my client, and therefore we should stay out of court. So that's another cross-examination question which I would ask the mom who will know at this point that I'm going to ask her the question about whether or not she told her lawyer who thereafter told me that my client gave her the STDs.

This all happened, to put it into context, she goes to the rape crisis center; to the Children's Recovery Center, she gets diagnosed with an STD. She tells her lawyer and tells her lawyer that my client gave them the STDs. And then whether she actually had it or not, the mom, I don't know. But I do know that at least she has told her lawyer that they both say that my client gave them the STD.

And so I recognize that letter in and of itself may not be admissible unless, again, on cross-examination I'm entitled to ask her that question, I think, whether or not she said, the mom

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said, or mom talked to her daughter who said that my client gave them the STD. So that --

THE COURT: So you're anticipating the State's objection to a question that you may ask on cross-examination?

MR. HILLIARD: No, sir. That's the reason that I think -- that's the reason that I believe that it's admissible to talk about whether or not my client had the STD because that's them saying --

THE COURT: Are we going back to that now?

MR. HILLIARD: Well, I didn't put that piece of evidence in, judge, because I wanted to save it to ask that on cross-examination. But I'm afraid that I'm not going to get to that if I don't go ahead and reveal it now. I think by revealing it, I take away the value that it has. But I don't have a choice.

THE COURT: Which motion are we on now? I mean, I'm totally lost. Where are we back now? Have we digressed?

MR. HILLIARD: Yes, sir. We're back to the spot where I am trying to have the opportunity to cross-examine on a limited basis Dr. Rahter, the mom --

THE COURT: Well, you do that. Your witness -- I mean, your expert has a letter from her attorney. And he says, I'm basing my opinion on this letter, her

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statement that she says that he gave her chlamydia.

MR. HILLIARD: Yes, sir.

THE COURT: What's wrong with an expert basing an opinion on that, a letter from her attorney?

MR. HILLIARD: Nothing. All right. Now --

MS. WALTER: I will just note that the State has some concerns as to how I think it's a little ethically murky how this letter comes in. Because my understanding is that Mr. Hilliard represented the Defendant in his divorce from the victim's mother.

THE COURT: Another proceeding between those parties.

MS. WALTER: Pardon me?

THE COURT: Yes, it was another proceeding in which she was a party.

MS. WALTER: Right. But this appears to go to a conversation --

THE COURT: And she's not protected by the rape shield.

MS. WALTER: I'm not talking about rape shield, Your Honor. I believe that this would be a communication that she had with her attorney. So that's just our concern there.

THE COURT: He, the attorney, waived it if there was because he sent it to Mr. Hilliard.

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MR. HILLIARD: Yes, sir.

MS. WALTER: I'm not sure that the attorney can waive the attorney/client privilege for the client.

THE COURT: Well, it would be up to her to raise that. And I don't think that would work here because he did it on her behalf, and apparently she told him, gave him that as ammunition for a bargaining position in a domestic case. So let's see what happens.

What are we on now, Mr. Hilliard?

MR. HILLIARD: Thank you, Your Honor. Voir dire, I believe, judge. We both have voir dire.

THE COURT: Okay. I've got voir dire for you.

MS. WALTER: This was ruled on already, Your Honor.

THE COURT: I still have the voir dire once we -- we went through this voir dire. I said, this is the voir dire I'm going to do. Elizabeth saved it for me. Do you want to look at it?

MR. HILLIARD: Yes, sir.

THE COURT: I mean, we did that before, and I think we got to that point and everybody was satisfied with it.

MR. HILLIARD: I'm guessing the "ours" means yours.

THE COURT: Yeah.

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MR. HILLIARD: Very good. Thank you, judge.

THE COURT: Well, mine and Ms. Smith's.

MR. HILLIARD: Yes, sir, as it should be. Thank you, Your Honor. We have nothing additional connected to do that. Do we have the...

(Discussion off the record.)

THE COURT: I mean, isn't that -- isn't this the same voir dire that I looked at earlier and we talked about, and we had a full voir dire hearing and this is what we came up with?

MR. HILLIARD: Yes, sir.

THE COURT: Okay.

MR. HILLIARD: That's correct, judge. If I could just mark my request for voir dire in the record.

THE COURT: All right. Very well.

MR. HILLIARD: Thank you, Your Honor. And we had a motion or we have a motion, judge, to sequester the witnesses. We'll do that --

THE COURT: Granted.

MR. HILLIARD: Thank you. Okay.

MS. WALTER: And this is just more for the logistics, Your Honor. We're going to have Detective Johnson, who is my --

THE COURT: He is your lead.

MS. WALTER: Right. And there are two victims in

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this case.

THE COURT: Right. But they are all adults now.

MS. WALTER: Yes.

THE COURT: Okay.

MS. WALTER: So are you ordering that they be sequestered during each other's testimony because --

THE COURT: No, I'll allow the victims to be here.

MS. WALTER: Right, okay. And everyone else, I have no problem with that. We'd have a reciprocal motion for sequestration.

THE COURT: All right, very well. And I'm pretty sure we already discussed that, but that's fine.

MR. HILLIARD: Yes, sir.

THE COURT: It's almost typical now. Okay. What else do we have?

MR. HILLIARD: That's all I can think of right now, judge.

THE COURT: Okay.

MS. WALTER: Well, there was his motion to preclude the forensic interviewer, and as I advised in the back --

THE COURT: You're not going to put that up --

MS. WALTER: -- I have no intention of calling her because --

THE COURT: She's over 12.

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MS. WALTER: Exactly. It's not permitted.

MR. HILLIARD: Thank you. That's correct.

THE COURT: So that's not even an issue.

MR. HILLIARD: Right.

THE COURT: Okay, all right.

MR. HILLIARD: So as I understand it, they are not going to call her at all.

THE COURT: Yes, sir.

MS. WALTER: Unless, as Your Honor said, it comes in as a prior consistent statement based on cross-examination.

THE COURT: Yes. And that could be an issue for you, Mr. Hilliard. I'm telling you, I don't think I have to rule on it because Ms. Walter says she's not putting it is in. But I told you that I didn't think that it was admissible because, under this statute, it's limited to children under 12, and she was 14 at the time, so it would not be admissible to begin with.

However, if on cross you challenge her statement or her testimony alleging that it's a recent fabrication and what the rule says, it may be admissible, or parts of it, as a prior consistent statement; okay?

MR. HILLIARD: Got it.

THE COURT: If it complies with the rules. All

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right. Okay. Right, everybody understand?

MS. WALTER: Yes. Yes.

MR. HILLIARD: Yes, sir.

THE COURT: Okay, fine, good.

MS. WALTER: The State's still waiting for the other two reports.

(WHEREUPON, Defendant's Exhibit Nos. 1 through 3 were marked for identification only.)

MR. HILLIARD: We can e-mail them, judge. We don't have the physical copies with us.

THE COURT: Okay, well, can we do it by --

MR. HILLIARD: We'll do it right now, judge. Let's make sure it works and we got it.

THE COURT: All right. Did Mr. Martin have several motions? Is that it? Are we done?

MS. WALTER: I believe that is it, Your Honor.

THE COURT: Is that it, okay. Someone had a motion -- I mean a plea for me?

(Discussion off the record.)

THE COURT: See you in the morning.

MS. WALTER: So tomorrow morning at 9:00 for their expert.

THE COURT: Right. Okay.

Bobby, now, we're going to be probably delayed, then, in the morning, so how about get something for

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the jury; okay?

BAILIFF: Okay.

THE COURT: All right. Thank you.

(Discussion off the record.)

THE COURT: You know, one thing that we might want to do in the morning is -- we got 44 jurors coming in -- is if we could go ahead and pull the jury and then release the excess jurors. Because I don't know how much time this is going to take in the morning. But I want to go ahead and let's pull a jury first thing; okay?

And then we'll give --

BAILIFF: Let them go to lunch while you're dong that?

THE COURT: We'll let them just give them the morning off or whatever they need. And at least we don't have 44 tied up instead of 14, okay. All right, so that's how we'll do it.

MS. WALTER: And then, Your Honor, just for scheduling purposes, because I had asked Dr. Rahter to be here tomorrow afternoon, but I don't want to have her sitting around. So at this point, if we're selecting the jury and doing the in-camera hearing tomorrow morning, I'm thinking we wouldn't get to Dr. Rahter until Wednesday, because we have two victims

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and the mother.

THE COURT: Well, you know, any way you want to schedule it, however you want to get to it. But we want to have the in-camera hearing in the morning.

MS. WALTER: Right.

THE COURT: Okay, we're going to have it. But I don't want 45 jurors sitting downstairs, or 44 jurors sitting downstairs, waiting for us at 2 or 3 o'clock in the afternoon to finally get around to picking a jury.

MS. WALTER: Right. I agree.

THE COURT: So I want to pick the jury first. Okay? All right, thank you.

MR. HILLIARD: Could I bring my guy at 10:00, then, if we're not going to talk to him until 10:00?

THE COURT: Yeah.

MR. HILLIARD: Thank you.

THE COURT: Yes. That would be fine.

MR. HILLIARD: Thank you, judge.

(WHEREUPON, the hearing adjourned at approximately 2:32 p.m.)

(WHEREUPON, the hearing resumed on Tuesday, April 10, 2018, at approximately 10:36 a.m.)

THE COURT: Good morning. Keep your seats. Mr. Bobby, we have our jury downstairs?

BAILIFF: Yes, sir.

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MS. WALTER: Your Honor, I left our witness list on top of your book; okay?

THE COURT: Okay. Have you seen this, Mr. Hilliard?

MR. HILLIARD: Yes, sir, I have a copy of it.

THE COURT: Do you have someone to add to that? I think you had an expert; right?

MR. HILLIARD: Yes, sir. I do. And, judge, in regard to witnesses, before we start, I ask the Court's assistance in serving a subpoena on Sabrina Houser.

THE COURT: Well --

MR. HILLIARD: And I could --

THE COURT: -- how would you need my assistance rather than the clerk's?

MR. HILLIARD: Well, we can have the -- obviously, the subpoena can be countersigned. Sabrina Houser, judge, is the young lady that we spoke about on yesterday where the complaining witness in this case has told Ms. Houser --

THE COURT: Okay.

MR. HILLIARD: -- or that Ms. Houser has told the police officer that the complaining witness has told her.

THE COURT: Okay, all right.

MR. HILLIARD: So yesterday after court, we went

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over to Ms. Houser's house in an attempt to talk to her, knocked on the door. And someone -- don't know exactly who it was -- came to the door with a baseball bat and said, you better get out of here because we're going to whack you with this bat.

THE COURT: Okay. Well, that's a clear message; isn't it?

MR. HILLIARD: Yes, sir. I was fairly -- we left. It was me and Jonathan. Jonathan is not here right now, but we were dressed from court and went over there directly from court, and they --

THE COURT: Okay. Well, you know, prepare a subpoena.

MR. HILLIARD: Yes, sir. We've done that. It's being countersigned now, and I'll bring it up.

THE COURT: All right. I'll be happy to assist you in that, okay.

MR. HILLIARD: Thank you, Your Honor.

THE COURT: He has a right to have -- for me to compel attendance of any witness, all right. I'll be happy to do so.

MR. HILLIARD: And then, if I could make a copy of this, look at it as the Defendant and his mom and Defendant and Houser. I'll pass this up, judge. Oh, yeah, and your sister.

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THE COURT: Okay. Do you have a witness list, Mr. Hilliard?

MR. HILLIARD: Yes, sir.

THE COURT: Okay. Let me just add those to the one that the State has. Who do you have?

MR. HILLIARD: Scott Rowan, Jr --

THE COURT: Okay.

MR. HILLIARD: -- the Defendant; Rebecca Rowan, his mother; Robert Bennett, the expert.

THE COURT: Wait a minute.

MR. HILLIARD: I'm sorry.

THE COURT: Rebecca?

MR. HILLIARD: Rebecca Rowan, yes, sir.

THE COURT: Okay. Who else?

MR. HILLIARD: Robert Bennett, the expert.

THE COURT: Is that Dr. Robert Bennett?

MR. HILLIARD: PhD, judge. Yes, sir. Thank you.

THE COURT: Okay.

MR. HILLIARD: Sabrina Houser.

THE COURT: Houser?

MR. HILLIARD: Yes, sir.

THE COURT: Okay.

MR. HILLIARD: And Sandra Reid. And Sandra is a sister of the Defendant.

THE COURT: Okay. Ms. Walter, is it Haydee

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Sencion?

MS. WALTER: Pardon me? Oh, Haydee Sencion.

THE COURT: Sencion, okay.

MS. WALTER: And it's Raymond Olszewski.

THE COURT: Olszewski.

MS. WALTER: Olszewski.

THE COURT: Good old Horry County name.

MS. WALTER: And the victim's mother pronounces her first name Anatasya.

THE COURT: Okay, Anatasya Herron. Okay, I think I can -- and Brother ; right?

MS. WALTER: Yes.

THE COURT: Okay. I think I can get those down, all right. Why don't we get Chris. All right. Is he getting the jury out? Chris.

THE DEPUTY: You ready for him?

THE COURT: Do I have the indictments, please. All right, we're going forward on two indictments; right?

MS. WALTER: Yes, Your Honor.

THE COURT: Criminal sexual conduct with a minor in the second degree and criminal sexual conduct with a minor in the third degree.

(WHEREUPON, the jury came into open court at approximately 9:31 a.m.)

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(Discussion off the record.)

THE COURT: All right. Mr. Ropp, is that everyone? We got one more? Okay. Now, remember, there is 44, Mr. Ropp. There you go. Well, I hope you miscounted because we got two more. Thank you, thank you.

And it's good to see you all again. Everybody got a seat there? There you go. Ladies and gentlemen, you know, on yesterday, I told you that the jury selection or qualification process was sort of like in two phases, and yesterday we talked about whether or not you would be a qualified juror in this state. And we made the determination that all of you are qualified jurors. This part of the process that we're about to engage in is where we determine whether or not you have any interest, prejudice, bias concerning this particular case.

And in that regard, we're going to talk a little bit about the case. This is the case of the State of South Carolina versus Scott Richard Rowan. Mr. Rowan is seated here at the Defense table with his attorney, Mr. Hilliard. I'll introduce Mr. Hilliard to you in just a short while.

Let me tell you that, in this particular case, two indictments have been handed down. The indictments

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allege the following: First, one indictment alleges that he committed the offense of criminal sexual conduct with a minor in the second degree. And that indictment says that Scott Richard Rowan did, in Horry County, State of South Carolina, on or about or between the dates of [redacted], 2013, and [redacted], 2015, willfully and unlawfully commit the crime of criminal sexual conduct with a minor in the second degree by engaging in sexual battery with a minor, who is at least 14 years of age but who is less than 16 years of age, to wit, Complainant 1, whose birthday is [redacted] the [redacted].

And the Defendant was in a position of familial, custodial, or official authority to coerce the victim to submit or was older than the victim in violation of the statutory laws of this state.

There is a second indictment which alleges that Mr. Rowan committed the offense of criminal sexual conduct with a minor in the third degree. And that indictment alleges that Mr. Rowan, being approximately 30 years of age, did, in Horry County, on or about or between the dates of [redacted], 2010, and [redacted] 2012, willfully and literally commit or attempt to commit a lewd or lascivious act upon the body or its parts of a child less than 16 years of age with the

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intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said Defendant or of the victim in violation of the statutory laws of this state.

Now, let me tell you a little bit about how the process works. You're probably all familiar with the process where someone is arrested and you've heard the term arrest warrant used. That is nothing more than a document issued by a magistrate judge, in most cases, allowing the arrest of a person.

A case is not brought before this Court unless there is an indictment. And the indictment is nothing, nothing but a document that describes the offense and puts the Defendant on notice of the offense that he is charged with. It is not evidentiary in any form or fashion, and you are to place no significance whatsoever, if you're seated on this jury, upon the fact that this Defendant may have been indicted for any offense.

Because this Defendant, like every defendant, enters this court with a presumption of innocence. It is presumed that he is innocent, and that presumption remains with the Defendant until such time as the State meets its burden. And that burden is to convince a jury unanimously that the Defendant has committed the

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offense beyond a reasonable doubt.

And if you sit on this jury, I will tell you much more about that in the charge on the law that I will give you in the case. But I tell you from the outset that those are basic principles of protection for people who appear before this Court, things that you should, in fact, be aware of.

Also, during this trial, you will hear the accused referred to as Defendant. That is a term of art that, by tradition, has been used in this Court. It doesn't mean anything. It is simply the way we refer to the person who has been accused. It does not create any inference of guilt, should not be considered by you as such.

Likewise, in many cases, there is what we refer to as a victim. Again, the Court is not making any determination, the attorneys are not making any determination or suggesting by use of that term that you should attach any significance to it. It's just that we have to refer to them in some fashion. And the traditions of the Court are that those terms have been used.

Now, we're about to embark on the jury selection process. And let me tell you a little bit about how it works. It depends on what kind of case we have. If

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this were a civil case, say, this week I was assigned to civil court, and we had an automobile accident case or something of that nature. We have a very kind and gentle way that we use to select a jury. Your names would be shuffled around, you'd be given anonymous numbers that you would not know about, the attorneys would be provided with a list just like this list, and the attorneys would just, when it comes time to select a jury, would exercise their strikes using these anonymous numbers, and you would not even know if any attorney had struck you. Now, isn't that a kind and gentle way of doing it?

Criminal court, it is quite different. On the criminal side, your names will be called. Again, you're placed in random order. You're called as we go down the list. But you have to come forward, right around here, turn around and face the attorneys and your fellow jurors, and it will go something like this: The State first will say either, Your Honor, excuse this juror. And that means that the State has exercised a strike. Or the State may say, Your Honor, present the juror. And if that's the case, then the juror is presented to the Defense.

The Defendant's attorney then would say either, Your Honor, excuse this juror, and in that case the

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Defense has exercised a strike. And if that's the case, you would return to your seat. If the Defense says, seat or swear the juror, then you would come around and you'd be placed in the jury box, and you would serve on the jury.

Now, let me tell you a little bit about that process. As you can tell by my appearance, I've been at this a long, long time. I've been on the bench over ten years, and I've practiced law for 32. And I can say this with some assurance, during that process these lawyers are going to be making faces, they are going to be scratching their heads, they are going to be whispering back and forth, they are going to be giving you the appearance of knowing what they are doing. But I can tell you they do not. They don't have a clue.

Would you agree with that, Ms. Walter?

MS. WALTER: I would, Your Honor.

THE COURT: Mr. Hilliard?

MR. HILLIARD: Yes, sir, judge. I would like to think I do, but I don't.

THE COURT: That is the most difficult thing. That's absolutely no reflection on these fine, experienced lawyers. It's just the most difficult thing that a lawyer has to do because that lawyer has to make almost a snap judgment. Of course, each lawyer

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wants to select jurors that they feel will be receptive, sympathetic to their position in the case. They want fair jurors. But they don't know you.

So if you are struck, I hope that you're not embarrassed by that fact. I hope that you don't feel hurt by the fact that either side may have struck you. On the next case, they may be happy to have you. As my mentor, Judge Floyd, used to say, they may strike you because you part your hair on the left or you part your hair on the right or you got no hair to part. It's just a gut reaction, and they are doing the very best that they can for their clients and their position in the case.

Now, I tell you that, and you're probably all standing out there thinking, I hope I get struck so I can go home. But let me say this, I've talked to many, many jurors over the years. And most jurors who end up trying a case, particularly a serious case like this, of course they are all serious, but when it's done, they have a greater appreciation for the protections provided to them and the system that we have in this country.

Do you know that 95 percent of all jury trials in the world are tried in the United States? This is something we take for granted, but it's not the rule in

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so many other places. And I hope that you will come to appreciate that, if you do serve. You should understand that while you may look at this as an obligation and an inconvenience, you have the right as jurors or qualified jurors to decide some of the most important decisions in this country.

When the courts can't resolve it, when the attorneys can't resolve it, we call a jury. And that jury comes in, and you become kings and queens for a day because what you say is what happens. If I make a mistake in a ruling, it can always go up to the Supreme Court, and the Supreme Court can tell me I did it wrong. They have before. But nobody invades the province of the jury. That's how important it is.

You know, you've already taken one oath, and in a moment you're going to take another oath to answer some questions for me truthfully. And if you get on the jury, you're going to take another oath. That's three times you have to take an oath to act reasonably, ethically, and responsibly in your service as a juror. If this were a death penalty case, the State's most important witness would only have to take an oath once. I think that's indicative of how smart -- I mean, how important a jury is.

Okay. Deputy, just lock up the next person that

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walks in, please. Thank you.

Now, I'm going to ask the clerk to place you under oath because there are some questions I have to ask you about any interest you might have in this case.

Would you place them under oath, Madam Clerk.

THE CLERK: Please stand and raise your right hand.

(WHEREUPON, all jurors were duly sworn.)

THE COURT: All right. Now, was there anyone who refused to take that oath?

Let the record reflect there was no response. You'll hear me throughout the trial say that occasionally where I ask you to nonverbally respond to something. As I told you on yesterday, everything in a trial in the Court of General Sessions or Common Pleas has to be recorded. So that's why I often turn to Ms. Bautz and say, there was no response to that, because she has to record there was no verbal response to that.

Now, listen very carefully, if you would, to the questions I have again. As I told you, this is the case of the State of South Carolina versus Scott Richard Rowan.

Now, is anyone on this jury panel related by blood or marriage, are you close personal friends of, do you

have any social contacts with, you attend church with, are you in a civic club with, do you know the Defendant in this case, Scott Richard Rowan? And there is no response.

I would ask you the same question about the alleged victims in this case, Complainant 1 and -- was it Complainant 2

MR. HILLIARD: Yes, Your Honor.

THE COURT: -- Complainant 2 . Anybody related by blood or marriage, or are you friends with, do you know anything about either of these people? And there was no response to that.

I want to ask you the same thing about potential witnesses in this case. And let me tell you about the potential witness list. I asked the attorneys to give me the names of anybody who might possibly try -- or testify in this case. If you hear a name during this voir dire and you're on the jury and that person doesn't testify, don't attach any significance at all to that fact. It's just that I want to know who might possibly be a witness.

Now, the potential witnesses in this case are: Detective Jack Johnson, Dr. Carol Rahter, Haydee Sencion, Complainant 1 , Complainant 2 , Anatasya Catheryn Herron, Brother ,

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Raymond Olszewski -- and I believe he is a PhD or a doctor?

MS. WALTER: No, Your Honor.

THE COURT: Okay, all right. Scott Rowan, Rebecca Rowan, Dr. Robert Bennett, Sabrina Houser, and Sandra Reid. Anybody related by blood or marriage, do you know these people, do you have any sort of connection whatsoever with any of these potential witnesses?

Yes, ma'am, right there in the black. Would you stand and give us your name and number.

JUROR #269: My name is Margaret Parker, my juror number is 269. And about 10, 12 years ago, I worked at the same facility as Dr. Rahter.

THE COURT: All right. Well, let me ask you this. Would the fact that you, ten or so years ago, worked with Dr. Rahter in any way affect your ability to be a fair and impartial juror?

JUROR #269: Absolutely not.

THE COURT: Could you be fair to both the State and the Defense?

JUROR #269: Absolutely.

THE COURT: Thank you very much for your response.

All right. Anyone else? And there is no further response.

Now, let me tell you about the attorneys in this

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case. Seated here to my left, your right, is Mary Ellen -- Ms. Mary Ellen Walter, and with her is Mr. George Henry Martin. Ms. Walter and Mr. Martin are attorneys. They are -- they work for the Solicitor's Office for the Fifteenth Circuit.

That would be Mr. Jimmy Richardson. He's our elected solicitor. They have both been practicing here in that capacity for some while. I don't think they have ever practiced in the private sector, have you, in Horry County?

MS. WALTER: No, Your Honor.

THE COURT: All right, very well. Thank you very much.

Over to my right, and again to your left -- or right, the gray-haired man, that is Mr. John Hilliard. Mr. Hilliard is a senior member of our bar. He practices over primarily in Georgetown County, but he's back and forth in the circuit, Horry and Georgetown Counties, been with us for quite some time. And he is representing the Defendant, Mr. Rowan.

Has anyone ever been represented in the past or are you presently represented by Mr. Hilliard, are you close personal friends of Mr. Hilliard, do you have any social contact with Mr. Hilliard, do you know Mr. Hilliard? And there was no response to that.

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MR. HILLIARD: 37 years, judge. You said 32, but I remember when you started. It's 37.

THE COURT: I was trying to slip a little bit.

MR. HILLIARD: Well, you called me out for being old, so...

THE COURT: And I didn't ask, but does anyone have any kind of relationship by blood or marriage, or do you have any social relationship, are you friends with Mr. Martin or Ms. Walter?

(No response.)

THE COURT: All right, okay. Has any member of the jury panel formed any opinion, bias, prejudice about this particular case? When I ask you that, I want to know if, perhaps, you -- I don't know if there was ever anything in the newspaper or the media about it, but if there was, do you recall ever reading anything about it?

Have you discussed the case with anyone? Do you have any prejudice or bias against either the State or the Defendant in a case like this? Is there any reason that you feel that you shouldn't serve as a juror on this case? And there was no response to that.

The indictments in this particular case were issued in 2016. And I think my voir dire yesterday or my qualification yesterday would cover this, but was

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anyone a member of the Horry County Grand Jury in 2016? And there is no response to that.

Is any member of this jury panel a member of, a contributor to, a part of any group whose primary concern is law enforcement or victims' rights? And that could be anything from MADD, SADD, CAV, which is Citizens Against Violent crime, things of that nature. And there is no response to that.

Now, specifically, let me ask you this. Is there any reason why any potential juror cannot honor the presumption of innocence? And I talked to you about that a moment ago. Everyone who comes in this court comes in with a presumption of innocence that protects them throughout the trial. Is there anyone who cannot honor that? And there was no response.

Is there any member of the jury panel or a family member or a close friend who has worked or volunteered at a job or activity which involved working with a battered woman's shelter, a rape crisis center, or anything like that? And there is no response to that.

Does any member of the jury panel believe that if a sexual assault is not immediately reported, it did not occur? And there is no response to that.

Has any member of the jury panel or members of your family or a close friend been sexually assaulted

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or the victim of unwanted sexual behavior?

Okay. Now, we have a few hands up. Add let's start with the lady right here on the front to my right. Yes, ma'am. Would you give us your name and number, please.

JUROR #278: Paula Phillips. I think it was 278.

THE COURT: 278, all right. Ms. Phillips, were you the victim or a family member or friend?

JUROR #278: I was.

THE COURT: Pardon?

JUROR #278: I was.

THE COURT: All right. And would that affect your ability to be a fair and impartial juror in this case?

JUROR #278: I don't think so.

THE COURT: Could you set that aside and give both the State and the Defense a fair trial?

JUROR #278: Yes, sir.

THE COURT: Very well. Thank you.

Gentlemen with the red cape on his jacket, yes, sir.

JUROR #114: 114.

THE COURT: 114. And your name?

JUROR #114: Vernie Fowler.

THE COURT: All right. Was it you or a family member?

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JUROR #114: It was a family member.

THE COURT: A family member, okay. And how long ago was that?

JUROR #114: It's about six years.

THE COURT: Okay. Would that affect your ability to be a fair and impartial juror in this case?

JUROR #114: Unfortunately, yes, sir.

THE COURT: It would? Then I will set you aside. Thank you, sir.

Yes, ma'am. Your name?

JUROR #290: Casandra Ray.

THE COURT: Ms. Ray. And what is your number?

JUROR #290: 290.

THE COURT: 290, all right. Ms. Ray, was it a family member, or a friend, or was it you?

JUROR #290: Family member.

THE COURT: A family member. And how long ago was that?

JUROR #290: Probably been like 20 years now.

THE COURT: Okay. And would it affect your ability to be fair in this case?

JUROR #290: No.

THE COURT: Could you give both sides a fair trial?

JUROR #290: Yes, sir.

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THE COURT: You could. Thank you, Ms. Ray.

All right. Anyone else? Yes, sir -- yes, ma'am. Back in the back, I didn't see you.

JUROR #170: Gertrude Hynes, Number 170.

THE COURT: And were you the victim or a family member?

JUROR #170: I was the victim.

THE COURT: You were, okay. And how long ago was that?

JUROR #170: 50 years.

THE COURT: 50 years ago. And could you set that aside and be fair and impartial in this trial?

JUROR #170: I believe I could, yes.

THE COURT: And could you give both sides a fair trial?

JUROR #170: Definitely.

THE COURT: Definitely, okay. Thank you ma'am.

Anyone else? All right. Yes, there is another back there. I'm sorry, I didn't see those hands. Yes, ma'am, your name?

JUROR #388: Michelle White.

THE COURT: And Ms. White, your number?

JUROR #388: 388.

THE COURT: All right. And were you a victim, a family member, a friend?

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JUROR #388: I was.

THE COURT: You were. And how long ago was that?

JUROR #388: About 39 years.

THE COURT: Okay. And could you set that aside and be fair and impartial in this trial?

JUROR #388: Yes, Your Honor.

THE COURT: Could you give both parties a fair trial?

JUROR #388: Yes, sir.

THE COURT: All right. Thank you so much.

Anyone else? All right. Has any member of the jury panel or a close family member or friend ever been accused of a sexually related offense? And there is no response to that.

Does any member of the jury panel harbor any preconceived notions of how a rape victim or sexual abuse victim should or will react? And there is no response to that.

Okay. Any additional -- well, let me ask this. Does any member of this jury panel know of any reason whatsoever why you should not serve as a juror in this case with particular emphasis being placed upon your ability to be fair and impartial to both the State and the Defendant? And there is no response to that.

Anything further from the State?

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MS. WALTER: No, Your Honor.

THE COURT: Mr. Hilliard?

MR. HILLIARD: No, sir. Thank you very much.

THE COURT: Thank you. All right.

Madam clerk, could you give us a jury.

And again, if your name is called and you come forward and you have some personal things with you, a purse or whatever, you may be placed on the jury. So I would ask that you bring it with you, just in case. That way you don't have to go back to your seat; all right?

THE CLERK: Number 30, Steven Blake. What say the State?

MS. WALTER: Present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please seat Mr. Blake.

THE CLERK: Please be seated in the jury box. Number 388, Michelle White. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please excuse Ms. White from the trial of this particular case. Thank you, Ms. White.

THE CLERK: You're excused from this particular case. Number 255, Cathy Myers. What say the State?

MS. WALTER: Please present this juror.

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THE CLERK: Defense?

MR. HILLIARD: Please seat Ms. Myers.

THE CLERK: Please be seated in the jury box. Number 395, Jonathon Witherspoon. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please seat Mr. Witherspoon.

THE CLERK: Please be seated in the jury box. Number 284, Gerald Powers. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Excuse me just one second.

THE COURT: Certainly. Take all the time you need.

MR. HILLIARD: Please seat Mr. Powers.

THE CLERK: Please be seated in the jury box. Number 314, Robert Sauls. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please seat Mr. Sauls.

THE CLERK: Please be seated in the jury box. Number 307, William Rodenmacher. What say the State?

MS. WALTER: One moment. Please present this juror.

THE CLERK: Defense?

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MS. WALTER: Present this juror. So just wait for the Defense.

MR. HILLIARD: Please excuse Mr. Rodenmacher from this case. Thank you, Mr. Rodenmacher.

THE CLERK: Number 11, Kailey Archibald. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please excuse Ms. Archibald from this case.

THE CLERK: You have been excused from this particular case. Number 290, Casandra Ray. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please excuse Ms. Ray from this particular case. Thank you, ma'am.

THE CLERK: You're excused from this particular case. Number 167, Alexis Hughes. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please excuse Ms. Hughes from this particular case. Thank you.

THE CLERK: You're excused from this particular case. Number 239, Gerard McMullin. What say the

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State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please excuse Mr. McMullin from this particular case. Thank you, sir.

THE CLERK: You're excused from this particular case. Number 143, Myranda Richardson. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please seat Ms. Richardson.

THE CLERK: Please be seated in the jury box. Number 329, Sarah Smith. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please excuse Ms. Smith from this particular case.

THE CLERK: You're excused from this particular case. Number 144, William Hampton. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please seat Mr. Hampton.

THE CLERK: Please be seated in the jury box. Number 26, Jeffrey Bienick. What say the State?

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MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Mr. Bienick?

JUROR #26: Bienick.

MR. HILLIARD: Bienick. Please seat Mr. Bienick.

THE CLERK: Please have a seat in the jury box. Number 203, Sheila Lee. What say the State?

MS. WALTER: With the Court's indulgence, one moment.

(Discussion off the record.)

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please seat Ms. Lee.

THE CLERK: Please be seated in the jury box. Number 170, Gertrude Hynes. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please excuse Ms. Hynes from this particular case.

THE CLERK: You're excused from this particular case. Number 250, Mary Mimms. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please seat Ms. Mimms.

THE CLERK: Please be seated in the jury box.

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Number 330, Heather Snyder. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please seat Ms. Snyder.

THE CLERK: Please be seated in the jury box.

Number 216, Dale MacNeill. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please seat Mr. MacNeill.

THE CLERK: Please be seated in the jury box.

THE COURT: Two alternates, one strike each. The alternates will be from 21 to 23 for the first alternate and then 24 to 26 for the second. Okay, do you follow that?

MR. HILLIARD: No, sir.

THE COURT: Okay. On your list, we're down to number 21, I believe.

MR. HILLIARD: Yes, sir.

THE COURT: First alternate will be drawn from 21, 22, and 23. Each of you will have one strike out of those three. The second alternate will be the next three, 24, 25 and 26. And you'll each have one strike.

MS. WALTER: May we approach just for a moment?

THE COURT: Yes.

(WHEREUPON, a bench conference was held off the

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record in the presence of the jury panel but out of the hearing of the jury panel.)

THE COURT: Okay.

THE CLERK: Number 251, Shanta Mines. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please seat Ms. Mines.

THE CLERK: Please have a seat in the jury box. Number 278, Paula Phillips. What say the State?

MS. WALTER: Please present this juror.

THE CLERK: Defense?

MR. HILLIARD: Please excuse Ms. Phillips from this particular case.

THE CLERK: You're excused from this particular case. Number 188, Lisa Kitzmiller. What say the State?

MS. WALTER: Please excuse this juror.

THE CLERK: You're excused from this particular case. Number 128, Andrew Godfrey. What say the State?

MS. WALTER: Please present this juror.

THE COURT: Defense?

MR. HILLIARD: Please seat Mr. Godfrey.

THE COURT: Please be seated in the jury box.

All right. Ms. Walter, will there be challenges

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to the panel?

MS. WALTER: No, Your Honor.

THE COURT: Mr. Hilliard?

MS. WALTER: No, sir, Your Honor. Thank you.

THE COURT: All right. Ladies and gentlemen, that is our jury for this particular case. The balance of this jury panel is excused. You're probably excused for the week, but I would ask you to please call back after 6:00 today to make certain that we will not be needing you.

And I will tell you, this does count as a full week of jury service, and you may use it to be excused in the future if you are called. Thank you again for your attendance. We appreciate it. You're welcome to stay, of course, if you would like. Just like any other citizen, you have the right to observe what goes on in court. I don't usually have many people who take me up on that. I just want you to know that you are welcome to stay if you wish. Thank you very much.

(WHEREUPON, the remainder of the jury panel exited the courtroom at 10:20 a.m.)

(Discussion off the record.)

THE COURT: All right, ladies and gentlemen, let me tell you where we are in this case. Ms. Mines, is Ms. Mines back there? And Mr. Godfrey?

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JUROR #128: Yes, sir.

THE COURT: Mr. Godfrey and Ms. Mines, I would ask you to always occupy those seats when we come back in the courtroom. You are our alternates, and we need to be able to always identify our alternates.

Mr. MacNeill, you got the magic seat. You, I'm going to ask to serve as the foreperson of our jury. In that regard, you will essentially be the liaison between this jury and the Court. Should you need anything, send a note to me.

Mr. Ropp, if you need me, just knock on the door and have Mr. Ropp come and take your note. If he doesn't respond, open the door and shake him, he wakes up pretty easily. Okay? Get a note to Mr. Ropp, and I will certainly do it. It's also your job to preside over the actual deliberations at the end of the trial and to make sure that the jury follows my instructions during the trial.

On yesterday, as is often the case, in fact, almost always the case, when a case is coming for trial, there are issues that need to be resolved by the Court. And that's what we did yesterday afternoon. There was one issue that we could not get to because it required some testimony, and that witness was not available so we had to delay it.

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I had already told you to be here early in the morning, and I didn't want you sitting downstairs in the jury room forever. So what I did was bring you up so we could select a jury, and I can just give you a break and let you leave the courthouse until we need you.

I'm going to get back to that right now. And I anticipate we will be done -- I certainly hope so -- by 1 o'clock. Even if we have to work through lunch, we're going to do it. So I'd ask you to come back, have a nice leisurely lunch, and come back at 1 o'clock. And Mr. Ropp will be showing you how to come directly to the jury room or how to assemble. He will help you with that.

In the meantime, I'm going to ask that you not discuss the case even among yourselves. Don't allow anyone to discuss it in your presence or approach you about the case. And, you know, it's so easy now with these smart phones where we're all geniuses now to -- almost any incident that you could imagine, you can look it up. Don't do that.

This case must be decided solely on what comes from this witness stand. Don't do any extraneous research, don't try to look up the names of the attorneys, you know. What might be on Ms. Walter's

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Facebook or Mr. Hilliard's is of no interest to you whatsoever. Look them up later. Mine would bore you to death unless you like my grandchildren. But don't do any of that. You don't need to, and it's highly improper for you to do that.

I'm going to place you under oath. And that means our jury would be sworn and the case would essentially have begun.

Madam clerk, will you place them under oath.

THE CLERK: Yes, Your Honor.

THE COURT: And this is your final oath, now.

(WHEREUPON, all jurors were duly sworn.)

THE COURT: And, again, was there anyone who did not take that oath? And there's no response there.

Mr. Ropp, would you take them, familiarize them with their jury room, make sure they know how to get back in, and just take care of them; okay?

MR. ROPP: All right.

THE COURT: Attorneys, we're going to take five, ten minutes; okay?

MR. HILLIARD: Thank you very much, Your Honor.

THE COURT: All right.

(WHEREUPON, the jury exited the courtroom at 10:25 a.m.)

(WHEREUPON, a brief recess was taken at

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approximately 10:25 a.m.)

THE COURT: Thank you. Please just be seated. All right. Yes, ma'am.

MS. WALTER: Your Honor, two things. Number one, now that the jury has been sworn, the State would ask that the Defendant be remanded into custody.

THE COURT: He is.

MS. WALTER: Okay. And number two, I just want to reiterate my stance from yesterday that the State believes --

THE COURT: Wait, wait, wait, wait. Mr. Hilliard is not here. I'm sorry, there are just so many people here, I didn't realize Mr. Hilliard was absent.

Yes, ma'am, okay.

MS. WALTER: I'm waiting for Mr. Hilliard. I'm just going to stand here.

THE COURT: Okay.

(Pause in proceedings.)

THE COURT: Okay, now we have Mr. Hilliard back.

MR. HILLIARD: Thank you, Your Honor. I'm sorry, I was in the restroom.

THE COURT: That's all right. That's why we took a break. Yes.

MS. WALTER: I'm sorry, Your Honor. Refill my water. So, Your Honor, now that Mr. Hilliard is here,

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we will renew our request that the Defendant be remanded into custody now that the trial has begun.

THE COURT: Yes, ma'am.

MS. WALTER: And then, the second issue is I wanted to restate our position from yesterday that the State asserts that Complainant 1 contracted chlamydia after she left the home. We have never asserted that she --

THE COURT: Well, that's the first time I've heard that, now.

MR. HILLIARD: Well, could we go with one at a time? We jumped right over the whole remanded to --

THE COURT: I'm -- let me just hear what she says.

MR. HILLIARD: Yes, sir.

THE COURT: Okay. Go on.

MS. WALTER: The State's position is that Ms. Herron contracted chlamydia after the assaults ended. And, therefore, the fact that the Defendant had it or didn't have it would not be relevant.

THE COURT: Well, let me tell you, I thought about this quite a bit over the evening. And there may be evidence -- I don't know if there is, that's why I want this hearing -- there may be evidence that she made the statement that she contracted chlamydia as a result of the assault by the Defendant.

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Now, there is -- it's out there. It was in one of the detective's report. I don't know whether that can be established or not, but it's out there. And that's why I want to have this hearing to explore that.

Because I think it is significant in determining, number one, whether or not this is protected by the rape shield; number two, whether there is an exception to the rape shield, whether or not it meets the 403 test. And let me say this, I have ruled already on some evidentiary matters. I want the record to be absolutely clear that part of my analysis, whether I put it on the record -- I think I have -- we discussed these matters extensively in pretrial conferences.

In each case I have performed a 403 analysis, and that's been part of my decision. If anyone doubts that, would like my analysis placed on the record as to any issue, please tell me. I think it's clear; but I want the record to reflect very clearly that in each case, I have conducted a 403 analysis; understand?

MS. WALTER: Yes.

THE COURT: Mr. Hilliard?

MR. HILLIARD: Yes.

THE COURT: Okay, all right, all right. Go ahead.

MS. WALTER: And then my last thing would be is sequestration in effect now, Your Honor?

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THE COURT: Um-hum.

MS. WALTER: Yes? Okay.

THE COURT: Well, it does when we begin any testimony; okay?

MS. WALTER: Okay. I'll have her step out anyway.

THE COURT: All right.

MR. HILLIARD: I'm sorry, I didn't hear what they said.

MS. WALTER: Sequestration is in effect as soon as we start testimony.

MR. HILLIARD: The issue as to the subpoena, judge, so that we can get started with that, we have a subpoena here for Sabrina Houser. As I indicated yesterday, we went there, and so we --

THE COURT: And I've already said that I would countersign any subpoena.

MR. HILLIARD: Well, it's signed and ready to go. Just if you could direct someone from the sheriff's office to handle that while we're --

THE COURT: Jade, can you handle that for me?

THE DEPUTY: Yes, sir.

THE COURT: Make sure that it's -- Mr. Palmer, someone is passed to them and that subpoena is served.

THE DEPUTY: I'll take care of it.

THE COURT: Do not take the witness into custody.

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But if it's necessary, I will do that; okay?

MR. HILLIARD: It's for tomorrow, judge.

THE COURT: All right.

MR. HILLIARD: Thank you. Thank you very much, Your Honor. And so the issue of taking the Defendant into custody, because the jury's been sworn at this point.

THE COURT: Yes, sir.

MR. HILLIARD: Do you intend to do that, or what's --

THE COURT: Well, the bondsman is released of his obligation once the jury is sworn.

MR. HILLIARD: Yes, sir.

THE COURT: Okay. I mean, that's the rule. Now, do you want to be heard on that or --

MR. HILLIARD: Well, it has been my experience in the past that that's not necessarily -- that the Defendant is not necessarily taken into custody at the point in time that the trial commenced.

THE COURT: Well, I've tried it both ways, and I've had some very unfortunate results, I think, in one of your cases.

MR. HILLIARD: One of my cases?

THE COURT: Where he just didn't show back up; what was it? Didn't we try a drug case a year or so

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ago, or maybe he just didn't show up at all.

MR. HILLIARD: Right, that guy never came.

THE COURT: Right, okay.

MR. HILLIARD: So it was unfortunate, but he wasn't here for the trial. My client's been here for every opportunity to be at the courthouse.

THE COURT: And, you know, I can't release him with no bond.

MR. HILLIARD: We can bring a bondsman.

THE COURT: He has no bond on him now.

MR. HILLIARD: All right. If we bring the bondsman back after --

THE COURT: I would consider it then --

MR. HILLIARD: Got you.

THE COURT: -- but at this point there is no bond.

MR. HILLIARD: Yes, sir.

THE COURT: And if there is no bond, he must remain in custody.

MR. HILLIARD: Yes, sir.

THE COURT: Okay. All right. Now, Ms. Walter, did you have something else we needed to...

MS. WALTER: No, Your Honor.

THE COURT: All right. Mr. Hilliard, then I'll hear from you.

MR. HILLIARD: Well, judge, I think our situation

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is different than it was yesterday because, as the Court indicated, today is the first time that anybody said anything about the prospect that the chlamydia was contracted at some time after the Defendant and the complaining witness were no longer interacting. That's not been said.

In fact, we have the -- so I'm back to my spot from yesterday where I would submit to the Court that it's important, rather than just hearing what the prosecutor has to say about what the witness is going to say --

THE COURT: Well, let me say this.

MR. HILLIARD: Okay.

THE COURT: And I think that it becomes significant. What does 703 say about the basis for an expert's opinion? 703 allows him to even consider evidence that might not otherwise have been admissible in making his -- or reaching his conclusion or his opinion.

MR. HILLIARD: Yes, sir.

THE COURT: Okay. If that is the case and I hear testimony that he bases it upon police reports and things or that, if I hear that -- I don't know if I'm going to hear that.

MR. HILLIARD: Yes.

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THE COURT: I don't know if that's customary in the field, I don't know. But it's out there or you have indicated to me that Detective Johnson -- was it Johnson or Jackson?

MS. WALTER: Johnson.

THE COURT: Johnson, Detective Johnson, took a witness statement, and the witness said that she had been told by the alleged victim that, in fact, she was assaulted, and as a result of the assault, contracted chlamydia.

Let me put the analysis perhaps in another context and tell you why it gives me concern. Suppose it was alleged that some defendant, some person, the victim says, I was sexually assaulted by this person, and as a result of that assault, I was impregnated, okay. Nine months down the road, the child is born, okay. DNA testing establishes -- paternity testing establishes that the accused could not have been the father. Would that not be admissible?

MR. HILLIARD: Yes, sir, absolutely.

THE COURT: And here, Ms. Walter says her victim will say that she contracted chlamydia after leaving the home and not as a result of any contact with the Defendant, okay. Certainly she may testify to that, and that may be absolutely correct, absolutely

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truthful. However, if we have a prior inconsistent statement, that prior inconsistent statement becomes admissible for impeachment purposes; does it not?

MR. HILLIARD: Yes, sir, absolutely.

THE COURT: Okay. So that creates a jury issue as to whether or not that is the case. I had sexual contact with the -- the jury could conclude, a reasonable inference, conclude -- I was sexually assaulted and contracted chlamydia from the Defendant.

That's a possible -- that's a reasonable inference that the jury may draw. However -- and I don't know what your expert's going to say, I haven't heard it yet. That's why I want to hear it.

MR. HILLIARD: Yes, sir.

THE COURT: Your expert may say, the science establishes a procedure by which I can determine whether or not this Defendant ever, ever had chlamydia. It's undisputed that the victim did contract chlamydia. And that could have been from any number of sources, I understand. I don't know, I haven't heard that. But generally speaking, I understand that that's a possibility.

But she does have it and that she contracted it from some source. But if you can exclude the Defendant from being the source of her contracting or getting

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chlamydia, you know, that's an issue for me. And I think it becomes relevant. Then we have to look at from 403, as to whether or not the probative value of that is significantly outweighed by any prejudice.

Well, that may not be the case. But 403 also has an additional element, and that is if the evidence results in confusion of the jury.

Now, if your expert says it may or may not do it, I don't know, if he can't say definitively whether or not the Defendant ever had chlamydia, I mean, I don't know what he's going to say.

MR. HILLIARD: Yes, sir.

THE COURT: The probative value of that testimony goes down and the confusion created by it could go up. Those are all things we have to consider. I need to hear what your witness is going to say. You know, we have talked ad infinitum about what the witness may say or may not say. I don't know until I hear definitively what the testimony is going to be.

