

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY

J. Michael Baxley, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KRISTOPHER WILMONT BERRY,

APPELLANT

Appellate Case No. 2011-198246

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S #3 and #4 (PHOTOS OF TEXT MESSAGES)
STATE’S #6 through #254 (PHOTOS OF TEXT MESSAGES)
STATE’S #264 (PHOTOGRAPH OF APPELLANT)

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
THE STATE OF SOUTH CAROLINA	)	JULY 18, 2011
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
KRISTOPHER WILMONT BERRY,	)	2010-GS-16-01364
	)	2011-GS-16-00894
DEFENDANT.	)	
_____	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

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OPENING STATEMENTS BY MS. PARKER

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1 **JURY:** Good morning.

2 **MS. PARKER:** Ladies and gentlemen, this is the case
3 about misplaced trust. A fourteen year old girl that trusted
4 her gymnastic coach, sitting over there at that table.

5 Her parents that trusted her coach, and the trust that
6 his profession held as a coach to work with young people, and
7 all of that trust broken. I am going to talk to you this
8 morning about how that trust was broken, and what the
9 defendant did, and why you are seated here this morning, and
10 what this case is about.

11 In a nutshell, you are here this morning, and this case
12 is about the defendant, who was thirty-six-years-old at the
13 time, giving a fourteen year old girl a pay-as-you-go cell
14 phone. A cell phone that was understood that her parents
15 would not know about so the two of them could secretly
16 communicate, and they did just that. Over the course of this
17 trial you are going to see over fifty text messages that law
18 enforcement was able to recover off of that phone. Over fifty
19 text messages between the defendant and the fourteen-year-old
20 victim that transpired over a two day period. Two days. Over
21 fifty text messages.

22 Ladies and gentlemen, you are going to have that evidence
23 to look at, and to see for yourself. You are also going to
24 hear about a digital camera that the defendant gave the victim
25 to take pictures of herself. Gave her the camera and told her

OPENING STATEMENTS BY MS. PARKER

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1 to take some good pictures for me. And I believe that
2 throughout the course of this trial you are going to
3 understand exactly what kind of pictures he was talking about.
4 Not of a decent nature, but of an inappropriate and of a
5 sexual nature.

6 Now, on January 29, 2010, just to back up a little bit,
7 is the date that Trent Johnson, **Minor**'s father found the cell
8 phone. He found the cell phone in his fourteen-year-old
9 daughter's room. She was not home. He came across the cell
10 phone, and it was unfamiliar. He and his wife had purchased
11 their daughter a cell phone that they knew about. One that
12 they monitored. One that they knew that she had. This cell
13 phone he did not recognize. He picked it up. He went to go
14 through it. And low and behold what did he see? He sees text
15 messages from his daughter's coach on that phone that were
16 inappropriate and that were of a sexual nature; is what he
17 saw. He immediately calls his daughter. She is at the gym
18 with him as he is finding the phone. He phones her, phones
19 the gym, asks to speak with her. He tells her, I'm coming to
20 pick you up right now. I have found the phone.

21 Later that evening law enforcement comes out to the
22 Johnson's residence, and this incident is reported, and this
23 investigation begins. It is throughout the course of this
24 investigation that you find out that the defendant had also
25 given **Minor** a digital camera, and that is also turned over to

CORT TRENT JOHNSON - DIRECT EXAMINATION

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1 allegedly occurred. And for those reasons, he is presumed
2 innocent. And for those reasons he is.

3 THE COURT: Prosecution, call your first witness.

4 MR. HOLT: Thank you very much, Your Honor. At this
5 time The State calls Trent Johnson to the stand.

6 THE COURT: Please come forward and take the oath of a
7 witness.

8 WHEREUPON, CORT TRENT JOHNSON

9 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

10 MR. JOHNSON: Yes.

11 THE COURT: Go ahead, counsel.

12 MR. HOLT: Thank you very much, Your Honor.

13 DIRECT EXAMINATION BY MR. HOLT

14 Q. Mr. Johnson, will you give your entire name to myself as
15 well as the jury?

16 A. Cort Trent Johnson.

17 Q. And, what do you do for a living, Mr. Johnson?

18 A. I am the Director for Resource Development, for the
19 Salvation Army. It is a fund raising position. I travel
20 The State and raise money for shelter programs, feeding
21 programs, and this kind of thing.

22 Q. And how often have you been doing that?

23 A. Ten years.

24 Q. Where do you live?

25 A. I live in the Burn Branch Community of Hartsville. It is

CORT TRENT JOHNSON - DIRECT EXAMINATION

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1 down in Kelleytown, it is between Kelleytown and Ashland.

2 Q. Are you married?

3 A. I am very married. For nineteen years.

4 Q. And, have you lived in Hartsville your entire life?

5 A. I was --- I live currently in our old home place. My
6 parents built it whenever I was maybe a junior in high
7 school. I live right there on the same farm, and moved
8 on to college. But, yes I have lived all my life.

9 Q. And how many children do you have?

10 A. I have three children. Minor is my oldest. I have a
11 thirteen-year-old daughter, Minor M. And my youngest is
12 Minor.

13 Q. That is your only boy?

14 A. Yeah.

15 Q. At around Christmas time of 2009, how old was your oldest
16 daughter Minor? How old was she at that time?

17 A. She turned fourteen that July.

18 Q. All right. When it comes to raising your three children,
19 do you believe that you would be considered an involved
20 or an active parent?

21 A. We are very engaged together. My wife and I were
22 regularly at the gym. My wife made more events than I
23 did. I think I missed maybe one, one event throughout
24 the course at the gym. We rarely ever missed a PTA
25 meeting. We are very engaged in their studies. And we

1 are very engaged. And we go to a very small home church,
2 so we all went to church together. There are maybe
3 fifteen or twenty of us. And we do ministry and stuff
4 together on the streets in Hartsville. We are, I would
5 say, a very close family.

6 Q. And when you say you do this ministry; your children are
7 involved with you as well?

8 A. Yeah. **Minor** is actually the leader on that team.

9 Q. And, can you explain to the jury some of the rules and
10 some of the ways that you monitor your children to keep
11 them safe, some of the things that are in your normal
12 practice?

13 A. Well, during all of the time that this took place we
14 maintained software on our computers. And it was
15 connected with my computer. We all knew what each other
16 was doing. It was one of those things that we all knew
17 what each other was doing. It wasn't something that we
18 hid from our kids. They knew that you know that we would
19 get email updates about what was going on in our homes.
20 And it was sent to our in boxes. So, we would monitor
21 websites, and monitor emails and chats. And during this
22 particular time, cell phones were not allowed --- you
23 know --- their rooms. We had a two story home, and it
24 was a practice that we would leave our cell phones, or at
25 least our children, would leave their cell phone on the

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1 desk in the kitchen to be charged each night. So, it was
2 understood that we paid for those cell phones, and that
3 you know they are not to be offended whenever we pick
4 them up and sort of browse through the messages. They
5 are our phones, they just happen to be using them at the
6 time.

7 Q. In and around we are going to call it at this time, but
8 we are talking about December 2009, what was some of the
9 activities that **Minor** enjoyed?

10 A. Well, **Minor** was a gymnast. If you asked her anything
11 about herself, that was the first and about the only
12 thing that she would talk about. She was -- you know
13 that was the kind of magazines she read. That was you
14 know --- we have gymnastic equipment in our home, and
15 around our home. And she was telling everywhere she
16 went. She would be flipping around in the yard. We had
17 mats, and balance beams, and bars and stuff that she
18 would practice with at home. And you know I would say
19 that that was as an important part of her life than as I
20 guess any athletic event you know athletic activity could
21 be to any athlete.

22 Q. How long had she been involved in this sort of
23 gymnastics?

24 A. Six-years. Six-years, approximately. Six-years, I think
25 she started when she was around nine. And she is

1 fourteen, so roughly six-years.

2 Q. And the defendant is sitting over there with his lawyer
3 today, Kris Berry. How long had Kris Berry been her
4 gymnastics coach?

5 A. He wasn't there at the very beginning, you know. But he
6 was there for part of the majority of it. I mean, I
7 don't keep account of those types of things, but I would
8 probably say at least four of those six-years he was an
9 important coach at the gym.

10 Q. Correct me if I am asking this wrong, but that means that
11 he would have started around the time she was
12 ten-years-old?

13 A. I mean, roughly. I can't necessarily --

14 Q. -- That's fine. And could you explain to the jury how
15 gymnastics might work? I think the jury may all be
16 familiar with baseball, how practices go; football, maybe
17 even tennis and that kind of thing. But gymnastics, I
18 understand are different. So, could you explain how that
19 works?

20 A. Well, you know gymnasts, they train regularly. They were
21 training somehow every day. But that leaves three or
22 four days a week inside of a gym. You know, anywhere
23 from hour and a half to two or three hours during those
24 practices. So, they would typically have a practice like
25 a Monday, Wednesday, and Friday. And you know a couple

CORT TRENT JOHNSON - DIRECT EXAMINATION

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1 or three hours.

2 Q. So they would be at the gym three days a week?

3 A. It was very structured. That was a very structured
4 class. And usually during those you know for the
5 divisional or whatever the level that she was competing
6 in, both coaches would be a part of the practice.

7 Q. Now -- and I don't mean to interrupt you. But you said
8 level. Could you explain what that means?

9 A. Well, I am probably the least qualified one to get into a
10 lot of those details. But, you know, when they really go
11 to a competition they had you know a certain level that
12 you had to score at a meet, which is their competitions.
13 You have to score at a meet above a certain level. And
14 once you scored above that certain score, you were
15 qualified to compete at the next level.

16 Q. And, what level was your daughter **Minor**?

17 A. I believe it was a seven, six/seven, I mean.

18 Q. How many levels are there?

19 A. I believe, and again, I am not necessarily qualified to
20 go into all of this, but I think ten at the collegiate
21 and professional level.

22 Q. Okay. Now, about how many meets would you have in a
23 year? Like how often do those events occur?

24 A. Well, it is not like a regular you know --- it was one of
25 those things that the gym would decide which meets they

CORT TRENT JOHNSON - DIRECT EXAMINATION

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1 were going to go and compete in. And she probably
2 competed in four or five meets a year. And, again, they
3 would decide to go to a meet certain times of the year.
4 You would be more likely to have competitions during
5 certain times of the year. And I don't know if that was
6 just based on the availability of the gymnasts. Four or
7 five weeks. Maybe more, it could be double that as far
8 as --- really.

9 Q. Talk about her going to practice. Now can you tell me
10 --- you said practice was about three times a week?

11 A. Three times a week. And that was a very structured ---
12 that was a very structured time. That was --- you would
13 have very structured practices where you would have the
14 two coaches with the five, ten, gymnasts within that
15 level. But, you know, Hartsville was a small gym, so
16 they would have group levels together. So, you may have
17 levels five, six and whatever competing or practicing at
18 the same time, because they are generally working on the
19 same type of skills. And then they would have you know
20 on Friday nights they would have an open gym, which is a
21 much less structured time where, you know, **Minor** would be
22 there working on a particular skill. At that particular
23 time a lot --- there was probably more to division as far
24 as personnel, but as far as the child to you know
25 supervise their ratio, it would be much less, because you

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1 would have a lot of children there, and a lot less
2 structure, and the --- you know **Minor** would generally be
3 there that particular week you know talking to her
4 friends. You know, some people go to a skating rink on a
5 Friday night, and she went to the gym. I mean that is
6 what she did. When she wasn't at the gym she was talking
7 about it and she was thinking about it. That was just
8 who she was.

9 Q. Now, were you ever in the past worried about your
10 children as far as gymnastics at that particular gym?

11 A. We generally would try to be at the gym, or have somebody
12 there at the gym with her. It wasn't uncommon for me to
13 contact my mother, you know, if we weren't going to be
14 there at all, or if we had you know --- that particular
15 December, I remember a particular time we weren't going
16 to be there. She was going to be there for a pretty long
17 period of time, and I called my mother. My mother went
18 and sat up there with her, and just watched her compete,
19 or watched her practice rather. I am not going to say
20 that we never left her there alone, because I am sure we
21 did. But I would say that would be the exception and not
22 the rule. Generally we were there supporting her, and
23 you know -- I'm sorry I forgot the question.

24 Q. That's alright. But I'll ask another one. You say she
25 would have been around fourteen around this time. Was

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1 she allowed to date? Was she allowed to go out?

2 A. Kids call it dating at nine now whenever they run into a
3 friend in the lunchroom at school. But, she has never
4 been on a date. She just turned sixteen, and we start
5 her birthday week this week with this trial. So she
6 turned sixteen yesterday. She has never been on a date.
7 She has never been alone with a guy, or in the car
8 driving alone with a guy as far as I know.

9 Q. Now, you said that you felt safe for her at gymnastics.
10 What event -- and I am talking specifically January 30,
11 2010. What event happened that might have changed all of
12 this for you in your mind?

13 A. It was a Friday --- a Friday afternoon. It was one of
14 those unusual Saturdays that I was supposed to be out of
15 town that weekend. And I had a board meeting that I had
16 to go to in Conway, a seminar that I was supposed to be
17 giving that next morning. And during that morning, or
18 during that evening as I was packing up getting ready to
19 go, just dragging around, because I didn't have to be
20 there until 7:30 the next morning, so I was waiting until
21 late to leave. **Minor** were already at the
22 gym. And I was you know packing up, and I just happened
23 to walk into **Minor's** room.

24 Q. And I'll tell you what. I'm going to stop you right
25 there.

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1 A. Okay.

2 MR. HOLT: Permission to approach the court reporter,
3 Your Honor, if I could get this marked?

4 THE COURT: You may.

5 MR. HOLT: If I could get this marked?

6 (Whereupon, State's Exhibit Number 255 was
7 marked for the record.)

8 MR. HOLT: And at this time, Your Honor, I would like
9 permission to approach the witness?

10 THE COURT: You don't need my permission. Go ahead,
11 you may.

12 Q. Mr. Johnson, I am going to show you as State's Exhibit
13 255. I want you to look at that. I want you to tell me
14 what it is. I want to know just, do you recognize that?

15 A. As I was getting ready to leave I walked in her room, and
16 I saw that.

17 Q. Yes or no?

18 A. Yes.

19 Q. And I don't mean to be rude. I have to follow procedure.
20 Now, can you tell me how you recognize that object?

21 A. It was laying right sort of --- not up under her bed, but
22 like it had fallen off the bed in her room.

23 Q. And can you tell me what that object is?

24 A. It is a prepaid cell phone.

25 Q. And you came into possession of it like you said that

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1 night, on her bed?

2 A. That's right. Actually, it was on the floor right next
3 to her bed.

4 Q. And what did you do with it once you found it, just
5 briefly?

6 A. Well, the first thing you know was our policy phones were
7 not in her room. So, my first thing is, what is this
8 phone doing in here? She would commonly have friends
9 sleep over at our house. So I thought maybe one of her
10 friends, because we didn't --- If there are a bunch of
11 girls in there together, we don't necessarily make every
12 one of them check their phone at the door. So, I just
13 assumed maybe a friend left it over. And I picked up the
14 phone, and I started browsing through it --

15 Q. -- That's okay. And we are going to get back to all of
16 that. I promise you, Mr. Johnson. But is that phone in
17 substantially the same condition as the last time you saw
18 it?

19 A. Yeah. It doesn't look any different.

20 MR. HOLT: Your Honor, at this time The State would
21 move to place State's Exhibit 255 into evidence.

22 THE COURT: What says defense?

23 MR. CANNARELLA: No objection, Your Honor.

24 THE COURT: Without objection, 255 in evidence.

25 MR. HOLT: All right.

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1 WHEREUPON, STATE'S EXHIBIT
2 NUMBER 255 IS MARKED AND
3 ADMITTED INTO EVIDENCE WITHOUT
4 OBJECTION.

5 Q. All right. Mr. Johnson, you can feel free to touch the
6 phone, and look at it, or whatever you want. But, can
7 you start the jury off with you said you don't
8 specifically check everybody's cell phone at the door,
9 does that imply that if Minor has friends over, you ask
10 them to adhere to your policy of no cell phones in the
11 room?

12 A. No. The only thing --- I mean, if she has friends over,
13 and they are all in her room talking. All of her friends
14 that stay over with us now, that we don't allow them to
15 talk after a certain time. But, I didn't check the cell
16 phone.

17 Q. All right. And you are telling us that you were on the
18 way to a business trip, and you found that cell phone.
19 Can you tell us what happened next?

20 A. Well, I browsed to see the numbers. And whenever I
21 looked at the contacts, I knew once I saw the contacts
22 that it was her phone. Because, we have friends all over
23 the State associated with different church groups, and
24 different things. So, I immediately knew she was the
25 only person that could have you know this sphere of

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1 contacts. And so, I called her on my phone. And I said
2 I found a phone in your room. And I said I'm coming to
3 get you. And so, I came and picked her up actually
4 without looking at any messages or anything yet. I
5 called her, came and picked her up, and brought her back
6 to the house, and was giving her the riot act at that
7 particular time. Going through the phone, I could see
8 you know -- Jerry was a kid that goes to church with us.
9 And they sit next to each other at church. And they
10 talk. And I was reading the text messages. Nothing, you
11 know, I didn't like the fact that she had a phone texting
12 him. I didn't like the fact that she was texting a
13 nineteen-year-old boy. And I was giving her the riot act
14 about that. But, nothing --- nothing extremely offensive
15 other than the fact that the communication was taking
16 place behind my back. And then just not even thinking to
17 check the text messages of Kris Berry. I don't know if I
18 accidentally just bumped forward and saw one of the texts
19 from Kris Berry.

20 Q. Did you read that text?

21 A. I did.

22 Q. Do you remember what it said?

23 A. I mean, I couldn't quote it, but I can tell you it said
24 something about you know the kiss will be great, and I
25 want you to know that whenever I kiss my hands begin to

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1 move around or roam around or something like that.

2 Q. What did you think when you saw that?

3 A. Oh, I flipped out. It was --- I mean, oh my God, what in
4 the world? Because with Jerry, he is still a kid. He is
5 not necessarily within the age group that I would you
6 know be gung-ho about my daughter talking to, but he was
7 still a kid. But, here is a man my age, who is talking
8 to my daughter this way. So at that particular time I
9 don't know what has happened. I don't know what is going
10 on. All I know is, I would never be --- I mean, this is
11 just --- all of a sudden my world was flipped upside
12 down.