And his testimony will determine whether or not the fact that this witness at some time from some source contracted chlamydia is admissible or not.

MR. HILLIARD: Yes, sir.

THE COURT: And that's where I am. Now, I want to hear from him on that.

MR. HILLIARD: I'm prepared to call a witness, judge.

THE COURT: That's what I'm here for.

MR. HILLIARD: Yes, sir. We call Dr. Bennett.

MS. WALTER: Your Honor, is this just on this discrete issue --

THE COURT: Yes.

MS. WALTER: -- or is it on qualifications and everything?

THE COURT: Well, I would like to have him qualified, too, if he's going to call him as an expert. Let's go through that. I mean, I'm going to let you go ahead and voir dire him, and we'll see; okay?

MS. WALTER: Thank you.

ROBERT BENNETT, after being duly sworn, testified as follows:

THE CLERK: All right. Please be seated and state your name and spell it for the Court, please.

THE WITNESS: Robert Bennett, B-E-N-N-E-T-T.

DIRECT EXAMINATION

BY MR. HILLIARD:

Q Dr. Bennett, if your ears weren't burning on yesterday, they should have been. Would you please give the judge the benefit of your credentials. Let's run through your CV.

A Sure. Education-wise, I attended the Medical University of South Carolina and obtained a pharmacy degree in 1980 and became a board certified pharmacist. I went back to school and got my doctorate degree, PhD, in the field of drug science. It's actually called pharmaceutical sciences, and it includes toxicology.

And after graduating, then I established a business doing drug and alcohol testing for workplaces as well as other avenues such as for the courts. And I started doing that in 1991 and have been providing that service since then. So many years.

Q All right, sir. And do you own your own business in that regard?

A Correct, yes.

Q Do you -- it started in 1991, you said?

A Correct.

Q How many times have you been qualified as an expert witness for the purpose of your testimony in courts in South Carolina?

A Many, many times in federal court, state court, family court, military court. Just about every court that exists, I've been qualified as an expert in various fields.

Q Got you. And specifically today, we are looking to qualify you in the field of -- as an expert in

clinical laboratory testing, analysis, and interpretation.

MS. WALTER: Can you repeat that, please.

MR. HILLIARD: Certainly. Clinical laboratory testing, analysis, and interpretation.

Q In that regard, what work do you do that would cause the Court to believe that you are an expert in this area?

A Well, in schooling, we took courses in clinical pharmacology and the understanding of how sexually transmissible diseases can occur and how to treat those diseases. Because as a pharmacist, I counsel patients on the treatment of their STDs with various medications.

As far as the work I do now, I do a lot of work for family court in which adultery is a component of that family court proceeding. And the transmission of an STD is commonly included in that claimed adultery. So I'll do STD testing for that situation to determine if adultery had occurred. I've also done some work in criminal cases where STDs were included in the criminal sexual conduct of a man with a younger underage person and provided that to the Defense attorney.

Providing clinical laboratory testing focused on STDs is a standard service that I offered. I advertise

it on my website. I advertise it to attorneys as a standard service that I provide for the forensic community.

THE COURT: Have you been qualified as an expert in this particular field?

THE WITNESS: I have.

THE COURT: And that was again?

MR. HILLIARD: As an expert in clinical laboratory testing, analysis, and interpretation.

THE WITNESS: Although I have provided many reports that have been used in both family court and criminal cases, it's never gotten to the point where I actually needed to testify on that issue.

THE COURT: All right, tell me about your training in that particular field.

THE WITNESS: Sure. In pharmacy school, we are constantly dealing with people who have sexually transmittable diseases. And so we're trained to determine how to counsel the patient on the treatment of that disease. In other words, the clinical laboratory tests confirming that the disease exists, the symptoms of that disease, discussing that with the patient --

THE COURT: So diagnosis is part of it.

THE WITNESS: Absolutely, yes.

THE COURT: Okay, all right.

THE WITNESS: And then treatment of that to both short and long term.

THE COURT: Okay.

Mr. Hilliard.

MR. HILLIARD: Thank you, Your Honor.

Q And, more specifically, in the situation that we have here, when I contacted you about your ability to do testing in this particular case, I provided you with tests that had already been done; is that correct?

A Correct.

Q And I asked you whether or not you could duplicate that test for the purpose of coming to court and testifying; is that correct?

A Correct. I duplicated that test and then some. I did some additional expanded testing.

Q All right, sir. And the -- how often have you done the kind of testing that you did for this -- or the -- how often have you interpreted the results in the kind of testing that you did in this case?

A I don't know the exact number, it's certainly not in the hundreds, but it's part of my routine service that I provide. I don't know the exact count, I apologize.

Q All right, sir. And -- but you have been

qualified as an expert in what areas to testify previously?

A I have been qualified as an expert in various fields and forensic sciences many times before in a variety of courts.

Q And, sir, and at my request, did you do testing in this case?

A Yes.

Q What kind of testing did you do?

A I did testing for the detection of antibodies for all of the known types of chlamydia that exist and to determine if that chlamydia infection was either current or had ever occurred in the past.

Q Explain that for the Court, please, what that -- what that test does and how it's interpreted. What does it mean?

A Well, there are a variety -- well, chlamydia is a bacteria that can live and grow in the human body. And that bacteria can be transmitted from one human to the next as a tangent. There is even a form of chlamydia that is in birds called chlamydia psittaci. But that usually doesn't involve humans, but it potentially can.

The two common types of chlamydia that occur in humans are chlamydia trachomatis and chlamydia pneumoniae. The chlamydia trachomatis is typically

associated with the genital area, and chlamydia pneumoniae is associated with the lungs. But they can be transmitted to either area. For example, if someone has chlamydia pneumoniae and they cough or have oral sex with someone, that could be transferred to the genitalia and now you have chlamydia that could be associated with a sexual activity.

As far as what happens when someone contracts chlamydia, they can either have symptoms or not. The disease is asymptomatic in many people, but the immune system will start to attack the bacteria to try to fight it off. And in the process of the immune system fighting the chlamydia, the immune system will form antibodies to chlamydia. And we can measure that with a clinical laboratory test. And there are basically --

Q Is that what you did here?

A Yes.

Q Okay.

A And there are basically two types of immune tests that we can do. And when we do a clinical test for antibodies, we measure proteins in the blood called immunoglobulins. And there are two common types of immunoglobulins that can be analyzed to determine if someone was exposed to a disease or had been -- currently or had been exposed to disease in the past.

And for this particular case, I tested for both, to see if there was any current or recent infection as well as to determine if there had been any past infection.

Q And when you say you did tests, who did you do testing on?

A On Mr. Scott Rowan, which I identified by his photo ID and by photograph.

Q All right, sir. And so what were the results of your tests?

A They were negative for all forms of chlamydia, both short term and long term.

Q And what does -- you and I have had the opportunity to discuss what long term means. But it's a five-year window; is that what you said?

A That's correct. The type of antibodies that are formed with this particular type of organism is not a lifetime immunity. It's -- the research has shown that the antibodies formed to chlamydia can last, on average, about five years. In other words, if there is no reinfection, then the level of antibody goes down to the point where it's no longer detected after approximately five years.

Q So within a reasonable degree of scientific certainty, you could tell the judge today that Scott

Rowan has not had chlamydia within the past five years?

A From the day I collected the sample --

THE COURT: And when was that?

THE WITNESS: -- yes. April 2nd of this year.

THE COURT: '18?

THE WITNESS: Yes, 2018. April 2nd, 2018, I collected the blood sample personally from Mr. Rowan.

THE COURT: Okay.

THE WITNESS: And the results of that analysis of that blood was negative for all forms of chlamydia, both short and long term.

THE COURT: Okay.

Q All right, sir. And also, did you have the opportunity -- I think you already testified to this -- but did you have the opportunity to review the other testing that Mr. Rowan had had done?

A Correct.

Q Do you remember the date or do you have the information there about his first antibody test?

A Yes, both. On December 3rd, 2015, I received a report from your office of a test that was performed at Crest Laboratories in which he was tested for chlamydia trachomatis -- trachomatis, whether or not he had a current infection.

Q Yes, sir. And what was the date of that test, the

test was --

A December 3rd, 2015.

Q So December 3rd, 2015, the result of that test as to current chlamydia was?

A Was negative, nothing detected.

Q He didn't have it?

A Correct.

Q But that's not the antibody test?

A That's not. There was another test performed on December 8th, 2017, performed at LabCorp in which the chlamydia antibodies were tested.

Q That is a similar test to the one you did?

A Correct.

Q And you can interpret that result as well?

A Correct. That was negative, indicating that there was no evidence that chlamydia occurred within the past approximately five years from the date of collection of December the 8th, 2017.

Q All right, sir. I may be repeating myself, but is it fair to say, based on what you've said, that Scott Rowan didn't give anybody chlamydia for five years prior to the first antibody test that you've --

MS. WALTER: Your Honor, I understand that we're in front of Your Honor and not the jury, I'm just hoping that this direct questioning will not occur in

front of the jury because it's certainly inappropriate.

THE COURT: He understands the rules. And, again, they are more relaxed when they are before me. I'm going to let him continue for the sake of judicial economy, if nothing else.

MR. HILLIARD: Thank you, Your Honor.

THE WITNESS: Well, the extent of what I can say is that there is no evidence to indicate that he had chlamydia at any time. Therefore, there is no evidence to indicate that he gave or received chlamydia.

Q Right. So you can't give it to somebody if you don't have it?

A Logically, that's correct.

Q Okay. Thank you, sir. And let's talk about how -- you've reviewed some other documents that we've provided to you about the facts and circumstance or allegations involved in this case. If, in fact, Mr. Rowan was having sex with some female who had chlamydia, can you talk about whether he would have contracted it and the likelihood of how that would have happened?

A I can.

Q All right, sir.

A Yes. Although there are many variables that can determine whether or not someone contracts the disease,

in an effort to try to more solidly answer that question, I did some research, and there is a publication in a peer-reviewed journal entitled, Sexually Transmissible Diseases, of a study published in 1980 which was titled, The Risk of Transmission of Genital Chlamydia Trachomatis Infection is Less Than That of Genital Neisseria Gonorrhoeae Infection.

Now, the importance of the study is they actually took several hundred male and female partners and determined the rate of contraction of those two STDs to try to determine exactly what is the extent of the ability to contract chlamydia if you have a single sexual encounter with someone who does.

Now, this is from the published study directly, and I'll read you the sentence and explain what it means. It says, When index patients had single infections with chlamydia trachomatis, chlamydia infections were observed in consorts of 28 percent of the men.

Now, what that means is if a woman had chlamydia and had sex with a man one time, that the chance of contracting that chlamydia, according to the study, was 28 percent. Now, that's on one encounter.

Q All right, sir.

A If someone has multiple encounters, that number

goes up. And I can -- if you want to go into a discussion of how much it goes up with the number of encounters, we can do that as well.

Q Let's save that for the time being and talk about condoms.

A Okay.

Q Tell me about how that would impact...

A Well, condoms are designed to reduce the transmission of STDs that occur based on the way the condom is worn and fitted. That's transfer of STDs that occur from the penis or the penile discharge into the female and vice versa from the female genital tract into the surface of the skin or to the urethral opening of the penis. The condom does not cover and, therefore, does not protect the rest of the genital area.

So being that the chlamydia bacteria can live on the surface of the skin, for example, in a woman, not only can it be intravaginal, but it can be on the outside of the vagina and even in the genital area. So it can be transmitted from skin-to-skin contact of the general genital area. So condoms aren't a hundred percent. And that's well documented with many studies that condoms, although they increase protection from STDs, they are not 100 percent.

Q All right. Now, when you say not 100 percent, in the area of chlamydia on a female transferred to a male, does a condom afford any real protection to that transfer of bacteria from the outside of the female sex organ to the male and the surrounding area beyond the penis?

A It does not.

Q So there is no protection in that regard?

A In my opinion, it doesn't offer any substantial protection as compared to not wearing a condom. There is a slight improvement because of the reduction of contact with the actual penile skin itself. But if a female has chlamydia, then there is significant contact with the male area, the total genital area, not just the penis.

Q All right, sir. And back again to the logic. But if the complaining witness in this case were to say that she had gotten chlamydia from Scott Rowan at some point in time within that five years, that would not be possible; is that true?

A Based on the testing that's been performed showing that he did not have chlamydia antibodies in this blood, I would say the likelihood of that is very, very low.

Q All right, sir.

MR. HILLIARD: Give me just one second.

Q And, Doctor, you mentioned something about being asymptomatic. That is, the person who has chlamydia, for the purposes of our discussion a female person who has chlamydia, and the chlamydia being asymptomatic. Tell us more about that, please.

A Well, some STDs do not have symptoms. A person could have an infection and not know it. They are not exhibiting any symptoms, and, therefore, that infection just continues. And it could continue for an extended period of time, sometimes years. If the person is asymptomatic, they are not going to know they have an infection, therefore -- because they have no symptoms; therefore, they are not going to seek treatment. And, therefore, that STD infection, whether it be a bacteria or virus, will just continue to grow and survive and live.

Q And based on what you're saying, are you saying that the person, female, could have chlamydia for years and never know they had it until they got tested?

A That potentially exists, yes.

Q All right, sir. And what's the likelihood of that, asymptomatic?

A It's quite common. It's well reported in the scientific and medical literature that chlamydia quite

commonly can be asymptomatic.

Q All right, sir.

A And that's one of the problems of the transmission is because if someone is asymptomatic, then they are going to transmit it and keep transmitting it to all of their partners without knowing it.

Q Yeah.

MR. HILLIARD: We would offer him at this time, Your Honor, as an expert in the area of clinical laboratory testing, analysis, and interpretation for the purposes of the testimony that he's just given.

THE COURT: All right. Let's give counsel an opportunity to cross-examine.

MS. WALTER: Thank you, Your Honor.

MR. HILLIARD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. WALTER:

Q Dr. Bennett, you provided a current curriculum vitae to the Defense; correct?

A Yes.

Q And it's quite lengthy. And in that CV, did you list the fields that you consider yourself an expert in?

A Some of them but not all of them. The CV just gets too voluminous if I start listing everything that

I've done.

Q Well, you include at least seven pages of cases that you've testified in?

A Correct.

Q Of those seven pages of cases that you've testified in, none of them show you as an expert in -- let me get this right again -- clinical laboratory testing, analysis, and interpretation; correct?

A Correct. As mentioned, it never got to the point where I actually testified, correct.

Q And nowhere on these seven pages does it have you as an expert in the field of infectious diseases?

A Correct.

Q You are not a medically trained doctor?

A I am not a physician, but I am a medically trained doctor.

Q Well, you are a -- were a pharmacist; correct?

A I still have a pharmacy degree with a license that is in good standing.

Q It's inactive; correct?

A It's inactive because I don't fill prescriptions anymore.

(Emergency alarm went off.)

(WHEREUPON, a brief recess was taken at approximately 11:19 a.m.)

MR. HILLIARD: I had not remembered this, but the mom put up 10 percent cash bond. She's here. The cash is still with the Clerk of Court. That's our bond situation, 10 percent cash with the Clerk of Court.

THE COURT: Of what?

MR. HILLIARD: $20,000. It's $2,000 owed. So he's got $2,000 cash.

THE COURT: I'm not inclined to, under those circumstances, to waive the rule. I'm just not -- you know, $2,000 in a case like this where there's extreme jeopardy, I'm not inclined to do that.

MR. HILLIARD: All right, sir. What about if we secure a bondsman with a $20,000 surety bond?

THE COURT: I'll hear from the State.

MS. WALTER: Your Honor, we would oppose that at this time. Certainly now that the trial has begun, the stakes are certainly higher. I have a note on the file before I handled the case, that on February 10th of 2017 the Defendant failed to appear and a bench warrant was issued. It looks like it was lifted on March 14th. I don't know the reason for that, as I said, because I was not the prosecutor at that time, but the State would certainly oppose the Defendant being released.

THE COURT: All right, I'll consider it. Let's -- I see our doctor is back.

MR. HILLIARD: Yes. Thank you, judge.

THE COURT: All right, Dr. Bennett. You remain under oath.

Let's just let the record, so that we have a complete record, indicate that the doctor's testimony, his cross-examination, was interrupted for a half hour or so by the fire alarm going off. But now we're back on the record, okay.

MS. WALTER: Thank you, Your Honor.

Q I'll rephrase my last question to you. You are not a medical doctor; correct?

A Correct.

Q You are not licensed or certified to see patients?

A Correct.

Q You are not licensed or certified to write a prescription?

A Correct.

Q You are not licensed or certified to dispense a prescription currently?

A Currently.

Q Right? Because you've been inactive for so long.

A Currently, correct.

Q And I believe you talked about that you help people that you see with the treatment of sexually transmitted diseases?

A As far as providing them the information they need to use their medication effectively, yes.
Q Well, you're not dispensing that medication; correct?
A Not dispensing it, no.
Q And so does someone just come up to you and say, hey, how do I use this medicine?
A No. They end up in my office. I see people on an almost daily basis that come into my office. And so if they are diagnosed with an STD through testing that I've done, then they, many times, will receive some sort of treatment for that.
Q From a doctor, from a medical doctor?
A Well, depends on what the treatment is. If it's medication, they would have to get a prescription from a doctor. But the treatment maybe is not always medicine.
Q And in the treatment of chlamydia, how often would you say it is treated with medicine versus no treatment at all?
A Well, the best course of action is to treat it with antibiotics.
Q And you cannot prescribe antibiotics?
A Correct.
Q So if you perform a test that indicates someone

might have chlamydia, you can't do anything further for them?

A Oh, absolutely I can.

Q They would have to see a medical doctor for treatment?

A For a prescription, yes.

Q Right. You said you were trained to counsel regarding treatment, that's what you had said. Where -- can you show me --

MS. WALTER: Your Honor, can I approach?

THE COURT: Yes.

MS. WALTER: Do you want this marked for the purposes of this, Your Honor?

THE COURT: That's his CV?

MS. WALTER: Yes.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification only.)

Q Showing you Court's Exhibit 1, do you recognize that?

A Yes.

Q Do you want to take a minute to look at it and make sure that it's recent?

A It's recent.

Q How recent?

A Within the past 30 days.

Q And so within the past 30 days, in the seven pages of sample case listings, you could not find a single case where you were an expert in clinical laboratory testing, analysis, and interpretation?

A I'm not sure the nature of your question.

Q Is there anything in your CV, in your sample cases, where you were used as an expert in clinical lab testing, analysis, and interpretation as an expert witness in any court?

A Well, that's just a sample case listing. It's not all case listings.

Q Right. But these are the ones that you included on your CV, highlighting them by inclusion, and it's actually a yes or no question. Is there anything in this sample case listing that you prepared that shows that you have been qualified in any court in the land as a expert in clinical laboratory testing, analysis, and interpretation?

A That current CV does not have that, correct.

Q Does a prior CV have it?

A I think it may. I just don't recall at the moment.

Q Well, that's interesting, because on direct examination --

MR. HILLIARD: Objection, judge --

Q -- you said that you had never --

MR. HILLIARD: Objection.

THE COURT: Wait a minute, wait a minute. Let me hear his objection, Ms. Walter.

MR. HILLIARD: Objection. She is arguing with him, judge. She asked a question, and he can answer, and he can explain his answer. But, you know, she is arguing with him by saying that's interesting, implying that she doesn't believe him. I get all that. But there is nobody here but us.

THE COURT: I understand, all right.

Go ahead, Ms. Walter.

Q On direct examination, you testified that you had never been qualified as an expert in this field because it had never gotten that far; do you recall that?

A Yes. But as far as being qualified as an expert, I testified that I had never testified as an expert.

Q Right.

A But I performed services in this area of discussion many times for forensic cases.

Q Okay. So, let me -- perhaps my question isn't clear. My question was, have you ever been -- we've established that you have never been qualified in any court anywhere as an expert in clinical laboratory testing, analysis, and interpretation; correct?

A I've never testified in that field.
Q So that would be a yes, you have never been qualified. And in the sample cases, again, that you pulled to highlight the different areas of your expertise, there are no cases that you pulled where you are identified, self-identified, as an expert in clinical laboratory testing, analysis, and interpretation; is that correct?
MR. HILLIARD: He's already answered that question, judge.
THE COURT: I understand. Let's just move on. Go ahead. There's no jury here. Go ahead, Ms. Walter.
MS. WALTER: I know, but --
THE COURT: Continue.
MS. WALTER: Thank you.
Q I'm waiting for the answer?
A That's correct, because it's not a primary function of my services provided. It's secondary.
Q So it's your testimony that all of the sample case listings on these seven pages are things that you do as a primary responsibility?
A For the most part, yes.
THE COURT: Let me ask you, Doctor, have you ever been denied expert qualification in that field?
THE WITNESS: I have not.

Q Have you ever been offered as an expert in that field?
A Not in a courtroom.
Q Now, you cited -- actually, let me back up. The test that you did, did you perform the test yourself?
A The actual analytical portion is a technical function that technicians perform. I don't actually inject a serum on the analyzer. That's a technical function that's performed routinely by technicians.
Q And did you -- well, actually, I'll come back to that. I'll stick with your qualifications for right now. Now, in order to actually testify today, you had to look up a research article from 1980; correct?
A Yes, I routinely do research on every case I work on.
Q And, in fact, that's actually how you describe yourself, as an expert; correct, if you read sufficient articles, you're an expert?
A That's the way, in my opinion, any expert is required to perform to be an expert. You have to continually do research and reading and stay up on all of the scientific and forensic knowledge that's out there.
Q So other than this article from 1980, what is the last piece of literature that you read on sexually

transmitted diseases?
A It's something that I read on a continuous basis. For example, I'll subscribe to many journals that routinely have articles on STDs in them, and I'll read those. As far as recalling which one that I read the most recent, I read so many, I just can't recall.
Q Well, let's go to the article that you mentioned on your direct examination. First of all, I'm not sure that you told us, in the test subjects that they looked at, did those test subjects use condoms or no?
A As I skim through it, I didn't see -- do you have one statement in particular that you want me to answer to?
Q No. I'm asking you, since you reviewed this article in preparation for testifying today, did that study indicate whether or not the subjects used condoms or not?
A In reviewing the abstract of the study, I don't see where it mentions that or not.
Q Well, wouldn't that be an important factor to consider when looking at rates of transmission?
A Absolutely.
Q So this article that you relied on, you don't know whether condoms were accounted for or not?
A At this point, we do not.

Q Well, did you read the entire article or just the abstract?
A Just the abstract.
Q You didn't think it important to read the entire research article?
A I didn't have time.
Q You were hired -- at least you were disclosed to the State on March 30th?
A Correct.
Q You didn't have time between March 30th and today to read that article?
A I do research on a particular case all the way up until the time I walk in that door.
Q Well, now you're in the door.
A Yes.
Q So are you telling me that in that time period you did not have the time to read the article upon which you are basing your opinion today?
A That's correct.
Q And then, even just reading the abstract, I believe you said that 28 percent of men who had sexual intercourse with an infected partner would contract chlamydia?
A Correct.
Q Well, that means that 72 percent of men that have

sexual contact with a woman with chlamydia don't get chlamydia; correct?

A That is correct.

Q So those are pretty good odds. That's almost three quarters of the men who have sex, unprotected or not since we don't know, with an infected partner don't get chlamydia?

A With a one-time exposure, that's what the conclusion of the study reports.

Q Right. Did you, as you were conducting your testing or preparing for today, did you ever ask the Defendant how many times he had had sexual contact with the victims in this case?

A I did not.

Q So, then, that would mean that you didn't ask him if he had ever used a condom when he had sexual contact with the victims in this case?

A That's correct.

Q So you would -- let's go back to those statistics -- you would agree with me, then, that it is actually more likely than not, 72 percent versus 28 percent, that a man could have sex with an infected female and not get chlamydia?

A With a one-time event, the article that we're discussing reports that, yes.

Q And so it would be important for this to have any relevance to know when the infected partner was infected?
A Yes.
Q It would be important to know when the last contact was between the uninfected and infected partners; right?
A Yes.
Q Do you know any of that? For this case, this case specifically, do you know any of that information?
A Not definitively.
Q Okay. Now, let's go back. Also you're saying that you read up on sexually transmitted diseases. How many articles have you written that have been published in peer-reviewed journals on sexually transmitted diseases?
A I'll give a generic statement and say I just don't have time to write articles at all on any subject.
Q Okay.
A Just not enough time.
MS. WALTER: Court's indulgence for a moment.
Q Oh. You were testifying about condoms not being foolproof because maybe the chlamydia is on the external genitalia?
A Correct.

Q Do you have any information in this case -- reliable, definitive information in this case -- of where the chlamydia was located in the victim?

A Your question insinuates that the chlamydia could be in an abnormal place, and that confuses me.

Q Well, the chlamydia could be in the internal portion of the genitalia; correct?

A You mean in the vagina?

Q Yes.

A Yes.

Q That would not be the same as it being on the outside of the genitalia, say, the labia or the surrounding tissue; correct?

A Correct.

Q Okay.

THE COURT: Let me just ask you this, Doctor. Is your opinion limited to your opinion that the Defendant in this case, within the past five years, has not been infected with chlamydia bacteria?

THE WITNESS: Yes.

THE COURT: Is that the extent of your opinion?

THE WITNESS: Yes.

THE COURT: You never considered the victim?

THE WITNESS: No.

THE COURT: Know nothing about the victim?

THE WITNESS: Nothing.

THE COURT: All right. That's where we are.

MS. WALTER: Okay. Well, then, the State is renewing its objection as this is completely irrelevant because, even according to their own expert's testimony, which we would certainly dispute the fact that he's an expert, but 72 percent of men who have sex with an infected partner don't get chlamydia. So that makes it more likely than not that the Defendant could have had -- and this is even --

THE COURT: That's not where we're going. I think where the Defense is going is, if you look at the rape shield statute, the victim was infected with chlamydia, no question about it, okay. The Defendant was not within the period that this was supposed to have taken place or did take place -- I don't know. I haven't heard the evidence, and the jury would make that determination -- but the Defendant could not have been.

And if you look at the rape shield statute, if the Defendant has said, I was infected -- or the plaintiff -- the victim has said, I was infected by the Defendant, it becomes an issue and is admissible even under the rape shield statute if it passes the 403 test, which is different when considering the rape shield statute.

It is more liberal under a 403-type analysis. Under rape shield, under State versus Chase, says that evidence is only excluded if the danger of unfair prejudice substantially outweighs the probative value. I mean, that's where we are here.

You know, it's a matter for the jury to determine whether or not his opinion that this Defendant was never infected, for whatever good that is to them or whatever importance they put on that particular piece of evidence, whether or not to believe him. And if they believe him, what's to be drawn from that? It's up to the jury. I mean, these are jury questions as I see them.

MR. HILLIARD: Yes, sir.

MS. WALTER: Well, Your Honor, perhaps I misunderstood where we were going yesterday because if -- the State is not making a claim that the Defendant infected --

THE COURT: The State may not. But it's my understanding -- and again, I haven't heard it, I don't know if it comes in, the rape shield statute requires that there be evidence of the existence of a sexually transmitted disease -- or a disease, I think is what it says, origin of semen.

This is what it says, evidence of the victim's

sexual conduct with the Defendant or evidence of specific instance of sexual activity with persons other than Defendant introduced to show the source or origin of semen, pregnancy, or disease about which evidence has been introduced previously at trial -- it's got to be introduced.

MR. HILLIARD: Yes, sir.

THE COURT: -- is admissible if the judge finds that such evidence is relevant to a material fact and issue in the case and its inflammatory or prejudicial nature does not outweigh its probative value. And case law says that it must substantially outweigh its probative value.

Now, it all goes back to the weight the jury places on his testimony as to whether or not this Defendant was ever infected during the time in question with chlamydia. That's a question of weight. Whether or not it's admissible would be determined first whether or not there is any evidence that this victim said that she was infected by an assault by the Defendant.

If that's not in, I don't think any of it is relevant. But if that comes in, and Mr. Hilliard, you're going to have to establish that, evidence of that, prior to even putting his testimony in, I

believe.

MR. HILLIARD: Yes, sir, absolutely.

THE COURT: And if you can do that, or if you can't, I don't know. You have to meet the test. And you know the test for prior inconsistent statements.

I assume, from what Ms. Walter is telling me, that she will deny making that statement. You seem to indicate that you can show that she did make the statement. That's yet to be seen. I don't know what the result will be. Right now I'm just trying to sort this out and decide how we should proceed. And I think I've got a pretty good idea.

First, you're going to have to establish that. If you do that, then we hear Dr. Bennett's testimony concerning whether or not it could have come from this Defendant. If he never had it, and the jury believes that, then the source of the disease becomes an issue.

And that's admissible under the rape shield statute if I make a determination that its probative value outweighs substantially its prejudice -- excuse me, its prejudice substantially outweighs the probative value. And let me tell you, I don't think the existence of the disease in and of itself is that probative here. But what it does go to, it goes to credibility.

MR. HILLIARD: Yes, sir.

THE COURT: And that's where it becomes probative.

MR. HILLIARD: Yes, sir.

THE COURT: So, you know, I believe that that's the proper analysis here. Now, what else do we have in regard to -- I'm sure Ms. Walter is not done, but we'll go on with that, okay.

MS. WALTER: No, I mean, I think that Your Honor has made it clear. So if -- I just want to make sure that I understand Your Honor's ruling. The State's position would still be that Mr. Hilliard cannot question the victim or Dr. Rahter about the chlamydia. My understanding is that at this point --

THE COURT: No, I haven't made that determination. My determination is this. I think Mr. Hilliard can ask her if she made that statement.

MS. WALTER: Right.

THE COURT: If she made the statement that she contracted chlamydia, whatever. If she says no, then I think Mr. Hilliard may be, under 801, entitled to provide extrinsic evidence of that statement as a prior inconsistent statement. But he's got to follow the rules, and the rule is very specific.

But if he can do that -- I mean, Mr. Hilliard, let's look at this. It says, a declarant witness'

prior statement -- I'm looking at 801(d)(1). The declarant testifies and is subject to cross-examination about a prior statement and the statement is, A, inconsistent with the declarant's statement and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition.

Now, even at best, Mr. Hilliard, how do you get over the requirement that it must have been a prior statement under oath? Is there a rule, is there an exception that would allow you, even at best, if you can bring in the lady, Ms. Houser, would that statement allegedly made to Ms. Houser be admittable as a prior inconsistent statement, would it be admissible, under what rule? How do we get past the requirement of 801(d)(1)(A)?

MR. HILLIARD: It has to do with the credibility of the witness making -- I don't believe, judge, and subject to correction, but I don't know that 801(a) -- I'm sorry, 801 (d)(1) --

THE COURT: (A) is applicable? Okay. Tell me which one is, then. Would you say (d)(2)?

MR. HILLIARD: Yes, sir. And why, judge, the thing is that any time you have a situation where a person is testifying in court and they have two separate stories about what happened, the two separate

stories are admissible to show that they are inconsistent statements --

THE COURT: Okay. Well, what I'm getting at is, Mr. Hilliard --

MR. HILLIARD: Yes, sir.

THE COURT: -- if she made the statement, okay. If she admits it, okay.

MR. HILLIARD: Yes, sir.

THE COURT: If she denies it, you're going to have to come back to a third party who says, I heard her say this hearsay, you got to come under an exception to that hearsay in order to put her statement in.

Now, an exception to that would be allowed, an exception to hearsay would be under 801(d)(1)(A). Now, show me, you know, point me to another rule that would allow you to do that. Clearly hearsay. Clearly meets the definition of hearsay, an out-of-court statement. You got a third party coming in and saying, I heard her say that. That would clearly be, under normal circumstances, a hearsay statement. But, it could be an exception under 801(d)(1)(A) as a prior inconsistent statement.

Now, tell me how you get to that point because that statement is required to have been made under penalty of perjury at a trial, hearing or other

proceeding or in a deposition. Now, that's a requirement of 801(d)(1)(A). Now, show me an exception that would allow you to introduce it other than under 801(d)(1)(A).

MR. HILLIARD: Part of my response to that, judge, is that -- and I recognize I'm not answering your question, I understand that part -- the thing is that if the -- I'm suggesting that it's not hearsay at all. Because if I ask her the question and she says, I never said that, and I have another witness who says, Yes, she said it, the question is did she say it or didn't she say it. I'm not offering that to show that either one -- that it's true that she had the disease or not true that she had the disease, only whether she said it or didn't say it.

So that's the -- that's direct evidence of whether she said or she didn't. She says, I didn't say it, and we offer proof that she did say it, that's not hearsay. That is --

THE COURT: But if you're not offering it for the truth of the matter asserted --

MR. HILLIARD: Yes, sir.

THE COURT: -- if you're not offering it for that, does it then meet the requirement of the rape shield statute, the exception of the rape shield statute that

says evidence of it must have been introduced? On the one hand, you're saying it's not evidence of whether she had it, it's evidence -- it's not offered for the truth of that, so there's nothing offered to the truth of whether or not she contracted chlamydia from the Defendant.

That is a requirement under the rape shield statute. It must have been introduced prior -- prior to the doctor's testimony in the proceeding, okay. Now, if it's not, how you going to get that in, the doctor's testimony?

MR. HILLIARD: The doctor's testimony is she has chlamydia, there is no question. Dr. Rahter tested her for chlamydia, she has chlamydia, Dr. Rahter prescribed and treated her for chlamydia. Those things all happened. That's all part of Dr. Rahter's notes. Those things are all true. So she had chlamydia. We have a police officer who took a statement --

THE COURT: But does that have anything to do with the chlamydia? I mean, I've heard both of you say that chlamydia can be contracted in many different ways. I think it becomes an issue where she says, I contracted chlamydia as a result of a sexual encounter with this Defendant.

MR. HILLIARD: Yes, sir.

THE COURT: And if that is not true, then that becomes an issue, and it has probative value as to her credibility. That's the probative issue here. Now, if in fact, that never comes in, it never comes in that she said, I contracted it from this Defendant, the probative value of that goes down because it's not a matter of her credibility anymore. I just simply have chlamydia. And the fact that she just has chlamydia, how is that probative of anything in this case to get past the rape shield statute?

MR. HILLIARD: Well, how would it be prejudicial if it's not -- if she could contract it from any set of circumstances, and she never says she got it from the Defendant, how would it even be prejudicial? We have two -- we have two shots at -- number one, we don't know what she's going to say. So until she says it one way or the other when I ask her the question, then we don't know what she is going to say. She may say yes, she may say no.

We don't know what the witness is going to say because we don't have the witness. We know what the witness has said before, that part's without question. But we also have the letter from the lawyer to me to the effect that they had said -- it says they, the letter says they, have said that they contracted the

disease from the Defendant. So we have two different circumstances where the witness --

THE COURT: And I had forgotten about the letter.

MR. HILLIARD: Yes, there is a letter to the effect that they have contracted chlamydia from the Defendant.

MS. WALTER: That is not what it says.

MR. HILLIARD: Okay.

MS. WALTER: That's not what it says.

THE COURT: What does it say?

MS. WALTER: It says --

MR. HILLIARD: Let me pass it up.

MS. WALTER: My client and her daughter were both recently diagnosed with STDs which they allege came from your client. STDs, not chlamydia, because the mother actually contracted a different sexually transmitted disease from the Defendant.

But I, again, raise my issues with the e-mail that, number one, it's my understanding that the attorney never spoke with Complainant 1. So that clearly could not be correct. If she didn't talk to her, then this is wrong.

Furthermore, we've spoken with Ms. Herron, and she never, as this e-mail claims, never waived privilege, never approved the divulging of this information to

Mr. Hilliard.

THE COURT: Well, then that would be a matter she needs to take up with her attorney.

MS. WALTER: But it's also hearsay at that point.

THE COURT: Well, I'm going to -- this is my ruling. I'm going to allow him to ask the question. If he can establish that, first, that chlamydia exists, and secondly, that the victim says that she contracted it from the Defendant, I will allow this doctor to testify.

MS. WALTER: Your Honor, if I may make a suggestion. I don't think we need to establish that chlamydia exists to get to that point. I think, as Your Honor has said, for her credibility, I think we can limit it to, did you say that you contracted chlamydia from the Defendant? If she says, no, I never said that --

THE COURT: No. I'm going to allow him to ask Dr. Rahter that. I'm going to allow him to ask the victim that. If she denies it, then you're going to have to show that she did say it. I don't know how you're going to do that.

MS. WALTER: That's where I'm confused --

MR. HILLIARD: Thank you, Your Honor.

MS. WALTER: That's where I'm confused, Your

Honor, because if she denies that she had chlamydia, that's not -- I don't think that was the issue. The issue is --

THE COURT: No, she's not going to -- I mean, that's not what I said.

MS. WALTER: Right, but if you're --

THE COURT: I'm going to allow him to establish that she did through Dr. Rahter if that's --

MS. WALTER: That she has chlamydia?

THE COURT: Yes.

MS. WALTER: How does that go to her credibility? How that is not directly --

THE COURT: Well, I'm going to allow it. Now, I've heard this for two hours. I think in fairness to this Defendant, it's an issue that goes to her credibility and it's necessary to establish it. If you can establish, number one, that she has it, it means nothing. It's not prejudicial to anyone. We can all attack it. It could have been contracted in any way.

But -- and I'll allow you to ask her if she, in fact, said that she contracted it from the Defendant. If she -- if you can get that in, that she says that's where it came from, and she has said that, I will allow you to put up Dr. Bennett's testimony that he was not infected at any time with chlamydia. Okay?

MR. HILLIARD: Thank you, Your Honor, yes, sir.

THE COURT: If she attributes it to this Defendant, I'm going to allow you to do it, okay?

MR. HILLIARD: Yes, sir.

THE COURT: All right, thank you. That's my ruling on it.

MR. HILLIARD: Thank you, Your Honor.

THE COURT: All right.

MR. HILLIARD: Does that mean Dr. Bennett's an expert.

THE COURT: Yes, I qualify him as an expert. Of course, I'll do it on the record. But subject to my charge to a jury, they have the right to determine whether or not they will accept his opinion based on his expertise; okay?

MR. HILLIARD: Yes, sir.

THE COURT: They are the ultimate decision -- judge of whether or not he has met the standard.

MR. HILLIARD: Thank you very much, Your Honor.

THE COURT: All right, thank you.

MR. HILLIARD: Thank you, Your Honor.

THE COURT: All right, we're at ease for 30 minutes because the jury is coming back, okay.

(WHEREUPON, a luncheon recess was taken at approximately 12:27 p.m.)

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THE COURT: Good afternoon. Chris, if you would bring the jury in.

(WHEREUPON, the jury came into open court at approximately 1:06 p.m.)

THE COURT: All right. We have all of our jurors back in the courtroom as well as our alternates, the Defendant is here, and all counsel. Before we begin, let me talk with you just a minute about how this trial might progress.

You know, it seems that it's been fashionable over the past, I guess, 20 years to have many programs on TV about trials and in movies and things like that. And it just seems that everyone is just a thrill a minute, they are action-packed, and that's the way they are portrayed. And I think some people probably have that perception of how trials proceed. But I will tell you that, in reality, that's not necessarily the case.

A trial is nothing more than a search for the truth. It is often slow and repetitive, and that's the nature of it. But, then again, trials are not for our entertainment. Trials are important proceedings to seek a final resolution of some type of dispute, whether it be between the State and a person accused of a crime, or whether it be between individuals. A trial is nothing more than a formal presentation of evidence

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to a jury whereby the jury will then make a determination of what actually transpired, what the facts of the case are.

You know, these attorneys, these fine attorneys that we have in the courtroom today, and I know them all, and they are great attorneys, and I'm lucky in that regard. There is nothing worse than having an attorney who might not be very experienced in a trial, at least from a judge's standpoint. So we're fortunate to have good attorneys in this trial.

But the attorneys have taken an oath to conduct themselves ethically and professionally, and I, likewise, am under an oath to do so. But you jurors are also under an oath. Do you remember the oath? It's an oath to well and truly try the case. You will make a final determination of how this matter should be resolved. In doing so at the end of this trial, you're going to be asked to deliberate. That's one of those terms of art that we use in the law. It has a special meaning. It's sort of a three-part process.

As jurors, you will hear evidence. That's the attorneys' job, it's their job to present evidence to you. And from that evidence, you will determine what the facts are. And there is quite a difference between facts and evidence. You, as a jury, are the ultimate

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judge of the weight and value and credibility of the evidence that you will receive. There is always conflicting evidence in cases, otherwise, we would not even need a jury if everybody agreed what occurred. You have to sift through it, you have to determine what actually occurred. That is exclusively your job.

You know, if I say or do anything in the trial that suggests to you that I have an opinion about a piece of evidence, please disregard that. That was unintentional. The law doesn't even allow me to have an opinion about the evidence. That's solely your business.

The other part or another part of the deliberation process is determination of what the facts -- I mean what the law is in a case. And that's a pretty easy part for you, because just like you are the sole judges of the facts, what occurred, you'll make that determination, I determine what the law is. You might not agree with it, you might think it ought to be something else. It might be something else, I don't know. But your oath requires you to follow the law exactly as I give it to you and be guided by the law. So that part is going to be fairly easy to you.

And I will tell you right now that I do something that I'm not sure any other judge does, but I've done

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it for ten years, and that is I actually do a transcript in advance, and I read you my charge directly from the transcript. And I give it to you in writing so you'll have it with you in the jury room because, oftentimes, it can be very complex. And I want you to be able to have it with you.

The final part of that deliberation process is where you actually take the facts as you have found them and the law as I gave it to you, and if you would, imagine a mill with two great, big gears. One gear represents the facts, and you built that gear. The other gear is the law, and I built that gear. In that final part of the deliberations when you bring them together and you see how they fit, and that's how you, as a jury, will reach a verdict.

Now, you probably say, you know, that all sounds good, judge, but how are we to determine what the facts are? There are going to be people, I'm sure, that are going to be testifying, and we don't know those people. How do we know who's telling the truth and who's not telling the truth?

I will tell you this. You can apply any test that you, in your experience, have determined to lead you to the truth. The truth here is no different than the truth out there on Second Avenue. You can consider a

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witness' education, you can consider a witness' intelligence, you can consider whether a witness has any interest, prejudice, any bias, anything to gain by the outcome of the case. You can consider those things. You can consider whether a witness who testifies that he or she has seen or heard something was actually in a place to hear or see what transpired.

You can even consider how a witness looks or appears on the witness stand. We call that a witness's demeanor. You can consider that. Consider all the things that you rely on on a daily basis to determine whether someone is telling you the truth or not telling the truth. And from that you will decide whether or not to believe that witness.

Now, I will tell you right up front that during the course of this presentation of evidence, there is going to come a time when you're going to want to hop right over that rail and choke the living daylights out of one of these lawyers because you're going to be sitting there thinking, why doesn't he or she get to the point? We know where they're going. They are asking ten questions when they only have to ask one.

They do that because they are trained to do it. They do it because they understand the rules that they are required to follow before certain evidence can be

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introduced. That's the sign of a good lawyer, a lawyer who knows how to present -- we often call them foundational questions. To ask the final question, you've got to lay the foundation so the jury will understand how the particular witness knows what the witness is saying. Those are all important things these lawyers have been trained to do and they know to do them.

Sometimes during the trial of the case, you might hear one of these lawyers stand up and say, I object, Your Honor, or, we've got something we need to take up outside the jury, and I'll probably send you into your jury room. And when you got out there, the natural thing for you to do is think, hey, they are trying to keep something from us.

That's not the case at all. It's just that that usually involves the procedure by which a piece of evidence may be produced. And in ruling on that, oftentimes I have to actually express an opinion or make a comment about the relevancy or importance of a particular piece of evidence, and it would be highly improper for you to hear me do that because it might influence the way you look at it. And that's why that's done, it's not that these lawyers are trying to keep a thing from you. It's just that they are

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following the rules of court.

You know, as I mentioned to you earlier, I actually tried cases for 32 years, and I've been on the bench for ten. And I look at some of these rules, and these are rules that we've had for hundreds of years. And I look at them and I say, well, why in the world do we have that silly rule? That's so antiquated, we don't need that rule anymore.

And then I'll try a case and the rule will come up, and it will be crystal clear all of a sudden, oh, that's why we have it. I can promise you, these are tested by time, they are relevant, and they are important rules, and these lawyers know what they have to do to follow them. So, please, don't hold it against them if they make an objection or if they invoke the rules. They are supposed to do that.

Now, let me tell you about how we're going to proceed. The case will begin with what we call opening statements, opening arguments, if you will. It begins with the State. And Ms. Walter or Mr. Martin, one, will tell you about the case, much more than what you have heard from me. I gave you a very sketchy, brief description of the case. She is going to explain what the State intends to show, how they intend to show it, and why the State takes the position that the Defendant

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is guilty of this particular -- or these offenses.

What she says is not evidence. It's merely laying the case out for you so you will understand evidence as it's produced. The only evidence you will consider is what actually comes from the witness stand.

Then Mr. Hilliard will have an opportunity, if he chooses to do so, and he doesn't have to, but if he chooses to do so, he can also make an opening remark. And again, he will lay out the defense for you. He will explain what the problems are with the case. And each attorney is supposed to explain it to you from their perspective. You can expect that. But, again, what they say is not evidence.

Once that is done, the State must proceed. The State, as I told you earlier, has the burden of proof in this matter. That is, the State has to carry the case. The State has to convince you in the end that the Defendant is guilty beyond a reasonable doubt of the offenses that he is charged with.

And in this case he has two charges, and you must return a verdict on each charge. And these are totally independent verdicts. You may find him innocent of both charges, you may find him guilty of both charges, you may find him guilty of one and innocent of the other with no consideration of what your finding may

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have been on the other charge.

At the end -- as the State's case proceeds, Ms. Walter or Mr. Martin will examine the witnesses. They will put up a witness, they will ask them questions. Then Mr. Hilliard will have the opportunity to cross-examine. And it will go back and forth until the State rests. Once the State rests, the Defense has the opportunity, but not the obligation, to put up a defense. And if they choose not to put up a defense, you shall not in any way hold that against them because they have no burden of proof whatsoever in this matter, and there is a presumption of innocence.

But if they choose to, they may put up witnesses, and it, likewise, will go back and forth, direct examination, cross-examination. When that is completed, when the Defense rests, they each get to do what we call closing arguments, point out their strong points, point out why the case should be resolved in their favor. And that will be followed by my instruction to you on the law, and then you will deliberate and reach a decision in this case.

Again, I want to reiterate to you that you are to consider no evidence in this matter that you do not hear from that witness stand. That is the only evidence you may consider. It is highly improper for

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you to do any outside research in this matter. It's highly improper to discuss it. I know it's hard to go home to your wives, husbands, significant others, and they say, what did do you today, and for you to say, I can't tell you about it. My wife usually thinks I'm up to something if I say that. But you just tell her that the judge said you can't talk about it.

I ask you not to even discuss it among yourselves until you've heard both sides and you've heard the law. And I'll tell you why that is. It is so easy to hear a witness and go back into a crowd, and I assume you're mostly strangers -- you won't be when you leave here after this trial, but you are now -- and to say something about or like, I don't believe a word that witness says, or, I believe everything that witness says, I don't need to hear anybody else.

You've committed yourself, then, if you do that, you've stuck your neck out. And it's awfully hard, as the case develops, if you change your mind, to pull it back in. So that's why I tell you, don't even discuss it. When you go back into your jury room, think of something else to do.