13 Q. And what did you do after that? Did you contact the
14 police?

15 A. My other daughter **Minor** was still at the gym. I had no
16 reason when I picked up **Minor** to drag her into any of
17 this. Not because --- I was just upset that the phone
18 was in the room. Not about any particular message that
19 was on the phone. So, I go back --- I'm like, you know
20 the first thing I think I said was, **Minor** is still up
21 there. So, --

22 Q. And just for the jury, who is **Minor**?

23 A. **Minor** is my middle child. She probably would have been
24 ten, eleven, at the time. 4So, I you know I just ran out
25 the door. I had the phone in my hand. Regina was there

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1 with us. We were all sitting there in the room because
2 we were just addressing you know just the disciplinary
3 action for the phone in the room. We were just
4 addressing that with her. And whenever I read that text
5 message I just took off out the door. I am going to go
6 get my other daughter. And I remember Regina had to ---
7 she was dressed for bed. I was dressed to go to
8 Charlotte, or go to Myrtle Beach rather. And I was going
9 to wait on her to get to the car. And then just while I
10 was sitting there in the car waiting for her to get
11 there, maybe it was thirty seconds, but I browsed and I
12 saw another text message.

13 Q. From who?

14 A. From Kris. At that particular time, you know I don't
15 even know if I finished reading or even looked at the
16 rest. At that particular time that was my issue. But
17 the text message said something to the effect of I want
18 to get in your panties. Or get you out of your panties
19 or something like that. And so, whenever I read that I
20 didn't wait on anybody. You know, I am going to the gym,
21 and at that particular time I was out of range. So I am
22 driving to the gym. I stopped halfway there, because I
23 am absolutely --- my head is about to pop off my
24 shoulders. And, I just remember pulling on the side of
25 the road. And I just remember saying, God, I need your

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1 grace.

2 Q. At what point, Mr. Johnson, did you contact the police?

3 A. Well, a calm came over me, so I called Regina. I think I
4 called Regina. I told Regina to call **Minor**, and have
5 **Minor** whenever I get there -- I'm not going to go
6 inside. When I get there for her to come on out to the
7 car.

8 Q. You didn't want to go inside, why?

9 A. Well, when I first saw the text message, my intention was
10 to go inside. But, then you know all I could think about
11 was --- I thought about a bunch of things. But
12 ultimately, I felt my children --- to put them --- to
13 expose them to this type of stuff. The second thing is
14 I'm going to kill this guy. But then whenever that peace
15 came over me, I'm just like --- I just want to get my
16 child out of there. I just want to get my other child.
17 So, Kelly comes out to the car with Ashley, the older of
18 the gym, and with Kris Berry as well. And they are like
19 what is going on? And I just told them the text. And
20 whenever I did, Kris --- Susan Berry, Kris's wife, just
21 kind of dropped her head. And my last words to her was
22 Susan I am sorry for what this is going to do to your
23 family. I went to drive home. My sister is a --- my
24 sister's husband is a deputy. So I called her, and I
25 said --

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1 **MR. CANNARELLA:** Your Honor, I am going to object to
2 what he said to somebody --- I'll give him a little bit of
3 leeway, but that is hearsay. Saying what he said to somebody
4 else.

5 **THE COURT:** Overruled counsel. What he said would not
6 be hearsay. What they say may have been. But what he said is
7 appropriate testimony. You may proceed.

8 And let me just interject. The point is, when you say
9 what someone else said, the best evidence of that is to let
10 them come in and say what they said.

11 **MR. JOHNSON:** Did I say? I don't know what I said. If
12 I did, I'm sorry.

13 **THE COURT:** You didn't, sir. You are fine. What you
14 said is you called your sister. And then you said -- and you
15 can answer.

16 A. And I asked her you know what should I do? And she said
17 --

18 **THE COURT:** There you go.

19 **MR. HOLT:** You can't say what she said.

20 A. I didn't call the police directly, she did. And it was
21 Officer Young.

22 Q. Who is her husband?

23 A. Eddie Warhouski.

24 Q. Now, previous to this rather dramatic night, did you
25 trust Mr. Berry?

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1 A. I mean, I more or less left my kids up there with him. I
2 mean, I am not a very trusting father to begin with. We
3 are there. We try to supervise them. But, more or less
4 we trusted them in his care for a considerable amount of
5 time. And, so -- my children, even though **Minor** was the
6 same age as his daughter, I never let her spend the night
7 over there. It was a rule that our kids couldn't spend
8 the night with someone who had a teenage son. And so,
9 never would we let her go and spend the night over at
10 their home. But, you know, --

11 Q. Mr. Johnson, I am going to play the same set of facts out
12 one more time briefly. I want to show you ---

13 (PAUSE.)

14 (Whereupon, State's Exhibit Number 256 was
15 marked.)

16 Q. Mr. Johnson, I am going to show you what has been marked
17 just for identification purposes State's Exhibit Number
18 256. Just like earlier, can you look at it and tell me
19 if you recognize it without telling me what it is?

20 A. I do.

21 Q. All right. And, how are you able to recognize it? How
22 are you able to tell me what it is?

23 A. It was in her room.

24 Q. And what is that?

25 A. It is a digital camera.

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1 Q. And, how did you first come into possession of that
2 digital camera?

3 A. **Minor:** had a couple of friends that she had been talking
4 to about you know things. And one those her friends
5 called us up or actually the older sister of one of the
6 friends called us and said that there was more that you
7 need to know. And said that --

8 **MR. CANNARELLA:** Your Honor, is this -- I don't really
9 know what he is going to say somebody else said. But, he is
10 getting ready to testify about what somebody else said.

11 **THE COURT:** Very good. Just a moment. Let's talk
12 about this ladies and gentlemen. What the objection is, is
13 hearsay. And let's just talk for a moment. If you think
14 about when we were children, we played a game where everyone
15 sits in a circle, and one person would begin to whisper
16 something and it would go around. And when it would come back
17 it would be totally different.

18 The hearsay rule is to prevent an outside statement from
19 a third person coming into evidence through someone who is
20 testifying. The best evidence, of course, is to bring that
21 third person in and let them say what they said.

22 So, the hearsay rule would prevent someone from coming in
23 and testifying about what someone told them. And that is the
24 reason for the rule.

25 I am not correcting you, Mr. Johnson. It is hard enough

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1 to testify, much less worry about the testimonial rules that
2 we worry about here. But, it just has to do with the
3 credibility and reliability of evidence. So, you can testify
4 that you had a conversation, and what you did based on that
5 conversation, because that is not hearsay. But, it is hearsay
6 to say what someone else told you.

7 Now, with that understanding, why don't you rephrase your
8 question to avoid that and we will go forward?

9 MR. HOLT: Thank you very much, Judge.

10 Q. Mr. Johnson, after the conversation you had with Minor's
11 friends, did you search for anything in her room?

12 A. Yeah. After the conversation, I went into her bedroom,
13 and I said, where is the camera? And she immediately
14 went and got the camera and gave it to me. I mean we
15 were irate, you know, at the time. It wasn't one of
16 those things that I went in there just yelling, where is
17 the camera? I don't know exactly. But she went
18 immediately and picked up the camera and brought it to
19 me. Without having a conversation, she knew exactly what
20 I was referring to.

21 Q. And is that camera in substantially the same condition
22 now as when you first saw it?

23 A. Yes.

24 MR. HOLT: And at this time, Your Honor, The State
25 would move State's Exhibit Number 256 into evidence.

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1 **THE COURT:** Is there an objection?

2 **MR. CANNARELLA:** No objection, Your Honor.

3 **THE COURT:** All right. Number 256 in evidence.

4 **WHEREUPON, STATE'S EXHIBIT**

5 **NUMBER 256 IS MARKED AND**

6 **ADMITTED INTO EVIDENCE WITHOUT**

7 **OBJECTION.**

8 **THE COURT:** One more thing. We keep up with what is in
9 evidence and what is not, because whatever is in evidence goes
10 back with you to the jury room when you retire to deliberate,
11 and what is not in evidence doesn't. Go ahead.

12 **MR. HOLT:** Thank you, Judge.

13 Q. Now, Mr. Johnson, at any time did you give Kris Berry
14 permission to give your daughter that camera or that cell
15 phone?

16 A. Absolutely not.

17 Q. And are you aware of any reason why Kris Berry would give
18 your fourteen-year-old daughter both a digital camera and
19 cell phone?

20 A. I am aware of a reason he did.

21 Q. Legitimate reason?

22 A. There is no legitimate reason why he would have given her
23 a camera and a cell phone.

24 Q. All right. And, Mr. Berry, have you ever asked him ---
25 Mr. Johnson, have you ever asked Mr. Berry for any reason

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1 at all to counsel your daughter, or to look after your
2 daughter, or to do anything other than what he was paid
3 to do, which was to coach your daughter in gymnastics?

4 A. I paid him to coach her.

5 Q. Have you ever asked him to do anything else?

6 A. So far as I know, he is not qualified to offer any
7 counseling or anything like that. So, I have never asked
8 him, to answer your question. No, I have never asked him
9 to do anything else.

10 Q. And, before all of this happened, was your daughter ---
11 What level of activity was your daughter in gymnastics,
12 meaning did it take up a lot of time, or did it not take
13 up a lot of time?

14 A. It took up a great deal of time.

15 Q. And, since this, let's call it an incident with Mr.
16 Berry, how much time has your daughter spent with
17 gymnastics?

18 A. She doesn't. I mean, immediately after --- immediately
19 after all of this took place, we felt it was best for
20 **Minor** not to go back, or for **Minor** not to go
21 back to the gym, because you know the Berry children were
22 still going there, and had every right to go there. But
23 we just felt it best not to be in association with them.
24 It would be too difficult, you know, even as time went
25 on. So we tried a couple of other gyms, and just the

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1 distance made it too difficult. And she still gets up
2 there on the trampoline, and bounces around. Gets up
3 there on her beam, and you know, flips around. But,
4 maybe an hour a month now, where before it would have
5 been fifteen hours a week to twenty hours a week.

6 Q. In Mr. Cannarella's opening, he made a large deal about a
7 man named Jerry Hall. Can you explain your relationship
8 with Mr. Hall, and how you came to know him? Who he is,
9 as well as the relationship to your family?