Now, let me tell you about trying my cases, and I'm almost done with you. It's important that you are able to see, hear, and concentrate on the evidence

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that's being presented to you. I try not to go, as I said yesterday, about an hour, hour and a half. If I'm going too long and you become uncomfortable for any reason, you need a break, please, I don't want you sitting there uncomfortable and distracted. Raise your hand, let me know that you need a break. We've got plenty of time. I promise you that we will take a break if that occurs.

Also, let me tell you about the attorney sickness. I did it, both of these lawyers -- all of these lawyers are going to do it, too. We become so caught up in trying to present to you evidence -- I mean, that's what these lawyers do, they present to you evidence, that's what their job is.

But in doing so, oftentimes we'll stand between the witness and the jury, we'll block you or we may have an exhibit that we want to put -- I don't know if there is going to be one in this case or not, but if there is, you put up an exhibit and you're trying to explain it to the jury, and you end up standing in front of some of the jurors.

If that happens, raise your hand and let us know. Because I promise you, these lawyers will not be upset if you say, I can't hear what you're doing. They are doing this for your benefit. They want you to see and

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hear what they are doing. So don't hesitate to say, excuse me, I can't see, I can't hear. Everything is important. They want you to see and hear what they are presenting to you and for your consideration. So please do that.

Again, if you go in your jury room, we take a break, you need anything, let Mr. Ropp know. He'll bring it to my attention, and we'll try to take care of it. I want you to be as comfortable as possible so you can listen and hear what's taking place in this courtroom.

Ms. Walker, Mr. Martin?

MS. WALTER: Mr. Martin.

THE COURT: Mr. Martin.

MR. MARTIN: May it please the Court, Your Honor.

THE COURT: Certainly.

OPENING STATEMENT BY THE STATE

MR. MARTIN: Every little girl dreams about holding hands, sharing her first kiss. But for Complainant 2 [redacted] -- Complainant 2 and Complainant 1 that dream was anything but a nightmare. While most little girls have a father that they can go to, these girls only had him to blame. You see, while they were living in the family home here in Horry County along with their mother, Anatasya, their brothers and their stepdad,

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Scott Rowan, their stepfather began grooming them at a very early age.

Often times he would start by, at a very young age, walking into their bedrooms while they were changing, offering them alcohol, drugs like marijuana, prior to molesting them. He'd do this in separate rooms. He'd tell them things like, don't tell anybody, nobody will believe you even if you did.

With Complainant 2 the older sister, things sort of progressed when she was about the age of 14. He would touch her inappropriately on her breasts and other private regions of her body. Not too long after he started with her younger sister Complainant 1 much in the same way. Unfortunately for her, the activity went to much more. From the ages of about 14 to 16 he forced her to perform oral sex on him and engage in vaginal intercourse.

You see, both girls were dealt a pretty rough hand in life. They had -- in addition to Mr. Scott Rowan, they had other male influences in their life. Unfortunately, they never really knew their biological father. Anatasya was pregnant with the youngest daughter Complainant 1 when he left the home.

But they did have a positive male influence in their life, that was Mr. Billy Eller. He was a good

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dad, he was a good provider. Even the mother had a great relationship with him. Unfortunately for these girls, shortly after relocating to Myrtle Beach, he passed away tragically in an accident.

They didn't really have anyone they could go to while this was going on. Their mother was around, but she had her own demons she had to work out, substance abuse, a failing relationship. She wasn't always there. And it wasn't until [redacted] was about 14 and she thought she was pregnant that she went to her older sister, [redacted] And after revisiting a couple different versions of what may or may not have happened, they both discovered horrifically that they shared the same abuser, Scott Rowan. Neither one of them had known about that.

[redacted] handled things a little differently. She was very good in school, and that was kind of her outlet. [redacted] started doing self-harm, cutting herself, struggling in school. And they talked about all of this and developed a plan that they would finally go to their mother and let her know what was going on.

Unfortunately, because [redacted] was such a good student she actually graduated high school early and escaped the home before they could go to the mother.

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Unfortunately for Complainant 1 the abuse continued until September 15th, 2015, when she was finally able to escape. And her mother found her room empty, window open, the letter detailing the abuse that both of them had suffered.

Subsequently, after Complainant 1 did eventually return home, the Defendant, after the case was reported to Detective Johnson and Horry County Police, was charged with criminal sexual conduct with a minor third degree with regards to daughter Complainant 2 and criminal sexual conduct with a minor, second degree with regard to Complainant 1

Now, later on in the trial the judge is going to instruct you on the law and on these charges specifically. But the evidence will show that the Defendant is guilty of criminal sexual conduct with a minor, third degree, because he inappropriately touched Complainant 2 on her breasts and other parts of her body while she was under the age of 16.

And the evidence will also show that he's guilty of criminal sexual conduct with a minor second degree with regards to Complainant 1. Because in addition to doing many of the same things he did with Complainant 2 he engaged in sexual battery with her while she was in between the ages of 14 and 16. And the judge will tell you about

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this, but sexual battery can be even the slightest penetration. And there is no such thing as consentual sex with a 14 year old.

Now, often times in opening statements, what attorneys do is they give you the facts, and they give you the law like I've done. And we also like to provide to you a roadmap or an outline of kind of where we see this trial going, how we see it progressing. And often times we try to do that by telling you stories or by sharing with you analogies, so that you as the jury with not the same understanding that we may have of the case can kind of better connect the dots, so to speak.

But I'm not going to do that in this case. And the reason I'm not going to do that is because it's not my story to tell, it's their story to tell. And they are going to tell it to you. And they are going to do it for two reasons; one, because they need to, and second, because they want to. Because in doing this, justice will be served.

You're also going to hear from the sisters, you're also going to hear from their mother, Anatasya. She's going to talk to you a little bit about the family dynamic, the girls' background, where they came from, how they were in the home, her struggling relationship

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with the Defendant. Mom's also going to talk to you about her substance abuse issues and how she wasn't available for those girls when she should have been.

You're also going to hear her talk about an interaction that she had with her husband at the time the day that Complainant 1 ran away. And this confrontation, conversation, whatever you want to call it, took place for almost half a day where he admitted to her that he inappropriately touched his stepdaughter Complainant 2 And he had sexual intercourse, both oral and vaginal, with and without a condom, with younger stepdaughter Complainant 1

You're also going to hear from Dr. Carol Rahter. She is an emergency room doctor with Horry and Georgetown Hospital. She volunteers at the Children's Recovery Center. That is a center that is designed to help treat children with physical, mental, emotional, sexual abuse, and she's been volunteering there since about 1992.

She conducted the exam and interview of the family, specifically of Complainant 1 And she's going to talk to you about her findings. She did find a penetrating injury to Complainant 1

Finally, you're going to hear from Mr. Ray Olszewski. He is a social worker at mental health and Children's Hospital in Columbia. And he has been

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dealing and volunteering and working there since 1999. And specifically he deals with children who have been victims of mal treatment. And he knows nothing about this case at hand. He didn't deal with either one of these girls or the family or the Defendant.

But he is what we would call a blind witness. He is going to talk with you about just his involvement with situations like this and kind of help us better understand things like prolonged abuse and why it may take one victim longer to report something than another victim; but kind of highlight for us the importance of these situations and help us kind of wrap our heads around what's going on.

But I want to ask something from y'all here today. While all of this is going on, your job is going to be watching what takes place here on this witness stand, nothing else. And imagine for a second when you're doing that how difficult and how embarrassing it would be to talk with a member of your family or your closest friends, people who have known you for a very, very long time, they know all of your dark secrets, and to talk with them about your personal, intimate details of your sex life.

Now, take that a step further and imagine that you're here today in this setting, in this courtroom,

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in that chair, talking to 14 total strangers who you've never met before, who don't know the personal details of your life, and having to talk with them about intimate details of your sex life.

Now, take it one step further where you're in here today in that seat talking to 14 total strangers about how your stepfather inappropriately touched you, kissed you, your first kiss, fondled you and raped you. Sure, there is going to be some nervous laughter, there is going to be some uncomfortable moments for all of us. But I want you to think about that.

And after hearing the facts, hearing the evidence from that stand, after having the judge instruct you on the law, and after hearing from us in our closing arguments on how we think you should interpret that law, justice will be served here this week. And Scott Rowan will be guilty. Thank you.

THE COURT: Mr. Hilliard, will you make an opening remark?

OPENING STATEMENT BY THE DEFENSE

MR. HILLIARD: I will, judge. Thank you.

Wow, it took us a long time to get here. And I know you're just starting, but we've used up a lot of energy to get to this spot over the last few days. I would like for you to remember back when we were all

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listening to the Clerk of Court, y'all remember that in the very beginning. And the clerk was telling you when she was talking to the big panel before you 14 got selected, and said that the people who were out there waiting on trials didn't trust you. And therefore, that's why a lot of cases got settled and a lot of things happened.

I thought about that when she said it. And I thought, well, we're going to pick 14 people, and we're going to trust those folks. And when you went through this process, you saw that we spent time and energy and were thoughtful about selecting the 14 of you to be the persons who make an ultimate decision in this case.

So here we all are, and we're going to spend some time talking about unpleasant things. And at the end of this, the judge, as he said, will put those -- the law to you and make that gear. And you'll take your information that you have and you'll make your gear. And at the end of this, there will be a decision one way or the other.

Now, when the Clerk of the Court said was that she didn't envy -- let me say exactly if I can remember -- she didn't want to be a defendant. I'm guessing nobody wants to be a defendant. And the solicitor, the prosecutor in the case has said, imagine, if you will,

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the difficulty that the prosecutrix, the witness, the person who's making these allegations, imagine if you will, how that is to come there and testify.

So to that same end, imagine if you will, an innocent man sitting here with his fate in the hands of 12 strangers who will ultimately make a decision. It's going to be your job. So it's a high stakes situation for all involved, there's no question about that. And it's not -- one of the things that the judge was saying is that when you're here, he was saying that you can use your common sense, your good common sense, in making decisions about what you believe and what you don't believe in the search for the truth and how you look at the situation.

One of the things that he'll also tell you and I will ask you on behalf of Scott to remember, and really on behalf of everyone, because these are constitutional things that we're talking about now, remember that this is not an ordinary situation. You are not people sitting here trying to make an ordinary decision about whether to buy a used car or some other thing. There is a framework, there is a legal framework for your decision-making process.

And it's the thing that the judge has told you about already, and that is the very first one is, of

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course, the presumption of innocence. And when we use these words, and you know, lawyers use these words all the time, they mean a very specific thing when you're on the jury. The presumption of innocence means that at this point, right now, today, that Scott is not guilty.

You start, that's a presumption. I mean, the words mean what the words say. You start with a -- you presume him to be not guilty. So you're saying in your head, he's not guilty, he didn't do it. And how do you get beyond that spot, how do you get somewhere else? Because if he's presumed innocent today and we get to the end of the case, how do you decide whether at that point he's guilty or not guilty?

Well, proof, like what everybody says. You know, the folks come up here on the witness stand and they talk about it. You know, remember as the judge said, Scott doesn't have to say anything, he's presumed innocent. And the question is, as the search for the truth, the question is whether or not the State of South Carolina through their lawyers can prove to your satisfaction beyond a reasonable doubt that he did these terrible things. These are terrible things. Either, either he is a monster or he's not; right?

That's not the question. The question is whether

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they prove it beyond a reasonable doubt. And that's hard to do. Juries and jurors want to be heroes looking for justice, maybe. And the question is, do they prove it beyond a reasonable doubt to the satisfaction of the 12 of you and remove that presumption of innocence, because that's where we start. That's the framework that this information comes to you, the perspective that this information comes to you from.

So now, the judge has said also that the things we say are not evidence. The prosecutor has said that this is what the evidence will show. He has said that it will be this and this and this and this and this. The evidence in this case, ladies and gentlemen, is going to be witness testimony, it is going to be what is characterized ordinarily as a "he said, she said." That is, there are people who are going to say that Scott has done these things. Scott's going to say, I didn't do it. He said, I didn't do it.

And I can tell you that, you know, the prosecutor says that he confessed to his wife. Scott's going to say, I didn't confess to my wife, that didn't happen. There's not going to be any wishy-washy or trying to figure out maybe a misunderstanding. Somebody's not telling the truth. And the question is once you get to

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the end of the case whether you can say with conviction in your heart and beyond a reasonable doubt that Scott's been proved guilty. Because, again, he doesn't have to say anything.

One of the things that the prosecution talked about, and this is -- at this point whether the expert for the government testifies or not, maybe he will, maybe he won't, but in any event, presuming for the purpose of our discussion here today that the expert for the government is going to talk to you, what he's going to do is remove from your consideration things you ordinarily use to decide whether to believe something or not.

We'll talk more about that, but remember when you hear his testimony. And I won't get a chance to talk to you directly again until the end of this thing. But remember that that's what that testimony is about, it's removing ordinary considerations of truthfulness from your box of things to think about in deciding what's the truth and what's not.

I'm grateful, very grateful, for your presence here today. This is a situation that's been going on for some considerable period of time, as you will hear. You're going to sit there and listen, as the judge said, to all of the testimony, and at the end of this

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you're going to make a decision.

So, again, we are thankful and grateful we have selected you because we believe in you. And we will go forward at this time. Thank you.

THE COURT: All right. Who do you intend to call first?

MS. WALTER: Complainant 1.

THE COURT: I would imagine that that will probably be half hour to an hour?

MS. WALTER: Yes, Your Honor.

THE COURT: So why don't we do this, before we start with a rather lengthy witness, let's give the jury a five-minute break.

Mr. Ropp, you take them back. We've been in here close to an hour. Let's give them a break before we do that so we won't have to break the witnesses' testimony; okay?

(WHEREUPON, the jury exited the courtroom at 1:46 p.m.)

THE COURT: Let's be at ease for about ten minutes, give everybody a chance to refresh themselves before we begin.

MR. HILLIARD: Thank you, Your Honor.

(WHEREUPON, a brief recess was taken at approximately 1:47 p.m.)

(WHEREUPON, the jury came into open court at approximately 1:55 p.m.)

THE COURT: We have everyone back in the jury box as well as our alternates. You may proceed, Counsel.

MS. WALTER: Thank you, Your Honor. The State calls Complainant 1.

Complainant 1, after being duly sworn, testified as follows:

THE CLERK: State your name and spell it for the Court.

THE WITNESS: My name is Complainant 1, [redacted]

MS. WALTER: Thank you. May I proceed, Your Honor?

THE COURT: Yes, you may.

DIRECT EXAMINATION

BY MS. WALTER:

Q And, Complainant 1 you're doing a great job speaking into the microphone so that everyone can hear you. How old are you today?

A I am 18 years old.

Q And what is your mother's name?

A Anatasya Herron.

Q Do you have brothers and sisters?

A I have two little brothers and a older sister.

Q Can you tell us their names.

A Complainant 2, Brother, and Younger Brother

Q I'm assuming Complainant 2 is the sister.

A Yes, ma'am.

Q Okay. Do you know the Defendant, Scott Rowan?

A Yes, I do.

Q How do you know him?

A He is my third father.

Q Okay. Let's go back a bit. You said he was your third father. Did you ever know your biological father?

A No, ma'am.

Q Who was the first father figure that you remember?

A Billy Ray Eller, Jr.

Q Do you know how old you were when your mother and Billy Eller started dating? Anytime you don't know, say, I don't know.

A I think I was about two. I was little.

Q Okay. Where were you guys living then?

A I don't recall.

Q Do you know what state you were living in?

A Tennessee, I believe.

Q And at some point did you move from Tennessee?

A Yes, ma'am. We came to Myrtle Beach.

Q Who all came to Myrtle Beach?

A Me, my mom, my sister, and Billy.
Q Okay. And where did you start to live when you came to Myrtle Beach?
A I don't recall.
Q Was it a house, a hotel?
A It was a hotel.
Q Okay. And you said Myrtle Beach, so that's here. This is a silly question, but it's here in Horry County; right?
A Yes, ma'am.
Q Okay, great. And did your mother and Billy Eller have any children together?
A Yes, ma'am.
Q Which of your brothers is that?
A Brother
Q Did something happen to -- well, I'll back up. How would you describe your relationship with Billy?
A It was great. I was daddy's little girl.
Q And how long was he in your life?
A For about four years.
Q Did something happen to him after you guys moved here to Myrtle Beach?
A Yes, ma'am. He got in a motorcycle accident in front of where he worked at.
Q And what happened to him?

A He was walking -- he was crossing the street to get home from work and a motorcycle ran over his skull.
Q Did he die?
A Yes, ma'am.
Q How did that affect you?
A It affected me really bad. I just lost my whole world in the blink of an eye.
Q After Billy died, did you stay in Myrtle Beach?
A We did. We had went to stay with some family over the summer, but we continued to live in Myrtle Beach.
Q Okay. So when you say we went to stay with some family, who is we?
A Me and my sister.
Q Complainant 2
A Yes, ma'am.
Q Where was this family that you stayed with?
A Tennessee.
Q Who was it?
A My grandmother.
Q Okay. So you said that was just for the summer?
A Yes, ma'am.
Q When you and -- well, did you and Complainant 2 at some point, come back to Myrtle Beach?
A Yes, ma'am.
Q When you came back to Myrtle Beach, who -- did you

stay with your mother?
A Yes, ma'am.
Q Had your mother met anyone new at that point?
A Yes, ma'am.
Q And who was that?
A Scott Rowan.
Q All right. Were they living together at that point, if you know?
A I don't recall.
Q What did you think of the Defendant when you first met him?
A Honestly, I really don't know. I was very young.
Q Did -- at some point did y'all start living together?
A Yes, ma'am.
Q Do you recall where the first time you lived together was?
A I don't recall the name of the road, but we stayed behind Tanger Outlets.
Q And who all lived together at that point?
A Me and my mom, my sister, my oldest little brother, and Scott.
Q Was anyone else staying with you for a little bit?
A A friend of theirs named Allen.
Q How long did Allen stay with you?

A A couple months.
Q Do you remember that house behind the Tanger Outlets?
A Yes, ma'am.
Q Can you tell us who stayed in what rooms.
A My mom and Scott stayed in the back bedroom, and me and my sister shared a room. And the room next to us was my little brother's room.
Q That's Brother?
A Yes, ma'am.
Q And during this time, was your mother working?
A No, ma'am.
Q Do you ever remember your mother working?
A No, ma'am.
Q Do you know if the Defendant was working?
A He -- I believe he was working at McAlister's Deli at that point still.
Q Did anything happen while you were at that home with the Defendant that made you uncomfortable?
A There was one incident when me and my sister -- I was about seven, I think my sister was about nine. We were in the back bedroom changing clothes, and him and his -- or his friend Allen had walked into the bedroom where we were changing at. And me and my sister asked them very politely like, will you please leave the

room. And they stood there for a second and just didn't say anything.

And my sister kind of raised her voice a little bit just like, y'all need to leave the room. And they were like, okay, and they continued to just stand in the doorway and watch us change clothes. And my sister took the blanket to try to cover us up a little bit so that way like we were out of eyesight, and then they finally turned around and left.

Q You said this was the back bedroom. Was this your bedroom and your sister's bedroom?

A Yes, ma'am.

Q When the Defendant and Allen walked in, did you have any clothes on?

A No, ma'am.

Q And so it was just a blanket that your sister used to cover you?

A Ma'am?

Q It was just the blanket that your sister was able to grab to cover you?

A Yes, ma'am.

Q And you said that the Defendant and Allen were standing in the room, what were they -- or standing in the doorway, excuse me. What were they doing as they stood there?

A They were just staring at us, like as if -- as I'm sitting here staring -- looking at you as I'm talking to you, they were just making like direct eye contact, just staring.

Q And while they were doing that, were you and Complainant 2 saying to leave?

A Yes, ma'am.

Q Did anything else happen at that house?

A Not to my knowledge.

Q And then at some point did you guys leave that house?

A Yes, ma'am.

Q Do you know where you moved after that?

A We moved to [redacted] Street in Carolina Forest.

Q So Carolina Forest, that's still in Horry County?

A Um-hum.

Q And just remember, you have to say yes or no so that Terri can get everything down for you.

A Yes, ma'am.

Q When you moved to that home on [redacted] who all moved with you?

A It was me, my mom, my sister, both my little brothers, and Scott.

Q Okay. So now we've added your second little brother to the mix, that's Younger Brother?

A Yes, ma'am.
Q Do you know when he was born?
A [redacted] -- [redacted]. I don't know my brother's birthday.
Q Okay. So was he born when you guys were still living in the Tanger Outlet home or in the [redacted] home, if you know, if you remember?
A I can't quite remember.
Q Okay, that's fine. When you moved to the [redacted] home, can you describe your relationship with the Defendant at that point.
A It had started progressing to an awkward stance.
Q What do you mean by that?
A Not very long after we moved into that house did he start giving us -- giving me marijuana and groping on me.
Q All right. So let's back up a little bit. You said he gave you marijuana. Do you remember the first time that he gave you marijuana?
A I was about nine.
Q Can you tell us how that happened?
A Well, he had always smoked. And he was just sitting on the couch smoking, and just kind of looked at me and handed it to me, and it was like, do you want to hit this? And I said, yeah.

Q How often would he give you marijuana?
A Every single day.
Q Where was your mother when this was happening?
A My mom would be in her office, as she would call it, in our little computer room.
Q All right. So now I'm going to back up. You described that house behind Tanger Outlets. Can you describe this house on [redacted]
A It was a two-floor house. Me and my sister had the two upstairs bedrooms. My little brothers shared a bedroom downstairs because they did not like being separated. So my mom and my dad had the back bedroom to themselves, and my mom turned the other bedroom into an office.
Q And you're calling -- you're saying dad. Is that the Defendant?
A Scott.
Q And you called him dad; correct?
A Yes, ma'am.
Q So when you moved into the [redacted] house -- I don't think I asked you this first -- your mother still was not working?
A No, ma'am.
Q How much time would she spend in the office -- in her office?

A About 90 percent of the time.
Q When she would be in her office, was the door open or closed?
A Closed. And she would have headphones on.
Q Was the Defendant working at this time?
A Yes, ma'am. I believe he was still working at McAlister's for a short period of time.
Q Now, you said he would give you marijuana almost every day. Did he ever make you do anything in exchange for the marijuana?
A Yes, ma'am.
Q Would you tell us what he made you do.
A First it was just he would come up into our bedroom with a bowl, and we would start smoking it. And it would lead to him putting his hand up my shirt or grabbing on my thighs. And then over as time started progressing, he started getting a little more comfortable with the fact I wasn't talking or saying anything, and it started progressing more and more.

If I wanted it or if he had given it to me and I did not comply to what he wanted or I did not let him grab on my boobs or anything like that, then I was punished.
Q Now, you said just then, if you wanted it. What were you referring to, the groping or the marijuana?

A The marijuana.
Q And you're saying that if you didn't allow him to then grope you, you got punished?
A Yes, ma'am.
Q Can you tell me some of the punishments that he used?
A I would be grounded. I've been -- I have been choked out. I've been slapped across the face. I've been grabbed by my hair and thrown into a wall.
Q When you wouldn't comply?
A Yes, ma'am.
Q Did the Defendant ever give you anything besides marijuana?
A Yes, ma'am.
Q What else did he give you?
A He's given me liquor and pills.
Q Okay. When -- let's talk about the liquor. Do you know when he started giving you liquor?
A He started giving me liquor when I was about 11.
Q What kind of liquor would he give you?
A Southern Comfort, Jack Daniels, Jim Beam, Kraken Black spiced rum, Grey Goose, whatever he had. Whatever was in the home.
Q Did he ever ask you to do things or make you do things in exchange for the liquor?

A Yes, ma'am.
Q And what was that?
A He would have me perform oral sex, he would have me give him hand jobs, he would -- he would force me to let him rub on me and all kind of things.
Q And, I'm sorry, we have to get specific.
A It's all right.
Q Okay. When you say he made you give him hand jobs, what do you mean?
A He would take my hand and put it in his pants and make me keep going until he ejaculated.
Q What did he make your hand touch, what part of him did you have to touch?
A His penis.
Q And so do you know approximately how many times he made you give him a hand job?
A More than I can count.
Q And you said at least once that he ejaculated. Did he ejaculate frequently?
A Yes, ma'am.
Q How, if you know, did he clean himself up after that?
A Usually a towel or a rag.
Q And you said that he would make you give him a blow job. What do you mean by that?

A He would undo his pants and force my head down and force me to suck on his dick until he came.
Q How would he force your head down?
A He would grab me by my hair.
Q Where would this normally happen?
A In the living room.
Q And was anyone around?
A My sister would have been in her room, my mom was in her office.
Q Your brother --
A My little brothers just run amuck, so I don't know where they would be.
Q Did your sister spend a lot of time in her room also?
A Yes, ma'am.
Q And how old were you when it progressed to having to give him a hand job and a blow job?
A I was about 11 or 12.
Q As you got older -- let me back up. You said he also gave you pills?
A Yes, ma'am.
Q What kind of pills did he give you?
A Pain pills.
Q Do you know when he did that?
A About the same time I was getting the alcohol.

Q How often would he give you pain pills?
A It wasn't very frequent. My mom was more of the pill person. But every once in a while he would get some from my mom just so he could give them to me.
Q How did the pills make you feel?
A They took away the pain.
Q And I'm going to ask you the same question about the alcohol. When you drank, do you know how much you drank?
A I drank until I couldn't feel anything anymore.
Q Do you remember anything specific happening one day when you drank too much?
A There was one day that we were drinking moonshine, and I had ate all the strawberries out of the moonshine. And I had sat on the couch, and next thing I remember, I needed to go pee. So I went to the bathroom to use the bathroom. About like 30, 45 minutes later, my mom and my dad are coming in the bathroom and were like, what are you doing?

And at that point I was laying in the bathtub with, like, maybe two, three inches of water, not enough to take a bath in, but all I remember was like waking up and looking down, and I was like, I'm peeing. And they're like, well, you're in the bathtub. I was like, so.

And then I got out of the bathroom. I went and I had sat down on the couch to watch TV. And I can't quite give you details of that, the instances that happened the rest of that night. All I do know is I had ejaculation inside of me that I had to clean out.

Q Do you know how old you were when that happened?

A I was about 15.

Q Was that the only time that something like that happened?

A No, ma'am.

Q Did something -- was there a time when your little brothers were staying someplace else?

A Yes, ma'am. My little brothers were staying at Scott's sister's house in Dillon. And my mom and my sister had left to go pick my little brothers up. Well, when they left, my dad was in the shower. I was laying in my bedroom. My dad had gotten out of the shower, came upstairs into my doorway, completely naked. And I was laying on my floor.

I started screaming at him and yelling at him and telling him to get out of my room. He would not get out of my room. He proceeded to come into my room, and I was begging him to please just go downstairs. And he had grabbed either a sock or a pair of underwear or something that I had on my floor and shoved it in my

mouth.

He had put in both of his knees on my thighs so that way I couldn't move. He had ripped off my pajama pants, and he stuck his dick in my vagina and he raped me. And I laid there on my floor crying my eyes out.

He came. He stood up like nothing had happened. He walked back downstairs to go to his phone because my mom had tried to call him, and he missed a call. And I'm sitting there, I'm laying on my floor, I can't move. I was -- I hated myself. And all I hear from upstairs was him telling my mom not to get me nothing to eat for dinner because I didn't deserve it because I wouldn't come downstairs and spend time with him.

So my mom came home. She had gotten me a little thing of chicken nuggets, had my sister sneak it to me so that way I could eat. And that was that.

Q Was that -- if you can tell us, was that before or after the incident with the strawberry moonshine?

A That was before. That was the very first time he ever did it to me.

Q So when he stuffed a sock or a shirt in your mouth and held you down with his knees, that was the first time he raped you?

A Yes, ma'am.

Q When your mother came home, did you tell her what

happened?
A No, ma'am.
Q Why not?
A Because the way my dad always made me out to be was I was a pathological liar. He would ask me questions he knew I couldn't answer in front of my mom. He would ask me where I would be at a certain time knowing that I was right there with him. He would ask me things to make me look like you couldn't trust a word I said for the specific purpose of this reason.
Q You said that he would ask you where you were when he knew you had been with him. Would that be during the hand job or the blow job or the rapes?
A Yes, ma'am.
Q And so that's why you didn't tell your mom?
A Yes, ma'am.
Q And is that the same reason why you didn't tell her about everything that had led up to that?
A Yes, ma'am. Honestly, I just -- the way I saw it is everybody always looks at me as a liar. To this day, I'm still trying to get my family to have trust in me and believe what I say because of the circumstances I was put in. And it's -- you have no idea how hard it is.
Q Are you lying today?

A Ma'am?
Q Are you lying here today?
A No, ma'am.
Q After that first initial rape, did you -- again, and I am sorry we have to get a little personal with you, were you already menstruating at that point, did you have your period?
A Yes, ma'am.
Q Did there ever come a time when you or the Defendant thought you might be pregnant?
A Yes, ma'am.
Q Okay. Can you tell us about that.
A There was one time in which the Defendant thought that I was pregnant because I have very irregular periods. I get one every three to four months. Well, I hadn't gotten one, and this was right after one of the instances where he hadn't used a condom. And in that instance, he went to the store himself, bought me a pregnancy test to take and had me pee on it right in front of him.

And then there was another time that I thought I was pregnant, and I had went to my sister and had my sister help me to get a pregnancy test.
Q Okay. And we'll talk about that in just a minute. You just said it was one time that the Defendant

brought the pregnancy test, it was after an incident where he didn't use a condom?

A Yes, ma'am.

Q Let's start it this way. If you remember, how many times did the Defendant rape you?

A At least 12.

Q Of those 12 times, would he always use a condom or never use a condom?

A He used a condom about two times.

Q Now, you said the second time you went to your sister and asked her for help. What did you tell your sister that day?

A At first, when I had went to her for help, I told her that I thought I was pregnant. I told her I had snucken out of the house one night and went for a walk around my neighborhood because I was upset and that I had gotten raped by some random person in the neighborhood. I gave her some random description of any teenage boy walking around you could think of and told her that I needed her to be there for me, I needed a pregnancy test.

Q Why did you tell her that it was some random boy?

A Because I didn't -- I didn't think she would believe me.

Q What happened during the rest of that conversation

with your sister?

A We had sent my friend -- or our friend to go get the pregnancy test for us. And me and her were sitting there talking. And she was trying to -- the whole time I'm sitting there begging her not to tell mom, just please not tell mom. I didn't want mom to know. And she was talking to me, and she was trying to make me feel better.

And in the midst of it, she was like, well, there's something I really want to talk to you about, too. And she told me about how Scott, when she was younger, had touched on her and groped her a couple times in our bedroom. And the moment she told me that, I just kind of -- I fell apart. I just started crying my eyes out. And I told her that he did it to me, too. I told her that she wasn't alone, that we were both going through the same thing.

Q And, luckily, you were not pregnant at that time?

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

Q Okay. Why didn't you want your mom to know?

A Because not only was it because I didn't think she would believe me, but for once I thought my mom was happy. And for once I thought we were taken care of, we didn't have to worry about where we were going to stay. I didn't have to worry about whether or not my

brothers were taken care of.

Q You didn't want to risk destroying that?

A No, ma'am.

Q When you and Complainant 2 finally talked about what had happened, did you make any sort of plans?

A Yes, ma'am. We had made a plan that she was about to be 17. State of South Carolina, 17 you can legally live on your own. We had made a plan that she was going to get out of the house, get her somewhere to stay, and she was going to tell my mom. So that way I would have somewhere safe to go when she told her, and so that way she can make sure that I wouldn't be in danger.

Well, the plans didn't go as we had hoped. My sister graduated from high school early, she moved in with her boyfriend, and I was left in the home to deal with it by myself.

Q Do you know when that was?

A I do not.

Q Was this the same -- I'll back up. After your sister left, were there other incidents with the Defendant?

A Yes, ma'am.

Q Can you tell us about any of them.

A There was this one -- there was one incident when

my -- the day my sister came to pick the rest of her stuff up from our house. And Scott had came upstairs, and he wanted me -- I don't quite remember what he wanted me to do, but I snapped, like everything in me just finally hit a stop. And I flipped out. I told him he was a dad. He needed to start acting like a dad, that I needed a dad in my life, I didn't need this.

He went downstairs, and he was mad. About five minutes later he comes back upstairs, and he's crying his eyes out, telling me he loves me, he wants to be with me, not my mom. And I felt disgusted. I completely hated myself at that point. I told him to get the fuck out of my room, to leave me alone.

And he's sitting there crying, why are you doing this to me, why are you doing this to me? I thought we had something nice. I thought I was supposed to have a dad in my life. That was the furthest from a dad I could ever imagine.

And as he's upstairs crying telling me all of this stuff, I hear my sister pulling in downstairs. And he races to go downstairs. I locked myself in that bathroom upstairs, and I cried for four hours. My sister even came in to check on me before she left, and I couldn't even speak to her. I couldn't even breathe.

I had just -- I had given up on everything.
Q When you say you gave up on everything, did you at any point try to harm yourself?
A I tried to commit suicide a few times. I tried. I've never been able to actually go through with it, but I tried.
Q And did you ever cut yourself?
A Yes, ma'am. I have scars all over my body.
Q Why would you cut yourself?
A Anything -- I would do anything to just get my thought, my mind off of things. I've turned -- I've turned to drugs; I've turned to self-harm, I've turned to everything I could possibly think of just to get some feeling back.
Q At some point were you able to get out of the house?
A Yes, ma'am.
Q Can you tell us about that.
A When I was 16, I finally ran away. I was working at McDonald's at the time. I had about seven, $800 saved up in a bank account that I was going to use to get me a car. Well, I had -- like a week prior to that, we had an altercation in the household. And at that point it just kind of pushed me over the edge. And I had had a runaway letter that I had written six,

seven months before I ever ran away. Like I had been planning and planning and praying and praying for the right time to come.

So that night I got off of work, I came home, I called my friend and told him to be waiting outside. About 30 minutes later I see them pull up. They helped me jump out my two-story window. I left my notes, and I disappeared.

Q And I'm going to get back to that in just a minute. And again, I apologize for having to get personal. After you left the house, did you have a consensual relationship with a male?

A Yes, ma'am.

Q As a result of that relationship, did you come to find out that you had a sexually transmitted disease?

A Yes, ma'am.

Q Have you ever blamed that sexually transmitted disease on the Defendant?

A When I first found out that I had it, before all knowledge and everything came into play, I did say at one time that it was from him.

Q Do you know who you said that to?

A Sabrina.

Q That's your friend, Sabrina Houser?

A Yes, ma'am.

Q Is -- have you maintained contact with Sabrina?
A I've talked to her one or two times every once in a while just to check on her, see how she's doing because she was one of my best friends at the time. But I don't talk to anybody anymore.
Q Now, let's go back. And you said that you had written a runaway letter?
A Yes, ma'am.
Q Did you write just one letter?
A Altogether I think there were three. There was a runaway letter. There was a revised copy of the runaway letter, and then there was a third note that left details of just what my dad had did.
Q Where did you leave those letters?
A Two of them were on the mirror in my bedroom, and one of them was in the binder. Or, no, one of them was on the mirror. I had the other one with me.
Q Okay. So one on the mirror, one on the binder, and one with you?
A Yes, ma'am. I kept a copy with me in case the Defendant got to it first.
Q Okay. Do you know if those letters were turned over to the police?
A Yes, ma'am, they were.
MS. WALTER: Your Honor, I'm going to ask that

they open this.

MR. HILLIARD: I don't have any objection, Your Honor.

THE COURT: It's admitted without objection. That will be State's-1?

MS. WALTER: Yes, depending on how the Court wants to do it because it's in one envelope, but -- see, I turned my back on you just like that -- and then there are three letters.

THE COURT: Okay, three letters, why don't you introduce them.

You have no objection to any of them; right?

MR. HILLIARD: I don't, judge. But I think it would be good if we could mark them independently.

THE COURT: That's what we're going to do.

MR. HILLIARD: Yes, sir.

THE COURT: And I will ask you to have her more specifically identify.

MS. WALTER: I will.

THE COURT: And then have marked without objection and entered; okay?

MS. WALTER: Can I mark them first and then show her?

THE COURT: Certainly.

(WHEREUPON, State's Exhibit Nos. 1 to 3 were

marked for identification.)

(WHEREUPON, State's Exhibit Nos. 1 to 3 were admitted in evidence.)

Q So I'm showing you what's been admitted as State's Exhibit 1, 2 and 3. And I want you to just look at those, and then tell me if you recognize them.

A Yes, ma'am, I do.

Q So, let's look first at State's Exhibit 1, which appears to be two pages. What do you recognize that to be?

A That's the runaway letter I left on my mirror.

Q Okay. And then State's Exhibit 2?

A That would be the copy that I had with me.

Q Okay. And how do you know the difference between the two of them?

A Because the one that's all folded up, which would be this one, I had in my possession. So rather than being nice and neat on here, it was creased and put up for safekeeping.

Q So that's, you're saying, as I throw it at you, State's Exhibit 2?

A Yes, ma'am. That's the copy I had with me, and that was the copy I left for my mom.

Q So one you left for your mom, two you had with you, and what about State's Exhibit 3?

A That is the one I left for my mom to give details of the situation that was going on.

Q Do you recognize that to be your handwriting?

A Yes, ma'am.

Q And you recognize those to be the letters that you did, in fact, leave?

A Yes, ma'am.

MS. WALTER: Your Honor, I would ask that they be published to the jury.

THE COURT: You may. And they are admitted, Ms. Bautz; is that right?

COURT REPORTER: Yes.

THE COURT: Thank you.

Can everyone see that? Just raise your hand, now. If they are trying to -- I promise you these attorneys don't mind at all. They want you to see what they are presenting. So just let us know if you can't hear or see. You cannot see?

A JUROR: I'm having eye issues.

THE COURT: I will tell you what, how about him -- well, when we're done, can you let them circulate the originals?

MS. WALTER: Absolutely.

Q 1 and 2 are the letters that were State's Exhibit 1 and 2, essentially the same?

A More or less, yeah.

Q Okay.

MS. WALTER: Your Honor, with your permission, what I can do is give the juror that's having trouble Exhibit 2, which is essentially the same, then we can pass them all around.

THE COURT: Okay, that's fine. But let's eventually let them pass them around to see them.

MS. WALTER: Yes.

THE COURT: The originals; okay?

MS. WALTER: And with the Court's permission, I'll just ask when they are done with the first page, just let me know and I'll turn it to the second page.

(Jury is reading.)

MS. WALTER: Everyone ready for the second page?

THE COURT: Did everyone get a chance to read the first one.

(Jurors indicate affirmatively.)

MS. WALTER: Is everyone done with that, okay. I'm just going to take a minute to roll that back, Your Honor.

Q Did any of the rapes leave any marks on your body?

A Yes, ma'am.

Q Okay. And can you tell us about that.

A I had bruises all over my body constantly,

fingerprints, welts, everywhere.

Q Was the Defendant ever physically abusive to you -- well, in addition to sexually abusive, physically abusive to you?

A Yes, ma'am.

Q Can you tell us about that.

A There was the incident I spoke of that happened about a week to where I ran away. I was working at McDonald's. And I was messing with my mom. She asked me to clean something up. And like she mixes this like chemical with some water as like our spray cleaner.

And I was messing with her, joking around, like, mom, if you want me to clean it, you got to make the chemical for me, like just joking. And Scott was like, well, you need to learn how to do it yourself because I'm sure McDonald's is going to have you do it. I said, well, actually, they are not. I said, that's morning shift's job. I don't work morning shift.

He's like, well, maybe one day you're going to work morning shift. I said, well, considering the fact that I go to school, that's not going to happen, I'm going to stay on my middle shift.

And he -- at that time me and my mom were standing in the kitchen, he got up off of the couch in the living room, ran to where we were in the kitchen and

slapped me across my face, started screaming at me. As he was screaming at me, his spit was landing on my face, and I like backed up a little bit. And I went, started screaming at him back. Well, I tried to be the bigger person, I tried to stop and walk around him. And in which he pushed me down, climbed on top of me and was choking me in front of my mom.

Q What did your mother do?

A She didn't do anything.

Q Who was the first male that you kissed?

A Scott.

Q Who did you lose your virginity to?

A Scott.

Q Was that by your choice?

A No, ma'am.

Q How are you doing now?

A Ma'am?

Q How are you doing now?

A I'm a wreck.

MS. WALTER: Thank you very much. And just answer any questions Mr. Hilliard has.

THE COURT: Mr. Hilliard.

MR. HILLIARD: Thank you, judge.

CROSS-EXAMINATION

BY MR. HILLIARD:

Q That's a lot of years that you've been telling us about here. How many years would you say that is all together?
A Seven, to be exact.
Q Seven years?
A Yes, sir. From '09 to '16.
Q There was some of it that happened when you were seven; is that --
A Yes, sir. There was the instance where he came and stood in my and my sister's room. But as far as like traumatic things, it wasn't really that big of a deal considering the rest of the years.
Q It was significant enough that you remember it to this day?
A Yes, sir. I have a great memory.
Q And you didn't tell your mom about it at that point back when it happened; you and your sister nude and Scott and his friend looking at you nude in the room?
A No, sir.
MR. HILLIARD: Excuse me just one second.
MS. WALTER: May I see what you're approaching with?
MR. HILLIARD: Sure.
Q This isn't a real good picture, but let me just

ask if you can identify that in the top left-hand corner there.

A It's my old house.

Q That's your old house?

A Yes.

MS. WALTER: Your Honor, I'd ask that that be marked.

MR. HILLIARD: We'd offer it into evidence, Your Honor.

THE COURT: Please have her identify it, and you may mark it.

Do you have any objection?

MS. WALTER: Well, I'm not looking at the same thing, so I would just like to see what he is actually showing the witness.

MR. HILLIARD: You have a set right there. I'll bring it back.

MS. WALTER: Thank you.

Q Can you identify this, please.

A It's my house on [redacted] Street.

Q Your house on [redacted] Street?

A Yes, sir.

Q Thank you.

MR. HILLIARD: Would you mark that for me, please.

(WHEREUPON, Defendant's Exhibit No. 4 was marked

for identification only.)

MR. HILLIARD: Marked as Defendant's Exhibit 4 for identification.

MS. WALTER: No objection, Your Honor.

THE COURT: Very well. It's admitted without objection.

(WHEREUPON, Defendant's Exhibit No. 4 was admitted in evidence.)

MS. WALTER: No objection. It might make sense to just mark that -- if we staple it all as the one exhibit.

THE COURT: Do you want to do that?

MR. HILLIARD: No, sir.

THE COURT: Very well, proceed.

MR. HILLIARD: Thank you, Your Honor.

Q That's another photograph of your home; is that right?

A Yes, sir.

Q On [redacted]

A Yes, sir.

MR. HILLIARD: Mark that one for me, please, ma'am.

(WHEREUPON, Defendant's Exhibit No. 5 was marked for identification only.)

Q And that's a stairwell in your home on [redacted]

is that right?
A Yes, sir.
MR. HILLIARD: Thank you. Six, please.
(WHEREUPON, Defendant's Exhibit No. 6 was marked for identification only.)
Q And this is the kitchen and living area of your house on [redacted]?
A Yes, sir.
(WHEREUPON, Defendant's Exhibit No. 7 was marked for identification only.)
Q And this is the door. What does that door lead to on [redacted] if you could tell us?
A The water heater.
Q The water heater?
A If that's the laundry room, right there in the back door is the water heater room.
Q Okay, very good.
(WHEREUPON, Defendant's Exhibit No. 8 was marked for identification only.)
MR. HILLIARD: That's Defendant's No. 8, judge.
Q And then this is a view from the other direction, from the kitchen to the living room; is that right?
A Yes, sir.
Q And of your house at [redacted]
A Yes, sir.

(WHEREUPON, Defendant's Exhibit No. 9 was marked for identification only.)

MR. HILLIARD: That is Defendant's-9, Your Honor.

Q This is a drawing that I'm asking you to look at and see if that is a drawing that is consisting of the interior of your house at [redacted]. Take your time.

A That seems correct.

Q That seems correct?

A Yes, sir.

MR. HILLIARD: Mark this please, ma'am.

(WHEREUPON, Defendant's Exhibit No. 10 was marked for identification only.)

MS. WALTER: Well, Your Honor, is the whole board being marked or just that one page?

MR. HILLIARD: Just the one page.

MS. WALTER: I just want to make sure that for purposes of admission it's just that page and not whatever else has not been addressed.

THE COURT: Right, that's my understanding.

MR. HILLIARD: The board is to hold it together, judge.

THE COURT: Okay, I understand.

MR. HILLIARD: So do you have objection to --

MS. WALTER: I just don't know what else is on the board. I'm just trying to make sure that the record is

clean.

MR. HILLIARD: Well, we have a clean record. Do you have an objection to that?

MS. WALTER: I do not have an objection to that page, as already stated.

MR. HILLIARD: All right. How about this one?

THE COURT: Looks like, Mr. Hilliard, you have got plenty of people that will help you hold those, so...

MR. HILLIARD: Yes, sir. I thought we'd bring somebody.

Q Let me ask you about this one. It's, again, a piece of paper. And does that look like the second floor of your house?

A Yes, sir.

Q All right.

MR. HILLIARD: Mark this one as well.

(WHEREUPON, Defendant's Exhibit No. 11 was marked for identification only.)

MR. HILLIARD: I'll just stick it right here, judge, for the purpose of holding on to it. We'll come back to that in a bit. Only the page is in evidence, judge.

THE COURT: That's right, sir.

MR. HILLIARD: We'll take it off before we go further.

Q Can you tell me what the phrase, "wake and bake" means?
A It's when you smoke first thing when you wake up.
Q And did you and Scott and Complainant 2 on occasion wake and bake?
A Yes, sir.
Q How often would you -- well, let me ask this question. So, when did you and Scott and Complainant 2 start waking and baking?
A Well, I can't tell you when my sister and Scott started doing it because we never waked and baked together. It was an individual thing. He would come up to my room some mornings and smoke with me, and he would go up to my sister's room some mornings and smoke with her. But he never did it -- it was never a wake-and-bake-together thing.
Q Never on any occasion did you and Scott and Complainant 2 wake up in the morning and smoke marijuana together?
A Not in the form in which you're stating it, no.
Q How about in a --
A There was times where we would all be together in one room and smoke, but as far as waking and baking, no, that never happened.
Q Well, help me understand the difference between being in the same room -- are you saying being in the

same room together in the morning time and smoking marijuana?

A Like if we were downstairs in the living room in the morning when we first wake up, all three of us were down there?

Q Right.

A Then, yeah, all three of us would smoke together.

Q But that's not waking and baking?

A We were never -- we never went downstairs first thing in the morning. When we would all smoke together in the living room, it was in the evening. And even then, my sister would rarely ever smoke with me because she didn't like it. Everything that I did my sister was never usually a part of.

Q All right. Well, when you say those things, you're looking over there. Is it your sister is here with us in the courtroom?

A Yes, sir.

Q All right. And this is Defendant's No. 11 in evidence. This is the upstairs of your house; is that right?

A Yes, sir.

Q That you've been testifying about?

A Yes, sir.

Q Okay. And so your room and your sister's room are

right there beside each other?
A Yes, sir.
Q That's a really small area; isn't that true?
A Yes, sir.
Q Okay, very good. When you were talking earlier about running away from home -- let me ask a better question. When you ran away from home, was that the first time that you had said anything to your mom about Scott having any sexual activity with you?
A Yes, sir.
Q So your mom never knew anything about it until that time?
A No, sir. She had had her speculations, but I never told her nothing.
Q She had her speculations. You talked about it since then?
A Sir?
Q I say, when you say she had her speculations, is that something you talked about when she had the speculations, or is that something you've talked about since then?
A We -- she talked about it when she had the speculations and since then.
Q So when she had the speculations, you didn't go ahead and tell her what was going on?

A No, sir. Because when she would address the speculations, she didn't address me, she addressed Scott.

Q Were you there?

A Yes, sir, but I was not going to open my mouth.

Q Because you were afraid you would not be believed?

A Because I was afraid I wouldn't be believed, yes, but I was also afraid of opening my mouth, of the consequences of speaking up.

Q When you were talking earlier about running away from home, you indicated that there was a confrontation right before you ran away; is that right?

A Yes, sir.

Q And that confrontation was based on your stealing marijuana from your family?

A No, sir. That confrontation was about the cleaning chemicals incident that I had just went over a moment ago.

Q How long after the cleaning event -- cleaning chemicals event was it that you ran away?

A About a week. They -- the -- I had gotten in trouble at one point with them for stealing marijuana and alcohol, but that was months prior to my running away.

Q Okay. So your running away was not based on the

sexual activity, the running away was based on the physical activity with the bleach; is that right, or cleaning agents?

A No, sir. The running away was me wanting to get out of the house, me finally getting to the point where I said, I cannot take this anymore. My body was done. I was done emotionally, physically, I couldn't do it anymore. That is my reason for running away. It had nothing to do with any kind of confrontations. It had nothing to do with just the physical abuse. It had to do with I got tired of waking up every morning and hating myself and hating my own family for not noticing. That's why I ran away.

Q Your family didn't notice?

A No.

Q And you were saying that the boys were running around the house sort of willy-nilly during all of this period of time; is that right?

A Yes, sir.

Q And they never saw anything?

A My little brother did. But when he had finally spoken up about it, it was months after everything had been said and done. It was after he had already talked to the Children's Recovery Center. It was after everybody else had gotten to put their side of the

story in did my brother actually say that he had saw something.

Q It was actually only after he had the -- he had spoken to your mother about that; is that right?

A Yes, sir.

Q And the only person that he's talked to about that is your mother?

A No. He talked to me about it, too.

Q Okay. How many times did -- and if I'm incorrect or should recollect and don't, I'm sorry for that -- but tell me how many times Scott actually had sexual intercourse with you.

A At least 12.

Q Could it have been more than that?

A Yes, sir.

Q And over what period of time, if you can recollect for me?

A Between 14 and 16, so two years.

Q Between ages 14 and 16?

A Yes, sir.

Q And it never happened when you were 13?

A I'm not a hundred percent with the dates and times of everything, but I'm pretty sure it started when I was 14.

Q Your recollection is that he only had -- or he

only used a condom twice; is that right?
A Yes, sir.
Q You told your friend Sabrina that Scott had given you an STD; is that right?
A At one point, yes, sir. But it was right after I had gotten tested. It was right after I had started pressing charges, before I had gotten knowledge or even thought about what had happened, I did say it came from the Defendant. But once knowledge came into -- once I was able to pinpoint exactly where it came from, then I took back anything I had said.
Q So once you found out Scott didn't have and never had it --
A No, sir. Once I found out who gave it to me.
Q You know today that Scott never had chlamydia?
A Yes, sir, I do.
Q And so you know today that Scott didn't have chlamydia?
A Yes, sir. I got it -- I had gotten it from someone I had slept with after I had pressed charges and after I had ran away and all that, I had gotten it. I had it for about two, three months maybe, and then I got rid of it.
Q The first time that you found out you had chlamydia was you went to the rape crisis center for

your testing about Scott; is that right?

A Yes, ma'am -- or yes, sir.

Q And they told you that you had chlamydia?

A Yes, sir.

Q And you said, Scott did it?

MS. WALTER: Objection, Your Honor.

THE WITNESS: I didn't say that Scott had done it.

Q You told your friend that Scott did it?

A I didn't -- but the way you just worded it was that I had told the CRC I had done it -- or that he had done it.

Q I apologize, I misspoke. You told your friend that Scott had done it?

A Yes, sir. When it first happened, yes.

Q And you told your mother that Scott had done it?

A When everything first happened, I did not have any knowledge of any of who it could have came from. I did not have any knowledge of anything. All I know is they told me this, and the first thing that came to my head, considering the fact the only person that -- besides the person I slept with, the only person that I knew I had a constant relation with was the Defendant.

So the first thing that popped into my head when I got it was, oh, it must have came from him. And then once knowledge came into play, I took back what I said

and I apologized.

Q Who did you apologize to?

A I apologized to the people that I spoke to for miscommunicating with them.

Q You apologized to the people that you -- so you told -- let me see if I can get this right. You told people that Scott had given you the chlamydia?

A I told one person.

Q And you went back and apologized to that person for telling them that Scott had given you chlamydia?

A No, I apologized for misinformation.

Q Help me understand, what do you mean by that? I don't understand.

A Because if I was to tell you something, and I find out a little bit later that I had a little bit of the facts twisted, I'm going to come up to you, I'm going to apologize for giving you the wrong information, and I'm going to right it by telling you what really happened.

Q So you apologized to your friend for giving the wrong information about having got the chlamydia, apologized to your friend; right?

A Yes, sir.

Q And you told your mom's lawyer that Scott had given you chlamydia?

A Not to my knowledge. I don't even know who my mom's lawyer is.

Q You know your mom had a lawyer for the divorce?

A For the -- no. I've never, I have no part in that. I've never once talked to her divorce lawyer, not to my knowledge. I have no part in their divorce.

Q I think you said earlier, and correct me if I'm wrong about this, but I think you said earlier that your family believes that you're not a truthful person?

A Yes, sir.

Q And you told folks on the jury that you're trying to cause your family to believe you are a truthful person?

A Yes, sir.

Q And you have not been a truthful person in the past; true?

A Correct.

Q When you wanted your sister -- and again, if I'm misspeaking this, please correct me, but when you wanted your sister to help you with the pregnancy test, you told her that you had been sexually assaulted out by the pond?

A Yes, sir.

Q That wasn't true?

A No, sir.

Q And at that point you didn't tell her what was going on with Scott?
A I told her a little bit later.
Q When was that?
A After me and her had sat down and talked and realized that I wasn't the only person that was going through it.
Q How many times were you sexually assaulted by Scott after that?
A I'm not quite sure. But quite a few times.
Q So after you told your sister and after you talked to her and said that you're not the only one that went through it, and I'm not the only -- you and I are both going through this same thing, at that point Scott sexually assaulted you some more?
A Yes, sir.
Q And you and your sister decided that the best way for you to handle the situation is to have her move out of the house, and you'll move out of the house with her, and at that point y'all can tell?
A No, sir. I was never moving out of the house. She was going to -- she wasn't even going to move out of the house. She was going to find somewhere to go stay for a little bit that I would be welcome to go with her the day that she does tell. But she wanted to

make it a safe home to where me and her could both live back at home and actually, for once, be a family.

Q So what you-all wanted to do was to live back at home, safe, away from Scott and all be a family; that was the idea?

A Yes, sir.

Q All right. And at the same time -- let me ask this question, a better question maybe. Scott was a good provider, he earned significant money and helped to pay for the things in the house; right?

A Yes, sir.

Q And he took care of the whole family in that regard?

A To an extent. There were favorites. There was favoritism, some people got taken care of way better than others.

Q Who got taken care of way better than others?

A It was kind of a back -- it was a back-and-forth kind of battle. Sometimes my sister would get to be the golden star, sometimes my brothers would get to be the golden star.

Q Did you ever get to be the golden star?

A I was always the trashy one.

Q I mean, you got to smoke the marijuana; right?

A I didn't give two fucks about marijuana.

Q But that's one of the things was that he wouldn't let you have the marijuana unless you did things?

A I mean, over time, there was an addiction that came into play with it. But I didn't -- I could have cared two -- I couldn't care about the marijuana, like, I really don't. All I wanted at that time was to get the same treatment that my sister would get or that my brothers would get. I wanted to feel equal in my own home.

Q You were getting the alcohol?

A And that's not -- that means nothing compared to having a family, to having a dad-and-daughter relationship, to having people that care about you and actually care.

Q Well, what were they getting that you weren't getting?

A They got love, they got to be treated special, they got everything. I got my head bashed into a wall, called a piece of shit daily. I didn't get nothing.

Q So you were -- but you were the one that he wanted the special relationship with; right?

A And I'm the one that did everything I could to fight it. I'm the one that he knew, no matter what happened, I wasn't going to tell, but I was going to keep on fighting. And that's what I did is I fought

and I fought and I fought. I fought for as long as I could. I tried to be -- I tried to be good in everybody's eyes, I tried to make good grades, I tried to do what everybody wanted, I tried to be like my sister. But I can't. It's not me. That part of me got ripped apart a long time ago.

Q It's got nothing to do with Scott; does it?

A It does.

Q All right. So Scott tried to do the same thing with your sister that did he with you; right?

A Yes, sir.

Q But he never did?

A No. When he finally stopped with my sister was when things progressively got worse with me.

Q When you say he finally stopped with your sister, there were -- well, tell me about it. What do you know about instances with your sister?

A I know that the time period when me and my sister were sitting down talking and she told me that she had gotten him to stop. And I looked at her, and like I hated myself for thinking it, but I envied her because the moment that it stopped, there was about maybe a month or two period, and then there was the first time that he raped me.

And I sat there, and I wanted to hate her, I

wanted to hate her so bad because by him stopping with her, it just -- it made it worse for me. But at the same time, I love my sister, and I'm so glad that she was able to get out of that, no matter what kind of situation it put me in.

Q Well, there was a point in time when you indicated your sister hated you; is that right?

A Me and my sister, we've never gotten -- we've never really gotten along, none of my family has. But there is no hatred with any of our family. There is dislike sometimes, there is discomfort, there is not wanting to be around each other, but my family, we will never hate each other.

Q But you don't get along with your sister?

A At times, no.

Q All right. So the point in time that we're talking about where you told your sister, and you and your sister planned on running away from home or whatever that was, whatever that event was where your sister was going to go and you were going to have a safe place to be, that never came to pass, that never happened?

A No.

Q Your sister moved in with a boyfriend, and at that point you could have gone and stayed with them, right,

that would have been a safe thing?
A No. I was underage.
Q You would always have been underage under either set.
A But if I'm 17, I can legally live on my own out of my house. At that time I was not old enough. I could not leave my house legally, not without getting my sister put in jail or her boyfriend put in jail or whoever she went to go stay with.
Q I'm going to hand the letters back to you that you wrote.
A Okay.
Q Before we get into the letters, you need to take a break?
A No.
Q Before we get into the letters, at the point in time that Scott -- of the, give or take, 12 times that Scott sexually assaulted you, where did those sexual assaults take place?
A Mainly in the living room. There was about two times in my bedroom. But a majority of everything that has ever happened to me has been in that living room. I think there was one or two times that he did it in his bed.
Q One or two times in his bed and two times in your

bedroom, is that --

A Two times in my bedroom for sure.

Q Okay.

A And then I know there was one time that it happened in his room. It might have been two times. But I know it happened two times in my room, at least once in his room, and multiple times in the living room.

Q And the times that it happened in the living room, who was in the house?

A Everybody would be in the house. It would not matter.

Q Okay. So the times that Scott was sexually assaulting you in the living room, everybody was in the house?

A Yes, sir.

Q And so we're understanding the place we're talking about, that's Defendant's Exhibit No. 7 and No. 9; is that right?

A Yes, sir.

Q And the location of the television and the sofa in Defendant's-7, is that approximately the same location the television and sofa were in when you were being sexually assaulted?

A Yes, sir.

Q And the sexual assaults were taking place on the sofa; is that right?

A Yes, sir.

MR. HILLIARD: If I could publish these to the jury.

MS. WALTER: No objection, Your Honor.

THE COURT: Without objection. Have you marked them?

MR. HILLIARD: Yes, sir, 7 and 9.

THE COURT: All right, they are admitted.

(WHEREUPON, Defendant's Exhibit Nos. 7 and 9 were admitted in evidence.)

THE COURT: All right, Counsel.

MR. HILLIARD: Thank you, Your Honor. Thank you, judge.

Q What would you say that the letters you left -- tell me again about where you left the letters.

A I had one on the mirror, I had one with me, and I think the other one was in a binder.

Q And what was the purpose of writing these letters?

A To let my mom know why I was running away. To let her know that I was running away, and to let her know what was happening in her household.

Q And then, in the letters, you say that you don't want her to call the cops; is that right?

A About me running away?
Q Right.
A Yes, sir.
Q And that if she does call the cops about you running away, then you're going to tell about how she has been cheating the government on money?
A Yes, sir.
Q Pardon?
A Yes, sir.
Q And how was she cheating the government on money?
A Honestly, I don't know. Like at the moment I'm not recalling because, granted, like I said, I had writ [sic] these letters six, seven months prior to me running away. And also considering the fact this has been going on for three years now, I cannot recall what I was referring to in that statement.
Q Okay. So today you don't remember what your mother was doing to cheat the government on money?
A I remember putting it in there for a reason. I know that there was something. She had it -- she wasn't registering completely that she was married. That's what it was.
Q And then you were talking about the pills y'all do, you were going to tell the police about the pills that y'all do. That was your mom and Scott; is that

right?
A Yes, sir.
Q And you were doing the pills as well?
A Every once in a while, yes, sir.
Q And then you also said that your mom and Scott were selling drugs; is that right?
A My mom was not. Scott was.
Q Well, it says, the drugs y'all sell?
A That may be what it says in the note, but that's not what was going on. I was angry when I had writ this letter, I was upset when I had writ this letter to begin with. And as I stated, it sat there for months untouched until the night I went to run away, and I wrote another copy of it, and I left.
Q When you wrote the letter, what were you upset about at the point in time that you wrote the letter?
A I don't -- I'm not quite sure. I was just, you know, one day I was really upset, really mad, just kind of done, fed up, and I wrote that I was going to run away that day. I just never got the chance to.
Q And so you told your mom or you reminded your mom that she had told you and Complainant 2 that she would rather die of cancer than have kids like y'all?
A Yes, sir.
Q That's what your momma told you?

A She had told me it one day when I made her very upset.

Q Well, this says that she told both of you, you and Complainant 2 that because of kids like y'all, she would rather die of cancer than have kids like y'all, both of you?

A Yes, sir.

Q Is that what she said?

A Yes, sir.

Q Because of what?

A Because she was -- she was upset, she was mad. People say hurtful things when they are upset and mad.

Q And then you say that she sat in the -- her office every day and every night smoking weed, drinking, and snorting pills; is that right?

A Yes, sir.

Q And you were angry that she wouldn't spend time with you?

A I was angry that she would seclude herself because she would still spend time with my sister. I was angry she would seclude herself in that room, that she would spend time with my sister and not me, that she would let me be vulnerable but not care.

Q So she spent time with -- you were jealous that she spent time with Complainant 2 and didn't spend time with

you?
A I wasn't jealous. I envied the mother-daughter relationship that they had because me and my mom will never have that relationship.
Q You said you were running away to Arizona; is that right?
A Yes, sir.
Q That wasn't true; was it?
A No, that was just something -- I just put some random place down so that way she wouldn't know where I was actually going to be at, to where as far as she knew, I wasn't going to be in the State. The only reason she knew I was still in the State was because I was using my bank card because I wanted her to know.
Q You wanted her to know?
A Yes, sir. Like I said, I had writ this letter months prior. I wanted my mom to know I was still in the State. I wanted to make sure she knew I was still safe. I didn't want my mom to worry, no.
Q The person that you actually talked to was your grandmother; isn't that correct, the first person?
A The very first person I talked to was my grandmother.
Q That's Scott's mom?
A Yes, sir.

Q So when you ran away from home, the person that you wanted to know -- that you wanted to know that you were safe was Scott's mom?
A No.
Q The first person?
A No, sir. About three or four days after I ran away and finally turned my phone on and I was out, as I was sitting there listening to voice mails that Scott had left me, that his mom had left me, that my mom had left me, I sat there and listened to the voice mails. And I called the one that didn't say anything that hurt me in the voice mails.
Q So the voice mails from your mom, even after you left this letter, were hurtful; right?
A The first voice mail my mom left me wasn't the most pleasant. But my mom had her own way of handling this, and she had her right to. It wasn't easy for not one -- not one of us. So my mom had the right to be angry at first.
Q And you say in the letter that you have videos that you took of y'all, your mom and Scott, hitting me and y'all doing drugs?
A I never had any videos. I just said that to -- because I thought it would keep her from calling the cops.

Q And you said that you gave Rebecca, who is Scott's mom, a copy of the letters; is that right?
A Yes, sir. But I never got the chance to.
Q So that wasn't true?
A No. I was going to, but I never got the chance.
Q The first occasion that you told the prosecutor about was an occasion where you were in your bedroom and Scott was in the bathroom; is that what it was?
A The first --
Q The very first time.
A I was in my bedroom, he was taking a shower.
Q In your bathroom?
A No, downstairs in his bathroom.
Q So he was downstairs in his bathroom, and you were upstairs in your bedroom?
A Yes, sir.
Q And your family had just left to go to Latta or Dillon; is that right?
A Yes, sir.
Q So they had just left. Scott was taking a shower, and he came up immediately upon them leaving and was naked in your bedroom?
A I wouldn't say it was immediately upon them leaving.
Q Okay.

A I mean, he finished his shower. But once he got out of the shower and came upstairs.
Q He was in the shower when they left, and then he came upstairs when he finished his shower; is that what you're saying?
A Yes, sir.
Q So he was in the shower when they left, he comes upstairs after he finishes his shower, and at that point is the first time that he raped you?
A Yes, sir.
Q And that was the occasion where the boys had been staying with Scott's sister in Latta, Dillon, Latta, slash, Dillon; is that right?
A Yes, sir.
Q And that was the time that you had to sneak the chicken nuggets?
A Yes, sir.
Q So the Latta event, Latta, slash, Dillon, what time of -- what's the best you can do about telling me when that happened?
A I really can't give you a time period. All I know is my brothers went to stay with them for like a week, and that's about the only time period I can give you.
Q So the kids were there for a week. Is it fair to say it would not have been during school time?

A No. It -- during school was like we got a lot of little breaks and holidays. So normally on a break or a holiday that we were on, the boys would go there. They went over to his sister's quite frequently during school, during the months school are in.

Q But it would have been -- are you certain they were there for a week?

A It was about a week. They went there for a good couple days, between five to seven days.

Q And it was during weekdays? Like it wasn't Saturday and Sunday, but it was weekdays. Do you remember that?

A If it was five to seven days, then there would be no possible way for it just to be on a weekend.

Q Fair enough. When this happened, the event that you're talking about, your mom and Complainant 2 were on the way to get the boys to bring them back?

A Yes, sir.

Q At this point, trying to put it all back together, at the point in time that the event, the Latta, Dillon event that happened, did you already talk to Complainant 2 about the trouble that you were having with Scott or had that not yet happened?

A Had not yet happened.

Q So Complainant 2 didn't know about any trouble that you

had had with Scott at that point?

MS. WALTER: You just have to say yes or no.

THE WITNESS: No, sir.

Q Thank you. Let's go back to the chlamydia for a minute. Dr. Rahter did the testing and reported back to you that you had chlamydia; correct?

A Yes, sir.

Q And at some point you found out that it wasn't Scott, it was somebody else who gave you chlamydia?

A Yes, sir.

Q And you found that out by doing what?

A I had a conversation with the gentleman.

Q And --

A I had gotten word from his ex-girlfriend, which happened to be one of my best friends, and I sat down and had an adult conversation with him.

Q So you got word from his ex-girlfriend that you should have an adult conversation with him, and then you did that?

A No. I got word from his ex-girlfriend that he had chlamydia because she had just found out she had it, too. And she let me know because she knew I had slept with him. So I went, I had a conversation with him, found out whether or not it was true that he had it to make sure he knew that he had it, too, so that way he

wouldn't give it to anybody else like he did me and her.

Q So had his ex-girlfriend told him that he had chlamydia?

MS. WALTER: Objection, Your Honor.

MR. HILLIARD: I'll withdraw the question.

Q Who is that, what's his name?

MS. WALTER: Objection, Your Honor, relevance.

THE COURT: Sustained.

MS. WALTER: You don't have to answer that.

THE WITNESS: Can I take a break?

THE COURT: Certainly. Mr. Ropp, would you take the jury out.

(WHEREUPON, the jury exited the courtroom at 3:37 p.m.)

THE COURT: We'll be at ease for a few moments.

MR. HILLIARD: Thank you, judge.

(WHEREUPON, a brief recess was taken at approximately 3:38 p.m.)

MS. WALTER: Your Honor, I was hoping we'd get through this witness. I have Dr. Rahter available this afternoon. I would really like to get her in this afternoon.

THE COURT: Well, we'll see; okay?

Okay, Chris, if you would.

(WHEREUPON, the jury came into open court at approximately 3:55 p.m.)

THE COURT: All right, we have everyone back now. Mr. Hilliard, you may continue.

MR. HILLIARD: Thank you, Your Honor.

Q Better?

A Yes, sir.

Q Did you have the opportunity to visit with your sister over the break?

A Not really.

Q Okay. When we were talking about the moonshine, strawberry moonshine?

A Yes, sir.

Q And I recognize that these are indelicate subjects, but we're sort of stuck with it. You were saying, I think -- and again, if I'm wrong, tell me -- but that you, at some point in time connected to the strawberry moonshine event, that you found that you had ejaculate up inside of you?

A Yes, sir.

Q And that happened before the Latta event; right?

A No, sir. That happened after.

Q All right. Latta happened when you were 14 years old?

A Yes, sir.

Q And the moonshine event happened when you were 12 or 13?

A No, sir.

Q All right. Let me...

MS. WALTER: Your Honor, may we approach for a moment?

THE COURT: Yes.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

Q Do you remember doing an interview at the Children's Recovery Center with their interviewer?

A Yes, sir.

Q And let me show you page 38 of that interview.

THE COURT: Mr. Hilliard?

MR. HILLIARD: Yes, sir.

THE COURT: What I will allow you to do is ask her if she was asked, and tell her what the question was, show it to her, and ask her if this was your response.

MR. HILLIARD: Thank you, Your Honor.

THE COURT: Okay.

Q And the question was: Is there an incident in your head before the -- is there an incident in your head before the other incident that you told me about when your mom was in Latta, before that one, is there a

specific incident in your head that you can remember? And your answer was?

THE COURT: Ask her -- show it to her and ask her if that was her response.

MR. HILLIARD: Well, that was the question.

THE COURT: Okay. You just told her what the question was.

MR. HILLIARD: Yes, sir.

THE COURT: Now show her what you have in your transcript and ask her if that was her response.

MR. HILLIARD: Thank you, Your Honor.

Q So this is the question. Is this your response starting at 19, line 19?

A Yes, sir.

Q And so line 19, your response is, I think I was like 12, almost 13, and I had gotten strawberry. I was drinking it. And he got you to eat a couple pieces of fruit. And we were on the couch, and he started sliding his hand down my pants. Right?

A Yes, sir.

Q So that was the event that you told the folks on the jury about, was the event where you woke up in the bathtub, and you were peeing in the bathtub and had the ejaculate; that was that again?

A Yes, sir.

Q And do you recall now that that happened before Latta or after Latta?
A Before.
Q So when you testified earlier today, you were mistaken in saying that Latta was the first event?
A Yes, sir, I was mistaken.
Q All right. And the question at this point is...
MS. WALTER: What page, counsel?
MR. HILLIARD: Page -- I'm trying to find where the pages are.
MS. WALTER: Upper right hand.
MR. HILLIARD: Thank you. 66.
Q So on page -- the question is, did someone ever offer you pills? Do you remember that question?
A Sir?
Q During the same interview with the folks at the Children's Recovery Center, do you recall them asking you, did someone ever offer you pills? It's line 14 of the same transcript.
A Yes, sir.
Q And do you see your answer there at line 15, was that your answer?
A I guess. You have to think, this is from three years ago.
Q It was from three years ago?

A Yes, sir.
Q Which thing?
A That whole paperwork. That was three years ago when knowledge was fresh in my head and when...
Q So when knowledge was fresh in your head three years ago, you remembered at that point that Scott had never offered you any pills; right?
A He had offered me pills.
Q Well, you said no?
A I don't know why I said no in that interview.
Q But you did say no in the interview --
A Because I also know in that interview, it also talks about how he had given me pills.
Q But you would agree with me that they offer you pills, and you said no?
A Yes, sir.
Q So three years ago when it was fresh, you said no, and today you say yes?
A She had asked me a question in that interview before that I'd already told her about the pills.
Q Page 58, line 17, the question was about sexual activity, criminal sexual conduct, how many times did something like that happen. And line 19 is your answer, do you see that?
A Yes, sir.

Q And at that point you said between five and ten times, that you didn't know exactly; is that right?
A Yes, sir.
Q So back when this was fresh, you believed it was five or ten times you'd been sexually assaulted; right?
A Yes, sir.
Q And today your belief and testimony is 12 times?
A Well, when I answered that question for her, after having the past three years for it to sit in my head and count the times, then it equalled out to be more than what I had originally said to the Children's Recovery Center.
Q In the original note that you wrote, you said 12 times; do you remember that?
A No, sir.
Q Did you have the opportunity to meet with and speak with the prosecutor after you got here for this trial?
A After I got to the courthouse or to South Carolina?
Q South Carolina.
A Yes, I did.
Q And on how many occasions and for what period of time, do you recollect?
A One time. And for -- I sat down and talked to her

one on one for maybe ten minutes.

Q Ten minutes?

A Yes, sir.

Q In preparation for the trial?

A Not really. It wasn't really a preparation. It was, I need you here at this time, and I need you to tell the truth.

Q She didn't talk to you about the chlamydia event?

A No, sir.

Q What day was that?

A Yesterday.

Q I'm going to ask you to take a look at the back side of State's Exhibit No. 3. And the note, it says that, since that night, he has raped me 12 times?

A Yes, sir.

Q Did you have an opportunity to review the note before you came to court today?

A I had the opportunity, but I did not get a chance to read over any of the notes.

Q So you didn't look at anything to come to court today and testify?

A No, sir.

Q And one last thing, to be certain that I understand, that the sexual assaults that took place, most of them took place on the sofa?

A Yes, sir.
Q In the house?
A Yes, sir.
Q With everybody else there?
A I'm not going to say everybody was there every single time, but there were times that everybody was there when it happened.
Q Most of the time?
A I can't give you a for-sure answer on who all would be in the household.

MR. HILLIARD: That's all I have. Thank you.

REDIRECT EXAMINATION

BY MS. WALTER:

Q The first question I'm going to ask you is, when is your birthday?
A [redacted].
Q Well, happy early birthday. We've been talking about the Defendant and Scott. Do you see him in the courtroom?
A Yes, ma'am.
Q Can you point to him, please.
A He's right there (indicating).
Q What's he wearing?
A A black button-up shirt.
Q Is he the man that raped you 12 times?

A Yes, ma'am.
Q And did everything else that you've described to us here today?
A Yes, ma'am.
MS. WALTER: Nothing further.
MR. HILLIARD: No, sir.
THE COURT: You may step down, thank you.
(Witness excused.)
MS. WALTER: The State would call Dr. Carol Rahter.
CAROL ANN RAHTER, after being duly sworn, testified as follows:
THE CLERK: Please have a seat. If you could just state your name and spell your last name.
THE WITNESS: Carol Ann Rahter, R-A-H-T-E-R.
MS. WALTER: May I, Your Honor?
THE COURT: You may.
MS. WALTER: Thank you.
MR. HILLIARD: If I could interrupt for just a second, I'm going to stipulate -- I know they probably want to go through some of it, but I certainly stipulate to Dr. Rahter as an expert witness in connection to...
THE COURT: In what field is she offered?
MS. WALTER: She is being offered as an expert in

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the evaluation and treatment of child physical, sexual, and emotional abuse.

MR. HILLIARD: Yes, sir.

THE COURT: Ladies and gentlemen, normally, a person who testifies cannot give an opinion or the reasons that the person may have for that opinion. However, there is an exception for witnesses we call experts. When a person by education or experience has gained specialized knowledge in a particular field or art, that person may testify as an expert and may not only give an opinion in the field, but that person may also give the reasons that the person has for the opinion.

Dr. Rahter has been offered as an expert in the field of?

MS. WALTER: The evaluation and treatment of child physical, sexual, and emotional abuse.

THE COURT: And counsel for the Defense has stipulated, agreed, that she does possess the requisite education and experience in that field to be qualified as an expert. And although I have agreed that she does have that expertise and that she may testify as an expert, it is entirely up to you to place such weight, value, and effect on her testimony that you believe it deserves.

Ma'am.

MS. WALTER: Thank you, Your Honor, and I would just like to go through a little bit of her background.

THE COURT: Certainly.

MS. WALTER: Thank you.

DIRECT EXAMINATION

BY MS. WALTER:

Q Dr. Rahter, where do you currently work?

A I currently am practicing emergency medicine in Camden, South Carolina, and I'm the medical director of the Children's Recovery Center.

Q Okay. And let's deal with the emergency medicine. How long have you been doing that?

A 28 years.

Q And your position at the Children's Recovery Center, how long have you been doing that?

A 22 years.

Q And you just -- you are Dr. Rahter. What type of doctor are you, for lack of a better word?

A I'm board certified in emergency medicine.

Q And what do you do at the Children's -- well, let me back up. Can you describe for us what the Children's Recovery Center does.

A Yes. Children's Recovery Center is a child advocacy center where we get referrals from law

enforcement and DSS, and we do forensic interviews of the children. And then I do the forensic medical exam on all of the children that come through there.

Q And you said, I believe, that a child has to be referred to the Children's Recovery Center?

A Correct.

Q So could someone just walk off the street and say, hey, interview me, examine me?

A No, that does not happen.

Q And once there is a referral, you talked about the forensic interview. What do you do as part of the forensic medical exam?

A I used to do the forensic interviews, too, but now I just do the forensic medical exam. So we have a colposcope, which is basically --

THE COURT: Excuse me, Dr. Rahter. I'm sorry to interrupt.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

Q You can continue.

A Okay. So I have a colposcope, which is basically a fancy microscope that's hooked to a TV, so I evaluate the children from head to toe. And we look at all parts of their body. We start with their toes and

their fingerprints and their fingernails to get them acclimated to it. They get to watch it all on TV. Obviously, listen to their hearts and lungs and get their blood pressure and so forth and then palpate their abdomen.

So the last part of the exam is the genital exam, which they also get to watch on the TV. So, basically, the colposcope magnifies everything 15 times, so they really can see their fingerprints well. And if there is any abnormalities down there in the genital area, it magnifies that, too. It's all videotaped so it's there for the record. Especially if there is an abnormality -- I mean, it's all videotaped, whether it's abnormal or not normal.

Q And I want to back up for one second. You said you used to be a forensic interviewer. How long did you conduct forensic interviews?

A About 15 years.

Q And how long have you been doing forensic medical exams?

A Oh, I always did the medical exams.

Q Took a step up?

A Yeah.

Q And in that time, approximately how many children have you seen?

A I would say between five and 6,000.
Q And then when you are -- you said that you are looking for abnormalities. Can you just describe what type of abnormality might you be looking for?
A Well, the main purpose of doing the medical exam is to reassure the child that they look normal. The second reason we do the medical exam is to test for any kind of infections they may have encountered. And the third is to treat those infections and photo document any injuries.

So there is multiple different injuries you can get on a child from sexual abuse. You can get sexually transmitted diseases, you can get transections of hymens, you can get bruising of the genitalia, multiple different things like that, petechiae which are little broken blood vessels. So you're looking for all of those things.
Q And do you find abnormalities in a majority of the cases?
A No. It's rare to find an abnormality.
Q Can you tell us what goes into that, why is --

MR. HILLIARD: Objection, relevance.

THE COURT: I'm going to allow her to testify.

MR. HILLIARD: Thank you.
Q Why is it rare to find abnormalities?

A Because the majority of children have delayed disclosures. And that tissue is very similar, believe it or not, to the inside of your cheek, it heals very rapidly. So I'm sure we've all bit down on our cheek and you get that ridge and it hurts really bad, but by the next day the ridge is gone, and by the day after that, you can't see anything or feel anything. That tissue is very similar to genital tissue.

So when you get an injury, even if there is an injury there, it frequently heals before the child ever discloses and before they ever get a medical exam. So it's less than 5 percent of the cases have abnormal findings at the Children's Recovery Center because of delayed disclosure and rapid healing of that tissue.

Q Now, did you participate or did you conduct the medical examination on Complainant 1 in this case on October 15th of 2015?

A I did.

Q Did you perform the forensic medical examination on her?

A Yes, I did.

Q Can you describe for the jury what you did and what you found.

A So I spoke to her, checked her blood pressure, listened to her heart and lungs, did everything on the

colposcope, the TV. And her positive findings were that she was a self-mutilator, so she had scars on her thighs and her forearm. And she had a complete transection of her hymen at 6 o'clock. Which the hymen, we look at the hymen, which is kind of the -- the hymen is the entrance or the foyer into the vagina.

So, the hymen comes in many shapes, but we describe it as a clock. So if you're looking at a child, 6 o'clock is at the bottom, 12 o'clock is at the top, 3 o'clock is on the right, and 9 o'clock is on the left. So what that means is she had a complete transection, a complete tear, through her hymenal tissue at 6 o'clock.

Q What did that signify to you, or what is the significance of that?

A That's diagnostic of a penetrating injury.

Q Are you able to tell, from looking at that, when that penetrating injury occurred?

A No. I mean, it's healed, but they can heal in 72 hours. So I don't know if it was 72 hours before or three years before. I have no way of knowing.

Q And is it more or less common to see a transected hymen in nonconsensual sexual encounters, if that made sense?

A Yes, it does make sense. There's many studies out

there --

MR. HILLIARD: I'm sorry.

THE COURT: Could you rephrase the question?

MR. HILLIARD: I don't understand -- I know the doctor understands it, but I don't, I'm sorry.

Q Are you more or less likely to find a transected hymen after a nonconsensual sexual encounter -- that's a tongue twister -- or a consensual sexual encounter?

A You're more apt to see a transection in nonconsensual intercourse because lack of lubrication, fondling, being aroused. So in nonconsensual intercourse, it's more likely to get a transection. But you can see transections in consensual intercourse, and we do see that in consensual intercourse, it's just more likely in nonconsensual intercourse.

Q And did you also perform a test for Complainant 1 for sexually transmitted diseases?

A Yes, I did.

Q And what did that reveal?

A That's part of the medical maintenance that we do on anybody who has had any kind of sexual encounter to make sure we don't miss any infections because some of them, the exam looks totally normal and they still have an infection.

So we did a NAAT, which is basically a long word,

which is nucleic acid amplification test, which is done on urine, and it checks for chlamydia and gonorrhea. We did an HIV for AIDS, we did RPR for syphilis, and then a hepatitis panel.

Q And were any of those tests positive?

A Chlamydia was positive.

Q Was that at all significant in your exam?

A There was nothing on her exam that made me think that she would test positive for chlamydia, but we just do that maintenance thing for everybody that comes there that's been sexually active in any way. So it's not uncommon that we see -- chlamydia is the most common sexually transmitted disease among female adolescents and young adults. It's not uncommon that we see it, and then we just treat it with antibiotics.

Q And that's what you did in this case?

A Yes. Then we do follow-up to make sure it's resolved.

Q Now, you also mentioned a positive finding of self-mutilation. Why is that important?

A Well, that's why we look at --

MR. HILLIARD: Objection as to relevance.

THE COURT: Well, let's hear it. Answer the question.

Q You can answer that.

THE COURT: Rephrase it as did it have any importance.

Q Did the fact that you saw self-mutilation scars have any importance in your mind?

A Yes, it does.

Q And can you tell us why it was important?

A Self-mutilation is something that adolescents and young adults do when they are trying to alleviate something that's bothering them because it makes them feel better and release that pain. Children who have been victims of abuse frequently have a pattern of behavior. Self-mutilation is one of them, sexual promiscuity is one of them, running away, drugs and alcohol, getting pregnant, trouble with the court, all of those are things that we see in children and young adults that have experienced sexual trauma. That's why we look at the whole body.

Q Was there anything else of significance that you found during Complainant 1 exam?

A No, I don't believe so.

MS. WALTER: Court's indulgence. I have no further questions.

THE COURT: Mr. Hilliard --

MS. WALTER: And I believe you know Mr. Hilliard; correct?

THE WITNESS: Yes, I do.

MS. WALTER: You consider him a friend?

THE WITNESS: I do.

MS. WALTER: Well, then, you should be able to answer all of his questions.

MR. HILLIARD: I can guarantee you can answer all of my questions. We are very proud of that colposcope and we got it.

THE WITNESS: Yes.

MS. WALTER: Objection, Your Honor.

MR. HILLIARD: Weren't we very proud of that?

MS. WALTER: Objection.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. HILLIARD:

Q In any event, your testimony regarding the penetrating injury, you can't say what the penetrating injury that transected the hymen came from?

A No. All you know is that it's a penetrating injury. It could be from an object, multiple things. Anything that penetrates through the hymen can cause that injury.

Q And the notion that it's more likely than not to have been from nonconsensual sex rather than consensual sex presumes that it was from sex at all?

A That's certainly true. I mean, we've seen transections of the hymen when somebody has used a vibrator on a child. We've seen it when there's been no sexual abuse but there's been a traumatic penetrating injury like falling on a fence or something like that. So, yes, you can get -- all it is diagnostic of is a penetrating injury. It doesn't tell you what the penetrating object was.

Q Very good, thank you. And, also, you tested for all of the sexually transmitted diseases; is that correct?

A Correct.

Q And the only one that it was positive for was chlamydia?

A Correct.

Q And let me show you, this is her report. And I'm just going to show you, and I think these are your notes. Are those your notes there, 10/19/15; is that --

A That's Kelly's notes. And then I sign here when I see the report and treat. So I treated her with a gram of Zithromax on 10/22.

Q And your folks had permission to talk to her mother about the fact that she had chlamydia?

A Correct.

Q Okay. Thank you, doctor. And there are many different reasons why adolescents can engage in self-mutilation that are not connected to sexual activity; isn't that true?

A Absolutely.

Q And I think you said that Complainant 1 exam regarding the chlamydia was completely asymptomatic, that was just something you did automatic?

A Correct. It's part of the maintenance that we do if there has been any sexual activity.

MR. HILLIARD: Thank you, doctor, very much.

MS. WALTER: Nothing further.

THE COURT: Thank you, Doctor. You may step down.

MR. HILLIARD: No objection to her being excused.

THE COURT: And you're released from your subpoena.

THE WITNESS: Thank you.

(Witness excused.)

MS. WALTER: May we approach, Your Honor?

THE COURT: Certainly.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right, Mr. Foreman, ladies and gentlemen, in my sidebar with counsel, I learned that

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the next two witnesses may be lengthy, and I certainly don't want to, on the first day that you're here, carry you over. I know that you have probably family obligations that you have to contend with. So I'm going to let you go. It's almost 5 o'clock.

Mr. Ropp, will you have something for them in the morning?

BAILIFF: Yes, sir.

THE COURT: You want biscuits or donuts? That's a decision that our foreman has to make.

THE FOREPERSON: They are saying both. Can we have both?

THE COURT: You take care of this jury in the morning, okay. If you would be in your jury room about 9 o'clock, Bobby will have something for you, all right, and I'll get to you just as quick as I can.

(WHEREUPON, the jury exited the courtroom at 4:34 p.m.)

THE COURT: Okay, Ms. Walter, you said you had something.

MS. WALTER: I do, Your Honor. At this time the State would request the opportunity to play the entire Children's Recovery Center forensic interview, given that Mr. Hilliard, number one, in the State's mind certainly, suggested recent fabrication with the

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remark, well, did you have an opportunity to visit with your sister over the break, which is a clear insinuation that she somehow discussed her testimony.

Additionally, he --

THE COURT: In what particular has he suggested fabrication?

MS. WALTER: With everything where --

THE COURT: He simply asked, did you talk with your sister.

MS. WALTER: And then he went on to cross-examine her about specific portions of the forensic interview, which I believe certainly for the completeness, rather than taking it piecemeal when the --

THE COURT: We're not going there. Now, if you can point to a specific instance where he has alleged something to be a fabrication and you can point to a prior consistent statement, I might entertain your request to admit that part.

But we're not going to open up a probably hour-and-a-half-long forensic interview which is going to get -- no, no, no, we're not going to do that.

If you've got something specific, I'll go with you. But we're just not going to open up this forensic interview. She was over 12, it's not admissible. It could come in under possibly a prior consistent

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statement. We got to be more specific than that. You got something specific that he alleged or insinuated or has challenged her on as being a fabrication, what part of the story?

MS. WALTER: The fact that today she said she had been raped at least 12 times versus what she had said at one point during the forensic interview.

THE COURT: And you have letters and all sorts of things that say, prior consistent statements, 12. You got her letters, you got her testimony today. If you've got anything in that -- I'll hear on you that, Mr. Hilliard. I mean, I didn't hear you get specific on anything as far as fabrication.

MR. HILLIARD: No, sir. She said -- in the letters she said she had 12 sexual assaults, and in the testimony she said she had 12 sexual assaults, and at the CRC she said she had four or five sexual assaults. The CRC part was an inconsistent statement about the number of sexual assaults, not so much a fabrication.

My challenge is not that she's not telling the truth as to the number of sexual assaults. My question is directed to her ability to recollect and whether that challenges her testimony.

THE COURT: I'm not going to -- I'm not going to admit this forensic interview, we're not going down

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that road. It's clearly prohibited by statute, and I don't think it meets any exception. I'm not going to do it.

What did you have for me, Mr. Hilliard?

MR. HILLIARD: The bond issue, judge, as you've indicated that you're unsatisfied, and I understand that, with the $2,000 that he has up for a 10-percent bond. We have a bondsman or we had a bondsman. There is a bondsman. We had a bondsman here, and what we would ask Your Honor to do is, based on the fact that my client has, as I've indicated, showed up for all of the circumstances that we've had court. I recognize --

THE COURT: There was a bench warrant issued for him.

MR. HILLIARD: Judge, that bench warrant is -- they issue bench warrants like candy corn in the solicitor's office.

MS. WALTER: We actually issue them when people don't show up.

THE COURT: They don't issue them, I do. And they don't go out like candy corn. There is a reason for them. Now, I lifted his bench warrant for him. I looked in the file, and I was actually the one that lifted it after 30 days or so, I think. Who's your bondsman?

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MR. HILLIARD: Here she is. Come around.

BONDSWOMAN: I'm sorry, I wasn't -- I want to apologize for the way I dress, first of all, because I didn't realize I was coming today.

THE COURT: And who are you with?

BONDSWOMAN: A. Owens Bail Bonding and Coastal. I'm with A. Owens and Coastal.

THE COURT: Now, I would require a substantial bond. You're willing to put up a substantial bond for approximately two days?

MR. HILLIARD: Well, I guess the question would be what is a substantial bond.

THE COURT: I would not consider less than a $25,000 bond.

MR. HILLIARD: Well, I guess that would depend on what the --

THE COURT: If I considered it.

MR. HILLIARD: Yes, sir.

THE COURT: And I don't feel comfortable with that. The rule is once trial starts, bond is relieved and he is in custody. I call it the Stuart Axelrod rule where I have been burned more than once.

MR. HILLIARD: Well, of course, in order to save their $25,000, he's got no place -- their house burned down, their business is closed, he's got no place to

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go.

THE COURT: Yes, he does, it's called J. Reuben Long.

MR. HILLIARD: I mean, he's got no place to run away to. His mom is here, somewhere.

THE COURT: I'm not going to release him, he's in custody. Thank you.

MR. HILLIARD: All right, sir.

THE COURT: All right. We will adjourn until -- I want the attorneys here at 9 o'clock in the morning just in case. We'll probably start back about 9:30, but I want you around; okay?

MS. WALTER: Yes, sir.

MR. HILLIARD: 9 o'clock.

THE COURT: All right.

(WHEREUPON, the hearing adjourned at approximately 4:40 p.m.)

(WHEREUPON, the hearing resumed on Wednesday, April 11, 2018, at approximately 9:26 a.m.)

THE DEPUTY: They tried to serve it yesterday. There was a vehicle there, but nobody would answer the door, so they weren't able to get it served.

THE COURT: Well, what do you say about that, Mr. Hilliard, what do you want me to do?

MR. HILLIARD: Send them back, judge, ask them to

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hang around. I believe that it's important to be served.

THE COURT: It is. And I would -- all I can do is ask the sheriff's office to make another attempt.

MR. HILLIARD: Yes, sir.

THE COURT: All right.

MR. HILLIARD: Thank you.

MR. MARTIN: Judge, there's also another matter that we would like to take up prior to us calling our expert witness.

THE COURT: Okay.

MR. MARTIN: We intend to call that expert next, but just before we do.

THE COURT: All right, Mr. Martin, what do you have?

MR. MARTIN: Judge, we would move to preclude the Defense from questioning the witness about an unpublished Court of Appeals opinion. It's State v. Barnes. I do have a copy of that if Your Honor would like for me to hand it up.

THE COURT: Okay.

MR. MARTIN: John, have you seen a copy of this?

THE COURT: Well, this is novel.

MR. HILLIARD: They are prescient, judge.

THE COURT: Okay.

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MR. MARTIN: Your Honor...

THE COURT: He's not being offered as an expert in forensic interviewing; is he?

MR. MARTIN: Exactly, Your Honor, he's not. We are not intending to do that. We are intending to offer him as an expert in the dynamics of child sexual assault.

THE COURT: Um-hum.

MR. MARTIN: And we would just ask that since that's a legal principle not to qualify someone as an expert in that area, and we are not trying to do that, the Defense be precluded from asking him about that.

And, judge, it didn't speak --

THE COURT: I don't see where this really has any -- first of all, it's unpublished, but why it would have any particular relevance to this case? Because he's not being offered as a forensic expert in forensic interviewing.

MR. MARTIN: Correct, Your Honor. Defense counsel mentioned it in chambers, and that's why we're bringing it up.

THE COURT: All right. What did you mention, Mr. Hilliard, what did you say?

MR. HILLIARD: What I was talking about, judge, is that he has -- I can't remember if it's Court of

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Appeals or the Supreme Court, one of them, whichever one it was, said that he should not have been qualified as an expert in connection with that area of the law. And so he has -- one of the questions that they asked about my expert, or perhaps the Court, in fact, asked the question, has he ever been not qualified as an expert in this case, this witness has -- the Appellate Court has said that he was qualified mistakenly. And so I would like to ask him that question.

THE COURT: Are you talking about Dr. -- or Mr. Olszewski? Is that who you're talking you about?

MR. HILLIARD: Yes, sir.

THE COURT: Or your expert?

MR. HILLIARD: No, sir. I'm talking about the person in that opinion, Ray Olszewski. The appellate court said he should not have been qualified as an expert.

THE COURT: Okay.

MR. HILLIARD: Not that his area of expertise was not allowed to be testified to, but he should not have been qualified as an expert.

MR. MARTIN: And, judge, that's not exactly what the opinion is saying. It is saying he was mistakenly qualified as an expert in an area of --

THE COURT: I thought it said it was likely an

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error to qualify.

MR. MARTIN: That is correct, too, Your Honor. Additionally, it doesn't go to his qualifications or anything like that in the area where we would be addressing as well. It's based --

THE COURT: Correct. I mean, how is it relevant at all to the issue of his qualification in another field?

MR. HILLIARD: I don't know until I ask him the questions.

THE COURT: And I don't see where the Court made a finding -- does the Court make a finding that it's error? The Court said, in light of Kumara or Kromah, State vs. Kromah, his qualification was likely error.

MR. HILLIARD: Yes, sir.

THE COURT: Is that right?