10 A. We disciplined a lot of teenagers throughout the course
11 of the last ten years, and Jerry was one of those kids
12 that came in, I think first he came as a visitor to our
13 church with my nephew. We became very close, and he is
14 one of those kids that --- there are a dozen kids that
15 were a part of the group. It is not like Jerry was
16 always over there by himself. There was always a bunch
17 of kids who were a part of our ministry team who were
18 there. And, it was --- I knew that **Minor** and Jerry liked
19 each other. **Minor** was fourteen, and they said nineteen,
20 I guess in the opening statement I knew eighteen,
21 nineteen. I knew they were certainly at different places
22 in their life. And, they knew that I would allow them to
23 sit together in church, and that was the extent of it.
24 And, you know, there have been times since that if Jerry
25 was driving to church or something, and there was a bunch

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1 of kids, or two or three other kids going, I might would
2 let --- might --- it was always one of those things where
3 they asked never knowing what the answer was going to be.
4 But if there was a couple of kids, **Minor** may ride in the
5 car with him. But, that was --- He is --- I would say,
6 as much as you can trust any teenage boy he is a trusted
7 friend of our family. And, he is a part of our church,
8 and just a friend of the family. He works now on our
9 family farm, my brother's farm. I live on the farm. And
10 he is one of his employees now.

11 **MR. HOLT:** Beg the Court's indulgence, Your Honor.

12 **(PAUSE.)**

13 **MR. HOLT:** Mr. Johnson, would you please answer any
14 questions Mr. Cannarella may have?

15 **THE COURT:** Cross examination.

16 **CROSS EXAMINATION BY MR. CANNARELLA**

17 Q. Trent, you don't have any reason to believe he ever
18 molested your child do you?

19 A. Well, I'm not a lawyer. If you can define what
20 molestation is? I would say sticking your tongue into
21 somebody's mouth is molestation. So, I would say, yes.

22 Q. I mean something beyond that?

23 A. Something beyond that, I have no reason to think that
24 anything other than --

25 **THE COURT:** One at a time, counsel. Please. Don't

CORT TRENT JOHNSON - CROSS EXAMINATION

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1 bump your witness.

2 Q. Okay. When you got back to your house, Minor had told
3 you that she had bought the phone?

4 A. That's correct.

5 Q. That is a yes?

6 A. That's right.

7 Q. Then she later told you that Kris had gotten a phone for
8 her, right?

9 A. Whether she told me that he got the phone, or whether she
10 told Mr. Young, you know, or if it came out during the
11 forensic interview, that is the facts as I know them now,
12 is that Kris gave her the phone one night at the gym.
13 And so, I was originally told whenever I called her, my
14 first thing is, whose phone is this? And she said mine.
15 And I said where did it come from? And she said I bought
16 it.

17 Q. She had been prohibited from texting. Hadn't y'all taken
18 the phone away from her at that time? You had blocked
19 her ability to text?

20 A. I --

21 Q. On her own phone.

22 A. We would restrict her from time to time for various
23 reasons rather it is grades or any other. I can't
24 necessarily remember whether she was on --- I don't think
25 she was on restriction at that particular time. There is

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1 a --- our phones are not used at nighttime. But so far
2 as I can recall, she was able to text with her own phone
3 during that particular time.

4 Q. Now, during the course of this investigation, that Friday
5 and Saturday morning, [Minor] first told you that she was
6 kissed on a Monday, that preceding Monday?

7 A. No, [Minor] has never even to this day told me that she was
8 kissed. The forensic interview came to us and informed
9 us of that.

10 Q. But you were present when the officers were at your
11 house, and your wife was there, and you had already
12 returned from the gym?

13 A. I was at the house when the officers arrived.

14 Q. You didn't hear Regina tell one of the officers in your
15 presence that [Minor] said he kissed me on Monday?

16 A. I don't recall. I don't recall. I mean, I don't recall
17 being told about the kiss by [Minor]. I'll let Regina
18 answer for herself, but I don't recall.

19 Q. Are you familiar with how the gym was laid out?

20 A. Uh-huh.

21 Q. Are you familiar with how the front offices are?

22 A. I mean we were at the gym a lot. About fifteen, twenty
23 hours a week for years.

24 Q. And most all the times there, can you ever think of any
25 time that any of the children there were not in the

CORT TRENT JOHNSON - CROSS EXAMINATION

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1 company of an adult?

2 A. Certainly. Certainly, you will have two coaches there at
3 any one time, and there are kids sort of moving around
4 throughout the gym. And for any period of time, no.
5 But, it would be very easy to walk out of the presence of
6 the adults for a few moments.

7 Q. I understand that. And that is what you think --- that
8 is what your theory of what was going to happen?

9 A. As to what was going to happen?

10 Q. Yeah.

11 A. As a father, I try not to play that out in my mind.

12 Q. But nothing ever did happen?

13 A. Yes. Something did happen.

14 Q. Well, you are talking about a kiss that took place either
15 on Monday or Thursday.

16 A. I am talking about the kiss that took place and even the
17 arousing messages that were sent, in my mind that were --

18 Q. -- The text-messages you just testified to?

19 A. Certainly.

20 Q. We understand that. But, there are always adults there
21 at the gym?

22 A. Yes.

23 Q. And that gym is open Monday through Friday?

24 A. I believe so, yes.

25 Q. And on Saturday, too?

CORT TRENT JOHNSON - CROSS EXAMINATION

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1 A. I mean, it may be from time to time, but not generally.

2 Q. Your wife was --- she probably spent more time there at
3 the gym than you did, because you would be at work?

4 A. Sure.

5 Q. And Jerry, the guy that is fourteen ---
6 nineteen-years-old that she was talking with on the
7 telephone, texting, he goes to y'all's church?

8 A. That's correct.

9 Q. Well, so, is that kind of like what you describe as a
10 church date?

11 A. My words were she has never dated. Now, whether she
12 would have described that as a date, you can ask her.
13 But, I said that she has never dated even up to this day.
14 She may sit with him in church, and if that is a date,
15 then you can --

16 Q. -- And he works on y'all's farm, your brother's farm?

17 A. He works on my brother's farm. He is one of the guys.
18 He is a farmhand.

19 Q. Do you know if **Minor** has ever spent the night at Kris's
20 house before?

21 A. I know she has not.

22 Q. She never has?

23 A. No.

24 Q. Has any of his children ever spent the night at your
25 house before?

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- 1 A. Perhaps, I don't --- I have had so many kids spend the
2 night at the house, I couldn't -- They were very close,
3 ~~Minor~~ and Rebecca are essentially the same age, give or
4 take a few months. And so, it is possible that Rebecca
5 spent a night at some point.
- 6 Q. At your house?
- 7 A. At my house. But, I don't recall the event.
- 8 Q. That phone that you found in her room, is that a phone
9 that you just didn't recognize before or what brought
10 your attention to it?
- 11 A. That it wasn't where it was supposed to be.
- 12 Q. You had never seen it before?
- 13 A. No.
- 14 Q. And there were text messages. How about this guy named
15 Joey, have you ever heard of him?
- 16 A. Sure.
- 17 Q. And, your daughter was having a problem with him?
- 18 A. I mean my daughter had a crush on him. He was a kid in
19 her grade that was you know, just didn't meet the
20 standards that a father and mother would chose for their
21 child.
- 22 Q. What do you mean?
- 23 A. His grades weren't there. And there was some
24 disciplinary issues at that school. I mean just his
25 behavior and stuff would not be what we would expect, you

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1 know somebody who we would want to hang out with our
2 child.

3 Q. It was because you had some problems with the way it was
4 affecting her?

5 A. You know, I didn't get into a lot of the psychology of
6 all of that. I figured a lot of that was just a
7 fourteen-year-old girl crushed on a guy that she
8 shouldn't crush on, and in time it would pass. I really
9 didn't you know -- I really just don't think that way.
10 In my mind, I would just say **Minor** you are not going to
11 see this guy, period. And that was the extent of it.

12 Q. How about your wife, Regina, what was her feeling towards
13 this boy, the same as yours?

14 A. Sure. Sure.

15 Q. Was it affecting your child's performance at school, at
16 the gym; to your knowledge?

17 A. I mean, she has always been a great student. And she has
18 always been a great athlete. You know, how she may have
19 been under a different circumstance, how in the world
20 could I answer that question?

21 Q. Well, you have already described that he wasn't up to her
22 standards.

23 A. I didn't say that. I said he wasn't up to my standards.

24 Q. Well, your standards. Do you expect her standards to be
25 as good as your standards? Do you strive for that?

CORT TRENT JOHNSON - CROSS EXAMINATION

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1 A. I wouldn't expect a fourteen-year-old to have the same
2 level of standards as a father would. I would expect a
3 fourteen-year-old to act like a fourteen-year-old, which
4 is sometime inappropriate. And that is the reason
5 parents have to monitor and have to reign children back
6 in, and say what is and what is not, and interject our
7 opinions about things.

8 Q. Well, was she suffering in any way from the relationship
9 with that boy because she had a crush on him, and you
10 didn't want her to be around him? And that needed to
11 stop. Did Regina ever, to your knowledge, ask Kris to
12 help y'all or --

13 A. -- I addressed my issues directly with **Minor** and with
14 Joey. And because they knew --- I got all of their
15 messages, just like I got every other message that came
16 into the house. So, sometimes where I felt that Joey was
17 manipulative -- because she would act like she wanted to
18 break off the relationship with him. And he would say
19 something to the effect of, well, I'm just going to kill
20 myself if you do this. So, it was one of those things
21 that she kind of felt that there are consequences here if
22 I end this relationship. So, I remember there was a time
23 I remember replying to their email, you know, Joey, don't
24 manipulate my daughter. And so, I just interjected, I
25 interjected there.

CORT TRENT JOHNSON - CROSS EXAMINATION

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1 Q. But you wanted her to stay away from him.

2 A. Sure.

3 Q. Because, of how he was trying to control her? I'm going
4 to kill myself if you don't love me, date me, like me, or
5 whatever. Is that what you said?

6 A. I would say that we are talking an awful lot about it,
7 and it wasn't something that occupied a great deal of
8 time in my mind. It was one of those things. It was a
9 disciplinary thing. I dealt with it. And I didn't dwell
10 on it.

11 Q. But when it comes down to it -- Okay, let's go back to
12 the kiss part. Your testimony is, if you don't know if
13 the kiss allegedly occurred on that Monday the 25th, or
14 that Thursday the 28th; you don't have any knowledge of
15 when it was alleged to have occurred?

16 A. No. I would have to tell you that I would have to look at
17 my calendar to tell you where I am going to be tomorrow.
18 I'm not one that can sort of assign a date to an event.
19 I don't know whether it took place on a Monday, a
20 Wednesday. They said it took place, and that is what is
21 offensive to me. It is not the date but the event.

22 Q. I understand, and that it occurred and how it occurred.
23 But, the 28th was on a Thursday, and all of this started
24 happening to you on that Friday?

25 A. I discovered it on a Friday.

CORT TRENT JOHNSON - CROSS EXAMINATION

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1 Q. And you don't know what date this kiss allegedly took
2 place?

3 A. My understanding now is that it took place the day before
4 on a Thursday.

5 Q. And you have no knowledge of anybody ever saying, hey,
6 you don't have any knowledge that **Minor** said it happened
7 on a Monday?

8 A. I don't have any knowledge of that.

9 Q. That's okay. Let's move on. I am going to ask you this
10 question one more time, because I'm not real clear. But,
11 during the investigation at your home for Eddie and those
12 to come out there, Eddie's deputies to come out there, do
13 you remember Regina leaving the room and then coming back
14 in the presence of all of y'all and saying that **Minor** had
15 told her the kiss happened on Monday the 25th?

16 A. I remember allowing **Minor** to talk to Regina, recognizing
17 that we want information to come out. And that a
18 father's presence talking about issues like this may
19 obstruct that. So, I gave them a chance to talk, and you
20 know, I'm telling you I know the --- I was told by **Minor**
21 and others that the kiss took place. Or I was told that
22 the kiss took place. You would have to work out the
23 calendar on your own, because I can't do it.

24 Q. Do you know he was charged with it taking place on the
25 25th? Did you know that?

CORT TRENT JOHNSON - REDIRECT EXAMINATION

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1 A. No, I did not know that.

2 Q. Now he is charged with it taking place on the 28th?

3 A. But I think that is what is trying to be established.

4 But I think the event is the issue, and not necessarily
5 the date. A fourteen-year-old, I am telling you this was
6 a chaotic night. A chaotic night. It was chaotic for
7 everybody. Our worlds are upside down, and we can't ---
8 if we did not keep a calendar, that was sufficient for
9 the events, I apologize.

10 THE COURT: All right. Anything further?

11 MR. CANNARELLA: That's all I have, Your Honor.

12 THE COURT: Ladies and gentlemen, when a witness is
13 presented, you have direct, cross, and then if a new issue is
14 brought up on cross, new issues only, we go back with redirect
15 on the proponent of the witness.

16 Is there any redirect for the witness?

17 MR. HOLT: Just briefly, Your Honor.

18 THE COURT: All right. Please go ahead.

19 REDIRECT EXAMINATION BY MR. HOLT

20 Q. Mr. Johnson, you talked about or Mr. Cannarella talked
21 about a boy named Joey. Can you tell me how old he was?

22 A. He was in her grade. I think he had been held back a
23 year, maybe two. But, he was relatively the same age.
24 He may have been a year older.

25 Q. So he was like --- he was someone around her same age?

CORT TRENT JOHNSON - REDIRECT EXAMINATION

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1 A. Right.

2 Q. And do you know where he went to school?

3 A. He went to McBee High School.

4 Q. And do you know if they ever went out on a date, or ever
5 did anything?

6 A. I know they never went out on a date.

7 Q. Did Joey ever give her a camera?

8 A. No. Joey never gave her a camera so far as I know.

9 Q. Did Joey ever buy your daughter a cell phone that nobody
10 told you about?

11 A. No.

12 MR. HOLT: Thank you. That's all.

13 THE COURT: All right. Sir, you may step down. Please
14 watch your step there as you exit the box.

15 Ladies and gentlemen, we are going to take our morning
16 break at this time. And we will give you the opportunity, if
17 some of you wish to go outside to take that break; we will let
18 you do that. We will be in recess approximately twenty
19 minutes. Please don't discuss the case. But we all will
20 remain where we are while you depart to the jury room. Please
21 have a nice break.

22 BAILIFF: This way, please.

23 (Whereupon, the jury exits the courtroom
24 at 11:00 a.m.)

25 THE COURT: All right. Court is now in recess.

CORT TRENT JOHNSON - REDIRECT EXAMINATION

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1 (Whereupon, a recess was taken from 11:00 a.m.
2 until 11:19 a.m.)

3 (WHEREUPON, STATE EXHIBITS
4 NUMBERS 257, 258, 259, 260, AND
5 261 WERE MARKED FOR THE RECORD.)

6 THE COURT: All right. Are we ready for the jury to
7 come back?

8 CLERK OF COURT: Yes, Your Honor.

9 MS. PARKER: Your Honor, I need to go get Ms. Burch.

10 THE COURT: Please do.

11 (PAUSE.)

12 THE COURT: All right. Please bring the jury in.

13 BAILIFF: All right, sir.

14 (Whereupon, the jury enters the courtroom
15 at 11:19 a.m.)

16 THE COURT: All right. Welcome back, ladies and
17 gentlemen.

18 And State, please call your next witness.

19 MS. BURCH: Thank you, Your Honor. At this time The
20 State calls Regina Johnson.

21 THE COURT: Please come forward and take the oath of a
22 witness.

23 WHEREUPON, REGINA JOHNSON

24 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

25 MS. JOHNSON: I do.

REGINA JOHNSON - DIRECT EXAMINATION

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DIRECT EXAMINATION BY MS. BURCH

Q. Good morning.

A. Good morning.

Q. Would you please state your full name for the record?

A. Regina Wilkins Johnson.

Q. Regina, what is your occupation?

A. I teach high school.

Q. Which high school?

A. McBee High.

Q. And how long have you worked there?

A. Fifteen-years.

Q. Has that been your whole career?

A. It has.

THE COURT: All right. Counsel, excuse me. Ma'am, would you move a little closer to that microphone? You can pull your chair up, just so you can speak a little bit more loudly, and we can hear you.

Go ahead.

Q. Regina, how do you know **Minor** Johnson?

A. She is my oldest daughter.

Q. How old is she now?

A. She just turned sixteen yesterday.

Q. And back in January of 2010, how old was she?

A. Fifteen, fourteen --- I'm sorry, fourteen.

Q. I know your husband covered a good bit of this, but tell

REGINA JOHNSON - DIRECT EXAMINATION

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1 us about --- Or would you tell us about **Minor** and her
2 relationship with gymnastics.

3 A. Gymnastics was her life. I don't know else to say it
4 other than it was her hobby, it was her sport, it was her
5 --- her friends were there. It was --- If we weren't at
6 school or church we were at the gym.

7 Q. How many hours a week would you say you spent at the gym
8 with **Minor**?

9 A. I would say at least ten to fifteen.

10 Q. Would that vary throughout the year?

11 A. Absolutely. Competition season, it was always more
12 intense.

13 Q. And where did **Minor** take gymnastic lessons?

14 A. The Gymnastic Center in Hartsville.

15 Q. Where is that?

16 A. On Swift Creek Road.

17 Q. What county is that in?

18 A. Darlington.

19 Q. Did **Minor** have coaches?

20 A. She did.

21 Q. Who were they?

22 A. Ashley Richardson was the lead coach, and then Kris Berry
23 also coached her.

24 Q. Would you tell us about Ashley Richardson and **Minor**'s
25 relationship as you saw it?

REGINA JOHNSON - DIRECT EXAMINATION

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1 A. I think Ashley was more than a coach. She was a role
2 model. **Minor** looked up to her an awful lot. I would say
3 they were friends.

4 Q. How old is Ashley Richardson?

5 A. She is probably twenty-three. Twenty-three, I think, at
6 the time. I'm not real good on that.

7 Q. I know your husband went over some of the rules of the
8 house, but if y'all would have a problem with **Minor**, a
9 disciplinary problem, what kind of actions would you
10 take?

11 A. She would say that we always take whatever was important
12 to her. Like, there may be times when we would take her
13 cell phone, or there was a meet coming up or something
14 like that. If her grades started flipping the slightest
15 little bit, we would say, you don't compete, you don't
16 meet.

17 Q. Did you ever go to either of her coaches, or was Kris
18 Berry involved in the discipline of **Minor**?

19 A. Discipline, no. I did say that there were times when I
20 would say something like that Trent has already said, if
21 the grades don't come up she is not competing in this
22 meet. And I may have said something like you had better
23 talk to her, or she is not going to be --- you know, she
24 is going to lose gymnastics.

25 Q. Did you ever have actually have Ms. Richardson give **Minor**

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1 advice?