MR. HILLIARD: Yes, sir. You're reading it, judge.

THE COURT: Has he ever been qualified in the field that you offer him in?

MR. MARTIN: Yes, Your Honor.

THE COURT: Okay. So, I mean, why is it relevant to even ask him if he was, even giving you the benefit of the doubt, mistakenly qualified as an expert in some other field, how is that even relevant?

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MR. HILLIARD: My guess is he probably doesn't know whether he -- I mean, that's a Court of Appeals opinion. I don't know if he knows that or not.

THE COURT: Well, then, what precedential value could the question possibly have?

MR. HILLIARD: I don't know until I ask him. But it's going to be an in-camera hearing. I'm not certain what -- they are trying to --

THE COURT: Well, in an in-camera hearing, I don't mind you asking.

MR. HILLIARD: All right, sir.

THE COURT: There is no prejudice if you ask him in an in-camera hearing.

MR. HILLIARD: Right.

THE COURT: I mean, where are we going to have an in-camera hearing? I mean, that's not usually the case.

MR. MARTIN: Judge, I was asking for this not to be made an issue in the presence of the jury while we're going --

THE COURT: Exactly, exactly. But when did this become elevated to the level of having an in-camera hearing? That's not usually what happens. I mean, I'll let you ask him anything about his qualifications to be an expert in the field he's presented for. The

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fact that this is an unpublished Court of Appeals opinion that says he was likely qualified in another field or it was likely an error that he was qualified in some other field, we're not going to get into that. There is absolutely no reason for that. It's confusing to the jury, it fails under 403, it has no precedential value, it doesn't mean anything.

All right, let's move on; okay?

MR. HILLIARD: Judge, we have a motion. The reason we say in-camera hearing is that, you recall from the very beginning, that we had a motion to exclude his testimony. And what I anticipated connected to that, we had a written motion, passed it up, and our position was that we anticipated an in-camera hearing to see, number one, whether he's an expert, and number two, whether the child abuse dynamics and delayed disclosure is an area of the law that can be put in front of the jury in general.

This is the situation you probably will recall, judge, where there are two cases currently at the appellate level to take up these issues. One of them is -- and they are both challenges to the testimony of child abuse dynamics and delayed disclosure. And if I could put, for the purpose of this --

THE COURT: I mean, why do I need an in-camera

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hearing if I allow them to present his qualifications and then allow you to examine him on those matters before he gives any opinion? Just let the jury hear it. I mean, otherwise we have to do it twice.

MR. HILLIARD: I understand. And but that -- I'd submit to the Court, judge, that that's exactly what needs to happen because the jury doesn't need to hear his qualification if there is -- if you're going to exclude him from testifying. So I understand what you're saying, and again, this is --

THE COURT: I mean, why not -- why do we not just do that, let them put him up and offer him before he gives any opinion, and then I make a determination as to whether or not they have reached the threshold where he may be qualified, may offer testimony as an expert.

And then, of course, the jury, in my charge, will have an opportunity to determine whether or not they believe him or not, whether or not they want to give any weight to his testimony or give great weight to his testimony. The jury always has that option when there's an expert opinion given.

I mean, my question is, does it serve any purpose to have an in-camera hearing on it and then have the same qualifying testimony presented to the jury?

MR. HILLIARD: Yes, sir. There is a two-part --

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the reason for this, judge, is it's a two-part situation. One part is, is he qualified or not qualified as an expert. If Your Honor qualifies him as an expert, the second question is, is even if he is an expert, is his testimony admissible in front of the jury. And before you can make a decision as to whether it's admissible or not, I submit you have to hear it.

Because you're going to be determining whether -- and that's what the two cases are on appeal now about, is whether -- not whether he's an expert, because I don't think he's an expert in those cases, but whether that testimony is admissible. And that's the focus of our motion is both.

THE COURT: Well, how long do you anticipate -- here we are on Wednesday -- how long do you anticipate this in-camera hearing, this, quite frankly, I find to be rather superfluous to have this other hearing, this in-camera hearing, rather than just have it presented in the court and I make that decision before he gives any opinion?

MR. HILLIARD: I wouldn't anticipate it would take over 30 minutes, judge. The two things, another two things. One is we made this motion in the very beginning and presented it to the Court, and that's how we talked about it in the -- in camera, that's how they

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knew about this part of it. And we determined at that point that it was premature because they hadn't -- we weren't in a position to talk about what his testimony was going to be.

THE COURT: All right, okay. Let's let him put him up, then. Okay, we'll do it in camera.

MR. HILLIARD: Thank you, judge.

MS. WALTER: Your Honor, may I make a suggestion?

THE COURT: Yes.

MS. WALTER: Why not have the qualification done in front of the jury, and then if Your Honor wants, we can excuse the jury, he can argue against precedent when it's clear that this type of evidence has been admissible any number of times. But I agree that it's a waste of time to do that twice. Additionally --

THE COURT: I mean, what is wrong with that, Mr. Hilliard? Otherwise, we're going to have to bring you back and go through the same testimony again for the jury if I make the decision.

Otherwise, you know, I can determine, outside the presence of the jury, whether he's an expert and whether the science is something that he should be able to testify to and do all that before he gives an opinion. Then I can tell the jury just disregard anything they've heard from him should I rule in your

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favor.

MR. HILLIARD: So as I understand it, we would have a -- the suggestion is that we would have a bifurcated proceeding where we would do the --

THE COURT: Yes.

MR. HILLIARD: -- qualification.

THE COURT: And he gives no opinion.

MR. HILLIARD: And then the jury would leave, and then we would go into whether he was --

THE COURT: You can argue it, and then we'll --

MR. HILLIARD: And I could ask him the questions about --

THE COURT: I'll either let him go forward and give an opinion or I exclude it, one of the two. I mean, I see no harm in that regard. He is not giving an opinion.

MR. HILLIARD: We're just going to do the qualification?

THE COURT: Right.

MR. HILLIARD: All right, sir.

THE COURT: Okay.

MR. HILLIARD: Thank you, judge.

THE COURT: Alison, could you ask the bailiff to bring in the jury.

MR. HILLIARD: Are we still sequestering the

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witnesses, Your Honor?

THE COURT: Yes, I believe so.

MS. WALTER: She's the first witness.

MR. HILLIARD: What's that?

MS. WALTER: She is going to be our first witness up. That's why she's here, to save time.

MR. HILLIARD: Oh. But you're calling a witness now?

MR. MARTIN: Your Honor, we intend to call the mother next, and that's why she's seated behind me.

THE COURT: And not the expert.

MR. HILLIARD: Okay. Well, I misunderstood. I thought they were saying they were calling an expert.

MR. MARTIN: Well, when I first put the issue before the Court, I said we don't intend to call the expert next; however, we wanted to bring the matter to the Court's attention.

THE COURT: Okay. And we have, okay.

MR. HILLIARD: All right, sir. Thank you.

(WHEREUPON, the jury came into open court at approximately 9:40 a.m.)

THE COURT: All right. We have our jurors and our alternates back in the courtroom. Is the State ready to proceed this morning?

MR. MARTIN: We are, Your Honor.

THE COURT: All right. You may call your witness.

MR. MARTIN: Your Honor, the State calls Anatasya Herron.

ANATASYA HERRON, after being duly sworn, testified as follows:

THE CLERK: Please be seated. State your name and spell it for the Court; okay?

THE WITNESS: My name is Anatasya Herron. A-N-A-T-A-S-Y-A, H-E-R-R-O-N.

DIRECT EXAMINATION

BY MR. MARTIN:

Q Good morning, Ms. Herron.

A Good morning.

Q How old are you?

A 37.

Q Where are you from?

A Virginia.

Q What was your -- how far did you go in school?

A I have a GED.

Q Are you currently employed?

A Yes.

Q What do you do?

A I'm a customer service manager.

Q How many children do you have?

A Four.

Q What are their names and ages?

A [Complainant 2] she is 20; [Complainant 1] she is 18; [Brother] is 12, and [Younger Brother] is 10.

Q When were [Complainant 2] and [Complainant 1] born?

A [Complainant 2] was born [redacted], [Complainant 1] was born [redacted].

Q Where were they born?

A Kingsport, Tennessee.

Q Do [Complainant 2] and [Complainant 1] share the same biological father?

A Yes, they do.

Q Who is he?

A His name was Greg Herron.

Q Do you have any other children with him?

A No.

Q Let's talk about his relationship with them. What was his -- did he have any relationship with them?

A Not really, no.

Q Was he involved in their lives growing up?

A He was in our lives. When [Complainant 2] was one, we separated. He never met [Complainant 1].

Q So when did he exactly leave the family?

A I don't remember the exact date, but it was a little after [Complainant 2] first birthday.

Q Did the girls have another father figure after Gregory?

A Yes.
Q And who was he?
A Billy Eller.
Q When did you meet Billy?
A Sometime around 2001.
Q Do you have any children with him?
A Yes, I have one.
Q And how old would Complainant 2 and Complainant 1 have been when they met Billy?
A One and three.
Q Did they live with you and Mr. Billy Eller?
A Yes.
Q Did you have a good relationship with him?
A Yes, we did.
Q How was his relationship with your daughters?
A They were very close.
Q So they were close to him?
A Yes.
Q Was he a good dad?
A Yes, he was.
Q Where did everyone live when you were with him, what state?
A We lived in Kingsport, Tennessee.
Q And while living with Billy, did the family ever relocate anywhere else?

A We moved to Myrtle Beach in 2006.
Q How long did you live with Billy while you were in South Carolina?
A We were here a month, and then he was killed in a motorcycle accident.
Q And approximately, if you remember, when did he pass?
A It was March 26, '06.
Q 2006?
A Um-hum.
Q How old would your daughters have been when he passed away?
A Around seven and nine.
Q That being [Complainant 1] seven, [Complainant 2] nine?
A Yes.
Q How did his death affect your daughters?
A It affected them deeply, especially [Complainant 1] because they were inseparable.
Q They had a good relationship?
A Yes, they did.
Q So after Gregory left and Billy died, did the girls have another male figure enter their lives?
A Yes, they did.
Q And who would that have been?
A That was Scott Rowan.

Q Is he present in court today?
A Yes, he is.
Q Could you point him out for us?
A He's right there in the back shirt (indicating).
MR. MARTIN: May the record reflect she's pointing to the Defendant sitting at the Defense counsel table with the black shirt.
THE COURT: Very well.
Q When did you meet him?
A In July of 2006.
Q And were you still living in Myrtle Beach at the time when you met him?
A Yes, I was.
Q After you met the Defendant, how quickly did this relationship progress?
A It was pretty much immediate.
Q Did you move in together?
A He was staying with me from the very beginning, but yeah, we more or less moved in together right away.
Q About when would that have been?
A That would have been July of 2006.
Q Did you have steady employment at this time?
A I was working at a job called Desperado's, but it didn't last very long. I quit shortly after we started seeing each other.

Q How old were your daughters when they met the Defendant?
A They were seven and nine.
Q Would they have been about that age, or would they have been that age when they moved in?
A Yes.
Q Did everyone live together?
A Yes.
Q And where did the family live?
A We lived in -- on [redacted] Court in Myrtle Beach.
Q Did you have any other children with the Defendant?
A I have one.
Q Did you and the Defendant ever become engaged?
A Yes, we did.
Q When would that have been?
A 2008.
Q Did you ever get married?
A Yes, we did.
Q And when would that have been?
A We got married on Halloween 2008, but our marriage license says January 2009.
Q How was your relationship with the Defendant?
A At first it was good, but over time it became very distant.

Q I'm going to ask a personal question, I apologize. You mentioned that you married in the October 2008 to January 2009 time period. Were the two of you still having sex at this time?

A Yes, we were.

Q Did you use condoms?

A No, we didn't.

Q When would you -- did you ever use condoms?

A We used condoms until we decided to try to have a kid. So we stopped using them probably around 2007.

Q Did you ever see the Defendant with condoms after that?

A One time he brought a box home that he claimed someone left in his car as a joke at work.

Q When would that have been?

A I don't remember exactly.

Q During your relationship with the Defendant, were there ever any issues with substance abuse such as alcohol or drugs?

A Yes.

Q Did you yourself have any issues with substance abuse?

A Yes, I did.

Q Let's talk about that for a second. What specifically?

A When we first met, cocaine. And then I stopped that, and then later on I had a problem with pain pills, and I smoked pot occasionally.

Q Was there an incident or an accident that you were involved in that worsened the situation?

A Yes, there was.

Q Let's talk about that. When would that have been?

A That would have been in 2012.

Q What kind of injury was it?

A A knee injury.

Q How was your relationship with the family while all this was going on?

A Distant.

Q Would you often remove yourself from the family?

A Yes, I would.

Q Was there a room or somewhere you would go?

A Yes. We called it my office. There was a room in the hallway across from the boys' room where all my stuff was, and that's where I pretty much stayed.

Q What did you do while you were in there?

A I usually sat in there, listened to music on my headphones or played video games or watched Netflix, listened to music.

Q Was this mostly when the Defendant would come home?

A Yes.

Q Would the children do the same thing while he was home?

A They would pretty much stay in their rooms.

Q And why was this?

A Because no one wanted to be around him because he was always in a bad mood.

Q Now, we talked about your relationship with the Defendant. How was his relationship with Complainant 2 and Complainant 1

A When we first got together, they were really close. They hung out on the couch all the time, played video games, watched TV. But as the girls got older, they stopped spending so much time with him and spent a lot more time to themselves in their room.

Q Did the relationship go south?

A Yes, it did.

Q About how old would they have been when that happened?

A It gradually happened, but it got really bad as they got more into, like, early teens.

Q We talked about substance abuse with alcohol and drugs. Did you ever see the Defendant give your daughters any alcohol or drugs?

A I've seen him give them alcohol, but I can't

recall ever seeing him smoke pot with them.
Q Regarding the alcohol, how did that make you feel?
A I didn't approve.
Q Did you ever give your -- any of your children alcohol or drugs?
A I did give them a little bit of alcohol on occasion, more of a taste. But when they got older, into their teens, then I realized that they were doing it behind my back, then I was a little more open to it because I would rather them be at home than out on the street, though I did not approve of them drinking heavy or getting drunk. And I did smoke pot with [redacted] when she was close to her high school years because she was having insomnia problems.
Q Let's go back to the alcohol. Do you know what kind of liquor was in the home?
A Pretty much always Southern Comfort.
Q Did the Defendant drink?
A Rarely at home. Usually he would drink if he was out with his friends or doing something for his work.
Q Did he smoke in the home?
A Constantly.
Q You mentioned the Defendant's relationship with the girls worsened or went south. Did you notice anything specifically with him and [redacted]

A Complainant 2 avoided him every chance she could get. She would pretty much stay closed up in her room or duck and dodge him if she knew he was going to be home.

Q During this time, did she have any unusual behavior changes?

A Not that I was aware of.

Q How was she in school.

A She did pretty good, though she was really high strung and very stressed all the time.

Q Was she a good student?

A Yes, she was.

Q Did she graduate?

A Yes, she did.

Q When would she have graduated high school?

A She graduated high school in January 2015.

Q And would that have been early, late?

A Yes, it was early. She graduated a semester early.

Q After that, did she eventually move out of the home?

A Yes, she did.

Q And when would that have been?

A I believe it was around June or July.

Q Did this have anything to do with the Defendant?

A Yes.

Q Regarding Complainant 1 did you notice anything specifically change with her relationship with the Defendant?

A Yes. They were always hot and cold. There was always tension. She started cutting herself, she was lying more, sneaking around, doing things behind my back and pretty much avoiding everything she could.

Q Did you ever witness the Defendant and Complainant 1 get into a disagreement or fight?

A Yes, I did.

Q Specifically, when would this have occurred?

A They constantly had disagreements and fights.

Q Do you remember any fight in particular?

A There was one in particular. They were sitting on the couch, and I was in the kitchen either cooking or cleaning up, and I'd asked her to fill a spray bottle with some Lysol for me. And she started joking around that she didn't know how. And he started shouting at her, and he told her, quit being stupid and to go do what I said.

So she got up to do it, and I don't know if she whispered something under her breath or if she said something he heard or rolled her eyes or what, but he jumped up and immediate got in her face. They were screaming at each other. He grabbed her by the throat.

She told him to keep his hands off of her, not to touch her. He shoved her down on the floor. She got back up, and they screamed at each other some more, and she went running up the stairs.

Q Did this trigger any kind of alarm in your head?

A Yes, it did.

Q How did it make you feel?

A It was a very intimate argument, like the kind of argument that I would expect to have with him. It just -- it made me uncomfortable, just the way she screamed at him and told him not to touch her.

Q Did you talk with Scott about this afterwards?

A Yes, I did.

Q What did he say to you?

A I made a comment that by the way she reacted, you would think he was trying to rape her or something.

Q Did you witness any other unusual or inappropriate instances with the two of them?

A Yes, I did.

Q Let's talk about that. Do you remember a specific incident at all?

A Yes. There was an incident where I was walking out of my office and around the staircase, and they were standing in the living room. And his back was turned to me, and she was directly in front of him. It

looked like they were kissing.

Q Did you talk with the Defendant about this afterwards?

A I asked him if he was kissing her, and he got really defensive and told me that I was being ridiculous and jealous and, yeah, I was kissing your daughter, being sarcastic.

Q You previously testified to Complainant 1 cutting herself. Let's talk about that. Did you witness these markings yourself?

A Yes, I did.

Q Did you ever see any markings on Complainant 2 as well?

A Not that I noticed.

Q Okay. Did you notice any unusual behavior changes other than that with Complainant 1

A Just that she was always in trouble, she was always lying, she was always hanging out in her room, or if she was downstairs, she was, you know, right there, right beside Scott.

Q You say lying. Can you give a -- can you expound on that a little, give an example.

A She would come home upset, and I would ask her what was wrong, and she would tell me something like, oh, a friend of mine just tried to kill himself, or, you know, my best friend is moving away. It's just the

way she said it, I knew there was something more wrong, but so I -- and I could tell she was lying, but she would never tell me what was wrong.

Q How was she in school?

A She did okay at first, but her grades dramatically went down a lot as she got into high school.

Q How did things change after Complainant 2 left with Complainant 1

A It didn't really change. I mean, things between her and Scott were still heated. There was still a lot of tension.

Q Did Complainant 1 ever leave or run away from the home?

A Yes, she did.

Q When would this have been?

A It was September 15, 2015.

Q Will you talk about that day and when you discovered she left.

A I had gotten the boys off to school, and I was standing at the bottom of the staircase around 7:40, 7:45 because that's usually when she went down, and I'd make sure she got off to school on time. And she didn't come downstairs.

So I tried yelling up at her. There was no response. So I walked up the stairs and knocked on her door, there was no response. So I tried to open it,

and it was locked. I checked the room across, directly across from hers, in that room to see if she was in there, and she wasn't. Because sometimes she would sleep in there.

So I walked downstairs to the bathroom or -- sorry, to the kitchen and grabbed a butter knife. And I went back upstairs, and I used it to pry the door open. And when the door opened and I looked inside, her screen and the glass part of the front of the window were laying on her bed, and she was not in her room.

So I went downstairs, I got my cell phone, I came back up, and I made a phone call to Scott and told him that I need him to come home, that Complainant 1 had ran away. And while I was on the phone with him, I looked, and there were three pages of a letter taped to a mirror in her room.

Q Let's talk about those letters. Did you recognize the handwriting?

A Yes, I did.

Q Whose handwriting was it?

A It was Complainant 1.

Q Did you read the letters?

A Yes, I did.

Q What was the letter about?

A At first it started out telling me if I was reading it, she was gone, and basically telling me that, you know, she didn't have the good life that I always said she did and that I was a terrible mother, and that I should do her and all my kids a favor and change, and that not to come looking for her.

And then as it got more into the letter, it started talking about that she was being abused at home along with her sister, and that I didn't marry the guy that I thought I had married.

Q Did the letter say anything about defrauding the government?

A Yes, it did.

Q Do you know what that was about?

A That was about the fact that when me and Scott got married, I was never allowed to report his income on my food stamps.

Q Did you attempt to call Complainant 1

A Yes, I did.

Q How about text?

A Yes.

Q Facebook message?

A Yes, I did.

Q Were you able to make any contact with her that day?

A No, I wasn't.
Q After you read the letter, you mentioned you were on the phone with the Defendant, did you talk with the Defendant?
A Yes. I told him that he needed to come home because he needed to explain what was being said in the letter.
Q What happened after that?
A We hung up. And a few minutes later he called me back, and he told me, I did it, I'm sorry. And I said, You did what? And he said, I did it. I touched the girls.
Q What did you do after hearing this?
A I hung up on him.
Q Did he call you back?
A Not at first. I tried to call him, and when he didn't answer, I called his mother. And I told her that I couldn't explain, but I needed her to call Scott and tell him he needed to call me back immediately. And a few minutes later, he called me back.
Q What did he say?
A I asked him, what do you mean by you touched the girls? And he told me that he had touched Complainant 2 but things had gone further with Complainant 1 And I told him we would talk about it when he got home.

Q Did he come home?
A Yes, he did.
Q And did you talk more about what had happened?
A Yes. He came in, he apologized, he told me that he would tell me anything that I wanted to know, that he just wanted to be honest with me and just wanted to tell the truth.
Q Was he honest with you?
A Yeah, he was.
Q Let me rephrase. Did y'all talk about anything specifically regarding Complainant 1
A Yes.
Q What was that?
A He told me that he had had sex with her on more than one occasion, that two times was with protection, one time without. I had asked him if he was sure she wasn't pregnant because she had came to me before saying she was having problems with her menstrual cycle. He said yes, he made her take a pregnancy test.
Q You mentioned with and without a condom. Were y'all still having sex at this time, you and the Defendant?
A Yes.
Q Using a condom?
A No.

Q Did he mention anything about an incident in the bathroom?

A I had found a semen-covered towel in the bathroom floor maybe a month or two before that. And I asked him about it, and he got really defensive. And I made a joke about him jacking off in the bathroom. And he got really mad and blew up on me about it, and it turned into a really big argument. So I asked him about it again that day, and he told me it was a blow job that went into his hand.

Q Blow job from whom?

A From my daughter.

Q Which one?

A Complainant 1

Q How many times -- did he tell you a number of times that he and Complainant 1 engaged in oral sex?

A He did not give me a number. He just told me it happened more than once or twice.

Q How about vaginal intercourse?

A He only admitted to the three times.

Q Did he say anything about whether it was consensual?

A He told me everything was consensual and that she started it.

Q Did he say anything about -- you mentioned

pregnancy test. Did he say anything about making her take a pregnancy test?

A Yes. He said he made her take one after the unprotected sex.

Q How did you feel when he told you all of this?

A I was angry.

Q About how long did this conversation at the house last?

A Pretty much all day.

Q After admitting this to you, did he move out?

A That evening we agreed that it was in his best interest for him to go ahead and get his stuff and go stay with his parents.

Q And whose idea was this?

A It was a mutual agreement.

Q Was there another incident during that time period where you were present when he admitted to anything?

A When he left, he took some stuff for work and stuff, he left and went to his mom's. Him and his mom returned back to my house a little while later because his sister was upset because no one had filed a missing persons report for my daughter, Complainant 1

And they both came in, and I let his mother read the letter. And he kept telling her that if they find Complainant 1 he's going to jail. And at some point he got

on the phone with his sister, and he told her that he could not report Complainant 1 missing because if he did, he was going to go to jail because she had sent letters out to everybody saying that he had defrauded the government and it was tax fraud.

Q And this conversation was in your presence?

A Yes.

Q Whose idea was it for the Defendant to move out of the home?

A It was a mutual agreement.

Q Did you still have a job at this time, or did you not have a job?

A No, I did not.

Q Why not?

A Because he wouldn't let me get a job.

Q How long had it been since you had worked?

A I hadn't worked since Desperado's in 2006.

Q Who paid the bills?

A Mostly him.

Q Were most of the bills in his name?

A Everything was in his name except the insurance.

Q Was he the main financial provider?

A Yes, he was.

Q With him moving out, did he offer to help in any way?

A Yes, he did.
Q What did he do, how did he offer to help?
A He told me that he would take the money he needed for gas to get back and forth to work and that he would give me everything else to help support me and the boys. He also withdrew $5,000 that we had saved for a house we were going to buy and gave me that money so I would be able to pay the rent.
Q And did he tell you why he was going to give you that money?
A He said he was trying to help me and the kids out, make sure that we would be okay if he went to jail.
Q What did you do with the $5,000 you received?
A The following morning, after he came and got his stuff and I filed a missing persons report for Complainant 1 I took it to the bank and deposited it into my private savings account.
Q And after all this took place and you talked to the Defendant, did you ever talk with Complainant 2
A I talked to her the day that Complainant 1 ran away.
Q What was that conversation about?
A He had told me to go ahead and call her and talk to her and verify that he had only just touched on her. So I called her, and her and her boyfriend both came to the house later on that afternoon. And me and her

walked outside, and I told her what Complainant 1 had said, what he had told me. And she agreed that he had touched her, and then me and her ended up in an argument.

Q Did she tell you where he touched her?

A She said her breasts --

MR. HILLIARD: Objection as to hearsay, Your Honor.

THE COURT: Sustained.

Q Now, did Complainant 1 ever return home?

A Yes, she did.

Q Did you ever call the police to report her as a runaway?

A I reported her as a runaway the following day, on the 16th.

Q Was there a reason it took you until the following today to report her?

A First of all, I did not know you don't have to wait 24 hours to file a missing persons report. And the other reason was because I felt like if all of this had really been going on, then she was probably better off not being at home.

Q Prior to her return home, did she ever contact you?

A She contacted me on Thursday and let me know that

she was okay and still in Myrtle Beach.

Q How long would that have been? You say Thursday. How long would that have been from the 15th, the day she ran away?

A She ran away on a Tuesday, so it was Thursday.

Q What day did she return home?

A She returned home on Friday.

Q If my math is correct, would that be September the 18th?

A Yes.

Q When she returned home, did you talk with her at all?

A I talked to her briefly on Thursday and asked her to come home, and she told me she would be home on Friday. But before she got home, I guess a cop spotted her from where I had reported her as a runaway, and I was actually called out to the house where she was staying at.

Q Did you report the incident involving the Defendant to the police?

A No, I did not.

Q Who reported it?

A Me and her did together that Friday when I found her and we got together.

Q The same day she returned home?

A Yes.
Q Did she remain in the home with you after that?
A Yes, she did.
Q But the Defendant had moved out; correct?
A Yes.
Q To your knowledge, did she have any further interaction with the Defendant after that?
A No, she did not.
Q Did you have any more interaction with the Defendant?
A Only when involving our son or business with money.
MR. MARTIN: Court's indulgence, one moment, Your Honor.
Q Let's go back for a second when we were talking about Complainant 2 And I asked you if she moved out of her home, and you said?
A Yes.
Q Why did she move out of the home?
A She moved out of the home because my husband told her she needed to get her stuff and get out.
Q Your husband, the Defendant?
A Yes.
Q I'm going to show you --
MR. MARTIN: Your Honor, may I approach the

witness?

THE COURT: Certainly.

Q I'm going to show you what's been marked into evidence as State's Exhibit 1 and State's Exhibit 2 and State's Exhibit 3. First State's Exhibit 1, do you recognize this at all?

A Yes. That's a copy of the runaway letter that she left.

Q How about State's Exhibit 2, did you ever see this?

A That's the copy that she had with her.

Q And State's Exhibit 3?

A That was -- came along with one of the letters, the letter I found.

Q And those were the letters we previously were referencing about her running away?

A Yes.

Q Are these the same letters that you showed the Defendant's mother?

A Yes.

MR. MARTIN: Court's indulgence again, Your Honor. Your Honor, nothing further at this time. Please answer any questions that Mr. Hilliard may have.

THE COURT: You may cross, Mr. Hilliard.

MR. HILLIARD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HILLIARD:

Q. Under questions from the prosecutor, you said that it was a mutual decision for Scott to leave; is that right?

A Yes, it was.

Q And do you recall saying that, when the police were asking about this, they asked you if the dad was living here now; do you recall that?

A Yes, I do.

Q And do you recall saying, no, I told him to get the fuck out the day I found out what was going on?

A Yes, I did.

Q So was it a mutual decision, or did you tell him to get the fuck out?

A I couldn't have kicked him out if I wanted to. The house was in his name.

Q All right. Do you recall having a -- filing a family court action for divorce?

A Yes, I do.

Q And your lawyer in that case was Lori Jones; is that correct?

A Yes, it was.

Q Do you recall telling Ms. Jones that Scott had given both you --

MR. MARTIN: Objection, Your Honor, relevancy.

THE COURT: I'm going to allow it.

MR. HILLIARD: Thank you, Your Honor.

Q Do you recall telling Ms. Jones that both you and your daughter were recently diagnosed with STDs which came from Scott?

A No, I did not.

Q You didn't tell her that?

A I told her that I had an STD that I got from Scott. I did not tell her that my daughter did.

Q And the STD that you had got from Scott was what?

A Herpes.

Q Herpes?

A Yes.

Q Okay. And at the point in time that this transpired, you knew that your daughter had been diagnosed with chlamydia at that point; is that correct?

A Yes, I did.

Q So -- let me ask you to take a look at this. Lori Jones. Does this appear to be a letter to me from your lawyer, an e-mail to me from your lawyer?

MR. MARTIN: Your Honor, objection. First of all, this would be attorney/client privilege. Second, how would she know anything about...

THE COURT: She can either admit that was her position or not in a previous hearing.

THE WITNESS: Yes, sir, it's looks like an e-mail from her.

Q And she said to me, my client and her daughter were recently diagnosed with STDs which they allege came from your client. That's what it says?

A Yes, that's what it says. But I never gave her permission to disclose that to you.

Q All right. So you didn't give her permission to disclose this to me, but is it true?

A I told her that I got an STD, but I did not tell her that my daughter's was from Scott.

Q You didn't tell her that your daughter's STD came from Scott?

A No, I did not.

MR. HILLIARD: All right. We would offer this into evidence, Your Honor.

MR. MARTIN: Judge, objection. First of all, it's hearsay. I'm not sure we --

THE COURT: There is no foundation to it established yet, Mr. Hilliard.

MR. HILLIARD: Yes, sir. Thank you, judge. If we could mark it.

THE COURT: You may mark it for identification.

MR. HILLIARD: Thank you.

(WHEREUPON, Defendant's Exhibit No. 12 was marked for identification only.)

Q All right. So let's spend a minute. Let's spend a minute talking about when were you diagnosed with the herpes.

MR. MARTIN: Objection, Your Honor, relevancy. We're not here to talk about mother, we are here to talk about --

THE COURT: I'm going to give him some leeway, it's cross-examination. Go ahead.

MR. HILLIARD: Thank you.

Q Well, and so what you're telling the folks on the jury is that your husband had given you herpes; right?

A At the time that's what I believed, yes.

Q All right. And -- okay, let me back up a little bit. Did you have herpes?

A I was diagnosed with it, but I've never had a breakout or anything to make me believe I actually have it.

Q You haven't been diagnosed with it. You haven't -- or did you say you have been diagnosed with it?

A No, I have been diagnosed. They said it came back positive. But to my knowledge, I've never even had a

breakout. I've done research on it. I've never shown any symptoms.

Q How did you come to have that test?

A Because when I found out he was having sex with my daughter, I decided to get tested to make sure that he wasn't having sex with someone else.

Q Okay. So when you were -- you knew that your daughter had chlamydia; right?

A No. We got tested at the same time. We got our results at the same time.

Q You got tested at the same time. You got tested at the Children's Recovery Center?

A No. She did, and then I made an appointment and got tested a day or two later.

Q And when the tests came back, you found out that you had herpes; right?

A Yes.

Q But not chlamydia?

A No.

Q And that she had chlamydia; right?

A Right.

Q But not herpes?

A She had to be retested because they did not test her for herpes the first time.

Q She didn't have herpes?

A No, she didn't.
Q So Scott is having sex with you and your daughter; right?
A Yes.
Q And you have herpes; right?
A Yes.
Q And she has chlamydia?
A Yes.
Q And he doesn't have either one?
MR. MARTIN: Objection, Your Honor. This is -- first of all, I don't think it's in evidence. And second, we've sort of addressed this.
THE COURT: Well, it's cross-examination. I'm going to give him leeway in this regard. We've talked about it, so let's go ahead and let him question this witness about it.
Q You know that Scott does not have chlamydia; right?
A She contracted chlamydia after they had had theirs.
Q Yes, ma'am.
MR. HILLIARD: If you would instruct her, judge, to answer my question yes or no.
THE COURT: I think she just did.
Q Well, the question is, you know that Scott does

not have chlamydia?
A I don't know personally what he has or doesn't have.
Q Very good, very good.
MR. HILLIARD: Well, and that's an answer, judge.
THE COURT: Yeah.
MR. HILLIARD: Thank you.
Q And going back, just one time, you believe and you're saying that he had sex with both you and your daughter; right?
A Yes.
Q At the same time that both you and your daughter had these sexually transmitted diseases; right?
A I know that he had to have had sex with me when I had it because I haven't had a -- been with anybody else in ten years.
Q Okay.
A As far as my daughter goes, I don't know if she had chlamydia at the same time they were having sex. She had sex with someone after they were having sex. But I know for a fact that he was having sex with us both.
Q Okay. And the reason that you know that your daughter was having sex after she had sex with Scott is because she told you that?

A Yes.
Q And she told you that after she found out that she had chlamydia?
A No. She told me that before she found out she had chlamydia.
Q All right. When you were thinking about and talking about whether or not to report this to the police, you indicated that you wanted her to be back so she could tell her side of the story before you reported it to the police; correct?
A Yes, I did say that.
Q Now, in your testimony, Scott had already admitted to you that he had had full-blown sexual intercourse with your underage daughter on three occasions; right?
A He had admitted that throughout an entire day.
Q Okay. For a whole and entire day you have these three letters that talk about how terrible your daughter has been treated and how she's been sexually abused over years, you have those letters?
A Yes, I do.
Q And you talk to Scott, and Scott has admitted to you that he's had sexual intercourse, full blown, with your daughter on three occasions?
A Yes.
Q And that doesn't cause you to call the police;

right?

A . He was telling me it was consensual, and at the time, that's what the story I was hearing.

Q All right. So you didn't believe at that point in time that him having consensual sex with your underage daughter was illegal, that didn't -- you didn't know it was illegal?

A As of the time, I was having trouble thinking about anything at all.

Q All right. You were sexually abused as a child by a stepfather --

MR. MARTIN: Objection, Your Honor. Objection, relevancy.

THE COURT: I'm going to allow it.

MR. HILLIARD: Thank you, Your Honor.

Q You were sexually abused as a child by your stepfather?

A Yes.

Q And this is a personal issue to you?

A When that happened to me, I was five. I have very little memory of it.

Q All right. When you were talking to the police -- when you first reported this and were talking to the police officer, do you recall saying, I was sexually abused as a child by my stepfather?

A Yes, I did.
Q And so this is a personal issue?
A It's not really a personal issue. I have very little memory of it.
Q So when you said this is -- do you recall saying it to the police officer?
A Yes, I did.
Q All right. So you told him it was a personal issue, but today it's not really a personal issue?
A I mean, it's always a personal issue when you're sexually abused, but I have very little memory of it.
Q Okay. And then, you were also completely pissed at yourself because you didn't even notice?
A Yes, I was.
Q And your daughter has said that she is sexually assaulted, full-blown vaginal intercourse, over and over and over again in the living room -- let me ask you this.

MR. HILLIARD: Can I have that board, please. Get the board.

Q This is Defendant's No. 10 in evidence. Would you agree that this is a fairly accurate representation of your home?
A Yes.
Q And so the part that's indicated to be Ana's

office, that would be your office?
A Yes.
Q Where you were in there listening to headphones and doing pills and --
A Yes.
Q Were you smoking marijuana in there as well?
A Occasionally. I don't smoke pot that often.
Q Don't smoke pot that often. And then you were drinking some alcohol?
A Yeah.
Q And so you were doing pills and drinking alcohol and in your office?
A Yeah.
Q For how many years were you in your office drinking and doing pills and -- how many years did that happen over?
A Since my mom moved out at the end of 2011. Or beginning of 2011, I believe.
Q Okay. So pardon me for my math is poor, but -- and Complainant 1 was how old in 2011?
A Let's see. Sorry, I'm having trouble with math, too.
Q Okay, I understand. Roughly. 12, 13, 9? Anybody know?
MS. WALTER: 12.

THE COURT: When was the child born, ma'am?

THE WITNESS: '97. I'm sorry, '99.

MR. MARTIN: The State will stipulate that it was probably about 12.

Q Okay. So she was about 12, born in '99, not '97?

A Yes. Yes.

Q Okay, '99. About 12. And so you started staying in your office. When was your knee hurt?

A In, let's see, around -- it would have been around September, October 2012.

Q Okay. So, but you started doing the pills and drinking the liquor in 2011 when your mom moved out?

A I would go in there and drink. I didn't always do pills.

Q Sometimes you did pills and sometimes --

A Sometimes I did.

Q And the rest of the family would be hiding from Scott somewhere?

A The girls were usually upstairs in their room, and the boys were usually at the hallway.

Q Pardon?

A The boys were usually in their room at the end of the hallway.

Q All right. So this is Defense No. 11. Hold it up a little high. Do you recognize that as the second

floor of your house?
A Yes.
Q All right.
A There was actually a closet up there, too.
Q There was a closet also?
A Yeah.
Q Okay. And Defendant's Exhibit No. 7, if you would look at that, does that look sort of like your living room?
A Yes.
Q And is the television in about the same spot that your television was in about?
A I mean, it -- yeah.
Q And the sofa is about the same spot?
A Yeah. It's a lot bigger sofa and a lot bigger TV.
Q Okay. Bigger TV, bigger sofa, but about the same spot?
A Yeah.
Q All right. And so you started -- in 2011 you started staying in your office?
A Yes.
Q And you stayed in your office from 2011 drinking and then listening on your earphones, and you knew that the boys -- where were the boys?
A They were in their room.

Q All right. So you were in your office drinking, listening to headphones, and you knew the boys were in their bedroom?

A Um-hum.

Q And you knew the girls were upstairs in their rooms; right?

A To the best of my knowledge, yes.

Q Okay.

A If they came downstairs or were in the kitchen or whatever, I wouldn't have known. I usually have my headphones on.

Q Okay. And so 2011, you're drinking and had your headphones on, and then your knee got hurt in 2000 and?

A 2012.

Q 2012 your knee gets hurt, and you start taking -- I'm guessing we're talking about opiates, pain pills?

A Yes.

Q All right. So in 2012 you start taking pills and drinking liquor, and every now and then you're smoking marijuana --

THE COURT: I think we kind of covered all that, Mr. Hilliard. Move to the next level.

Q All right. How about 2013? Were you drinking and smoking and doing pills in 2013?

A Yes.

Q In your office?
A Um-hum.
Q In 2014?
A Um-hum.
Q Or let me ask a better question. Did you ever --
A I pretty much stayed in that office from 2011 to 2015.
Q Okay. And so up until the time that Scott -- is that when Scott moved out?
A Yes.
Q So you stayed in your office doing pills and alcohol and smoking marijuana periodically until Scott moved out?
A Yeah.
Q And then the clouds opened and the sun came out and you moved out of your spot?
MR. MARTIN: Objection, Your Honor.
THE WITNESS: No. I just had a wake-up call when I realized what was going on with my kids and snapped out of my habits.
Q But in the meantime, you didn't know that any of this other stuff was going on?
A No, I did not.
Q When you talked to Complainant 2 she said that Scott made a couple of advances, but nothing ever happened?

A She said nothing sexual ever happened other than him feeling of her.

Q When you were talking to the police officer, you said to him, I have another daughter, too. She said that he made a couple of advances at her, but nothing ever happened?

A Yeah. She said that nothing -- there was never any sexual contact. It was just him feeling her up.

Q And then you also said or she -- you told the police officer that she had told you, I don't want nothing to do with any of you?

A No, that's not what I said.

MR. HILLIARD: This is page 12, line --

THE WITNESS: What I said was that she said she -- or that she said she pretty much didn't want anything to do with the family, and now I know why.

Q All right, okay. So do you recall saying that she said, I don't want nothing to do with any of you?

A Yeah.

Q All right.

A Yeah.

Q And do you recall telling the police officer that Scott was always hard on Complainant 1 because he's always considered her to be a liar and a troublemaker?

A Yes, I did.

Q And gets bad grades?
A I don't recall saying that.
Q Okay. But she did get bad grades?
A Her grades went down dramatically, yes.
Q While all this was going on, you were -- while this was going on, you didn't notice that [redacted] was drinking a good deal during that period of time?
A I caught her when I suspected, I marked one of my liquor bottles.
Q Right.
A To see if anything came up missing. And when it did, I confronted her about it.
Q So you confronted her about drinking some of your liquor?
A Yes.
Q And what kind of liquor was that?
A Usually rum.
Q Rum?
A Um-hum.
Q What kind of rum?
A Kraken or Captain Morgan.
Q Okay. And so the rum was what you drank?
A Yes.
Q And you confronted her about drinking your rum?
A Yes.

Q And, all right. Only on one occasion?
A That's the only time I actually caught her.
Q But she was in the house, and she was drunk some of the time; right?
A I never saw her drunk.
Q You never saw her drunk the whole time other than once, when you saw liquor missing?
A I didn't see her drunk then. I just had suspicions because I knew that my bottles were coming up short.
Q Did you ask everybody in the house, or did you select her?
A No, I asked everybody.
Q So you asked --
A I asked Scott, and I asked Complainant 2 and I asked Complainant 1 no one confessed.
Q Complainant 1 didn't confess?
A She confessed when I confronted her about me marking the bottle.
Q Okay. So you asked everybody, but Complainant 1 the one that confessed about drinking the rum?
A Um-hum.
Q All right. And what other alcoholic beverages did you have in there; do you remember, bourbon?
A Let's see. I drank a variety. It's mostly rum.

I also drink Hennessy.
Q Hennessy?
A Well, it wasn't actual Hennessy. It was cognac.
Q Okay.
A And then occasionally beer or wine.
Q Okay. So more specifically, there was never any Jack Daniels in your house, to your knowledge; was there?
A Occasionally.
Q Occasionally?
A His mom would buy bottles for people for holidays, so she would by stuff like Crown or Jack Daniels or something like that.
Q Jim Beam?
A Jim Beam. I did drink Jim Beam.
Q You drank Beam?
A Um-hum.
Q Then what about the marijuana, did you notice that [redacted] was high on marijuana ever?
A The only time I ever saw [redacted] with marijuana was when she had started working, and I found some -- actually, I smelled it and confronted her, and she had bought some while she was at work.
Q And smoked it?
A And she was smoking it, that's why I could smell

it.
Q Okay. She was smoking some that she had bought at work; right?
A Yes.
Q All right. And then there was the time when she stole some of y'all's marijuana; do you remember that?
A He accused her of stealing some of his marijuana. I couldn't say whether she did or not because I don't keep up with his marijuana.
Q All right. And but when you were smoking, I think you said that you were smoking some with Complainant 2 is that -- did I remember that right?
A Yes, I had smoked with her.
Q All right. And when you were smoking marijuana with Complainant 2 whose marijuana were you smoking at that point?
A I had gotten a little bit from Scott, and that is what I kept in my office. A lot of times he would give me some of his to put up for him so he won't smoke it all.
Q Well, did you keep your stashes of marijuana separate so it was your marijuana versus his marijuana?
A I didn't really smoke very often, so I rarely had marijuana.
Q All right, so you were smoking some with Complainant 2

because she had insomnia; am I remembering that right?
A Yes.
Q Okay. And then how about Complainant 1 did you smoke marijuana with Complainant 1 as well?
A No, I didn't.
Q Never?
A No.
Q And you never -- I won't ask that question.
A When I found the -- when I smelled the smoke and found out she bought the pot at work.
Q Right.
A She smoked a joint, I took it away from her, I finished the joint, and then I took the rest of the pot away. Which I offered to give to him, but he got mad because she had bought it at work, said he didn't want it, so I smoked it.
Q Okay. So you took the marijuana away, the marijuana cigarette and the marijuana away from your daughter?
A Yes, I did.
Q You smoked the rest of the joint?
A Um-hum.
Q And then you said, well, Scott, do you want this marijuana? And he said, that's not good enough marijuana for me; is that what you're saying?

A No. He was mad. He said he didn't want it. He was mad at her because of her buying it at work. When he was mad about something, he didn't want it. He asked for it later, and I told him I had already smoked it.

Q All right. But in describing Complainant 1 you said that she is known for lying a lot; correct? Complainant 1 is known for being a liar.

A She lies.

Q Okay. And then she is also jealous of Complainant 2 is that true?

A I wouldn't say that she is jealous of her.

Q Okay. Complainant 2 is a good student?

A Complainant 2 and Complainant 1 are black and white, night and day, they are nothing alike.

Q All right. And Scott, you have described as being an asshole?

MR. MARTIN: Objection, Your Honor.

THE COURT: I will allow it.

Q Is that right?

A Yeah.

Q In fact, you said he was always an asshole?

A Pretty much.

Q He was really, really mean. Do you remember, you said he was really, really mean?

A He is mean.
Q He is mean.
MR. HILLIARD: Excuse me just one second, judge.
(Discussion off the record.)
Q Do you remember telling your children on one occasion that you would rather die of cancer than have children like them?
A No, that's not what I said.
Q But that was in the note?
A That was in the letter, yes.
Q All right. And you're telling the folks on the jury that somehow Scott made you defraud the government; is that what you said?
A He wouldn't let me report his income on food stamps. I always argued that I didn't like frauding the government. That's where she overheard that, that's where that came from.
Q Okay. What about drugs that y'all sell?
A I didn't sell no drugs. I had one friend, one person I knew in the whole state of South Carolina.
Q And then says, y'all hitting me. Did you hit her also?
A I smacked her in the face one time because I found out she was on Snapchat, and my mom had contacted me and told me that there was this thing about photos

being leaked or something. Me and her got into an argument, and I slapped her.

Q She was on Snapchat?

A Yeah, it was something -- I don't even remember all the details, but yeah, I slapped her.

Q I mean, what was that about, why -- I don't understand. Snapchat, what's that?

A Because it was my understanding that she was posting photos on something, and I misunderstood what was said, and I thought she was posting photos she shouldn't have been. It was a misunderstanding that my mom started.

Q And before you found out there was a misunderstanding, you slapped her?

A Yeah, because she started yelling in my face, so I slapped her.

Q On the one hand, Scott was -- he was a good provider for the family?

A Yeah, he worked hard, he made decent money.

Q And he paid the bills and those sorts of things?

A Yeah.

Q But he was mean to everybody in the house?

A Yes.

Q And they all avoided him?

A Yes.

Q And, really, y'all just sort of put up with him because he was a good provider?
A Yeah. Well, the kids didn't really have a choice. I put up with him because I thought my kids were happy and despite him being hateful all the time.
Q You thought your children were happy?
A Yes, I did. They didn't want for anything. They had everything they could want.
Q And [redacted] was the favorite child?
A I don't have a favorite child.
Q Well, I've asked a poor question, I apologize. [redacted] was favored by Scott?
A [redacted] was the oldest. She was always a lot more mature. She always did well in school, she was helpful. She was the type of kid that if you came home, she would clean up the house for you while you were gone. She wasn't favored, she was just an outstanding child.
Q She got better presents?
A No.
Q No. She got the guitar?
A Yeah, she did get a guitar.
Q Was that a big deal when it happened?
A Well, I said that if you're going to give her a guitar, I think I should be able to get [redacted].

something. And he wasn't real happy about that, but I ended up getting her a tablet.