2 A. They talked a lot. And I believe Ashley did give her
3 advice. There were times when they would write back and
4 forth to each other in their journals. And at times I
5 would if **Minor** was gone, or something, and I was in her
6 room cleaning, and I saw it and I would read it, to see
7 what kind of advice she was giving her, and it was always
8 good advice. Most of the time she would tell her things
9 like you really need to buckle down. And she would give
10 her good advice.

11 Q. Would you say you were comfortable with that
12 relationship?

13 A. Yeah, I would.

14 Q. Let's talk about the defendant Kris Berry and **Minor**'s
15 relationship. How was their relationship as you saw it?

16 A. At the time **Minor** looked up to him too. He was her
17 coach. And if she was at a meet and fell off the beam or
18 something like that in the middle of her routine, he was
19 usually the one that could get her laughing, or you know,
20 it was light, and that sort of thing.

21 Q. Did you feel comfortable with Kris Berry?

22 A. There were definitely times where I felt uncomfortable.
23 For example, there was one particular time she had a very
24 bad back. So there were times where like I walked in one
25 particular time and she was on the floor, and he had a

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1 tension machine hooked up on her back, and he was sitting
2 on her legs massaging her. And I think Trent was with me
3 at the time, and he said, ah, that needs to stop. And I
4 said, well he is her coach. You know. So there were
5 things that made me uncomfortable, but I always excused
6 it with, that's her coach.

7 Q. Now, did y'all provide **Minor** with a cell phone to use?

8 A. We did.

9 Q. Did she ever make any phone calls that she may have
10 gotten in trouble for?

11 A. There were times when --- I know there was this one
12 particular time that we took her cell phone, or was
13 browsing through it or something, and saw that she had
14 sent something back and forth with Kris. And it was
15 completely appropriate at the time on that cell phone.
16 But, we told her, it just didn't look good. And that he
17 was a grown married man and that we didn't want her
18 texting him period, for any reason.

19 Q. Do you remember when you found that text message?

20 A. I have no idea. I honestly don't. It was obviously
21 before we found the other phone.

22 Q. I want to talk to you real quick about the rules, a
23 little bit about the rules. What were your rules for
24 **Minor** and boys?

25 A. Well, she was thirteen, fourteen-years-old. We really

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1 didn't need a lot of rules because, I was with her all
2 the time. We were in school together, because I teach at
3 McBee. We were at home together. We went straight to
4 the gym. Most of the time I stayed there unless I had an
5 errand to run or something like that I would drop her off
6 and come back, as long as it was a structured class.
7 But, you know, we spent a lot of time together.

8 We had rules like obviously she couldn't date until
9 she turned sixteen. You know, we didn't want her to even
10 talk to this guy Joey, you know, just because I knew him.
11 I knew his discipline record just from being a teacher
12 there at the school. So, you know, we didn't really want
13 her to associate with him in anyway because he would keep
14 --- But, we had rules like Trent said, the cell phones
15 weren't allowed upstairs. Laptops were allowed to be
16 used in a common area in the livingroom. No
17 communication with the outside world after 10:00-o'clock.
18 That sort of thing.

19 Q. Let's go back to Joey for a second. Would you see Joey
20 as a problem for **Minor**?

21 A. I guess no more of a problem than other teenage stuff. I
22 mean, I thought he was a problem, just because I didn't
23 like her talking to him period. I wouldn't say that it
24 was a major life crisis or anything. But it was a
25 concern of mine, just that he liked her. And I didn't

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1 want him talking to her.

2 Q. Did you ever go to the Defendant Kris Berry about **Minor**'s
3 relationship with Joey?

4 A. No. There may have been times when he was standing
5 there, and I told Ashley, you know, **Minor** is still
6 talking to this guy. We have told her to leave him
7 alone. You know, I may have said y'all had better talk
8 to her, and he may have felt included in that. I don't
9 ever remember going to him in anyway and saying I need
10 for you to counsel my daughter.

11 Q. Let's talk about Jerry Hall. Who is Jerry Hall?

12 A. Jerry is a family friend. He was my nephew's roommate
13 for a while. He was one of our youth. He was in our
14 youth group. So, he helped with the street ministry one
15 Sunday that we do out on Swift Creek Road.

16 Q. How do you feel about **Minor** talking to Jerry, like as a
17 boyfriend?

18 A. Now or then?

19 Q. Then.

20 A. Then it was completely --- I love Jerry to death, as far
21 as he has a lot of character, and I think he is a good
22 guy. But, at the time I just felt like, and I told him,
23 I just feel like you are at two different places in your
24 lives. And that this --- I didn't feel comfortable with
25 the age difference.

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1 Q. Did y'all make that clear to Minor?

2 A. Yes.

3 Q. Mr. Johnson mentioned a forensic interview that was done
4 by the Care House in Florence on Minor. Do you recall
5 there being a medical exam done?

6 A. Um --

7 Q. Do you know why the medical exam was not done?

8 A. Well, when we first got there, I knew they wanted to do
9 that, to rule things out. But I didn't want that to be
10 her first experience with it, like a Gynecologist or
11 anything like that. I felt like she had been through
12 enough. But they sat us down and they told us that you
13 know that she could have other things, you know,
14 something could have happened and that sort of thing and
15 so we eventually agreed to it. But they said they were
16 going to basically leave if optional for Minor. And I
17 said, well, I can tell you right now, if you leave the
18 option to Minor, she is not going to do it. If you even
19 hint that it is her choice, she is not going to agree to
20 it.

21 Q. Was Minor in the room with you at the time?

22 A. No. They took her --- as soon as we got there, they took
23 her in another room.

24 Q. All right. So, the phone, the camera was found later.
25 But the night the phone was found, and law enforcement

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1 got involved, did you have any interaction with the
2 Defendant Kris Berry?

3 A. The whole time that Mr. Young was talking to us, my phone
4 was just constantly vibrating. Text messages and I'm
5 sorry. I'm sorry, I was just joking. You know just
6 different things like that. And I never replied. I just
7 showed the investigator, and he took pictures of it just
8 so --

9 MS. BURCH: Permission to approach?

10 THE COURT: You may.

11 Q. I am going to show you what has been marked as State's
12 Evidence 3 and 4. And just tell me if you recognize
13 those?

14 A. Yes, ma'am.

15 Q. What is that a picture of? Or what are those pictures
16 of?

17 A. This is a picture of the text that he was sending me.

18 Q. Were those on your phone?

19 A. They were on the phone that I had then.

20 Q. I know they are blurry, but can you tell us what they
21 say?

22 A. This one says. I am so sorry. The joking got out of
23 hand. I was kidding, trying to get her mind away from
24 Joey. I am truly sorry for causing this. And this one
25 says I did not know she was not allowed to text. I was

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1 never ever trying to get down her pants. I swear I
2 wasn't. I wanted her mind off of Joey. He was and is
3 not leaving her alone still. I am so sorry to all of
4 you.

5 Q. And you did not reply to that?

6 A. No, ma'am.

7 Q. And who took these pictures?

8 A. Investigator Young.

9 Q. And one last question. Do you ever remember **Minor**
10 spending the night at Kris Berry's house?

11 A. I did not remember that. I asked her since then, and she
12 said there was one time that Kyle (phonetic) was out of
13 town, and that we agreed to it, because we knew that
14 Rebecca's older brother was not going to be there.

15 Q. And Kyle?

16 A. Rebecca's brother, Kris's oldest son.

17 **MS. BURCH:** That's all I have at this time, Your Honor.
18 Please answer any questions that Mr. Cannarella may have.

19 **THE COURT:** Cross examination.

20 **CROSS EXAMINATION BY MR. CANNARELLA**

21 Q. Ms. Johnson, we know that you did not approve of Joey,
22 right?

23 A. Right.

24 Q. But Jerry was okay?

25 A. No, sir. Jerry was not okay to date my daughter, or to

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1 have a relationship with her. I like Jerry as a person,
2 but I told both of them that he was too old for her at
3 the time.

4 Q. So the only place that they ever saw each other was at
5 church?

6 A. Or around on the farm, like a family event, or at the
7 camp meetings.

8 Q. Did she have a crush on Jerry?

9 A. I believe she did.

10 Q. Were they romantically involved?

11 A. Not to my knowledge.

12 Q. It would surprise you if they were?

13 A. Yes, sir.

14 Q. When you talked with the officers that investigated this
15 case at your house that night --

16 A. Yes, sir.

17 Q. -- You left the room?

18 A. I'm sorry?

19 Q. You left the room once to go talk to **Minor**?

20 A. We were all --- Mr. Young, and myself, and **Minor** were all
21 in one room. And Trent walked into the livingroom. So,
22 I think they are the ones that walked out of the room.

23 Q. But at that time you were emphatic that **Minor** had told
24 you that a kiss happened on the 25th, which was a Monday?

25 A. I don't recall the dates. This happened almost two years

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1 ago.

2 Q. I know. But that Friday night through when all of this
3 took place?

4 A. Yes, sir.

5 Q. A kiss, when I say took place, the sheriffs came to your
6 house?

7 A. Uh-huh.

8 Q. All right. A kiss had taken place supposedly sometime
9 that week?

10 A. Okay.

11 Q. Well, according to the investigation, **Minor** told you on
12 Monday the 25th. And that is what you told the officers,
13 according to the investigation?

14 A. The officer was in the room with me, I believe, whenever
15 she said that.

16 Q. Okay. But he is being charged with the kiss taking place
17 on Thursday, the 28th.

18 A. Like I said, I'm not familiar with the days.

19 **MS. BURCH:** Your Honor, objection.

20 **THE COURT:** And what is your objection?