Q So at least in that situation, Complainant 2 was the favorite child?

A In that situation, she got a much nicer gift from him than Complainant 1 did.

Q And that was true -- well, I mean, is that a telltale sign of how he felt about the two of them, or not?

A I don't even know how to answer that.

Q Very well.

MR. HILLIARD: Thank you, ma'am.

THE COURT: Mr. Martin?

MR. MARTIN: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. MARTIN:

Q Ms. Herron, Mr. Hilliard previously asked you if you dealt drugs in the home, and you said no. Did anyone else deal drugs out of the home?

MR. HILLIARD: Objection.

MR. MARTIN: Judge, he's opened the door. I think I'm entitled to ask the question.

THE COURT: I'm going to let him ask that question.

THE WITNESS: Yes.

Q Who was it?
A Scott.
Q What type of drugs?
A Mostly pot.
Q Anything else?
A When we first met, he was dealing pot and coke.
Q You also told the jury, Mr. Hilliard asked you, that you thought your kids were happy. Looking back, do you still believe that?
A No.

MR. MARTIN: Court's indulgence, Your Honor, please. Nothing further, judge.

MR. HILLIARD: Just one, judge, or two maybe.

THE COURT: Limited to redirect.

RECROSS-EXAMINATION

BY MR. HILLIARD:

Q So when you picked Scott to be the step daddy of your children and to be your loving husband, you picked a cocaine and marijuana dealer to marry?
A When we first met, I was still grieving, I was still going through a rough time. And my judgment was off because I, too, was on cocaine. When he stopped, we both cleaned up, he was working a legitimate job. It wasn't until he started working at Sticky Fingers where he started dealing pot again, and that was later

on.

Q Okay. So when you both got cleaned up, after that, he was dealing pot?

A He quit dealing pot for years. He quit dealing everything. It wasn't until, I would say, around 2014 that he started selling a little bit of pot at work to help pay for his own habit.

Q So you're not saying that him being a cocaine dealer or a marijuana dealer way back has anything to do with this case, you're not saying that?

A I was just answering a question.

MR. HILLIARD: Thank you very much.

THE COURT: All right. Very well. Mr. Ropp, let's give the jury a break.

You may step down, ma'am, as soon as the jury has cleared the courtroom.

(WHEREUPON, the jury exited the courtroom at 10:50 a.m.)

THE COURT: All right. Ma'am, you may step down at this time, thank you.

(Witness excused.)

THE COURT: All right. Counsel, I had a chance to look back at and actually read the unpublished opinion in Barnes, and I think perhaps you misinterpret the case, or at least no one has spoken of the case in the

context I think the Court of Appeals meant when they read it.

They were making no condemnation of Mr. Olszewski's qualifications for anything. The Court was simply referencing back Kromah. And in Kromah, that was the beginning of the Court's disfavor with qualifying experts as forensic interviewers for children because the expert designation had, in some view, resulted in a bolstering of the child's testimony.

What the Court was saying in Barnes was, in light of Kromah and subsequent cases and the growing disfavor with qualifying anyone as an expert in forensic interviewing of children, we no longer think that it's even an issue, and there should not probably have been anyone qualified in the Barnes case.

That's what the case is about. It's not about Mr. Olszewski's qualifications as they may have been when the Court looked with greater favor on experts in child forensic interviewing. So I think that supports my ruling, and we're not going to talk about that. Okay?

MR. HILLIARD: Thank you, judge.

THE COURT: All right, thank you. Let's take about a ten-minute break.

(WHEREUPON, a brief recess was taken at approximately 10:53 a.m.)

THE COURT: Please, take your seats. Okay, Mr. Palmer.

(WHEREUPON, the jury came into open court at approximately 11:07 a.m.)

THE COURT: All right. We have everyone back in the courtroom. Yes.

MS. WALTER: Your Honor, the State calls [redacted] Complainant 2

THE COURT: All right. Complainant 2, come around, please.

Complainant 2, after being duly sworn, testified as follows:

THE CLERK: State your name and spell your name.

THE WITNESS: Complainant 2, [redacted]

MS. WALTER: May I, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MS. WALTER:

Q Good morning, Complainant 2. How are you?

A Good morning. Good. How are you?

Q I'm good, thank you. How old are you?

A 20.

Q And what's your birth date?
A [redacted].
Q Do you have any brothers and sisters?
A I do.
Q Can you tell us who they are.
A I have a younger sister. Her name is Complainant 1 [redacted], and I have two baby brothers. One of them's name is Brother, and one of them's name is Younger Brother.
Q And you and Complainant 1 share a biological father?
A Yes, we do.
Q And can you tell me about your relationship with him, if any.
A I never knew him.
Q Okay. Did there come a time when you came to know someone as a father figure after your biological father?
A Yes.
Q And who was that?
A His name was Billy Eller.
Q Where were you living when you first met Billy?
A I don't remember the exact place, but I remember it was in Kingsport, Tennessee.
Q Okay. And at some point, did you, along with others and Billy, move to South Carolina?
A Yes, ma'am.

Q Can you tell us about that.
A We were in a very poor living situation in Kingsport, Tennessee. And so in order to get me and my mom and my younger sister out of a bad situation, they all decided to move us to Myrtle Beach, South Carolina where we would have a better life.
Q Do you know -- and then when you moved here, do you know where you moved?
A We moved to, I believe it's called Bermuda or Verbuta Sands Motel.
Q And that was here in Horry County?
A Yes, ma'am.
Q So who -- just the four of you moved, your mom, Billy, you, and Complainant 1
A And I believe Brother was already born at the time, so he was very little.
Q Okay. Did something happen to Billy after you guys moved here?
A Yes.
Q Can you tell us what happened.
A He was working at the place that is now the wax museum, it was the NASCAR cafe. And he was walking home from work one night. And he was killed, he was hit by a motorcycle.
Q How long after you moved here was that?

A Not very long.
Q And how did that affect you?
A It devastated us.
Q I can see you're still upset about it now. Why did it devastate you?
A He was really important to our family. He was a very good father figure and the only one that I ever really knew. He took care of my mom a lot, and he was a very family man. Like we used to all play video games together, we had like a family video game night where my mom would make jalapeno poppers. And she never got the recipe right, so they were always awful, but she always tried, every time.

And we were a really good family. And my mom and him used to go to like the video store, the Blockbuster. And he always made sure that we got kids movies so that when they had their movie night, we can have our movie night, too. And they would sit down and watch the most annoying things like Finding Nemo and stuff like that, but he always made sure to make it a point that we were always a family.
Q How long, if you know, was Billy in your life?
A I don't recall. But as I recall, I believe four years.
Q And then after Billy was killed, what did you do?

Did you stay here in Myrtle Beach?
A Yes, we did.
Q Did you ever leave Myrtle Beach, even for a short time, after Billy died?
A Me and my sister went and stayed with my grandmother in Kingsport, Tennessee for the summer so my mom could recollect herself. And we were, I believe, pulled out of school a little early for the circumstances. So we took that time, and we were there for the summer.
Q And that's your mom's mom?
A Yes.
Q Okay. At what point, if any, did you come back to Myrtle Beach?
A I don't remember, but I believe it was sometime in June or July of that summer. We came home a little early.
Q Do you know how old you were at that time?
A I believe nine.
Q And how old would Complainant 1 have been?
A Seven.
Q Okay. When you came back, was there anyone else in your mother's life at that point?
A Yes.
Q Who was that?

A His name was Scott Rowan.
Q Do you see him in court today?
A Yes, ma'am.
Q Could you point who him, please.
A (Indicating.)
MS. WALTER: Indicating, for the record, the Defendant.
Q What was your first impression of Scott?
A Well, at first, I was very young so there wasn't much, it was just a random guy at my house that was just there. And then, as I got older and realized that, you know, he was my father and that he was going to be my father, I got very close with him.
Q Let's go back to the beginning. So when you and Complainant 1 returned from Tennessee to Myrtle Beach, was the Defendant living with your mother?
A I don't remember if he was living there, but I do remember he was always there. Like, he was there often.
Q Do you remember where you were living when you moved back?
A We were living in [redacted] Court or [redacted] in the house behind the Tanger.
Q Tanger Outlets?
A Yes, ma'am.

Q All right. Who all was living with you there?
A At the time it was me, my mom, potentially Scott, my sister, my little brother, and I believe a roommate of ours named Allen.
Q Do you remember that house?
A Yes.
Q Can you tell us who stayed in which rooms.
A So when you walk in, it's the living room, and then more towards the back it's the dining room, the kitchen. And then straight across from the living room is the master bedroom and the master bathroom. And then on this side there is a small hallway, a bedroom on this side, a bedroom on this side and a bathroom (indicating). And me and my sister stayed in the bedroom on this side (indicating).

Brother was staying in our room for a little while, but when Allen moved out, he got older, he stayed in that room. But at that time it was Allen, and then in the master bedroom was my mom.

Q And I'm just checking with the court reporter. I might need you to -- I know you're nervous. Just slow down a little bit. She's trying to type down everything you're saying.
A Sorry.
Q When you and Complainant 1 moved back to South Carolina,

was your mother working at that point?
A I don't recall.
Q What about the Defendant, was he working?
A I don't recall.
Q All right. Did anything happen at the [redacted] Court house that made you feel uncomfortable?
A Yes, ma'am.
Q Can you tell us about that.
A So, my sister and I were staying -- we were changing in the master bedroom that was my mom's room because she had a pile of clothes that were sitting in the floor that she hadn't folded or put away yet, so they were just sitting there in like a basket. And my sister and I went in there to change. And my mom is not home, but I do not recall the reason why.

And we were almost completely undressed, and the Defendant and Allen walked into the room and saw us changing. And I grabbed a blanket off of the bed and my sister a towel off of the pile of clothes, and we covered ourselves up. And we kept asking them to leave, and they didn't.
Q You were both asking them to leave?
A Yes, ma'am.
Q What were they doing instead of leaving?
A They were just staring at us. They were just

standing in the doorway staring. They didn't say anything, they didn't do anything, they didn't move. They just stared at us, and they wouldn't leave. And then, after we kept asking them to leave, eventually they were just like, okay. But they kept looking at us like they were astounded, and then they finally walked out of the room.

Q And how did that make you feel?

A Uncomfortable.

Q Did you say anything to your mother after that incident?

A No.

Q How come?

A I don't really know. I kind of just felt like it was nothing, maybe, because I never really had much experience with stuff like that. So I just didn't really know what to do.

Q Okay. And how old were you at that time?

A Nine.

Q And Complainant 1 would have been seven again?

A Yes, ma'am.

Q All right. Did anything else happen in [redacted] that stands out in your mind?

A No, ma'am.

Q Do you know when you moved from [redacted]?

A I believe it was in 2008.
Q Where did you move after [redacted]?
A We moved to [redacted].
Q Who all moved?
A Me, my mother, my sister, my baby brother, Brother, and our newly born baby brother, Younger Brother, and Scott.
Q Okay. And do you remember that house?
A Yes.
Q And can you just tell us who stayed in which rooms.
A There were two bedrooms and an attic closet upstairs. Me and my sister stayed in the upstairs bedrooms, me in one and her in the other. The downstairs two bedrooms, on the right side, when you first walk in, the first one was my mom's office, and the second one was my baby brother's room because they were inseparable. And then the master bedroom was in the very back off of the kitchen.
Q Okay. And you said your mom's office. Can you describe what was in there.
A She had a lot of her things in there. She had a desk, a computer, music, we had reptiles that she kept in there that were her pets. She had a cabinet that was full of like her knickknacks and things that she wasn't displaying around the house and a closet that

had a couple of clothes and some stuff in it.

Q How much -- was your mother working at this point?

A No.

Q How much time did she spend in that office?

A She was there almost everyday.

Q Was the Defendant working at this point?

A I believe so, yes.

Q And, I'm sorry, how old were you and Complainant 1 when you moved to the [redacted] Street address, if you recall?

A I was in fifth grade, so I think I was 10 or 11, I'm not sure.

Q Okay. Did you, while you were at -- in that [redacted] home, did you ever see the Defendant either drinking or smoking marijuana?

A Yes, ma'am.

Q And I probably should have asked that separately. Did you ever see the Defendant smoking marijuana?

A Yes, ma'am.

Q Did you ever see the Defendant drinking?

A Yes, ma'am.

Q So let's deal first with the drinking. What did you see the Defendant drinking?

A He would drink Southern Comfort and Coke.

Q And did he ever give you anything to drink?

A Yes, ma'am.
Q Can you tell us about that.
A As I said before, we were pretty close for the first couple years that he was in my life. And so he used to drink, and he would offer me some. And I would drink it because I thought he was drinking with me like a buddy. And I thought it was cool to be hanging out with my dad.
Q What about the marijuana?
A He smoked all day, every day, all the time, and so it was always in the house, and we were always around it. And I kind of smoked a little bit with my mom right before bedtime because I had really -- still had really bad insomnia and sleeping problems, and so she would smoke with me a little bit. And then as I got older, he would offer it to me for sleeping purposes. And then he started offering it to me more and more, almost every single day.

And then he tried to get me to smoke with him before school, but I would refuse because I don't -- I never smoked before school because I wanted to keep a clear mind. I only smoked before bedtime because it would help me sleep. But then it got to a point where if I wanted to smoke before bedtime, I would have to do things instead.

Q So what would you have to do?
A I would have to let him put his hand down my shirt.
Q When he put his hand down your shirt, can you -- where did he touch you on your body? I'm sorry.
A It's okay.
Q Where did he touch you?
A He touched my breasts.
Q Was this -- so it was under your shirt. Let me back up. Do you remember the first time this happened?
A I do not remember the first time.
Q Okay. Is there any -- when he would put his hand down your shirt, would you be wearing a bra or no?
A Yes, ma'am. I always wore a bra underneath my shirts.
Q And was his hand over your bra or inside your bra?
A Inside.
Q Did he do anything with his hands when he put his hand on your breast?
A He just kind of rubbed it.
Q Did you ever tell him to stop?
A No.
Q Why not? I'm sorry. Why not? And if you need a break, just let us know.
A Okay. I kind of blacked out. I didn't -- I

didn't move or talk or breathe. I just sat there silently and let it happen. I never pushed him away or anything.

MR. HILLIARD: Can we go ahead and take that break, judge?

THE COURT: No.

MR. HILLIARD: All right, sir.

Q Are you okay to go on?

A Yes.

Q Did you ever tell your mother after this happened?

A No.

Q If you recall, how old were you when this started, the fondling?

A I believe I was 14.

Q Do you -- can you tell us approximately how many times this happened.

A I'm not sure.

Q How long did it go on?

A A couple of months.

Q Do you remember the last time it happened?

A Yes, ma'am.

Q Can you tell us about that time.

A So I was sitting on the couch with him, and I was still trying to be close with him. I was trying to put it out of my mind and just keep the father-daughter

relationship because we used to play video games together and watch movies together and watch Stargate Atlantis together and stuff like that. And he did it again. And I just remember I ran up to my room, and he didn't come in for a minute, and then he came upstairs and he opened the door, and I was crying on my bed. And he -- he approached me very kindly at first, and he was like, are you okay? You know I didn't mean to. I'm very sorry. And then I didn't say anything. I just sat there and was just kind of spaced out.

And then he got very angry with me, and he was saying, so what, now you're not going to talk to me? This is ridiculous. You know, I never hurt you. And then he would go back to being sweet, and he was saying things like, I'm sorry, please don't tell your mother. I won't do it again. And then he never did it after that.

Q Besides that time when he said, don't tell your mother, did he ever tell you to not tell your mother or not tell anyone?

A Yes, ma'am.

Q Can you tell us about that.

A There were often very low-key threats that he made. The one in particular that I remember is that we were all outside, and we were having a cookout. We had

bought a new grill, and the boys were out there, and we were roasting marshmallows and stuff like that. And, somehow, him and my mother got on the subject of it, I don't remember how, and she looked at me and my sister, and she was like, if anything like that ever happened to you girls, you would tell me; right? And we were like, yeah.

But then Scott said, I'm sure that if something like that ever happened to you girls and you didn't tell your mother, you would be in more trouble than I would. I'm sure she would be madder at you for not fessing up when you had the chance and waiting until later. And it was just kind of like a low threat that if we did speak up -- I guess, if I spoke up, because I didn't know about my sister, I took it personally that if I did speak up, that she was going to be more mad at me than at him because I never spoke up to begin with, and it would seem like it was a lie.

Q So you took that as a threat?

A Yes, ma'am.

Q And what -- you said that they started talking about it. What were they talking about?

A Molestation in general. They were talking about -- I don't remember how we got on the subject. I just remember we were talking about it because my mom

has had previous experience with that, so, believe it or not, she was very careful with stuff like that. She would always ask us, if we had ever been around like a strange guy, you know, if we were okay, if anything had happened. And she was always very open about we could always come to her if we needed to.

But I never did. And I don't know why I never did. I was just very scared to come to her. It wasn't like she was very close-minded about it, I was just really scared.

Q And you said you didn't know about your sister?

A I didn't.

Q Did there come a time when you learned what was happening to your sister?

A Yes, ma'am.

Q Can you tell us about that.

MR. HILLIARD: Objection. That would be hearsay, Your Honor.

THE COURT: Let's take the jury out for a moment.

(WHEREUPON, the jury exited the courtroom at 11:25 a.m.)

THE COURT: Ms. Walter, repeat your question.

MS. WALTER: Can you tell us about that. I said, did there come a time when you learned what was happening with your sister? She said, yes. I said,

can you tell us about that. Which is an exception to the hearsay because she can talk about, as I've instructed her, without saying who her sister named, she can talk about what her sister told her had happened.

THE COURT: And how is that an exception?

MS. WALTER: It's an exception for sexual assault cases. Once the declarant has testified, which in this case would be Complainant 1 then others can testify as to, essentially, time, place, and manner, but they cannot testify to the identity of the perpetrator.

THE COURT: All right. Mr. Hilliard?

MR. HILLIARD: All right. So any person could testify -- is that -- is what they are saying, is that anybody can come in and say those things that corroborate the victim's testimony?

MS. WALTER: Yes. Anyone that the victim has told they were sexually assaulted can testify in that manner as long as they don't say who the victim identified as the perpetrator.

THE COURT: Let me look at this section.

MS. WALTER: I will also point out that this has already come in through Complainant 1

Your Honor, if you look at 801(d)(2) -- I'm sorry, (d)(1)(D). Consistent with the declarant's testimony

in a criminal sexual conduct case --

THE COURT: Just one second.

MS. WALTER: Do you want me to show you my book, Your Honor?

THE COURT: I have it right here. I thought it was actually in the rape shield statute. I know what you're talking about, I just want to review it, (d)(1).

MS. WALTER: Capital D.

THE COURT: 801(d) subsection D, statements which are not hearsay, (d)(1)(D)?

MS. WALTER: Yes, Your Honor.

THE COURT: This is what it says: Declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is, A, has to do with inconsistent statements, B, consistent statements, C, identification of a person after receiving the person, or, D, consistent with declarant's testimony in a criminal sexual conduct case or attempted criminal sexual conduct where the declarant is the alleged victim and the statement is limited to time and place of the incident.

So if the declarant is the victim, says it is the victim.

MR. HILLIARD: Right.

THE COURT: And it is consistent, what she is saying is consistent with the declarant's testimony in this case, and it is limited to time and place of the incident. I don't think you can go into the incident, it's the time and place of the incident.

MS. WALTER: Okay.

THE COURT: Okay?

MR. HILLIARD: Let's hear what she says, judge, if you don't mind.

THE COURT: Okay. Ask her again and let me hear.

MS. WALTER: Well, I'll phrase it differently so that I'm adhering to the Court's ruling, but I'm going to have lead-up questions which I don't think are necessarily germane to that.

Q So without going into specifics, did your sister tell you when and where she had been sexually assaulted? And if you don't understand --

MS. WALTER: So, Your Honor --

THE COURT: The place.

MS. WALTER: Place and time.

THE COURT: Place and time.

Q Do you understand? This is like legal stuff, I know. You can -- in other words, you can talk about if your sister gave --

THE COURT: Let me explain it to her. See, the

rules will not let you repeat what your sister told you about what actually occurred. But you may confirm, if she told you, the time and the location, place, that it took place. Do you understand that?

THE WITNESS: Yes.

THE COURT: Okay. So did she tell you a location, did she tell you a time, like date, time of day, anything like that?

THE WITNESS: Like location in the house?

THE COURT: Yes. Yes.

THE WITNESS: I believe she told me in her bedroom and in the living room on the couch.

THE COURT: Okay. And did she tell you when?

THE WITNESS: No, not a specific date.

THE COURT: Like a date, a time, anything like that?

MS. WALTER: Or a date range would be appropriate, Your Honor?

THE COURT: Yeah.

THE WITNESS: I don't remember a specific date.

MS. WALTER: Okay. That's fine.

THE COURT: Okay. So we know where we are; all right?

MR. HILLIARD: Yes, sir.

THE COURT: All right. Chris, bring them back.

(WHEREUPON, the jury came into open court at approximately 11:32 a.m.)

THE COURT: All right. You may proceed.

Q All right. Let's try and go back to where we were. Did you learn at some point that something was happening to your sister, Complainant 1

A Yes, ma'am.

Q Okay. You can tell us -- do you recall when you learned about this?

A Do I recall when?

Q When you learned what was happening with your sister.

A I recall a timeframe.

Q That's fine. When would that have been?

A I believe it was in March or April of, I want to say, 2014.

Q Okay. How did that conversation come about, without -- how did that conversation come about?

A She came to me upset that she thought she was pregnant. I told her I would get her a pregnancy test. She told me that something had happened to her and not to tell my mother. And she explained to me what had happened to her. And then I explained to her what had happened to me.

Q And what did you tell her had happened to you?

A I told her that -- in order to make her feel better about something that she had told me, I told her a dark secret, which was that Scott had been molesting me.

Q Did your sister then tell you anything about what was happening to her?

A Yes.

Q And you can only tell us if she gave you a timeframe that you recall and if she told you where it occurred.

A Yes.

Q So do you recall a timeframe?

A I do not.

Q Okay. Do you recall where she said anything occurred?

A In the living room on the couch and in her bedroom.

Q Of the house you guys were living in?

A Yes, ma'am.

Q All right. Once you learned that, did you and Complainant 1 make a plan -- strike that. Do you know if Complainant 1 had told your mother anything at that point?

MR. HILLIARD: Objection. That would be call for hearsay as well, judge.

THE COURT: No. She is just going to ask her if

she knows.

MS. WALTER: Right, only if she knows.

THE COURT: Not what she may have said or anything, just if she knows that there had been a conversation.

MR. HILLIARD: Right.

THE COURT: I'll let her ask that.

MR. HILLIARD: Thank you.

THE WITNESS: I do know at that point that she had not said anything to my mother.

Q Okay. Did you and Complainant 1 make a plan to tell your mother?

A Yes, ma'am.

Q Can you tell us what that plan was.

A The first plan we had was that we had an upcoming dentist appointment. And when we had dentist appointments, we did not have to go to school. We got out for the whole day. And we knew that Scott would be at work. So her and I decided that that day, during the dentist appointment, we would try to make sure my mom was in a good mood so that she would be more willing to listen to us because we knew that she was going to be very upset. And then we planned to tell her after the dentist appointment when we got home because we all got breakfast and stuff together, and we

were having a really good day. So we didn't get out much, so it was really nice when we had that. And then he came home early.

Q When you say he, who came home early?

A Scott came home early from work, and we never got to tell her.

Q Was that the only plan, or what other plans did you make?

A Later on down the couple of months, we went to Charlotte and stuff like that happened, and then when we came back, my sister and I were -- we weren't talking as much. We were kind of keeping our distance from each other because we both kind of knew what was going on. But we made a plan that when -- that I was going to leave a letter, and I was going to run away somewhere safe, and that my sister -- that my mom would read the letter, find out everything that had happened with my sister, and then he would not do it anymore.

But that plan failed because I looked into the legal aspect of running away and found out that if I had run away, that whoever took me in for the time could go to jail for kidnapping or be charged for kidnapping if they decided to press charges. And I knew him, and I knew he would. And that was if my mom didn't believe me.

And I also was scared that if I left the house, left that note with my mom and she didn't believe me, because he had very strong hold on her, he was very manipulative, and -- or if he got to the letter first, that my sister would be in a lot of danger, and so would my mom. And so I decided that I was not going to run away. I decided that I went to school, I had very good grades, and I found out that I could graduate early.

So I pushed myself to graduate early, and I got a job so that I could start saving money. I ended up being thrown out of the house early, and once I threw out, I abandoned my sister and I didn't look back.

Q Where were you working to save this money?

A Sonic.

Q And you said you graduated early?

A Yes, ma'am.

Q What were you going to do after you graduated?

A I wasn't officially sure, but I decided that because I did not have a major, I was going to take a year off, and then I was going to get a place to live, take my sister in, and then I would start college a year late. But I graduated with my college credits already on my record, so I would have to just go straight into sophomore year. I didn't have to go into

college as a freshman.

So I knew that it would be okay for me to take a year off because I could pick up like I had gone to school the whole time in the first place.

Q You said you got kicked out before you could move out?

A Yes, ma'am.

Q Can you tell us about that.

A I was planning on moving in with my now fiance, at the time boyfriend, and his dad. I already talked to him about taking me in, and he said it was fine as long as I paid rent and everything like that. And so I was planning on moving out. And I had set a date. And then that date, it was raining really badly. And I wasn't able to get all of my stuff -- I'm sorry, let me back up.

They told me when I was working that, because I was never home, that I had to pay rent, and so I started paying rent to not live at my house, to stay at work and at a friend's house so I wouldn't have to go home. And then they called me one day and told me that since I basically wasn't there, that I needed to go home and pack all of my stuff up. I could leave it there so long as it was packed up so that I could move out when it was time, because I was only 17. So they

were waiting for me to turn 18.

So I went upstairs, I packed up all my stuff, and so it was already packed up. And then a couple weeks later, before the plan, they called me and they told me that I need to get my stuff out now. And they said that there was no more room for me, that they were tired of me, and that I needed to get my stuff.

So all of my stuff was already packed up in the room, and I made a date to move all my stuff out. And they called me even before the original date that I was telling that I had to get it out, and then it rained and I was unable to get it out, and I didn't have everything planned out the way I needed to.

And so I made another plan to do it the next couple weeks or the next week. And they called me -- more specifically, he called me and told me that my stuff was going to be on the street tonight if I didn't come and get it.

Q When you say he called you, who do you mean?

A Scott called me.

Q So did you go and get it?

A Yes, ma'am.

Q And did anything happen when you went to go get your things?

A The day before I went to get my things, I was on

the phone with his mom, Rebecca, because she was going -- she had a trailer, so she was going to help me relocate my stuff. And she was the only person that I actively knew with a trailer, and I didn't know anything about trailer rentals or anything because I was 17.

So I contacted her, and we were talking about everything. And I told her that I was very upset with him for the phone call about having to get my stuff out. And I explained to her that I was upset with him because he was always mean, and I kind of broke down and started venting to her about how he was so mean, how he kept us locked in our rooms, how he never let us go out, how he never let us talk to each other, how we were basically just people to clean the house and cook for him, and that was it. And I just started venting to her, and she kept defending him and saying, you know, he loved us and he was our father --

MR. HILLIARD: Objection as to hearsay.

THE COURT: Well, it's not offered for the truth of the matter asserted. I'll allow it.

MS. WALTER: Thank you, judge.

Q You can keep going.

A Okay. So I got really upset with her and told her that he wasn't as perfect as she thought. And I told

her that he had been molesting me and that I had suspicions about my sister as well.

Q What did she say in response to that?

A She asked how far it went. I explained to her that it was just the groping of my breasts and stuff, and that there were a few times where he asked me to take my shirt off, but I didn't. And she said that it wasn't as bad as I was making it out to be, that she had had worse, that he still loved me and he was my dad, and I needed to act like it, and to get over it on my own.

And I was upset with her, but I let it go. And the next day she helped me get my stuff out of the house. She took me to lunch. We never spoke of the conversation before that, and then I never spoke to her after that.

Q You haven't spoken to her at all after that?

A Not that I recall.

Q And you said you left your sister and never looked back. What do you mean?

A I was supposed to find a safe place for her, I was supposed to get her out of the house. It was my job to make sure everything was good. But once I got out of the house, I was so happy to be out of the house that I never went back for her. I left her there.

Q Let me just back up a little bit. You told us that you were -- you believe you were 14 when the Defendant started fondling your breasts. Do you know how old you were when you stopped eventually?
A I believe 14. It didn't go on for very long.
Q And did you ever self-harm?
A Yes, ma'am.
Q Can you tell us, first of all, why did you do that?
A I can't really explain why I did it, just that it helped.
Q Did you do this before or after the Defendant molested you?
A After.
Q Okay. And what did you do?
A I used to cut my wrists with glass, and then I started wearing bracelets up to my elbows so nobody would notice.
Q Do you recall a time seeing the Defendant with condoms?
A Yes, ma'am.
Q Can you tell us about that.
A I was standing in the kitchen. I believe I was doing dishes after my mom had cleaned, but I'm not sure. Or I might have been doing dishes before so she

could cook. And he came in the door, and he had a whole roll of condoms. And it struck me as odd because I knew that my mom could not have kids, and my mom confronted him about it, and he said that a guy dropped it in his car at work. But then he went to his bedroom and put them in his safe, which struck me as odd. But I never spoke of it after that.

Q Do you recall an incident or a night that you and your mother went to pick up your brothers at the Defendant's sister's house?

A Yes, ma'am.

Q Can you tell us about that.

A So my little brothers, I believe, were staying at my Aunt Sandy's house for spring break. I believe that that's what it was because it was a longer period of time. Or it could have been a teachers workday before a weekend or something like that, I'm not sure. And me and my mom had gone to Dillon to pick them up. And on the way home, my mom was going to get everybody something to eat because it had been late, and it was a long drive, and she didn't feel like cooking. So she was going to stop at McDonald's and get everybody chicken nuggets. So she was calling Scott to find out what he wanted because he didn't like McDonald's, and she was thinking about getting him Subway.

And she called his phone, and it rang, and there was no answer. And then she called him again, and it was ringing, and there was no answer. And she did that a couple of times. And then when she did answer -- when he finally did answer, she -- it was like, hey, you know, I'm stopping to get food, did you want anything?

And he's like, yeah, pick me up something, but don't get Complainant 1 anything. And she was like, why not? And he was like, because she won't listen to me, and she won't spend time with me, and she won't sit down next to me, so she doesn't deserve anything to eat.

Q Did your -- and was your mom's phone on speakerphone, or how were you able to hear --

A It was on speakerphone. She always carries on speaker so she doesn't have to talk while she is on the -- driving.

Q Okay. Was it unusual, in your experience, that the Defendant did not answer his phone?

A Yes.

Q Why?

A He keeps his phone right next to him at all times, and he always keeps it all the way up, even when he's at work or anything. When he's on the couch, when he's playing Halo or watching TV, he keeps his controller,

the remote, something to drink and his bowl and his cell phone all on his little table right next to him all the time.

Q When you say bowl, what do you mean?

A His bowl for smoking marijuana.

Q Okay. Did your mother, in fact, get Complainant 1 anything to drink -- eat, excuse me?

A Yes, ma'am, of course.

Q And just tell us what happened with that.

A I came in, and my sister was red in the face and looked like she had been crying. And I was really worried about her. And my mom had me give her some chicken nuggets.

Q How are you doing now with your life?

A A lot better.

Q Thank you for coming in and answering my questions. Please answer any questions Mr. Hilliard has.

THE COURT: Mr. Hilliard.

MR. HILLIARD: Thank you, judge.

CROSS-EXAMINATION

BY MR. HILLIARD:

Q You all right?

A Yes.

Q You have been in the courtroom throughout the

trial and had the opportunity to hear your sister and your mom's testimony; is that right?

A Yes, that is true.

Q In talking about Dillon, slash, Latta, you don't remember when that was; do you?

A I don't know the exact date, but I believe it was around March or April.

Q Of what year?

A I'm not sure.

Q So it was March or April of some year, you don't know what year it was; right?

A Correct.

Q Okay. And the two younger brothers, it was at least at a point in time when they were going to school; is that correct, ordinarily going to school?

A I'm not sure.

Q Don't know, okay, fair enough. You do recollect that the phone call where it rang through and Scott didn't answer, you know that that was on the way back from Dillon; is that right?

A Yes.

Q So that that phone call that he didn't answer was not shortly after y'all left to go to Dillon, it was when you were coming back?

A Yes.

Q And is this the -- did I understand that you had to sneak your sister some chicken nuggets because Scott didn't want her to have anything to eat; is that right?
A I do not recall if I had to sneak them, I just recall that I had to give them to her. She may have been up in her room. My mom may have just sent me up there because she didn't want her to come down, I'm not sure, I don't remember that part. I just remember that I'm the one that gave them to her.
Q Okay. So, I mean, you gave your sister some chicken nuggets?
A Yes, sir.
Q That's all there is to that?
A Yes.
Q All right. And then when you were living at home and going to school, your grades were good; is that right?
A Yes, sir.
Q And your -- but you couldn't sleep. That's one of the things that you had a problem with, insomnia?
A Yes.
Q And your mom would smoke marijuana with you so you could sleep?
A Not often, but every once in a while, yes.
Q But what I mean, whenever you couldn't sleep, you

could go to your mom and say, hey, mom, can we smoke some marijuana so I go to sleep, your mom would accommodate you in that?

A No.

Q She wouldn't?

A It did not happen like that.

Q Well, tell me how it happened, please.

A There would be times where I would be up at like 4 o'clock in the morning when I had to be at school at 6 o'clock in the morning, and my mom would hear me up getting something to drink or something like that. And then she would just be like, you know, you can't sleep? And I would say no, and she would be, like, okay, try this. And then I would smoke one time one hit. Because I didn't smoke often, so it only took one, and then I would go upstairs, and I would go back to sleep.

Q Okay. And -- but did I understand you to say that in order for Scott to let you smoke marijuana to go to sleep, you would have to do something with him; is that what you said?

A When he started offering me marijuana for sleep, because it got to a point where my mom did not want us smoking at all, and so he would give it to us, but he offered it to me for sleeping purposes. And he would tell me this would help me sleep because I was always

stressed out from my exams or something. And I was very high strung and not able to sleep. So he started offering it to me for sleeping purposes. And then it went further than that.

Q And this was a point in time where your mother had previously offered you the marijuana to sleep, but she had stopped?

A Yes, sir.

Q And so you didn't have any source of marijuana for sleeping unless you would do what Scott wanted you to; right?

A Could you rephrase that?

Q Sure. So in the beginning, and correct me if I'm wrong, but in the beginning, you would wake up at 4 o'clock in the morning, and your mother would hear you walking around, and she would see you and she would say, well -- or you would say you can't sleep, and y'all would smoke some marijuana together?

A It wasn't like we smoked together. She would hand me, if she had anything on her already, and it was very rarely, and she would hand it to me if she had it on her already. And -- like, here, you can hit this real quick. And then I would smoke it one time, and then I would usually go up to bed.

Q Okay. So you would -- would this happen upstairs

or downstairs, or where would you do it?

A I would be downstairs usually to get something to drink or something like that. If I was upstairs and up late, she never came upstairs just to give it to me or anything because she wouldn't have even known I was awake unless I was downstairs.

Q All right. And so you were downstairs and awake, and she knew that you were downstairs and awake. And if she happened to have -- where would she have the marijuana on her?

A If she was in her office, if she had been smoking at some point for some reason and I was downstairs and she heard me. There were times where she never heard me downstairs, there were times where I never came downstairs, there were times where I was awake for a couple of days without ever being offered anything.

It wasn't like she just gave it to me every chance she got every time I was awake. It was a very rare circumstance if the circumstances lined up that she happened to be smoking in her office or coming to bed or something like that and I happened to be downstairs at the same time, which was very rare.

Q Okay. And then after that, you went to her at some point in time saying, hey, mom, it's 4 o'clock in the morning. I can't sleep. Can I have some

marijuana?
A No.
Q You never did that?
A No, I never just asked them for it. I never went to my mom, like, hey, mom, can't sleep, marijuana, please. It was like only if I was already downstairs, present, awake, and she happened to notice and happened to be smoking already, which was rare.
Q All right. But what you said, I think, is that at some point she wouldn't do that anymore?
A Yes. At some point it was to a point where, you know, we were getting -- I don't know, she just kind of looked at us and, I guess, accepted that she shouldn't be doing that and told us -- or told me that she wasn't going to be doing that anymore. And I was okay with that because I didn't smoke for any reason other than sleep.
Q Right. But at that point, you had to let Scott fondle you in order to get you marijuana to go to sleep, but that --
MS. WALTER: Objection to the form of the question, Your Honor.
THE WITNESS: It was not like that.
MR. HILLIARD: Pardon?
THE COURT: Proceed.

MR. HILLIARD: Thank you.

MS. WALTER: You can answer that.

THE WITNESS: It was not like that.

Q Okay, go ahead.

A You are making it out as though I had an addiction to it and only would be able to have it if he fondled me. It did not happen like that. I had it once or twice, maybe more, I'm not positive of the exact number, with my mom once in a while if it just so happened the circumstances lined up.

He was always smoking all day, every day, always on the couch. And there had been nights where we had started hanging out frequently where we were always watching TV or something together, and he was already smoking anyway, and he would hand it to me once in a while. And it was only if I knew that I was wasn't going to be able to sleep or before bedtime that I would be like, okay, yes.

And then as that progressed, it got to a point where he would wait until I had smoked, and then he would start doing things. And eventually it got to a point where I didn't want anything to do with that at all.

Q All right. Well, let me ask you this way. I'm going to read you something that I wrote down during

your testimony, and if you think that it's what you said, please tell me, and if you think it's not what you said, please tell me that; okay?

A Okay.

Q Ready? Okay. I would have to do things with him -- and that was the quote part -- connected to getting the marijuana. I would have to do things with him. Do you remember saying that?

A Yes.

Q Tell me what -- tell me why you would have to do things with him connected to marijuana.

A So this is the part that's hard to explain.

Q Okay.

A I used to hang out with him often. We would always sit next to each other on the couch. We would watch movies together. We would play video games together, and he was always smoking. It was a while between the times to which I was using it for sleep, after my mom had stopped smoking with me, to the time that he started offering it to me. There was space between that. It wasn't immediately afterwards or anything like that. My mom put her foot down and said, they will not be smoking.

He complied to that for a short period of time. I don't know how long the period of time was, but then

later, behind my mother's back, he started offering it to me. I would smoke it a little bit with him because I thought that I was having fun with him. I thought this was something we were doing together. I thought that this was just like the drinking thing that my mom didn't know about where I thought we were connecting like father-daughter should, because I knew that that was one of the only things we connected on because the only other thing he likes is football, and I don't like football.

So we smoked a little bit together, and I would usually only do it -- I know for a fact I only ever did it at bedtime. I never did it before school, I never did it during the day, only at bedtime. And it was because I knew I was going straight to sleep. Then it got to a point where he would offer it to me, then he would put his shirt down my -- his hand down my shirt. That is how that progressed.

And he would make it as though I would try to be away from him, but he would throw guilt trips that -- even to my mother, that I didn't love him anymore, that I wouldn't spend time with him anymore, that I was growing apart with him.

And so I would feel bad and sit back down next to him all the time, and he would offer it to me, and I

would say no. And there were times where he would still try to reach his hand down my shirt. But the first few times that I was smoking with him, I got high first, then he reached his hand down my shirt. Is that clear enough?

Q Well, and --

A If I phrased it wrong, I apologize.

Q Your mom -- one of the things that you said is your mom has experience. Tell me what you meant by that, please. Your mom has experience in the area of sexual assault?

MS. WALTER: Objection, Your Honor.

THE COURT: It's already in evidence.

MS. WALTER: Well, it seems as though it's calling for hearsay.

THE COURT: If she knows, she knows. If she doesn't, she doesn't. And if she does know, we'll hear where it comes from, and that may be objectionable.

THE WITNESS: I know that my mom has mentioned before that her dad molested her when she was a child.

Q All right. Well, let me try to ask a better question. When you were answering questions for the prosecutor, you said that your mom was open to you talking with her; do you remember that part?

A Yes. She was always open with us talking to her

about situations like that, yes.

Q Right. And because your mom had experience in that area, she was even more open for you talking with her about things like that; right? Isn't that what you said earlier?

A Yes, that is what I said.

Q Okay. But you were afraid to talk to her?

A Yes.

Q And the times that Scott had touched you inappropriately, you don't remember when those times were; is that correct, the dates?

A I don't remember the exact dates. I believe that it was the summer before I started my freshman year of high school, but because I was usually high when it happened, I don't remember.

Q So you don't -- because you were high when this was going on, you don't really remember when it happened sort of at all; is that right?

A I don't really remember the exact date.

Q Okay. And Scott kicked you out of the house because your stuff was in the way; is that right?

A No. He kicked me out of the house because I was never home to do chores or anything because I was working and going to school. And then when I stopped going to school, I was working full-time. And he

didn't like the fact that I was never home to do the chores, and so he kicked me out. First he charged me rent, and then he kicked me out because he wanted my brothers to take the upstairs bedroom.

Q And you were angry about that?

A Yes, I was upset.

Q And when you talked to your grandma, when you called your grandma and said, hey, Scott's being mean to me, she defended him?

A It wasn't that he was just being mean. You're making it out like he didn't grab my sister by her hair and smash her head into the wall. He wasn't just being mean.

Q All right. Well, he's grabbed your sister and smashed her head against the wall?

A Yes.

Q When did that happen?

A I don't know the exact time.

Q All right. Well, in relation to your conversation with your grandmother, how long before the conversation with your grandmother?

A I do not recall.

Q A month, a year?

A I do not recall.

Q You have no idea?

A No.
Q Okay. And the Latta, Dillon situation, you have no idea when that happened either, do you?
A I know that it was -- I do not know for a fact, but I know, in theory, that it was, I think, between March and April, but I do not remember the year.
Q All right. And when you're -- well, tell me what it is that you were telling your grandma that she was defending Scott about. What all things were you telling her that she was defending Scott?
A I do not recall the exact specifications of the argument.
Q Okay.
A Just that it escalated to the point where I finally told her about the molestation.
Q And how long after the molestation had taken place was it before you told your grandmother?
A I do not know the exact time period, but it was a while.
Q And you never told your mom?
A No.
Q And your grandmother told you it was no big deal?
A Yes.
Q The condoms. So are you telling us that Scott came into the house with a roll of condoms for

everybody to see when he just came into the house?
A Yes, sir. He came in laughing, and he said that somebody had dropped them in his car, or that he found them in his car at work, and that he took a friend home, and they had dropped them in his car or something along those lines, and he took them into the bedroom.
Q And put them in his safe?
A Yes. He had a safe.
Q And he put the condoms in the safe?
A Yes.
Q And your mother was saying, what the heck you keeping those condoms for?
A I don't know if she said that, I just know that she was like, where did you get the condoms, when he walked in.
Q Okay. So she said, where did you get them, but she did not say, why are you keeping them?
A No.
Q Back when you were talking about Billy, would you say that Complainant 1 was a daddy's girl at that point in time?
A Yes. Complainant 1 was a daddy's girl, and I was momma's girl.
Q Complainant 1 was a daddy's girl and you were a momma's girl?

A Yes.
Q And you had a good relationship with your mother?
A Yes, I did.
Q You could tell her anything?
A Yes.
Q And when Complainant 1 told you that she had been sexually molested by the stepfather, you didn't tell your mom about that?
A The proximity between when me and my mother had a mother-daughter relationship and the proximity to which I found out what was going on with my sister was over a period of about nine years. So mine and my mom's mother-daughter relationship gradually fell apart. When she started locking herself in her office, I started locking myself in my room, and we were never allowed to really be in the same room as each other except for once in a while. Our relationship grew apart. And I was also afraid.
Q You were never allowed to be together?
A We were allowed to be together, but it was always -- it would always make him angry.
Q And Scott was always at home?
A Not always. And I was also not always at home because I was at school. And when he worked day shift, we got home at the same time.

Q And when he didn't work day shift?
A Then me and my mom would spend time with each other if I wasn't working or had homework. And it would be me, my mom, and my sister and my brothers. And sometimes we would be doing things for him like cleaning the house because he expected everything to be spotless when he got home, whether it was day or night.

So if he came in the daytime, my mom spent all morning while I was at school cleaning the house and getting dinner ready. And then when he would come in at night, we had already made dinner, put his up so it would be warm or made him a special dinner because he was very picky, and we would already have the house clean and stuff when he came home. When he came home, we went to our rooms.

Q And you were angry about that?
A I mean, yes, I was.
Q All right. So, but, I mean, even while you were cleaning and straightening up and doing all of those things, you had a chance to talk to your mother; right?
A Yes, I did have a chance.
Q So you could have talked to her at that point in time, y'all weren't being separated?
A Yes, I could have informed my mom at any time. The reason I didn't inform my mom is because I was

scared.

Q And you put together an idea to -- you made a plan that you were -- well, tell me about the plan. It was a plan that you made to tell your mom that Scott messed up by coming home early, Scott spoiled your plan by coming home early. When was that plan?

A I don't recall.

Q Okay. You had a plan that you were going to tell your mom about what was going on, and Scott spoiled it by coming home early?

A Yes. Because I wasn't going to tell my mom about him when he was there because he was dangerous, and I was scared of him. And I wasn't going to do that. I was hoping that I could tell her before, when I knew he wasn't coming home, so that we could actually sit down and have a conversation about it and talk it out.

Q Okay. And so that was one day, one plan, he came home early. That was one time?

A Yes.

Q And did he come home early the next day?

A He worked at different schedules. There were days that he would be home all day, but I do remember that there was a short period of time where we had a lot of things going on. Like we went to Charlotte, and so we were all in a hotel room for one or two days and stuff

like that, and there was never really much alone time with my mom beyond that point.

Q And there was a plan to tell your mom connected to that Charlotte trip; is that right?

A I'm not sure.

Q You didn't testify -- maybe I have this wrong, and I apologize if I do. But you didn't testify that there was some plan connected to Charlotte in telling your mom?

A No. There was the dentist plan, and then there was some stuff that happened between that. There was the Charlotte trip, and then after that, there was the second plan. They didn't have any correspondence with each other. It was just the timeframe that I'm remembering was that I remember we made a plan, I remember there were things in between, I remember we went to Charlotte, and then I remember we made another plan.

Q All right. And the plan was for you to run away from home?

A Yes.

Q But you did research looking into the legal aspect of running away from home?

A Yes.

Q And you believe that somehow, as a sexual assault

victim, that you would have been -- that Scott could have gotten your friends charged with kidnapping?

A Well, it was along the lines of there were different aspects -- there were different ways that this could go. There was my mom didn't believe me, he had my friends arrested, and we went home to a twice-worse household where at that point where he may have thought things had already progressed where he could do things that he was doing to my sister with me.

And then there was the aspect that she would believe me, she would kick him out. And then there were things in my mind such as if that did happen, where would my brothers go, how long would a trial last, would people believe you, stuff like that.

Q All right. So what you talked about was the kidnapping?

A Yes. I knew that my friends could be charged with kidnapping on one of the cases if my mom didn't believe us and he stayed, that he could charge my friends with kidnapping.

Q All right. And then, ultimately, you did leave?

A And then I more or less moved, slash, got kicked out.

Q Right. And at that point, that was when you abandoned your sister to whatever fate befell her with

Scott?
A Yes.
Q Do you believe that your sister was jealous of you?
A No.
Q Your sister is known for lying; is that correct?
A Can you rephrase that?
Q Sure. When you did an interview with Detective Johnson, do you recall telling him that your sister was known for lying a lot?
A Yes, I do recall saying that.
Q Okay. And you've already told us that Scott was really, really mean; right?
A Yes.
Q And you've also described him as an asshole?
A Yes.
Q And you said that on the occasion that something occurred and he stormed out of your room -- and I think you told the prosecutor this -- that it never happened again after you told him to quit and you went upstairs, and it never happened again; right?
A I went upstairs crying after it happened. He came upstairs. He went through motions, notions of emotions, and then he got to the point where he apologized, said that he would not -- not to tell my

mom if he would not do it again.

Q And he never did it again?

A And he never did it again.

Q All right. And so the situation with your mom and the -- was it a cookout where he threatened you, impliedly threatened you; is that right?

A That was one of the instances.

Q One of the incidents?

A Yes.

Q How many times did he threaten you if you were to tell what happened?

A I do not recall how many times.

Q All right. Tell us about some others besides this one.

A There was a time when I was upstairs, I was on my phone, I was talking to my now fiance because he knew about the situation before when we had first met. He was the first person I ever told. It was just a random thing, I just needed to get it off my chest.

And he was begging me to tell somebody like the cops or my mom because he felt like, even though it had happened however long ago, that it was still relevant and that I could still be in danger. And I was telling him that I would be out of the house very soon, and that I wasn't worried about it because it hadn't

happened and that it was over and done with, and I just didn't want to think or talk about it anymore. I just wanted it out of my life. And this was, of course, before I knew about it was going on with my sister. He came upstairs in the middle of the night and he said, turn your phone off.

So instead of turning my phone off, I put my phone down. And he told me, he said, if you want to tell your mom, we'll tell your mom. Let's tell your mom. We'll tell her everything. We'll tell her about how you kept it from her, we'll tell her everything. And he told me, he went nice and he said, don't you see I've done everything for you? I bought you a guitar, I gave you a spider. I gave you things that I never gave anybody else. Don't you see that I love you and that it was a mistake?

And then he said, all I ever did was touch you a little bit. I never did anything bad to you. And then he said -- he went back to being nice, and he said my mom spent all the time on World of Warcraft, and he felt like he wasn't getting love. And he said he tried to find love in us girls, which is when I suspected something may have been happening with my sister, but I wasn't sure.

But then he immediately said, I never messed with

your sister, it was only ever you. I only ever messed with you. And he said, and I was sorry for that. And then he kept going on about something, and I told him I didn't want to talk about it anymore, just to leave me alone and get out of my room. And he left my room.

And then the next day he came up, and he -- it wasn't what he was saying so much as how he was saying it, as though you knew it was a threat. And he was saying things like, we'll go down and tell your mom right now. You'll be in more trouble than I will. I'll tell her you're just using it to make your boyfriend feel guilty and want to spend time with you and be with you and that you're just using it as a guilt trip. And that was another time that I specifically remember his threats.

Q All right. And on that occasion, you were in your bedroom talking on the phone?

A Yes.

Q And Scott heard you talking on the phone?

A Yes.

Q And Scott was downstairs smoking in the living room?

A Yes, he was getting high. It was in the middle of the night.

Q So it was in the middle of the night. And let me

show you -- I'll just try to hold this up myself best I can -- Defendant's Exhibit No. 10. Is this a fair representation of your house that we've been talking about?

A I believe so, yes.

Q All right. And so when you say Scott was in the living room smoking pot, he was down here smoking pot (indicating); that is right?

A Yes.

(Discussion off the record.)

Q All right. Let me show you State's [sic] Exhibit No. 6. Is that a fair representation of the steps?

A Yes.

Q Up to your bedroom?

A Yes.

Q All right.

MR. HILLIARD: And I want to publish this, if I may, judge. It's in evidence. It's State's No. 6.

THE COURT: You may.

MR. HILLIARD: Thank you.

Q And also State's [sic] No. 11, is that a fair representation of the upstairs of your house?

A Yes, but there is an attic in the middle.

Q There is an attic in the middle?

A It's an attic closet. It's upstairs. It's used

as an attic. It's a closet between our bedrooms and the bathroom.

Q Okay. And so what you're telling us, what you've testified to is that Scott was down here in the living room (indicating)?

A Yes.

Q And that you were up here in your bedroom (indicating)?

A Yes.

Q And that those are the steps in between where he was and where you were?

A Yes.

Q And he was down there smoking pot, and he could hear you talking on your phone?

A Yes. It was very late. It was like 4 o'clock in the morning, and he was the only one up.

Q All right.

A The way that our house is lined up, it's the living room, the staircase, and my bedroom. So my bedroom is right beside the staircase, and the staircase is right beside the living room. So if there was any talking going on, you could hear it if there was nobody awake and the house was quiet. That's how they always knew that we were up past our bedtime or that my brothers were running about when they weren't

supposed to and stuff like that.

Q And so the sex -- you've indicated that your sister told you that she was having sex in the living room and in her bedroom; is that right, with Scott?

A She informed me that things that had happened had happened in her bedroom and in the living room, yes.

Q And you never heard any of that?

A I was never home, or I always had my headphones in because I always listened to music to do my homework and stuff like that. And I always had my headphones in, always, even when I was in class.

Q And Scott smoked pot all day every day?

A Yes. He smoked when he woke up. He would always wake up an hour and a half, two hours early so he could get high before he went to work. He brought a joint with him or a bowl with him at work. He would smoke when he was at work on break, which my mom found out about and got very angry with him about. And then he would come home, he would sit on the couch, and he would immediately start smoking before he would eat, and then he would smoke again before he went to bed.

Q For the whole time that he lived with you and in your household with your family, that was what he would do?

A Yes. It was -- got to a point where they would

even -- my mom would even make sure she pulled out money for him so that he could have it because he started smoking more and more, and then he started keeping a lot in the house, and he kept it in the cabinet that was holding the TV. And they even started having to write it into our budget. And my mom confronted him about it, that it was becoming a problem. Not just the fact that he was smoking a lot, but it was also starting to cost us a lot of money.

Q He never got fired?

A No, he never got fired, and he --

Q Never laid out of work?

A He was fired from McAlister's, but I do not recall the reason because I was too young.

Q Okay. Well, he got fired at some point in time that you were too young to remember, but after that, he never got fired?

A Not that I'm aware of, no.

Q Well, I mean, during the time that you were living there, you would have known if he got fired; right?

A I mean, I was never really much into their business. I assume that he has never been fired. To the best of my knowledge, he has never been fired because he's always worked at the same two jobs as far as I can recall.

Q So he might have got fired and you wouldn't know about it, maybe?
A Yes. I never stayed in their financial business like that.
Q I got you. So maybe he was just smoking pot all day long at home?
A I know for a fact that he was smoking at work, because I remember the fight that my mom had with him because she found out he had been bringing it to work, and she did not like that. And it was right around the time that he started selling again at work. And my mom did not like it ever when he was selling, and she really didn't like it when he smoked. But when she found out that he was smoking and selling at work, she flagged it as a problem and it was one of their big fights that I recall.
Q All right. So that was pretty bad. I mean, he was somebody selling pot at work and your mom was mad. He was making all you guys work and clean and wasn't nice to you when you got home. Everybody in the house was mad at Scott; right?
A It wasn't so much that we were mad at him, it was just that he was always mad at us for every little thing we did. If -- we were walking on eggshells literally. It took absolutely nothing to set him off,

and he was always angry with us. And I did not know about the abuse that was going on sexually with my sister, just what had happened to me. And for me, that was icing on top of the cake.

But being that I thought that it was only me at the time, I never spoke up about it because it was over with me, and I wanted to just lock it behind a door and be done with it. When I found out it was going on with my sister as well, that's when it reopened the door, and I tried to fight to get her safe. And then once I finally was out of the house, I didn't care about her anymore.

Q So this is a good way to get rid of Scott; right?

A I'm sorry?

Q I say, this is a good way to get rid of Scott?

A What do you mean?

Q I mean, this whole thing that we're doing here, if he is to be convicted, then you will be rid of him?

A Yes. That statement is true.

Q Thank you. And when you were talking to Detective Johnson, you were talking to him about your sister and what she had told you. And you said you weren't sure to believe her because she lies a lot. Isn't that true?

A I do not recall saying that.

Q Okay. Let me show you. This is page ten.

MS. WALTER: You haven't given me that.

Q This is page ten of your conversation with Johnson.

A Okay.

Q And look at line ten. Do you recall saying, I wasn't sure because she lies a lot?

A That full statement says, and so, for a minute, I didn't believe her. I thought maybe she just heard me talking or something. I wasn't sure because she lied a lot.

Q Right. But she does lie a lot?

A At the time I believed that.

Q At the time you believed that she lied a lot?

A At the time I believed that she lied a lot, yes.

Q Okay. But her reputation is getting better in the family; right?

A Yes. Her reputation is getting better. She doesn't lie. And, in theory, the things that she lied about were insignificant things that made no sense. He always made her out to be more of a liar than she actually was. And that was something that we didn't really see very much until later when we found out the reason that she was lying is because of the things that were going on.

Q All right. So Scott had convinced the family that she's a liar?
A Yes.
Q And y'all believed Scott that she was a liar as opposed to believing her?
A I did not take any part of any of it. I tried to stay as far away from the whole situation as possible. I stayed in my room or went to work or went to school or focused on homework or my college classes or things like that. I did not sit down and think, my sister is lying about this, my sister is lying about that.

I had never actually heard anything that she had specifically lied about, just that she had been often called a liar, and that was just something that I recognized was going on. I never really had any -- I never really had her lie to me about anything in specific that I knew about to call her a liar. I just know statement-wise that she was known for lying.
Q Well, but what you said was, because she lies a lot?
A Um-hum.
Q All right. And she lied to you about being raped down by the pond by a stranger; right?
A Yes, because she did not want me to know what had actually happened. That was her first statement before

I told her who had been doing things to me, and that's when she told me who had been doing things to her.

Q Okay. So in the beginning, she says, I was raped down by the pond, and after that you said, Scott has been messing with me; right?

A Thoroughly through a different conversation, yes.

Q And then at that point, she said, hey, Scott's been messing with me, too?

A Yes.

Q Right. So you were the one that first said, Scott's been messing with you?

A Yes.

Q And then she said, Scott's been messing with me also?

A Yes.

Q All right. And at that point she told you that the thing she told you back about the pond was a lie?

A We never really got into that at that point. It was more I found out that my sister was having the same problem I was. And by that point, I was over there comforting her while she was crying, and then we took the pregnancy test, and then we decided a plan that we were going to tell my mom.

Q How long after the pond incident was it that she took the pregnancy test?

A I'm not sure.
Q All right. Do you recall saying that Scott is a freaking psycho?
A Yes.
MR. HILLIARD: Judge, excuse me just a second.
(Discussion off the record.)
Q Would your sister, Complainant 1 try to listen to on your phone to your conversations?
A I do not know.
Q Would she report back to Scott things that you were saying on the phone; do you remember that?
A She would report back to him things in general, not specifically things I say on my phone.
Q All right. Scott and Complainant 1 would always be watching --
MS. WALTER: Page, please, Counsel?
MR. HILLIARD: This is just a question, 13.
Q Scott and Complainant 1 would always be watching movies together; is that right?
A Yes, they often watched movies together.
Q And you felt like she and he were closer together than you and he were?
A I do not know of their relationship. I just knew that him and I were not close because I did my best to avoid him.

Q And this is line 20. Do you recall saying, any conversation I had on my phone that was overheard she -- meaning Complainant 1 -- would report back to him?

A Yes.

Q And that he used all of that against you?

A Yes.

Q And that he used everything in the fucking world against me?

A Yes.

Q And then you said you were sorry for cussing?

A Yes.

Q So at that point Complainant 1 was listening in on your phone conversations upstairs?

A At that point I felt like that interview was a while after the situation.

Q Going back to --

MR. HILLIARD: And I just got a few more, judge.

Q But going back to the Latta, Dillon situation, at the point in time that that all took place, you didn't have any knowledge about any problems that your sister had with Scott; is that correct?

A I do not recall the specific timeframe. But as I recall, I'm pretty sure that I knew about their situation during that. Because that's why I felt so on edge during the car ride.

Q So you were on edge during the whole car ride --
A Just on the way back.
Q On the way there you weren't on edge?
A On the way there I was a little bit worried. It wasn't until my mom started calling him and he didn't answer that I started getting really worried.
Q All right. So you and your mom were in the car alone going all the way down there; is that right?
A Yes.
Q And you could have told her what your concern was, you were a little bit nervous?
A I told her that I had a bad feeling, and she told me, you know, that they happen. And I told her that I had a really bad feeling in my stomach. And, you know, she was asking me, what about? And I told her I wasn't sure. She did ask me about it. I did confront her about the feeling, but I did not tell her why I had the feeling or what was going on.
Q And why not, at that point?
A Because I was still scared.
Q And on the way back, you were even more concerned because of the phone call?
A I wasn't concerned until on the way back with the phone call.
Q And he didn't answer the phone at that point?

A No.
Q Which really made you afraid at that point; is that right?
A Yes.
Q But you didn't tell your mom at that point either?
A No.
Q All right. Do you recall that your interview with the police was on September the 21st, 2015?
A I do not recall the exact date, but that does sound correct.
Q Okay. And that was only a short time after Complainant 1 ran away from home?
A Yes.
Q Scott's mom's name is Rebecca; right?
A Yes, sir, as far as I know.
Q Okay. That's your grandma?
A Was.
Q Was?
A Was.
Q All right. And you -- when you got angry about Scott and the situation and had a conversation with her, you told her about Scott molesting you?
A Yes.
Q You did not tell her about Scott molesting Complainant 1
A No. I told her I had my suspicions, but that I

wasn't sure. Because I was okay with telling her what was going on with me because it was my story to tell. I was not okay with telling her what was going on with my sister because it was not my story to tell. And if my sister wanted her to know, my sister would have told her herself.

Q So you told her that you had suspicions?

A Yes, because I was hoping at that point maybe she would look into it or maybe tell my mom because I was too scared to tell my mom myself because I was chicken shit. And I was hoping maybe if I dropped the hint that it was going on with her, too, without actually saying it was going on with her, too, that it would lead her, like any rational person would normally do, to look into it. And I was hoping maybe she would tell my mom for me because I wanted my mom to know, but I was too scared tell her myself.

Q Well, when you put the -- never mind.

MR. HILLIARD: That's all I have. Thank you.

MS. WALTER: Your Honor, I only have a very few questions. I will leave it to Your Honor.

THE COURT: Let's go ahead and do them. I would like to finish this witness before lunch.

REDIRECT EXAMINATION

BY MS. WALTER:

Q Complainant 2 Mr. Hilliard said to you, you told us your mom was always open to us talking to her; do you recall that?

A Yes.

Q But was she always available to you?

A No.

Q And you had testified that she spent quite a bit of time in her office?

A Every day.

Q And when you would come home from school, would she be in the office?

A Yes. She would either be cooking dinner and then going back into the office or already in the office. She was -- either way, she was only out to cook dinner and clean up, and that was it.

Q You said that you were afraid to talk to her, and I think counsel also asked about physical abuse. So did you ever see the Defendant be physically abusive towards anyone in the home?

A Yes.

Q Can you describe that for us.

A There was one instance in particular when I was younger and he was on drugs. He slapped my baby brother, who was only about one or two years old, so hard in the face that he left a purple hand mark across

his face. There were instances where, if you got in his face, like what he considered to be getting in his face, which would either be just stating anything, like if he said the color is blue and you're like, well, I think it's purple, that was considered being in his face and talking back, he would just slap you in the face.

There were instances where he threw things at us, he threw objects at us, remote controls. Whatever was next to him, he would inevitably throw it at you. There were instances where I've seen him corner my mom and get in her face. But my mom is pretty tough, so my mom would always push him back and fight back. There were instances where he slapped my sister and grabbed her by her hair and thrown us around. There were multiple instances where he was physical with us, yes.

Q You also said that he expected everything to be spotless. Do you remember anything, any incident with -- did you often have to do the dishes?

A Yes. So, there was an instance, and it's the instance in which my mom told me that she wished she had cancer so she could die to be away from us. And it was because he was always keeping us on edge, and he always yelled at us, and he always turned us against each other often where if, you know, like you always

just wanted to put somebody else under the bus. Like if you were being yelled at and you were being screamed at and you were being hit or hurt, you would always want like, well, it wasn't me, it was them.

And one day, I was in charge of doing the dishes. And I was doing dishes for six people. And an average dinner, that's usually a lot of dishes. It's six plates, six bowls, six spoons, six forks, six pans, whatever. And so it's usually a good bit of dishes, and I did them.

There was one bowl in particular, it was a plastic bowl. And when plastic bowls get grease on them, it's really hard to get them out. You have to soak them for a while and you have to scrub them for a while. And I did all the dishes. I soaked it, I scrubbed it, and I put it in the dishwasher, and it was still dirty. It came out, and it still had grease on it.

And he was so mad, he took it out on my mom. And me and my mom came home from school, and that's -- me and my sister came home from school. And my mom was upset, and she was standing in the kitchen looking at the dishes, pulling them all out of the counters. And she was hurt, and she told us that she hated us sometimes and that sometimes she wished she got cancer so she could die to be away from us. Because of the

fact that he had been yelling at her and screaming at her all day for a dirty dish that I mistakenly left.

So he came home and made me redo every single dish in the entire house all over again for one dirty dish. And then as I was doing that, he would purposely go in the kitchen and keep getting food to use up plates to keep giving them to me to make me keep rewashing the dishes over and over again.

Q Counsel also said to you this is -- this trial is a good way to get rid of Scott. Did you get rid of Scott when you left your house?

A See, that's how I feel about it. I was already away from the entire situation. I was already moving away. I was already out on my own. I would not put me, my sister, and my mother through this nonsense just to get him out of the house when all I had to do was look at my mom and say, get him out of the house.

Like eventually she would have come to her senses, eventually something would have worked itself out. I didn't need to go through all of this just to do that. If my mom was only staying with him, which I don't know is true, because he was a good supporter in the first place, eventually we would already have been out of the house. It wouldn't have come down to that.

Especially not for my sister. She turned 18 very

recently. So -- well, I guess she's turning 19 in a couple of days, but...

Q And then last question. You said you were scared to tell your mother. Why were you scared to tell your mother?

A I was scared of him. He really is -- you can't explain him unless you've lived with him. Like to walk on eggshells around him, to not be able to raise your voice, to not be able to go in the living room without being yelled at, to not be allowed to take control of the TV to watch anything.

It wasn't like he locked us in our rooms physically so much as we never felt comfortable not being in our rooms, and we never in the same room. He would always be upset if me and my mom were in the same room. He would always walk in and check on us and made sure, like, what we were talking about and stuff like that. We never felt comfortable or safe.

And then on top of that, he had very, very, very severe anger problems. And, of course, he always took it out on us. There was one instance where he was playing Halo, and he got so mad at the game and he accused the guy of cheating that he kicked our dog, like kicked our dog and our dog went down.

And he's always been like that. And I was 14 and

scared of him. And then as I got a little bit older, he also registered his gun in his name, which he always kept on him, on his bedside. And he never threatened us with it ever. It was never like, if you don't do this, I'll shoot you. But just knowing that somebody like him had one in the house also made me very on edge.

And I was very upset with my mom when she brought it in. And my mom didn't real like it being in the house either because she has a problem with guns around children, like if it was somewhere where my brothers or something could get it. And so once he brought a gun to the house, I was even more scared, and so I never spoke up.

Q Thank you very much.

MS. WALTER: Nothing further, Your Honor.

MR. HILLIARD: I know, judge, but I got two based on that.

THE COURT: All right, just two. Let's just keep them on this planet.

MR. HILLIARD: Yes, sir, absolutely, 100 percent.

RECROSS-EXAMINATION

BY MR. HILLIARD:

Q And I wrote this down. Is this what you said: All I had to do is say, get him out of the house, and

my mom would have gotten him out of the house?
A Yes.
Q That's what you said?
A That is what I just said, yes.
Q All you had to do was say that, and your mom would have got him out of the house?
A That's an exaggeration.
Q An exaggeration?
A Yes. I mean, I didn't just have to look at her and say, hey, mom, get him out. But I'm sure that if I had really begged and cried for him to be out, that she probably could have gotten rid of him without having to go through all of this. There would have been other ways.
Q All right. And page 15 of your conversation with the police officer about your mom, you say that the only time you've ever seen him get in a fight with your mom was once in a while?
A Yes.
Q And usually she would get in his face before he would get in hers?
A Yes.
Q But you have seen him push her in the corner?
A Yes. A lot of our fights were -- a lot of their fights, my mom and Scott's fights, were over the way he

treated us. And my mom would get defensive, and she would get in his face first and tell him that he needs to back off. Like if he ever put his hands on us, my mom would get in his face and tell him to back off.

Q And your mom would fight back?

A Yes, my mom would fight back.

Q She never got hurt?

A She never -- they -- she never put her hands on him, and he never put his hands on her other than to push her into the corner.

MR. HILLIARD: Thank you.

THE COURT: All right, thank you. You may step down.

(Witness excused.)

THE COURT: All right. Ladies and gentlemen, it's a quarter of 1:00. Why don't we try to be back at 2 o'clock. It's an hour and 15 minutes.

Mr. Ropp, take them to the jury room.

(WHEREUPON, the jury exited the courtroom at 12:47 p.m.)

THE COURT: All right, 2 o'clock. What else do you have, Ms. Walter?

MS. WALTER: We just have the expert left, Your Honor.

THE COURT: Okay. All right. We'll be back at

2 o'clock.

(WHEREUPON, a luncheon recess was taken at approximately 12:49 p.m.)

THE COURT: We just got our jurors back, be seated. Chris, get them for me, thank you.

(WHEREUPON, the jury came into open court at approximately 2:11 p.m.)

THE COURT: All right. We have our jury and alternates back in the courtroom. Ms. Walter, you can call your witness, or Mr. Martin.

MR. MARTIN: Thank you, Your Honor. State calls Mr. Ray Olszewski.

THE COURT: All right.

RAYMOND OLSZEWSKI, after being duly sworn, testified as follows:

THE CLERK: State your name, and spell your last name for the Court.

THE WITNESS: Yeah, sure. My name is Raymond, last name is Olszewski, that's O-L-S-Z-E-W-S-K-I.

DIRECT EXAMINATION

BY MR. MARTIN:

Q Good afternoon, Mr. Olszewski. Where do you work?

A I'm employed at the Metropolitan Children's Advocacy Center in Columbia.

Q And how long have you worked there?

A Since 1999.
Q And what do you do there?
A My primary job responsibility is to conduct forensic interviews of suspected child abuse victims.
Q You mentioned forensic interview, what exactly is that?
A Well, a forensic interview or an investigative interview is basically a fact-finding interview whereby we try to determine whether or not something has happened to a child, and if it has, to get as many details as we can about what happened.
Q How long have you held that position?
A Since I started in 1999.
Q Can you tell us a little bit about your education.
A Sure. I have a Master's Degree in social work from the University of South Carolina in Columbia. I have a Bachelor's Degree in psychology as well. I also have a postgraduate certification in forensic social work diplomate, and I have attended numerous trainings, seminars in the area of child abuse and child interviewing.
Q Any other specialized training in that area?
A Well, let me say I'm also on the faculty for a week-long forensic interviewing course that we put on in Columbia three to four times a year where we train

frontline child abuse professionals and other forensic interviewers on how to interview children. It is a week-long, 40-hour course. I've been on the faculty for that course since 2001. I, myself, went through the course. It's now called ChildFirst South Carolina. When I went through the course, it was called Finding Words. I went through that with a team of people in Boise, Idaho back in 2000, and then we started teaching the course ourselves in 2001. I've been on the faculty since we started teaching it.

Q So you talked about your specialized training and the fact that you yourself have conducted training. Through that, do you have any certifications of any sort?

A Diplomate in forensic social work. I'm a licensed social worker, I am an LMSW. I'm a licensed social worker in the state of South Carolina.

Q Any other professional licenses?

A No.

Q Do you belong to any professional organizations?

A There is an organization, it's not currently on my CV, called the Association of Forensic Interviewers. It's sort of a fledgling organization that's being put together to try to bring forensic interviewers around the country together as a group.

Q Now, you told us -- let me get this right -- you told us that you work for the Metropolitan Children's Advocacy Center?

A That's correct.

Q In what circumstances does your organization provide assistance?

A So we accept referrals from law enforcement agencies and the Department of Social Services, Child Protective Services. So in order for a child to be referred and be accepted to be seen at our place, there needs to be an investigation initiated either by law enforcement or by Child Protective Services. Oftentimes both are involved. But there needs to be an investigation.

So, in other words, we do what we do to assist in an investigation. We don't do interviews to see if there needs to be an investigation, best way to think about it.

Q Can you give us, give the Court and the jury, a rough estimate on how many clients you've interviewed.

A It would be around 2,000, possibly more. I don't have an exact number.

Q Have you ever been qualified as an expert in the dynamics of child sexual assault?

A Yes. I don't know the exact wording. I've been

qualified as an expert numerous times, and sometimes the wording is slightly different, depending on where.

Q In what courts?

A Family court in South Carolina, general sessions court in South Carolina, courts-martial, also in the State of Georgia in a criminal trial as well.

Q And do you have any idea about how many times?

A Again, I don't have an exact count. Maybe 20 to 25 times over the course of my career.

MR. MARTIN: Your Honor, before we move to ask the witness to be certified as an expert, we extend a courtesy to the Defense to see if they would like to have any cross-examination on his qualifications.

THE COURT: All right. I will allow that.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

MR. MARTIN: Your Honor, for purposes of the record, we are asking to qualify the witness as an expert in the field of the dynamics of child sexual assault.

THE COURT: All right. Ladies and gentlemen, let me tell you what we're about to do because it's somewhat different. It again goes back to our rules, the rules that I discussed with you at the beginning of

this trial.

Normally, as I told you earlier, a layperson cannot give an opinion. To give an opinion, a person has to be offered as an expert, and he can only give an opinion based upon education and experience and things of that nature.

Sometimes when it's done, it's appropriate for the person putting forward the expert to have the expert testify as to his or her qualifications in a particular field. Oftentimes, and it is permissible, for the reverse party to then be able to cross-examine the witness prior to the witness giving an opinion. He has the opportunity to cross-examine him as to his qualifications, education, training, experience, and things of that nature.

In that regard, Mr. Hilliard has the opportunity at this time to do that. Once he is done, and before any opinions are given, I will probably excuse you from the courtroom, and we will discuss it, the attorneys and I. And I will bring you back, and I will then make a statement as whether in the Court's opinion the minimal requirements, the threshold, has been met.

That doesn't mean that you are bound to follow that. If you are not convinced that a person has the proper training, experience and education in a

particular field, you can totally disregard what that person -- it's entirely up to you. You give it the weight that you think that it deserves. My finding is only that, on its face, it would appear that the person may put forth an opinion and give the reasons for that. But what weight it receives is up to you. All right?

Anything further in the way of instruction to the jury, Mr. Hilliard?

MR. HILLIARD: No, sir, Your Honor.

THE COURT: Mr. Hilliard, you may cross-examine.

MR. HILLIARD: Thank you. And I appreciate the courtesy extended by the prosecution. I'm confident the Court would have allowed me to do it either way.

THE COURT: I would.

MR. HILLIARD: Thank you. All right, sir.

CROSS-EXAMINATION

BY MR. HILLIARD:

Q And Mr. Oshinski --

A Olszewski.

Q Olszewski, thank you. Thank you. And I'll do my very best, I promise.

A It's okay.

Q Mr. Olszewski, when you were telling the prosecutor that you've been qualified as an expert witness on how many occasions roughly?

A Again, it's an estimate, 20 to 25.
Q 20 or 25 times in various courts?
A Yes.
Q All right, sir. And in those courts, you have been qualified as an expert -- or let me ask a different question. Today you are presenting yourself as an expert in what?
A I don't remember his exact language, dynamics of child sexual abuse or something.
MR. MARTIN: That's correct, Your Honor, dynamics of child sexual assault.
Q Okay. So dynamics of child sexual assault is -- you're presenting yourself as an expert in that area today?
A That's what he's asking to qualify me as, yes.
Q All right, sir. And how many times in any court in the land have you been qualified as an expert in dynamics of child sexual assault?
A I can't answer that. It is one of the things that I'm sometimes qualified as. But like I said, the language is sometimes different. Sometimes that's included, sometimes it's not.
Q All right, sir. Well, let's exclude -- you are a, by profession, forensic interviewer?
A Correct.

Q And you have been qualified as a professional in that area as an expert?

A Yes.

Q Let's exclude, for the purpose of our discussion today, every time you have been qualified as a forensic interviewer or an expert in forensic interviews and focus directly on what you're here today about, between you and the prosecutor, what you have. Can you tell us any time that you've been qualified in that specific area?

A That specific area and only that area?

Q Yes, sir.

A I wouldn't -- I don't have that.

Q Ever?

A Yeah, it's happened, but I couldn't tell you an exact number. I don't keep count of exactly what I'm qualified in as and how many times in each area. Like I said, the language changes, the phrasing changes as to what I'm qualified in. So it's a hard question to answer.

Q All right, sir. Let me read something to you and see if you agree with it or not in that regard.

MR. MARTIN: Objection, Your Honor. We haven't seen this, and I want to...

THE COURT: Show him -- if you have a document, it

hasn't been introduced, they say they haven't seen it, let's see what it is.

MR. HILLIARD: Yes, sir.

THE COURT: Now, if it's a learned treatise, there's a rule for learned treatise, and he may be asked to read from it, parts of it.

MS. WALTER: May we approach, Your Honor?

THE COURT: Yeah.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: Let's take the jury out for just a minute.

MR. HILLIARD: Thank you, Your Honor. Thank you, judge.

(WHEREUPON, the jury exited the courtroom at 2:24 p.m.)

THE COURT: All right, Mr. Hilliard.

MR. HILLIARD: Yes, sir. Thank you, judge. The reason this matters is that there are two appellate court -- two appellate cases pending at this time, one before the South Carolina Supreme Court on cert from the Court of Appeals and one in the Court of Appeals at this point in time.

THE COURT: And do they not both involve

designation of expert forensic interviewers?

MR. HILLIARD: No, sir.

THE COURT: Okay.

MR. HILLIARD: They involve exactly -- sort of. They don't involve forensic interviewers because the South Carolina Supreme Court has ruled unequivocally that a person cannot be qualified as an expert witness --

THE COURT: In Kromah.

MR. HILLIARD: Sir, exactly the case we have there.

THE COURT: Okay. All right. So?

MR. HILLIARD: So this witness has testified, number one, that his job is a forensic interviewer.

THE COURT: That he has experience in that --

MR. HILLIARD: That's what he does today, he's a forensic interviewer. That's his job.

THE COURT: I mean, I haven't heard that.

MR. HILLIARD: Well, that's what he said, judge.

THE COURT: Suppose I give you that.

MR. HILLIARD: Yes, sir.

THE COURT: Go on.

MR. HILLIARD: So he's a forensic interviewer, that's what his job is today. He testified that he'd been qualified as an expert witness some 20 to 25 times

in courts. And the question that I have -- he doesn't remember exactly what it is that he's been qualified as, the language changes. The thing that I'm trying to divide, and I want to use Kromah to do it, because the South Carolina Supreme Court, in that language, says that the title of forensic interviewer is a misnomer.

THE COURT: Exactly.

MR. HILLIARD: So he's got a job which the South Carolina Supreme Court says is not a job which has a real name. It's a misnomer.

THE COURT: His job today?

MR. HILLIARD: Yes, sir.

THE COURT: His job today --

MR. HILLIARD: Yes, sir.

THE COURT: -- is to provide testimony, expert testimony, concerning the dynamics of sexual abuse of children.

MR. HILLIARD: Yes, sir.

THE COURT: A forensic interviewer will testify as to information that he or she received from an alleged victim.

MR. HILLIARD: Yes, sir.

THE COURT: And the objection, the primary objection to the use of forensic interviewers, as I understand it through the case law, has been that

interviewers who are qualified as experts tend to interpret what the child may say and, in essence, bolster what the child may say.

MR. HILLIARD: Yes, sir.

THE COURT: And that's been the problem with qualifying forensic interviewers. And that is certainly, although it's statutory, it's certainly fallen out of favor. And we all know that.

MR. HILLIARD: Yes, sir.

THE COURT: But what this witness is called here today to -- I, frankly, don't care if he's a plumber.

MR. HILLIARD: Very well.

THE COURT: If he has had specialized training that would support his opinion as to the dynamics of sex abuse of children.

MR. HILLIARD: Yes, sir.

THE COURT: Now, what that entails, I'm not sure. If you want to ask him if he has an opinion to put forward, and let us talk about that, if you want to cross-examine him as to that, we are outside the presence of the jury now, I will let you do that right now.

MR. HILLIARD: Thank you, judge.

THE COURT: All right?

MR. HILLIARD: All right, sir, thank you. And

what I'm trying to get to, judge, just so that --

THE COURT: My understanding is he's here -- and this is through certainly no ex parte, it's been when we have had discussions on the record and in status conferences concerning this case --

MR. HILLIARD: Yes, sir.

THE COURT: -- is that his testimony is to basically explain to the jury issues such as late reporting, nonreporting of child abuse in children. Is that correct, Mr. Martin?

MR. MARTIN: That's part of it, yes, Your Honor.

THE COURT: You say that's --

MR. MARTIN: Yes, Your Honor, that is one of the main reasons.

THE COURT: Why don't you tell us.

MR. MARTIN: Judge, it's not just delayed reporting. It's things such as the child's age, fear of consequences.

THE COURT: Well, that all goes to the failure to report, I mean.

MR. MARTIN: It all certainly, Your Honor, is under that concept, but we were wanting to go into a little more detail.

THE COURT: As I understand it, this witness has not even talked to the victim; is that correct?

MR. MARTIN: That's correct.

MS. WALTER: That's correct. He hasn't seen their testimony, he hasn't read any police reports.

THE COURT: He's testifying generically to what the data would show. I guess there is something to support his opinion. And I don't know, but I assume there is, that or the research would support the opinion that there are reasons for delayed reporting, failure to report, reluctance to report, things of that nature involving children who are the victims of sexual abuse. That was my understanding of where we were going.

MR. MARTIN: Yes, Your Honor.

THE COURT: That's what we're talking about; right?

MS. WALTER: Yes.

MR. MARTIN: Yes, Your Honor.

THE COURT: All right. Now, Mr. Hilliard.

MR. HILLIARD: Yes.

THE COURT: That is quite different from a situation where we had forensic examiners or interviewers, and I've already told you that doesn't work in this case because the statute says that the child must be under 12.

MR. HILLIARD: Yes, sir.

THE COURT: This child was over 12, so a forensic interview, while it may be useful for investigative purposes, it's certainly not admissible in court; okay?

MR. HILLIARD: Yes.

THE COURT: So, but we don't even have a forensic interview here, we don't have one. Now, the fact that this witness may have extensive experience as a forensic interviewer, as I said, I don't care if he's a plumber.

MR. HILLIARD: Yes, sir.

THE COURT: What I'm interested in is whether or not he has the requisite training, experience to give an opinion as to the dynamics, the why, the where, the when of child sexual abuse. That's what we are talking about. Is there such language -- I mean, such knowledge or information that could be the basis for his opinion. And that's what I'm concerned with here.

MR. HILLIARD: Yes, sir, exactly, judge. And if I could just amplify a little bit, I'm grateful for your patience, truly. That's the cases that are before the Appellate Court now that the Defense's position, the Court of -- the Appellate Defense Commission, those are guys that I talked to about this, those guys are piloting and what the Supreme Court and Court of Appeals is looking at, is this the same thing as the

other with a different hat. And that's what they are looking at, and that's why I want to ask him a question.

THE COURT: And I appreciate you wanting to put it on the record.

MR. HILLIARD: Yes, sir.

THE COURT: But am I not bound by the law we have?

MR. HILLIARD: No question. Yes, sir, absolutely. The thing that got us here to this spot is, what I'm inquiring about is he said he's been qualified 20 to 25 times in something. He's not certain exactly what. What I want to do is distinguish those times he's been qualified as a forensic questioner or forensic person. I want to pull those out because that doesn't count here. If he's been qualified in the past as a forensic examiner for the purpose of testifying, those things won't count because that's not what we're talking about.

THE COURT: And I understand.

MR. HILLIARD: Yes, sir.

THE COURT: But you and I both know that in the world of forensic interviewers --

MR. HILLIARD: Yes, sir.

THE COURT: -- historically, forensic interviewers have given that kind of testimony.

MR. HILLIARD: No question.

THE COURT: They've been asked to give opinions --

MR. HILLIARD: Yes, sir.

THE COURT: -- as to why a child may have done delayed reporting, why a child did not report. That's been part of the egg.

MR. HILLIARD: Yes, sir.

THE COURT: It's been part of it. But as I understand, and I can see your point, and I understand why the appellate defense would be interested in having this question answered by the Supreme Court, but my understanding is that the objection to the forensic interviewer has been his bolstering, corroboration of the information provided by the child.

Now, where does that cut off? On the one hand, if you listen to the child and you just say, all the indications are what this child told me is true, that's bolstering. There is no question about it, it's not permissible anymore in spite of the statute.

Well, where he's not talked to the child, and the jury knows he has not talked to the child, and he speaks only in generic sense, only in the generic sense that, this is why in some cases we have delayed reporting, in some cases we have failure to report. If that information -- are you telling me that's

information that should never, under any circumstances, be put forward to a jury?

MR. HILLIARD: I'm saying that I'm arguing it against precedent regarding that.

THE COURT: And I understand your argument.

MR. HILLIARD: Yes, sir.

THE COURT: And I appreciate it.

MR. HILLIARD: Well, and I'm grateful that Your Honor is allowing me to do it.

THE COURT: I appreciate your position.

MR. HILLIARD: Yes, sir. But the only -- the threshold question, the only thing I'm asking him now is, I want to exclude the number of times he's been qualified --

THE COURT: And I think he answered the question and says, I really can't. And I understand why he says that. You know, you and I have been around this block a long time.

MR. HILLIARD: Yes, sir.

THE COURT: And we understand that when we started with the forensic interviewers, all that information came in.

MR. HILLIARD: Yes, sir.

THE COURT: And I would bet you that this witness has testified to this exact information as a forensic

interviewer. Would that be a fair statement?

THE WITNESS: Yes.

THE COURT: There you go. We know that. The prosecution knows that.

MR. HILLIARD: Yes, sir.

THE COURT: But what we're trying to do is eliminate the bolstering of the forensic interviewer and limiting it to just the opinions that can be drawn from the empirical data that we have concerning why a child does not report or there is delayed reporting or why a child may be fearful to report. I think we have the case to take up the road because this interviewer has not even talked to the child.

MR. HILLIARD: Yes, sir.

THE COURT: So I'm told.

MR. HILLIARD: That's true.

THE COURT: So, anyway, I believe it all goes to the weight of his testimony, not necessarily whether or not his testimony should be admitted. I'm going to let you continue in front of the jury, but that's just my thought on it now; okay?

MR. HILLIARD: All right, sir.

THE COURT: You may change my mind, but that's my thought.

MR. HILLIARD: And I just -- so I'm not going to

be able to -- I wanted to read that one paragraph and see if he agrees with it or -- it's what the Supreme Court says about forensic interviewing. I wanted to read that one paragraph to him to see if he agrees or disagrees with it.

MR. MARTIN: Judge, once you're done reading.

THE COURT: Yes, sir.

MR. MARTIN: I'm just not sure how that is relevant. We're going back down the same rabbit hole again, so to speak.

THE COURT: I'm listening.

MR. MARTIN: I mean, this whole concept is, first and foremost, against any legal precedent. Additionally, we're in no way, shape, or form, as Your Honor has stated, trying to qualify Mr. Olszewski as any sort of expert in child forensic interviewing. We're not trying to ask him anything about that. All he said is something along the lines of doing that at one point.

THE COURT: You know, if we look at this footnote, what's the last sentence say? Somehow RATAC, which is, we all -- I don't know what it means, but it -- it's the method that they are taught to interview a child. But it says it is supposed to convert the interviewer into a human truth detector whose opinions of the truth

are valuable and suitable for the jury's consumption. That's what we must avoid.

MR. HILLIARD: Yes, sir.

THE COURT: That's what we must avoid. This witness' activity in this trial has nothing to do with the traditional concept of a forensic interviewer. He has not even spoken to the child. He has not had any contact with the child. He's not here to offer any opinion as to the truthfulness or falsity of anything the child says.

I think in order to -- if I admitted this over objection, regardless of whether it -- you know, is a footnote in case law, we understand that, but aside from that, it must stand the 403 test. And 403 does not just speak to prejudice balanced against probative value, it talks about confusion of the issues.

And I think that this is not an interviewer who is offered as a witness in the concept of forensic interviewer as addressed by the Supreme Court in this decision, so I am going to exclude it.

MR. HILLIARD: Thank you, judge.

THE COURT: Thank you.

MR. HILLIARD: Yes, sir. May I have it back? If I can just put on the record what it was.

THE COURT: You may.

MR. HILLIARD: Thank you, judge. Footnote four from State vs. Kromah, 2013, footnote four. Thank you, judge.

THE COURT: Very well, thank you. All right, Chris.

Did you want to be heard on that, Ms. Walter?

MS. WALTER: No, I think Mr. Martin did a great job.

THE COURT: I meant Mr. Martin. Did you want to be heard on it further, did you want to put anything else on the record?

MR. MARTIN: No, Your Honor. We put everything on the record.

THE COURT: Okay, thank you.

(WHEREUPON, the jury came into open court at approximately 2:41 p.m.)

THE COURT: All right. We have everyone in. You may proceed.

MR. HILLIARD: Thank you, Your Honor.

Q All right. And tell me which, again, it was that you've been qualified as an expert in, what specific --

A Dynamics of child sexual assault, I believe.

Q Dynamics of child sexual assault?

A I think -- I believe that's the language he used, yes.

Q All right. And so you're -- today you're telling the -- us all that you're an expert in the area of dynamics of child sexual assault?

A Yes.

Q And the basis of your expertise and your ability to offer testimony today is what?

A I've got more than 20 years experience in the field. I, again, am part of the faculty that teaches a course. The course itself is research based. In addition to being a practitioner, I'm familiar with the research. I'm not a researcher. Again, I've attended numerous training seminars, workshops in this area specifically dealing with the dynamics of child sexual abuse. You have to understand the dynamics of child sexual abuse in order to conduct forensic interviews effectively, I believe.

Q All right, sir. And the samples -- so that the testimony that you're giving here today regarding these dynamics, is that going to be based on peer-reviewed articles that you studied?

A I'm familiar with peer-reviewed articles, and it's also based heavily on my experience as a practitioner in interviewing victims about these issues because they come up.

Q Well, tell me, can you cite for us any

peer-reviewed articles that you would be thinking about connected to this issue?

A Well, there's an article, almost 40 years old now, published by Dr. Roland Summit on child sexual abuse accommodation syndrome, subsequent articles by Tom Lyon in particular where he sought to establish research evidence for the things that Dr. Summit talked about in his paper.

Dr. Summit's paper, he was a psychiatrist, was based on his experiences with victims that he was treating in his practice. And Dr. Lyon, Tom Lyon, sought to sort of put some science behind those things that Dr. Summit had observed in his practice.

Q So, Summit, what's his name?

A Dr. Roland Summit.

Q All right, sir. And where is that article found?

A Well, I think it was published in the early '80s, and I don't remember the journal it was published in. It's pretty widely -- in our field it's pretty widely known. You probably could look it up online and find it.

Q All right, sir. And so Dr. Summit's article, was that sort of the beginning of what you're talking about; is that the --

A Yeah, it's sort of the seminal article in our

field.

Q Yes, sir.

A It talks about a lot of the dynamics that we still talk about today in terms of how victims behave and respond in situations where they've been sexually abused.

Q And when they've been sexually abused?

A Yeah, and particularly within the family. His article was particularly focused on intrafamilial child sexual abuse.

Q All right, sir. And when it -- that's a peer-reviewed article; is that correct?

A Well, again, that was not a research article. Dr. Summit's article was based on observations of the patients that he was treating or seeing in his clinic. I think later on he regretted possibly using the word syndrome. It is child sexual abuse accommodation syndrome.

But it's not a syndrome in the medical sense in that if you have this collection of behaviors in a victim, you could say that this victim has been sexually abused. He didn't mean it in that way, he just meant that these are behaviors and things that we've seen across victims that we have been treating in our practice. The Tom Lyon article --

Q Well, let me interrupt you, and you can go into that later --

A All right.

Q -- but I want to stay focused on the one that you're talking about from 1980.

A Yeah.

Q That article was -- when you say we, you are talking about like the Queen of England says we? I mean, it is one guy; right, that wrote the article?

A Yes.

Q All right. And it was his study; right?

A Yes.

Q Based on his patients?

A Yes.

Q So the sample was not a random sample or research sample; it's a doctor writing about his patients?

A Well, about patients that he -- right, exactly.

Q Do you know how many patients there were?

A I don't remember the number. But I think it's important to connect it to the subsequent articles.

Q Well, before we get to it, let me finish with this article, and then we can go to the next because I want to know, was it ten or a hundred or...

A I don't know the exact number.

Q So it could have been five?

A It was not five.
Q All right. So maybe it was ten?
A I don't think it was ten. I don't have the exact number, I don't believe. I don't believe he wrote an article about ten patients.
Q All right, sir. So he wrote an article about his patients?
A Yes.
Q And it was not a peer-reviewed article; right? You said that already, I think.
A It was published in a legitimate journal. The reason I want to bring up the subsequent article is because I believe it was subsequently reviewed, and that research was done on the things that he observed --
Q We'll, let's --
MR. MARTIN: Objection, Your Honor.
THE COURT: Let's let him answer the question. You know, he's trying to explain his answer. Let's let him do it, and then you can go back.
MR. HILLIARD: Yes, sir.
Q All right, please.
A So, subsequently, Dr. Tom Lyon published an article, I believe it was entitled, *Scientific Support for the Child Sexual Abuse Accommodation Syndrome*, in

which he sought to go back and show that some of these, you know, using numbers and research, that some of these things were actually valid that Dr. Summit had talked about. They're all things that we see every day working in the field.

So that's why I think it's important to connect, like I said, subsequent research with what Dr. Summit was pointing out in the early '80s. The reason I bring up Dr. Summit's article is because that's kind of where it started and he's kind of the first person to put this sort of -- a description to this set of behaviors that practitioners in the field were observing, if that makes sense.

Q All right, sir. So Dr. Summit was talking about his patients. Do you know the age of those patients?

A I don't have the study with me.

Q All right, sir. So, well, let's do a little definitional work. Child abuse dynamics, define child as it's used in that statement.

A I mean, we define child as somebody under the age of 18.

Q All right, sir. So you have somebody under the age of 18. Do you know the ages of any of the Summit study's children?

A I don't have the article in front of me.