21 **MS. BURCH:** I believe Mr. Cannarella is testifying.

22 **THE COURT:** I'm going to sustain that, counsel. Please
23 limit your examination to questions.

24 Q. Well, at that time, on that Friday, **Minor** supposedly told
25 you about kissing earlier?

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- 1 A. Right.
- 2 Q. And, she told you when the kiss occurred?
- 3 A. Again, I am just not clear on the dates.
- 4 Q. Well, do you believe that the alleged kiss occurred
- 5 sometime that week?
- 6 A. Yes, sir. I believe a kiss had occurred. But I don't
- 7 know what days.
- 8 Q. Would it have been sometime that week?
- 9 A. I would assume, but I don't know the exact date.
- 10 Q. Well, up until that point in time on Friday, she had
- 11 never complained about a kiss?
- 12 A. We were unaware of what was going on.
- 13 Q. And she had never complained about kiss?
- 14 A. No, sir.
- 15 Q. She had never complained about any of those text
- 16 messages?
- 17 A. No, sir. We weren't aware of it, as we would have put a
- 18 stop to it immediately.
- 19 Q. She had never complained to you about it?
- 20 MS. BURCH: Objection, Your Honor.
- 21 THE COURT: On what basis?
- 22 MS. BURCH: Mr. Cannarella is still testifying.
- 23 THE COURT: Overruled. This is on cross examination.
- 24 We will give him some leeway.
- 25 Q. She never complained to you about the texting?

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1 A. No, sir.

2 Q. She never complained to you about the camera?

3 A. No, she didn't tell us.

4 Q. She never complained to you about the camera?

5 A. No, sir.

6 Q. She never complained to you about the cell phones?

7 A. No, sir.

8 Q. She never complained to you about the kiss?

9 A. No, sir.

10 Q. And there is constant supervision at the gym?

11 A. No, sir, there is not.

12 Q. Did you spend that much time there at that gym?

13 A. I spent a lot of time there.

14 Q. Okay. Monday's, Tuesday's, Wednesday's, Thursday's,
15 Friday's, whenever your daughter was there?

16 A. A lot of the time, yes, sir. I wasn't there every day,
17 every single practice for the entire time.

18 Q. But there would be times when they were actually
19 training?

20 A. Right.

21 Q. And then there were times when they were actually
22 playing, or working on different routines?

23 A. Do you want me to tell you how the practices went? Is
24 that what you are asking?

25 Q. I just want you to answer my question.

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- 1 A. I do not understand what you are asking.
- 2 Q. So, you were there most of the time with your child?
- 3 A. I was there a lot of the time.
- 4 Q. You never let **Minor** go there without any adult
- 5 supervision?
- 6 A. Well, it depends on what you call adult supervision.
- 7 There were times for example, if the gymnast needed to go
- 8 the restroom, I assume the older gymnast would go behind
- 9 the desk and use the restroom that was around the corner.
- 10 So I would say that is without adult supervision, even
- 11 though the coaches were in the actual gym. So, it
- 12 depends on what you mean. There were adults there, but
- 13 were they constantly in observation of the children? No,
- 14 they weren't.
- 15 Q. **Minor** told you that Friday, that he tried to kiss her?
- 16 A. Yes, sir.
- 17 Q. Tried to kiss her. Okay. That is all she told you?
- 18 A. Yes, sir. You are saying that is the only thing that
- 19 happened physically? Is that what you are asking?
- 20 Q. Yeah, that is all she told you?
- 21 A. Right.
- 22 Q. Well, did she tell you anything else then?
- 23 A. She told us about the cell phone.
- 24 Q. That she just said he tried to kiss me?
- 25 A. Right.

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1 Q. That's all she said?

2 A. That is enough for me, sir.

3 Q. But that is all she said, though?

4 A. Yes, sir.

5 Q. Tried to. Well, you don't know where it was tried?

6 A. Yes, sir, the bathroom behind the office.

7 Q. You don't know what time of day it was?

8 A. During her practice.

9 Q. You don't know who was there?

10 A. Kris and **Minor**.

11 Q. But you don't know what other adults were around?

12 A. I would assume Ashley!

13 Q. So there is a witness to it?

14 A. Not to my knowledge. I would assume that he would wait
15 until someone was not watching though.

16 Q. But that is all that she described to you, now, okay. So
17 you don't have anything else further to add about that,
18 other than he tried to kiss her?

19 A. Right. But she was very reluctant to talk to me, even to
20 this day exactly about what happened.

21 **MR. CANNARELLA:** Your Honor, just one moment, please?

22 **THE COURT:** Yes, sir.

23 **(PAUSE.)**

24 **MR. CANNARELLA:** That is all the questions I have,
25 Judge.

REGINA JOHNSON - REDIRECT EXAMINATION

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1 THE COURT: And now, is there redirect?

2 MS. BURCH: Yes, Your Honor, briefly.

3 REDIRECT EXAMINATION BY MS. BURCH

4 Q. Regina, you said you assumed Ashley Richardson was there,
5 when this kiss happened? Did Minor tell you that?

6 A. Well, I just wouldn't never leave Minor there unless
7 there were other people at the gym. I did not leave.
8 For example, I never did a private practice. A lot of
9 parents would pay for their children to stay with Kris
10 for private lessons, and I didn't feel comfortable doing
11 that. So the reason I say assume Ashley was in there is
12 because I would only have dropped her if she was.

13 Q. But you don't know who was actually in the room when it
14 happened?

15 A. No, I do not think she was.

16 MS. BURCH: Nothing further, Your Honor.

17 THE COURT: All right. Ma'am, you may step down.

18 Please watch your step as you exit. Thank you.

19 And State, please call your next witness.

20 MOTION TO CLEAR THE COURTROOM

21 MS. BURCH: Your Honor, at this time The State would
22 like to make a motion to clear the courtroom for the victim's
23 testimony.

24 THE COURT: All right. Counsel, let me get you to come
25 up just one moment if you would please. Just step up one

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1 moment.

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

4 **THE COURT:** All right. Ladies and gentlemen, what we
5 were discussing were the specifics of the request. But rather
6 than have a private discussion about it, we are going to place
7 it on the record. So, tell me the basis and the reason for
8 your Motion, counsel.

9 **MS. BURCH:** Thank you, Your Honor. The basis for my
10 Motion is the victim has requested that we limit the people in
11 here for comfort level. She is very concerned that her
12 parents may or may not be in here. And, the defendant's
13 daughter and victim are the same age. I think they have the
14 same group of friends. And, she is really worried about
15 feelings being hurt, and how ramifications socially and at
16 school and all will be for her.

17 **THE COURT:** All right. Very good. Let me say first of
18 all to Mr. and Mrs. Johnson, you have just testified. The
19 Court is not going to require you to leave this courtroom.
20 But, I am told as you heard it as I did, that your daughter
21 may perform for whatever reasons, of comfort or just
22 discomfort that you do. This is your decision. And if you
23 wish to leave you may for her comfort. But again, the Court
24 does not require it. Do you have a response? And, of
25 course, I should say **Minor** is not in the courtroom, so we are

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1 having this discussion outside of her presence. She is not
2 seated over here listening to this conversation. Do you have
3 a response you wish to make? Do you wish to remain, or do you
4 wish to leave?

5 MR. JOHNSON: We will leave. We will make it as
6 comfortable as possible.

7 THE COURT: All right. Very good. Will that also
8 apply to other members of the family as well? Is that your
9 request?

10 MS. BURCH: Yes, Your Honor.

11 THE COURT: Well, because the parents have opted to
12 leave, I am going to ask other family members as well to
13 leave. I am also going to ask those who are seated behind the
14 defendant --- the defendant has a right to be here, so we will
15 leave Mr. Berry here. But those who are seated behind Mr.
16 Berry, we would also ask them to leave as well, so that the
17 witness will feel comfortable in testifying. Thank you for
18 complying. And we will advise you when we are finished.

19 MS. BURCH: And, Your Honor, while they are clearing
20 out, I will go downstairs and get her.

21 THE COURT: You may. How long do you expect her direct
22 to be?

23 MS. BURCH: I will take no more than twenty minutes.

24 THE COURT: All right. Very good. Then we will try to
25 take that before lunch, ladies and gentlemen, and complete

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1 that testimony.

2 (Whereupon, the courtroom is cleared at 11:57
3 a.m.)

4 **THE COURT:** And while we are waiting, I know you think
5 it is an icebox in this courtroom. And unfortunately, because
6 of the air conditioning dynamics in this building, and we are
7 on top of it, and in order not to be burning up in here this
8 afternoon when the heat gets out and really going good from
9 the sun, we have to have it cool in the morning. But, if we
10 also went and cut the switch off now in this courtroom, we
11 can't slow it down by turning it off, because of some problems
12 we have had. It may not come back on. And I don't know why,
13 but that is just the way it is in this forty-five plus year
14 old building. Now, I will leave it up to you, ladies and
15 gentlemen, if you are sitting over there freezing, and you
16 want us to cut the air conditioning off, we will do it. It
17 may be that after lunch you may just want to bring a jacket
18 back with you. But is there anyone now who wishes that the AC
19 be turned off? Well, all right. Well, just be aware that
20 maybe you can bring a wrap this afternoon in case for some
21 reason it doesn't warm as the afternoon progresses. Thank you
22 for putting up with the county's air conditioning system.

23 **(PAUSE.)**

24 **MS. BURCH:** May we approach?

25 **THE COURT:** You may. Counsel, do you want to join us,

REGINA JOHNSON - REDIRECT EXAMINATION

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1 Mr. Cannarella?

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

4 (PAUSE.)