Q All right, sir. So no is the answer?
A I mean, I've read the article. I've read it more than once, I just don't have it in front of me. I don't have all those numbers committed to memory.
Q Very good, all right. So they could have been 17 years old?
A I believe it was probably a variety of ages. I don't think they were all 17 years old. Is that what you're implying?
Q All right, sir.
A I don't know.
Q And so the next study was what?
A Study entitled, *Scientific Support for the Child Sexual Abuse Accommodation Syndrome.*
Q And did you say that they had regretted naming it a syndrome?
A I believe Dr. Summit may have regretted naming it a syndrome because I think it caused some confusion because syndrome is typically a word used in the medical arena. For example, battered child syndrome. So if you have this collection of injuries or things, then you can say that this is, you know, this.
Q All right, sir. And going one more time back to Dr. Summit's study, all of the patients of Dr. Summit's which were part of that study were, in fact, victims;

right?
A Yes. Well, I mean, they were -- he was treating them as victims, yes.
Q So they were victims?
A Yes.
Q So they had victimizers?
A Yes.
Q All right. And so the next study, what was the next study?
A I'm sorry?
Q Well, the next one -- the one that you were talking about where the second fellow went and looked at Dr. Summit's stuff and decided to try to make it so that it was more true or confirm it?
A *Scientific Support for the Child Sexual Abuse Accommodation Syndrome.*
Q Perfect, thank you, yes. And the scientific support, was that a peer-reviewed article?
A Yes.
Q And where did that appear?
A I don't know the journal that it appeared in.
Q And that was written by who?
A Dr. Tom Lyon. Dr. Tom Lyon, he's a psychologist and a lawyer. He practices and researches at University of Southern California.

Q All right, sir. Vion, V-I-O-N?
A Lyon, L-Y-O-N.
Q L-Y-O-N.
A First name Tom.
Q Tom. All right, sir. And so Tom Lyon did a peer-reviewed study?
A Yes.
Q All right, sir. And that peer-reviewed study, what was the name of that again?
A *Scientific Support for the Child Sexual Abuse Accommodation Syndrome.*
Q All right. And so he used the word child there. He's talking about 18 years old, somebody under the age of 18 years old?
A Yes.
Q And do you know the -- what is the word -- do you understand the word "norming" to have an application in your work?
A Norming?
Q Norming.
A Say more about what you mean.
Q All right, sir. So when somebody does a study, when they do a scientific study and they have a population of people that they want to have the study apply to, then it's called norming, normed for that

population. That is, let's say it was 9 to 12-year-olds or 12 to 15-year-olds?

A Right.

Q Is norming the word that you would use in connection with that?

A Yes.

Q All right, sir. And so the study, the Tom Lyon's study?

A Yes.

Q Do you know what that study was normed -- what population that was normed for?

A So that study was more of a peer review. He was looking at -- he was collecting studies that had been done in all of these different areas. So when we look at the dynamics of child sexual abuse, we are talking about things, for example, like delayed reporting and recantation.

So he was looking at studies that had been done in those areas, sort of aggregating them and putting them together into a research paper that looked at all these different aspects of child sex abuse dynamics in an attempt to, you know, support what Dr. Summit had described again was the goal of the article.

Q So he knew what the answer was before he went looking for it?

A No. I think he was trying to see if there was scientific support for the child sexual abuse accommodation syndrome and just record the results as they were. There was support for it or if there wasn't.

Q All right, sir. So in terms of norming for the ages, you can't talk about that?

A Right.

Q Is it fair to say that the dynamics would be different depending on the ages of the child abuse victims?

A Yes. That's possible, yes.

Q Possible?

A Yeah. I mean, it depends on the --

Q Well -- go ahead, I'm sorry.

A I mean, there's so many variables. It depends on the age difference, it depends on specific variables we are talking about.

Q All right, sir. So, in other words, for -- if you're talking about child abuse dynamics, the age of the children involved in the situation matters?

A Again, I would need -- is that a question?

Q Yes.

A I would need specifics, though, in terms of --

Q Well, does it matter?

A In terms of what dynamic or what particular issue? All children -- there's dynamics in play with all children, regardless of age.

Q Sure.

A What those dynamics are, how they play out, sure, they might be different depending on how old the child is.

Q Right. So if you don't know whether the child -- if you're talking about child abuse dynamics, and you don't know whether the child is nine or sixteen, then those are not the same dynamics?

A Yeah. What's nice about studies like Tom Lyon, though, when you do peer-reviewed article, when you get a bunch of other research articles and you do a lit review, literature review, and you collect other research that's been done, you often get a variety.

So you'll get some studies where, you know, maybe they looked at younger children or other studies where they looked at older children. So you can compare and contrast the results based on one population versus another.

Q All right, sir. So, but we don't -- I mean, when you say compare and contrast, there are differences?

A I mean, there could be. But some things -- you know, we know that all children recant, for example.

It may be --

Q Wait, wait. Say that again.

A Recantation is a phenomenon that occurs with children of all different ages. It may be more common among certain ages than others, but it is a phenomenon that occurs in all age victims.

Q But you're not saying that all children recant?

A No, that's not what I said.

Q All right. I thought that's what you said.

A No, it's something -- it's, again, a dynamic of child sexual abuse that is common to all age -- all ages of victims. So a four-year-old can recant and a 14-year-old can recant, even though there is, you know, a huge age difference in those two victims.

Q All right, sir.

A I'm not saying that all children recant child sexual abuse allegations.

Q Right.

A Right.

Q So the study that you're -- that you got, the second study, Lyon's study, and Lyon's study was a study of other studies?

A Right.

Q All right. And that was -- what else do you have that you're basing your --

A There was another pretty important article in our field that was published, I think, in 2007 or 2008. There were four researchers. This was a similar-type article to the one that Tom Lyon did wherein they looked at other research that had been done. This was done by Kamala London, Maggie Bruck, Stephen Ceci. There's a fourth person on the study whose name I can't recall off the top of my head.

But, again, this article looked at some of these same dynamics and tried to see, again, if the research supported some of these things that we were seeing in the field. And that article is one that we look at because it's a little bit more recent, like I said. I think it was published in 2008, maybe 2007.

Q All right, sir. And what you're saying is the research supported what you were seeing in the field; is that --

A Correct, that's right.

Q And how was the research done, what was that research?

A Again, that was looking at other research that had been done and putting it together to see if it supported -- and I can go through the different dynamics if you want me to -- but supported things like delayed reporting, things like recantation.

Q What I'm trying to get to is when we started this, it was Dr. Summit's patients. And then the next thing was a study of studies. Were the studies that were -- were the studies that the study was done of, were they done of people's patients also?

A I mean, you're talking about a lot of studies. And, again, I'm not a researcher, I'm a practitioner by trade. So, I mean, you might need a wheelbarrow, I don't know, to bring all the studies in here and start looking through them all in detail or -- you know. There's a fair number of studies, and again, a wide range of ages of victims.

All of these different studies would have different methodologies, different norms. And one of the benefits in doing a lit review and putting all these things together is so that you get a variety of information, different types of methodologies that were used in these studies, different age ranges. And, you know, then you look at the results and see what you have and see if you can support your original hypothesis.

Q Trying to support the original hypothesis?

A Yeah, whether it does or not.

Q All right, sir.

A Yeah.

Q Is it fair to say that your ability to testify here or your expertise is based more on your experience as a practitioner than it is on these studies?

A I would say that, right. I am familiar with some of the literature, but I'm primarily a practitioner.

Q And your practitioner is based on interviewing persons who are victims of crime; is that right?

A Suspected victims of child abuse, correct.

Q All right, sir. So that's all based on individuals who are claiming abuse?

A Not everybody we interview was claiming abuse. We get a referral. There has to be an investigation initiated in order for us to get involved. But not every child we interview discloses abuse.

Q All right, sir.

A Does that make sense?

Q Yes, sir.

MR. HILLIARD: Excuse me just one second. Thank you, sir.

THE COURT: Anything further as to his qualifications?

MR. MARTIN: No, Your Honor. At this time, we'd ask that he be qualified as an expert in the dynamics of child sexual assault.

THE COURT: All right. Mr. Ropp, would you take

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the jury out again for just a few minutes.

(WHEREUPON, the jury exited the courtroom at 3:00 p.m.)

THE COURT: All right. Mr. Hilliard, I'll hear from you.

MR. HILLIARD: Thank you, judge. In order, judge, for this person to be qualified as an expert in this area, the Court will have to make a finding of reliability on --

THE COURT: Well, let me tell what you my understanding is, and you straighten me out. First of all, it's my understanding that the subject matter of an expert's testimony must be beyond the knowledge of a jury, and the testimony must assist the jury in making its determination of the facts in this case.

Now, in addition to that, it must be shown that the expert has requisite knowledge and skills in the particular field that he's offered at, and that the substance of the testimony must be reliable.

MR. HILLIARD: Yes, sir.

THE COURT: Now, there is a two-layered or two-leveled analysis that must be undertaken first by the Court. The Court must address the issues that I just went over with you and make a determination of whether the threshold has been met.

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However, the jury, as a secondary matter, will determine whether or not the science supports the opinion, whether the opinion is well founded, whether or not the expert has the requisite skill, knowledge, experience. Those are all things for the jury to determine. If the jury determines that he does not or the opinion is not supported, they can reject it totally.

Now, in this matter, what do I have? First of all, I have unrefuted, at this point unrefuted testimony that there is a body of information which has been produced by scientific peer-reviewed studies over a period of 40 years. I have an expert who has testified that he has 20-plus years of experience in the field. I don't know if he has been specifically qualified as an expert in the dynamics of child abuse or sexual abuse.

I do acknowledge that he has been qualified numerous times as a forensic interviewer. And traditionally that sort of information has been made a part of the forensic interview process, although forensic interviewing has fallen into disfavor but primarily because of its bolstering elements in it.

Tell me why the State, in your view -- where has the State failed in meeting the threshold of

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admissibility of this witness's testimony?

MR. HILLIARD: There is no evidence before the Court, I submit, as to reliability. The conversation that we've had was the testimony that the Court has heard is that there was one seminal article, there was a group of --

THE COURT: Isn't that always the case? You know, someone comes up with the hypothesis.

MR. HILLIARD: True.

THE COURT: That's how it has to be, someone comes up with the idea. And this witness has testified that there has been several significant research studies that have been done involving collateral research studies. And that is consistent with his observations in his practice.

Was that your testimony, sir?

THE WITNESS: Yes.

THE COURT: So, I mean, that's what he's telling me. So I think we do have that level of reliability that would be required to be shown by the State. Tell me why not.

MR. HILLIARD: All right, sir. His experience, judge, is based on people who are with him because they are either reporting -- or they are reporting that they've been assaulted. So his experience is

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totally --

THE COURT: Or someone else has reported that they were assaulted.

MR. HILLIARD: Yes, sir, whoever. But they are assault victims or purported assault victims or something. So there is no scientific study. His whole experience is based on one group of people who all fit the same model. So he's, you know, if he's trying to -- if the information --

THE COURT: How do we know that about these prior studies? I mean, how do we know?

MR. HILLIARD: That's what he said, he said he didn't know. He said he didn't know how they came about or what they were. They were studies of studies of we don't -- the Court has no information, judge, other than that there was the one study of the patients, and after that, they were looking to see if that were true.

THE COURT: But aren't these the studies that are relied upon in the field, Dr. -- I mean, Mr. Olszewski?

THE WITNESS: Yes.

THE COURT: I mean, they are relied on in the field.

MR. HILLIARD: And he also testified that the majority of his ability to testify here today is based

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on his experience as a practitioner. And his experience as a practitioner is limited solely to persons who are alleged in some form or fashion to have been victims. The whole population of his information is based on people who have been --

THE COURT: Well, any child who has been subject to sexual abuse is a victim.

MR. HILLIARD: Sure, no question.

THE COURT: No matter what study you had --

MR. HILLIARD: Sure.

THE COURT: -- if there was a child who had been exposed to sexual abuse --

MR. HILLIARD: Right.

THE COURT: -- that child's a victim.

MR. HILLIARD: Yes, sir.

THE COURT: So it's like a cancer study of patients who don't have cancer. I mean, yeah, they all have it. That's why the study is done.

MR. HILLIARD: Well, if I could jump right in there, judge, if you have a study of people who have a spot on their head, some of them are going to have cancer and some of them aren't. If you have a study of children who cut themselves, some of them are going to be sexual abuse victims, some of them are not. If you have a study of children who are bad in school, some of

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them are going to be sexual assault victims, and some of them are not.

The questions that I'm going to have for him are about, he's going to say, I believe, that sexual assault victims act in a certain way. And there are -- but the thing that he doesn't say, or hasn't said so far at least, is, you know, how about children that cut themselves that aren't sexual assault victims? How about people that --

THE COURT: You can certainly ask him about that. But I think what he would testify is to whether or not that dynamic is a factor to even be considered or has any part of a discussion of the dynamics of sexual abuse in children. It may or may not.

MR. HILLIARD: Right.

THE COURT: But if it does and the research supports it, that may, in fact, be something that he would testify to. You know, I agree with you, there are people who may self-mutilate that have never been sexually assaulted.

MR. HILLIARD: Yes, sir.

THE COURT: There can be a number of reasons why a person may do that. And I'm sure there are. But that may also be a component of sexual abuse. It's like running a fever. You know, just because you got a

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fever doesn't mean you got the flu. You could have something else, and it could be a component --

MR. HILLIARD: Yes, sir.

THE COURT: -- of that condition. We'll just see how it does.

MR. HILLIARD: Yes, sir.

THE COURT: Let me hear from Mr. Martin back there.

MR. MARTIN: Thank you, Your Honor. As the Court's aware, we filed your notice of intent to offer expert testimony back on March 9th. I believe the case Your Honor was quoting was Nelson v. Taylor, which is a South Carolina Court of Appeals decision, which basically does kind of, as Your Honor previously stated in another point in the trial, there is a relatively lower bar to qualify someone as an expert. Certainly a lot of it does go to the study or experience or everything else the expert would go through.

I believe he's testified to that, judge. He talked about the training he's undergone, the training that he has conducted himself, the over 2,000 clients that he has met with throughout this period of time, also numerous research articles that we just heard from for about 15 minutes and also talked to others in the field.

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I think with all of that, he can base his opinion off of something in this field of the dynamics of child sexual assault. And that's, in a nutshell, why we would ask --

THE COURT: All right. And I think that the threshold has been met, and I would grant your motion to offer him as an expert.

Of course, Mr. Hilliard, I will instruct the jury in my charge as to what exactly that means and that they can give it, his testimony, such weight as they determine to be appropriate. And I think I've already done that, but I would certainly do it again. Thank you, sir.

MR. HILLIARD: Thank you very much, Your Honor. Thank you, sir. I appreciate your patience, judge.

THE COURT: That's all right.

(WHEREUPON, the jury came into open court at approximately 3:10 p.m.)

THE COURT: All right. We have our jury and our alternates back in. Mr. Martin, you may proceed.

Ladies and gentlemen, this witness was offered as an expert in the field of the dynamics of sexual abuse of children. I have made a determination that he does meet the threshold requirements in order to allow him to give an opinion in that field.

As I mentioned to you earlier and as I will instruct you at the end of this case, you are not required to accept his opinion. You can give it such weight as you determine to be appropriate in the field that he has sufficient education and training. You can give it any weight you feel is appropriate. You can ignore it, you can totally dismiss it if you find that he doesn't have the expertise or the science behind it is not sound, you can reject all that. Thank you.

Mr. Martin.

MR. MARTIN: Thank you, judge.

DIRECT EXAMINATION

BY MR. MARTIN:

Q Have you had any contact with the victims or the Defendant in this case?

A No, I have not.

Q Have you read any of the police reports or listened to any statements from this case?

A No, I have not.

Q Other than talking to me, have you conducted any investigation?

A No, I have not.

Q Did I give you a broad overview of the case?

A A really broad overview.

Q Did you take time off of work to be here today?

A I did.
Q And is the solicitor's office paying you for that time?
A Yes.
Q Is that payment dependent upon what you say here today?
A No.
Q Were you present in the courtroom when either victim testified?
A No.
Q Are you familiar with the term, blind expert?
A Yes.
Q Are you what we would call -- please explain that.
A A bind expert is someone who is not familiar with the facts of a case but is asked to testify as an expert about some particular issue.
Q Here today, are you what we would call a blind expert?
A Yes.
Q Let's go back to something that was brought up not too long ago. You talked about Child Sexual Abuse Accommodation Syndrome. Can you again describe what this is.
A Yes. So this was something that Dr. Roland Summit used to describe behavior he was seeing in his

patients, a behavior that might otherwise seem illogical to outsiders. For example, so there's like five elements to his syndrome, for lack of a better word. Secrecy is one of them. He said that most abuse, particularly intrafamilial abuse, happens in secret; that is, the only people that know about it are the victim and the perpetrator.

He also talked about helplessness as one issue. In other words, there is this feeling that the victim doesn't have the power to come forward. There is a power differential between the victim and the perpetrator, and the victim doesn't feel like they have any way to remedy the situation.

The next thing he talked about was something called entrapment or accommodation. So this helplessness then leads the victim to try to figure out a way to basically survive in the situation they are in because they don't know of an alternative. Or the alternative is too scary or frightening or whatever. So they learn to accommodate, figure out how to get through it, maybe with some end goal in sight. Maybe they are moving out of the house in a couple years or whatever.

He also talked about delayed and/or unconvincing disclosure. He talked about the fact that many victims

seem to -- child victims seem to not report their abuse right away. There is some delay in reporting. Could be weeks, months, or years before they come forward. Sometimes when they do come forward, it's in a tentative fashion, maybe unconvincing to those who are hearing the initial disclosure or outcries. Maybe the child was testing the waters to see what the reaction was going to be.

And then he talked about, he used the word retraction, or recantation we sometimes use as also another dynamic. Recantation is when a child takes back an allegation that they have already made, and they say, well, wait a minute, never mind, it didn't happen. That's what he meant by recantation. And he said that he's seen that also in victims that he worked with.

Q Now, you mentioned the term, delayed disclosure.

A Yeah.

Q Briefly, can you describe that again for the jury.

A Yeah. So a delayed disclosure is simply the fact that many -- it's common for child victims to not report what happens to them right away. There is often a delay. And again, that delay could be weeks, it could be months, it could be years, some people don't tell until they are adults. And there are probably

some that never tell. Of course, we don't know about those.

Q You briefly touched on this, but what are some of the reasons that a child might delay in disclosing abuse?

A All right. There could be many reasons. Lack of caregiver support. They don't feel like they have a supportive person that they can turn to. Could be out of fear, fear of not being believed, fear of consequences, either for themselves or for other family members. Sometimes victims are threatened so they are worried that some of those threats may come true, whether it's being taken in foster care or whatever.

Intrafamilial situations, it could be that the victim is dependent on the perpetrator for love, emotional support, safety, protection, maybe they feel some kind of loyalty behind it. They can't figure out a way out of that. They may love the perpetrator and be worried that somebody is going to, you know, to get in trouble for this or go to jail. They don't necessarily want that to happen.

And, again, you know, oftentimes there is a grooming process involved with offenders and victims. And the physical contact, you know, may be a progression. It may start out slowly and work its way

up to other types of sexual activity, at which point the victim may feel guilt or some responsibility for the behavior or for allowing it to continue. And that may factor into a delay in reporting of what's taken place.

Q Now, you talked about the abuser being part of the victim's family. When that happens, is the delay typically longer or shorter?

A It can be. The studies on that are actually equivocal. Some relate victim-perpetrator relationship to a lengthier delay and others do not. So I would say it's possibly a factor. Lack of caregiver support, non-offending caregiver support in the home, is definitely a factor in delayed reporting.

Q If a victim is able to remove herself from the home, will she be more likely -- would she be more or less likely to disclose?

A More likely, in my experience.

Q Why is that?

A Just the feeling of safety and just sort of the burden, that burden of responsibility has been lifted, and they may be more likely to come forward.

Q In talking again about disclosure, are you familiar with the term, piecemeal disclosure or partial disclosure of abuse?

A Yeah. We when we talk about disclosure of abuse, in the field we think of it as more of a process than an event when we're dealing with children. Oftentimes children will not come forward that very first time and tell everything all at once initially. Again, sometimes there are very tentative steps made to disclose, and then they gauge the reaction from those they are disclosing to. So we call it tentative disclosure.

We don't really use the word piecemeal. It's more of a tentative disclosure. Then they may move into more active disclosure if their initial attempts at disclosing are met with support and they feel like they are protected. So it's not uncommon like to see more information come out later on from victims.

Q Is that form of disclosure addressed in the literature?

A It is.

Q Could you explain the process of disclosure. Are there initial denials?

A Oftentimes there are initial denials. A child may initially deny being abused when asked and then later disclose. So it can look contradictory, why did this child say no initially and then they, later on, disclosed. And, again, it goes back to some of the

same reasons why they would delay in the first place, they're afraid, they're worried, they're concerned.

Particularly if they are not the ones that came forward with the allegation, in other words, if somebody else reported them as a victim. Somebody said, hey, I know little Suzy is being abused by her stepfather. And then somebody goes and talks to little Suzy. Well, she may deny that initially because she hasn't come to the point where she's ready to talk about that. But somebody's asking her about it.

As opposed to a victim who marches into the guidance counselor's office and says, hey, I'm an abuse victim. You know, they may have gotten to the point where they are ready to talk, if that makes sense.

Q Based on the research in this field, your training and your experience, do you always expect a complete disclosure from the child in the beginning, in the initial stages?

A I wouldn't say we expect a complete disclosure. I would say we are not surprised if we hear that a child has made additional disclosures or disclosed additional information down the road. Therapy, for example, or subsequent to a forensic interview, children sometimes will disclose additional information, and that would not surprise us given what we know about that process

of disclosure.

Q And, again, based on the research and your experience in the field, do victims of child sexual abuse often have difficulty remembering things such as dates and details?

MR. HILLIARD: Objection to leading.

THE COURT: Rephrase your question; okay?

MR. MARTIN: Thank you, judge.

Q Based on your research and experience in the field we talked about, are there any difficulties, that you're aware of, of victims of child sexual abuse?

A Difficulties in what?

Q Difficulties in remembering certain things.

A That's a big question. Well, for example, younger children, we know, have a harder time with the concept of time. So a preschool-aged child is going to have a harder time remembering dates of events. Anybody who has preschool children knows that. I mean, it's -- you know, sometimes even older people have a hard time with dates of events, especially if a situation is chronic. So if it's something that is occurring on a regular basis, being able to identify all the different dates that this thing happened might be difficult if it's happened a lot. And that just might be common sense.

And we know that, you know, traumatic events can

have an effect on memory. It can sometimes go both ways. I mean, sometimes traumatic events will diminish a person's ability to remember things clearly and accurately. Sometimes a traumatic event may heighten their sense of awareness of what's going on around them. So you just have to be aware of those things. We are aware of them when we're interviewing children. And we call those, like, expectations.

You know, so the expectations you have when you interview a four-year-old are different than the expectations you have when you interview a 14-year-old. You know, you would expect a 14-year-old to be able to give more information, more detail, more narrative response than we would a four-year-old, if that makes sense.

Q Previously, you talked about the term, grooming. What's meant by that term?

A That's a process in which an offender prepares a child for abuse, lack of a better phrasing. So they may befriend the child and befriend --

MR. HILLIARD: Objection to the -- I recognize he's in the middle of the answer, but I want to look back in my notes. I object to the question about grooming.

THE COURT: I'll allow it. The term has already

been before the jury, and he's asking to explain it, what it means. That's my understanding of the question.

MR. HILLIARD: All right, sir.

THE COURT: Okay, all right.

MR. MARTIN: Thank you, judge.

Q You may proceed with your recollection of grooming.

A So an offender may have identified the victim, befriend that victim, perhaps befriend family members surrounding that victim so they can gain access to the victim, child in this case. So they are looking for opportunities to be alone with the child. They may pay special attention to the child initially. Maybe -- again, these are all things that are characteristics of grooming, not every case is the same -- but provide gifts or money to the child or just extra attention and affection.

Initially there may be a lot of -- you know, it could be the initiation of physical contact. They could start up with hugging, kissing, getting the child comfortable with physical contact, then progressing from there to more intimate physical contact. It sometimes involves the showing of pornography to the child to normalize that type of behavior, that type of

interaction. It could involve alcohol and drugs to lower a child's inhibitions.

Again, the role of the offender is to lower the child's inhibition toward this type of behavior and gain cooperation from the victim.

Q What are some of the emotional and/or behavioral characteristics of a child who's been sexually abused?

A It's almost an impossible question to answer. Can you be more specific?

Q Do you ever see -- are there any behavioral changes that are common in a victim, a child victim of sexual abuse?

A So victims' reactions to child sexual abuse, that can be all over the map. Some victims are more resilient than others. And if you know children, just children in general, some are more resilient than others. Some children show very little effects after being sexually abused. I mean, you may have a straight A student, a child who outwardly shows no sign that anything is wrong at all.

On the other side of the -- on the other end of the spectrum, you have children that, you know, are sexually abused and they fall apart. Mental illness, promiscuity, substance abuse, poor performance in school. So it really runs the gamut. It's hard to

point to one particular set of behaviors or even a particular behavior and say, this is directly related to sexual abuse, if that makes sense.

Q Is it uncommon for a victim of child sexual abuse to self-mutilate?

MR. HILLIARD: Objection.

THE COURT: I will allow it.

MR. HILLIARD: All right, sir.

THE WITNESS: I would say, if you told me that a victim of child sexual abuse was self-mutilating, I wouldn't be surprised by that. Is that a common behavior of child sex abuse victims, I actually wouldn't know the answer to that question. But it wouldn't surprise me that that behavior would be, you know, apparent in a child sex abuse case, if you told me that a victim is exhibiting that type of behavior.

Q How does the availability or support of a non-offending parent affect a child's disclosure?

A Yeah. So in our experience, this is particularly important. So a child who does not have a supportive non-offending caregiver to turn to for protection, for support, for safety, those victims we worry about in terms of not coming forward with their disclosure because they don't feel like they have anybody they can tell. And in my experience, children who have parents

like that, when they do try to tell, they could be met with apathy, disinterest, outright just, you know, disbelief. And so children will sometimes come forward to a parent like that who's not supportive or unavailable for some reason, and they are in a sense betrayed by that non-offending caregiver. And they may shut down again for some period of time and not try to come forward again because of, you know, their initial attempts are met with such betrayal by the only other person in the home, perhaps, that they can turn to, you know, for protection.

MR. MARTIN: Court's indulgence, Your Honor. Your Honor, no further questions for the witness at this time. Please answer any questions Mr. Hilliard may have.

THE COURT: Mr. Hilliard?

MR. HILLIARD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HILLIARD:

Q As you testified today about -- as an expert in child abuse dynamics and delayed disclosure, there was a study that you started out with, and there were five things that were part of that study. Who was that study by; do you remember the five?

A Dr. Roland Summit.

Q So that was Dr. Summit's study with the five things in it?
A Right.
Q And Dr. Summit's study with the five things in it, that's based on his patients?
A Correct.
Q From 1980?
A 1980 or 1981, I believe, that article was published.
Q And we don't really know anything about those patients except they were all -- well, let me ask this question first. The definition of child in your level of expertise is somebody -- child abuse dynamics is someone under the age of 18?
A Yes.
Q So, but in terms of how -- what age the children were in his study, you don't really know that?
A No. I mean, I think they would have to be at least three or four. You need to be verbal in order to be participating in counseling.
Q Yes, sir. So verbal, a child that can talk but is under 18?
A Right.
Q And other than that, that's all you know?
A Right.

Q And you say that most events happen in secret. And that's just sort of the practical thing, that child abuse happens when nobody is looking?

A Right.

Q And so that's not really an expertise sort of a thing?

A Well, I think it's important that you -- I think it's important for us to recognize that.

Q Okay. And then helplessness, the power differential, that's when you're talking about the circumstance where the child is a child, and the person who is doing the abusing is not a child?

A Right.

Q All right, sir. And then the entrapment and accommodation is sort of part of the helplessness?

A Correct.

Q And that's connected to the non-offending caregiver. I mean, those two things kind of go hand in hand; is that right?

A Right. It could be connected to a lack of support, a perceived lack of support, or whatever, yes.

Q So in a situation, hypothetically, where the non-offending caregiver was in a position to be supportive, we could do away with the helplessness and the entrapment and accommodation?

A I wouldn't say that necessarily. I mean, a child still may fear or worry about the consequences of coming forward, even if they suspect their non-offending caregiver may be receptive, there are still other factors that come into play as to whether the child may not come forward. So I wouldn't say that just because you have a supportive caregiver, that none of this applies.

Q All right, sir. So, but when you say may, I mean, when you use the word it may apply, it may not apply, I mean, that's what you're talking about is victims of child sexual assault and their dynamic. So you're saying that in some circumstances these things may apply, they may not apply?

A Well, that's right. I mean, not every child goes through all these different things. These are things that are commonly or sometimes seen in child sex abuse victims, not in all child sex abuse victims.

Q Sure. And they are seen in a lot of people that are not child sex abuse victims?

A Well, accommodating for abuse, I think --

Q Presumes abuse?

A Right.

Q Right.

A But you can't accommodate for abuse if you're not

being abused.
Q Exactly. I mean, that just works?
A Right.
Q But in terms, let's say, for example, in the delayed reporting, I mean, that's -- delayed reporting presumes the thing that they are reporting is true; is that right?
A The issue of coming forward with a disclosure of abuse has nothing to do with whether or not -- yeah, so if you're talking about like is the disclosure fabricated, I mean, Dr. Summit, I don't think, was looking at whether or not any of these disclosures were fabricated. So we're just talking about a child's ability, willingness to come forward with a disclosure of abuse.
Q So they never even thought about the possibility that any of these people were telling anything other than the truth, any of these children, they never thought about that?
A Well, I mean, the issue -- the issue of fabrication of abuse has also been studied. We do know that children will fabricate and make up allegations of abuse, but the numbers are pretty small.
Q The numbers are small?
A The numbers of children that we know have made a

fabricated allegation of abuse. Now, I mean, that's...
Q So you don't -- I mean, you can't tell the folks on the jury that that's true, right, that the numbers of children who have fabricated stories are small; you can't say that?
A There is some research that looks at that, and you can look at cases of -- I mean, the only way to really look at a case and say, is the child -- has this child told the truth about abuse, I mean, there are a few ways. One is some kind of adjudication in a court of law.
Q Let's stop there for a second.
MR. MARTIN: Objection, Your Honor.
THE COURT: Okay. Go ahead, go ahead.
THE WITNESS: I'm just saying that it goes back to the idea of, you know, who's the ultimate finder of fact, I guess, in terms of a child coming forward, you know, with an allegation. I mean, that is the child's allegation. And then you look for other evidence to support that child's disclosure.
Q What you said was the adjudication; is that right?
A Well, I'm saying that one of the things I think that the studies look at.
Q Right.
A In terms of, you know -- I mean, if you were going

to put a study together you wanted to look at whether or not this particular child's allegation is true, you could look at whether or not they had a sexually transmitted disease that was consistent with child sex abuse or pregnancy, or was there an adjudication. You would have to look for a way to -- some way to like quantify that in research terms so that you could feel comfortable about using that data --

Q All right, so --

A -- to say this is a victim of child sexual abuse.

Q So what you're telling me, as I understand it, and correct me if I'm wrong, but you're saying the data is that if you can get a conviction, that counts as a positive indicator of child sexual abuse, a conviction would do that; is that what you're saying?

A Well, I'm saying that it's one way that you would try and quantify that in a study, to say that maybe this child is -- you know, if you're looking at how do we decide if a disclosure of child sex abuse is fabricated or not.

Q Right.

A Other than just what the child says, you would look for other indications that this child's disclosure is valid.

Q And one of the things you said was if they had a

sexually transmitted disease?

A Well, one of the ones that is highly indicative of child sex -- of sexual contact.

Q Right. But, I mean, that would be important to study and figure out about that child's --

A Right. And Dr. Summit's study, he was working with children that were part of -- that he was treating as part of his practice --

Q Right.

A -- that were self-reporting as victims.

Q And, well, they were self-reporting. And that's the totality of his study is that group of people who were self-reporting as victims?

A Right. That he was treating, right.

Q And then when you were talking about delay and reasons for delay, those things, was that part of his study, or was that part of your experience, or what is that?

A Both. Dr. Summit talked about delayed or unconvincing disclosure. We also see it, it's just really common in practice, in doing forensic interviews, that children just do not come forward right away. There is often some period of delay in their reporting.

Q All right, sir. And then the -- you would

expect -- one of the things you said, I believe, that you would expect a 14 year old who was giving information would be significantly better at giving information than a four year old?

A We would expect, yeah. We're talking about expectations when we're interviewing children. We would expect to get more information from a 14 year old than a four year old.

Q All right, sir. And there was one thing that you talked about, and I didn't really write it down in a way that would be helpful to me. But, in any event, one of the questions that they asked you, and the answer was, it kind of goes both ways. Do you remember that, when it goes both ways? It could go this way, could go that way, people who are sexually abused?

A I think the question was about how the victims of child sexual abuse respond or what kind of behaviors.

Q Right. So it could be any sort of behavior, really?

A Yeah. I mean, we see all different types of behavior from child sex abuse victims.

Q And then, while you would not be surprised at the self-mutilation, that's not really a -- I mean, that could be under any sort of -- that could be from all sorts of different things?

A Yeah, it's indicative of a problem in that child's environment, but what that problem is...

Q Sure. And a lot of the things that -- a lot of the things that you're talking about are indicative of problems in the child's environment; is that right?

A I don't know about that. Be more specific.

Q All right, sir. I'll withdraw the question.

A Okay.

Q One of the places that you were taught, you were teaching -- tell me where it is that you teach.

A We teach physically at our Children's Advocacy Center. We teach a 40-hour forensic interviewing course called ChildFirst South Carolina.

Q Right. And as part of ChildFirst South Carolina, you utilize the United States Department of Justice literature? Let me show you this.

A Okay. What's your question? This was like a medical article.

Q It came off your website. Does that look -- you've never seen it before?

A Came off our website?

Q Well, the website for the place you just described, the teaching child for -- what is it, ChildFirst?

A ChildFirst South Carolina?

Q Yes.
A I don't believe ChildFirst South Carolina has a website. Was it a website from the national -- some national organization, perhaps?
Q Well, perhaps I'm mistaken. I thought it was ChildFirst. But whatever it is, you've never seen that before?
A I won't say I've never seen this before because I've seen similar articles from the U.S. Department of Justice. But this is not something I've -- sexually transmitted diseases as child abuse, I mean, I haven't read that article. I'm not familiar with it.
Q All right, sir. I won't ask you any other questions about it, then. That's fair enough.
A All right.
MR. HILLIARD: That's all I have. Thank you.
THE COURT: Mr. Martin?
MR. MARTIN: No, Your Honor.
THE COURT: All right, sir. You may step down, thank you.
MR. HILLIARD: No objection to this witness being excused, Your Honor.
THE COURT: Mr. Martin?
MR. MARTIN: No, Your Honor, no objection.
THE COURT: You are released from your subpoena,

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sir. Thank you.

(Witness excused.)

MS. WALTER: Your Honor, the State rests on its case in chief.

THE COURT: Okay. Approach.

(WHEREUPON, a bench conference was held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right. Ladies and gentlemen of the jury, as you just heard, the State has now rested in this case. And that means that I have another round of administrative things that must be taken care of before the Defense begins. I will tell you again that the Defense is under no obligation to produce any evidence whatsoever. There is a presumption of innocence.

Tomorrow morning we will find out whether the Defense intends to put anyone up. But that's entirely up to Mr. Hilliard and his client. But as I said, I have probably about an hour of work here to do with these attorneys. And it's ten minutes of 4:00, so I'm just going to let you go home, ask you to come back in the morning, again, about the same time. Mr. Ropp will have some refreshments for you in the morning. Be back about 9:15; okay? Thank you.

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(WHEREUPON, the jury exited the courtroom at 3:45 p.m.)

THE COURT: All right, Mr. Hilliard, you may make your motions.

MR. HILLIARD: Thank you, judge. The State having rested, we would move at this time for a directed verdict of not guilty as to both indictments. There is a dearth of testimony about when anything that is supposed to have happened happened. I have proof, trying to write down when stuff happened, and there is no rhyme nor reason nor dates. There has been contradictory testimony all over the place about when this happened and when that happened.

THE COURT: And, of course, you know the rules, it's whether there is any evidence.

MR. HILLIARD: Yes, sir. I would like for somebody to say what the evidence was of the day that something -- of what happened and what day it happened.

THE COURT: Well --

MR. HILLIARD: I don't believe that's before the Court.

THE COURT: All right. Mr. Martin, or Ms. Walter, you want to...

MS. WALTER: Your Honor, there is certainly more than enough evidence at this point to send this to a

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jury, and, in fact, for a jury to convict. The State does not have to prove a precise -- I'll agree with one thing that Mr. Hilliard says. He does have a crew. But just because they can't pinpoint a date, that does not mean that the State has failed in carrying its burden certainly past a directed verdict.

THE COURT: Well, I don't think any particular date is necessary. We have a range on the indictment, and the testimony, certainly it's the State's position, that the younger child was 12 to 14 and the older child was 14.

MS. WALTER: The State's range is actually 14 to 16, but I think she just needs to be under 16.

THE COURT: Under 16.

Mr. Hilliard, I would respectfully deny your motion for directed verdict as to these charges. I think there is certainly evidence to support the State's position, evidence that a reasonable jury could return a verdict of guilty, so I would deny your motion.

Now, let's go on to there is an evidentiary issue; is that correct?

MS. WALTER: Your Honor, I believe the way we left it with Dr. Bennett was...

THE COURT: Go ahead.

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MS. WALTER: I just want to make sure I wasn't interrupting you. The way it was left with Dr. Bennett was it would depend on the testimony that came in. The testimony from Complainant 1 was that, yes, she did initially tell Sabrina Houser that she believed the Defendant had given her the chlamydia, but she said and she explained exactly what happened. She said, I later found out that it wasn't true.

THE COURT: Well, let me just do this. Are we talking about Ms. Houser now; is that right?

MS. WALTER: Who is Ms. Houser?

MR. HILLIARD: She's the witness that we can't get to come. They've been trying to serve her with that subpoena for two days.

MS. WALTER: No. I'm talking about Dr. Bennett.

THE COURT: Okay.

MS. WALTER: Because, remember, the whole issue where the State believed and still believes that the issue of chlamydia should not have come in. But then Your Honor pointed out the issue on the credibility.

THE COURT: Right.

MS. WALTER: And I thought the way it was left was we were going to see how the evidence came in as to whether or not his testimony would even be relevant. And our position at this point is that it's not

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relevant because the State has actually made clear that we are not saying that the Defendant was the source of that sexually transmitted disease.

That along with everything else that occurred at that ex parte hearing, in fact, said even if we were asserting that, which we are not, it is possible for a noninfected person to have sexual intercourse with an infected person and 72 percent of the time not be infected.

THE COURT: Okay, and I understand that. But the only purpose in Dr. Bennett's testimony is to confirm that your client does not now and has not in the last -- I think it's in here --

MR. HILLIARD: Five years.

THE COURT: -- five years had chlamydia; right?

MR. HILLIARD: Well, also now, judge, it's the herpes issue.

MS. WALTER: We've not been given a test for that.

THE COURT: Did he do any testing on that?

MR. HILLIARD: Yes, sir. They've got the test, they just didn't look at it.

THE COURT: Who has the test?

MR. HILLIARD: Well, they said they didn't have the test, and I gave them the test.

THE COURT: For what?

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MR. HILLIARD: For the herpes.

THE COURT: Okay. All right.

MR. HILLIARD: So I'm sorry if they didn't read it, but they got it.

THE COURT: Okay. And so he's tested for herpes and --

MS. WALTER: Which is also still not relevant, because that goes to the mother. The mother is not a victim. We have not charged the Defendant with anything related to the mother, so it's irrelevant.

THE COURT: Well, the child has testified, the victim has testified that your client did not infect her with chlamydia.

MR. HILLIARD: Yes, sir.

THE COURT: I mean, that's the State's position. So why do we need -- help me here. Tell me why --

MR. HILLIARD: Yes, sir.

THE COURT: -- you even want Dr. Bennett to testify.

MR. HILLIARD: We have two parts to this, judge. One part is that she has said that he was the one who gave her the chlamydia. I want the jury to know that he doesn't have chlamydia. She -- the mom has said that he gave the mom herpes, that -- her testimony is that -- there is nothing in this case but testimony.

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The credibility of the witnesses in this case is all there is. And the mother's credibility is important.

THE COURT: But you intend to put up your expert to confirm what the State's witnesses have said. It's not to challenge the credibility, it's to support their position?

MR. HILLIARD: No, sir. One of the things, it's a bit premature because at this point we haven't established -- we haven't gotten into evidence the letter from the lawyer to me. I believe that I can get that letter into evidence before I call Dr. Bennett. The letter says that the mother told the lawyer that my client gave her and her daughter diseases.

THE COURT: Well, first of all, the child was not represented by any lawyer.

MS. WALTER: That is correct.

THE COURT: Okay. And I would assume that you proceed on the theory that somehow this would be a statement against interest or something of that nature, or a way to perhaps impeach by prior inconsistent statement?

MR. HILLIARD: Yes, sir.

THE COURT: But that's not her statement; is it? How do you get the lawyer's -- a lawyer's letter to you in a separate proceeding into the record? The mother

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has denied it; correct?

MS. WALTER: Yes.

MR. HILLIARD: Has denied that she told the lawyer that.

THE COURT: The lawyer to do that, okay. So now, how do you get a letter or an e-mail, whatever it was, to you, tell me -- help me out with the rules of evidence -- tell me how we get there.

MR. HILLIARD: All right, sir. What I'm looking to do, judge, and, of course, we could wait until I did it. But in any event, what I'm looking to do is to call a member of my staff to say that they ordinarily and customarily check my e-mails and provide those e-mails to me in connection with all of the cases. They were checking the e-mail, and the e-mail came through the ordinary course of lawyer interaction, that is, it's communicated on a regular basis, and I keep those e-mails, the e-mail came from the lawyer, her lawyer, connected to litigation that she was involved in, to me saying that both of them claim that my client gave them STDs.

They've explained that after, I would point out for the purposes of the record. We had to go through the process of saying what we're going to prove, and now they've explained it away. But at the same time,

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we do have the letter from the lawyer saying that they, the collective they, said that my client gave them STDs. My client's been tested for both of those STDs antibodies --

THE COURT: Okay. How do you get past the hearsay, the hearsay, how do you get past the hearsay problem, the 801 problem?

MR. HILLIARD: Well, that's what I'm talking about is that they told -- that the mother, under these circumstances, told the lawyer something different than she's saying today. It's not for the truth of whether she has herpes or he gave her herpes, but whether or not she told the lawyer that. So I have a letter from the lawyer saying that that's what got said.

THE COURT: Ms. Walter?

MS. WALTER: Ms. Herron has already addressed that. And I think in order to introduce extrinsic evidence, there are additional factors that need to be met that certainly aren't going to be met by someone saying, I regularly pull Mr. Hilliard's e-mail off our server. That doesn't get past what needs to be established to offer extrinsic evidence of what he is claiming has occurred.

THE COURT: Well, I think where you might be trying to get this in, Mr. Hilliard, is a prior

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inconsistent statement; is that --

MR. HILLIARD: Yes, sir.

THE COURT: Is that how you're doing it?

MR. HILLIARD: Yes, sir.

THE COURT: And you're offering that as an exception to hearsay; is that correct?

MR. HILLIARD: Well, I don't think it is.

THE COURT: Well, I'm helping you.

MR. HILLIARD: I appreciate it, yes, sir.

THE COURT: It can be an exception to the hearsay rule if it is a prior inconsistent statement. I want you to look at 801(d)(1).

MR. HILLIARD: All right.

THE COURT: All right. Do you see it?

MR. HILLIARD: Yes, sir, I'm with you.

THE COURT: Okay. That takes you out -- if you can get it under 801(d)(1), you get it out of the hearsay problem. You see?

MR. HILLIARD: Yes, sir.

THE COURT: Okay. There we go. Now, let's work from that point. Tell me why it's a prior inconsistent statement.

MR. HILLIARD: Tell you why it's a prior inconsistent statement?

THE COURT: Yeah.

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MR. HILLIARD: Well, because she said in her testimony that she didn't tell her lawyer that when, in fact, the letter says that she did tell her lawyer that, and her lawyer told me that.

THE COURT: And that would be as to the witness's mother; right?

MR. HILLIARD: Yes, sir.

THE COURT: Okay, all right. How about that, Ms. Walter?

MS. WALTER: Well, it's not a prior inconsistent statement of the witness, it's an attorney violating attorney/client privilege saying something. And first of all, at trial here today, Ms. Herron, I believe -- anyone can correct me if I'm wrong.

THE COURT: Why don't we look at Rule 401 where we talk about -- just give me a second. The rule I'm looking for is the rule that allows testimony -- excuse me, I think I should have been still under 801, 801(d)(2).

But, Mr. Hilliard, doesn't 801(d)(2) refer to a party opponent? And the adoption of the statement by his representative or her representative. Party opponent. That's not a witness.

MR. HILLIARD: True. But it is a prior inconsistent statement of a witness, which is (1). And

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she testified at the trial concerning the statement.

THE COURT: But what we have here is a statement by a non-present witness out of court that she made, a statement out of court that should be admissible. Then what we got is a rule on hearsay within hearsay. And what that rule requires is that both, both the hearsay and the hearsay within hearsay meet the rules of an exception to hearsay.

MR. HILLIARD: The first part -- yes, sir, I agree. And the first part of that is the business record exception. The first part of it that gets us in there is the business --

THE COURT: Well, that's where I want you to go.

MR. HILLIARD: Yes, sir. The business records, the records of regularly conducted activity, which is six -- what's the first part of that, 40 --

THE COURT: The rule is 805. Look at 805. I tell you what we're going to do. We're going to have a little talk about this first thing in the morning, okay?

MR. HILLIARD: Yes, sir.

MS. WALTER: That's fine.

THE COURT: That will give everybody an opportunity to collect their thoughts. I want you to look at 801(d)(1), and I want you to look at 801(d)(2)

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and 805; okay?

MR. HILLIARD: Yes, sir.

THE COURT: I think those are the keys. All right.

MR. HILLIARD: Could we get one more try for our witness, judge? I know they have been working hard at it. They go to the door, there is people there, and nothing happens.

THE COURT: Well, Jade, if you would, tell them to give it one more run.

DEPUTY: Yes, sir.

MR. HILLIARD: Thank you, judge.

THE COURT: I don't know whether that witness is necessary because -- except from perhaps the standpoint of credibility. But her testimony here was today, yes, I said, I was mistaken. I don't know whether that is inconsistent with her testimony today.

MR. HILLIARD: Yes, sir.

THE COURT: She did say, I did say it.

MR. HILLIARD: Yes, sir.

THE COURT: I'm not saying I didn't. So what do you need her for?

MR. HILLIARD: Well, the other part of that was that she also said that she apologized to her for being mistaken. I would like to see whether the witness says

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that happened or didn't. By the time she gets here, that may be what she says.

THE COURT: Well --

MS. WALTER: I think at this point we are on a waste of time, waiting to get things out.

THE COURT: Well, that's something we wouldn't want to do in this trial.

MR. HILLIARD: Well, the prosecution thinks we're wasting the time to have a trial.

THE COURT: Okay. Mr. Hilliard?

MR. HILLIARD: Yes, sir.

THE COURT: Make your client familiar with his rights under the Fifth Amendment, and I'll discuss that with him tomorrow.

MR. HILLIARD: Yes, sir.

THE COURT: Elizabeth has prepared a draft charge. She's going to send it to you. You know, both of you, all three of you know my practice. I'm going to give the jury a transcript. Don't come up after arguments and hand me another charge. We're going to have the charge done first.

So Elizabeth is going to send it to you by e-mail. She's been working on it. I haven't had a chance to read it, but I'm sure it's right, or close. And if you've got changes, let's talk about them tomorrow as