5 THE COURT: Ladies and gentlemen, I am told that the
6 witness is taking a slight break, and we will be ready to go
7 in just a moment.

8 (PAUSE.)

9 THE COURT: Counsel, let me get you to step up just one
10 moment, if you would.

11 (Whereupon, a bench conference was held in the
12 presence of the jury, but out of their hearing range.)

13 THE COURT: All right. Just one more moment, ladies
14 and gentlemen, and we will be ready to go forward with the
15 witness, or we will move in another direction.

16 (PAUSE.)

17 THE COURT: All right. Please come forward and take
18 the oath of a witness.

19 WHEREUPON, Minor

20 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

21 MS. Minor: Yes, sir.

22 CLERK OF COURT: I need for you to speak loud and
23 clear, okay?

24 MS. BURCH: Thank you, Your Honor.

25 THE COURT: All right. Counsel, you may proceed.

Minor

- DIRECT EXAMINATION

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DIRECT EXAMINATION BY MS. BURCH

Q. Minor, please state your full name for the record?

A. Minor.

Q. Minor, how old are you?

A. Sixteen; just turned sixteen yesterday.

Q. Well, happy birthday. How old were you in January of 2010?

A. Fourteen.

MS. BURCH: And let me say, be real careful with that microphone. If you bump it, it scares everybody.

Q. Okay. Back in 2010, tell us about you and gymnastics?

A. The gym is where I spent most of my time at.

Q. What did you do at the gym?

A. Practice. That was pretty much my social life.

Q. Did you have a lot of friends on the team?

A. Yeah, that was pretty much the only people I ever talked to.

Q. We heard earlier, and, of course, you weren't in here about your level of gymnastics. Tell us about what level you were on?

A. My next time would go under the competing level eight. The last time I was on a competing level I was on a seven.

Q. Is that good?

A. It's --- I competed with two other people, and it was the

1 highest.

2 Q. And which gym did you go to?

3 A. Gymnastic Center in Hartsville.

4 Q. Where do you go now?

5 A. I don't take it anymore.

6 Q. Why not?

7 A. Because this gym is about an hour from my house, so -- I
8 tried it there, but it was just too hard to get there.
9 So, I couldn't continue it.

10 Q. What do you mean it was too hard to get there?

11 A. It brought back a lot of memories, and at the time I
12 thought the people were the only thing that kept me
13 going.

14 Q. What do you think now?

15 A. Now, I wish I could go back.

16 Q. Who were your coaches at the Gymnastic Center of
17 Hartsville?

18 A. Ashley Richardson and Kris Berry.

19 Q. Do you see Kris Berry here in the courtroom?

20 A. That's him over there.

21 Q. Can you point him out to us?

22 **MS. BURCH:** Please let the record reflect that the
23 victim has pointed out Kris Berry, the Defendant.

24 Q. Tell us about your relationship with Kris Berry.

25 A. He was one of the most important people in my life. I

Minor

- DIRECT EXAMINATION

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1 trusted him with everything.

2 Q. What do you mean by that?

3 A. I can tell him anything.

4 Q. Did you?

5 A. Yes, ma'am.

6 Q. How did y'all get to be so close?

7 A. I spent a good bit of time in the gym.

8 Q. Did you know Kris Berry's children?

9 A. Yes, ma'am.

10 Q. How did you know them?

11 A. I competed with his daughter, Rebecca. And Caleb used to
12 take gymnastics for a while, and then we started to talk
13 at one point.

14 Q. Explain to us what you mean by talk? Like you and I are
15 talking?

16 A. No, ma'am. It was mistake. But --

17 Q. What happened when that relationship changed?

18 A. Kris didn't want a relationship in the gym.

19 Q. Did anything ever happen between you and Kris Berry that
20 didn't feel right, or made you uncomfortable?

21 A. He gave me a cell phone, and we talked about different
22 relationships that he had.

23 Q. What do you mean different relationships?

24 A. Um --

25 Q. It's okay.

1 (PAUSE.)

2 Q. What do you mean by different kinds of relationships?

3 A. He told me that he had been really down, and that his
4 wife knew that they had an open relationship.

5 Q. What does open relationship mean to you?

6 A. She was pretty much free to do whatever she wanted do,
7 and he was free to do whatever he wanted.

8 Q. Like free to go on dates?

9 A. Free to sleep with other people.

10 Q. To what?

11 A. Sleep with other people.

12 Q. Now you said that he gave you a cell phone. What was the
13 purpose of that?

14 A. He gave it to me to keep me from --- because he said
15 there would be a time where we would need to talk, we
16 would need to talk but we couldn't.

17 Q. Did you know what that meant?

18 A. Not really.

19 Q. Has he ever given you anything else?

20 A. He gave me a camera.

21 Q. What was the purpose of giving you a camera?

22 A. To take --- to take good pictures.

23 Q. What kind of pictures?

24 A. Of myself.

25 Q. Of yourself?

Minor

170

1 A. Yes, ma'am.

2 Q. Did he talk with you more about those pictures?

3 A. He --- no, ma'am.

4 Q. I am going to show you, what has been marked as, State's
5 Exhibit 256. Do you recognize that, which is marked as
6 State's Exhibit 256?

7 A. Yes, ma'am.

8 Q. What is it?

9 A. The camera that Kris gave me.

10 Q. I am going to show you what has been marked as State's
11 Exhibit 255. What is that?

12 A. This is a phone that he gave me.

13 Q. How do you know those two things are the ones that he
14 gave you?

15 A. When my Dad turned them into law enforcement, so...

16 Q. So, tell us again about what he wanted you to do with the
17 camera?

18 A. Take pictures of myself.

19 Q. And what was your understanding of the types of pictures
20 you were supposed to take?

21 A. Without clothes on.

22 Q. Did you ever take those pictures?

23 A. No, ma'am.

24 Q. When did he give you the phone and camera?

25 A. He gave me the phone at the gym I think a couple of days

Minor

171

1 before Christmas and the camera sometime after that.

2 Q. How long did you have the phone and the camera before law
3 enforcement found out?

4 A. About a month.

5 Q. And how did law enforcement find out about this phone and
6 the camera?

7 A. My Dad found it.

8 Q. Where were you whenever he found the phone?

9 A. Well, my Dad found the phone while I was at the gym.

10 Q. What happened after he found it?

11 A. It was a Friday night when we were in practice, and, so,
12 he called the gym and told me that he had found it, and
13 he asked me where I had got it. And I told him that I
14 had bought it.

15 Q. That you had bought it?

16 A. Yes, ma'am.

17 Q. Was that true?

18 A. No, ma'am.

19 Q. Why did you tell him that?

20 A. Because I didn't want to get Kris in trouble.

21 Q. I'm sorry?

22 A. I didn't want to get Kris in trouble.

23 Q. Why was that?

24 A. Because he was my best friend.

25 Q. What did you do after you got off of the phone with your

Minor

172

1 Dad at the gym?

2 A. I went --- I sat in there and Kris came into the office.
3 And I told him that my Dad found it.

4 Q. Then what?

5 A. And --- I told him that my Dad found it. And we sat in
6 there for a second, and we talked about what all was on
7 it. And if there was anything that was bad that could
8 get him in trouble.

9 Q. Was there?

10 A. Yes, ma'am. I reminded him that he asked for pictures,
11 and he asked me, --- he told me to tell them he was
12 asking for pictures of Joey.

13 Q. Who was them?

14 A. My parents and I guess whoever found out after that.

15 Q. So he told you to tell what?

16 A. That he was asking for pictures of Joey.

17 Q. Who is Joey?

18 A. My ex-boyfriend.

19 Q. Why did he think he wanted pictures of Joey?

20 A. Well, at the time I was having some problems with him.
21 He was calling me and giving me a lot of problems and
22 stuff. And, so he said that Joey was threatening to come
23 to the gym, and, so, he told --- I think the deal was ---
24 Kris wanted to know what Joey looked like if he ever
25 showed up.

1 Q. Was that what the camera was for?

2 A. No, ma'am.

3 Q. What was it for?

4 A. To take pictures of myself.

5 Q. Okay. Let's talk about when you started talking to law
6 enforcement. What did you tell law enforcement when they
7 asked you about the phone, and anything that had
8 happened?

9 A. I think I first, I told them nothing had happened. But
10 that he had given me the phone and the camera. I'm not
11 really sure what all was said.

12 Q. Why did you tell them that nothing happened?

13 A. Because I still didn't want to get him in trouble.

14 Q. Had something actually happened?

15 A. Yes, ma'am.

16 Q. What had happened?

17 A. He kissed me.

18 Q. Do you remember what day of the week that happened?

19 A. Tuesday. And, I --- I eventually told law enforcement
20 that Friday night that he had done that.

21 Q. Did you tell law enforcement when, like what day of the
22 week?

23 A. I think I had told them Tuesday. But I was confused, and
24 everything was running together. And it was --- that
25 whole week was kind of a blur.

Minor

- DIRECT EXAMINATION

174

1 Q. What day did it actually happen when you kissed?

2 A. Thursday.

3 Q. Where did this kiss happen?

4 A. At the gym.

5 Q. Where in the gym?

6 A. In the office.

7 Q. Now, can you kind of explain to us how the gym's laid
8 out?

9 A. (No answer.)

10 Q. You walk through the front door.

11 A. You walk through the front door, and there is a front
12 desk. And if you go behind the front desk, there is a
13 side-door. And when you go through the side-door, that
14 is where the computer desk is and a bathroom, and there
15 is another door. And it has like a couch, and I think
16 another computer desk and stuff in there.

17 Q. The room with the couch, is that what you are referring
18 to?

19 A. Yes, ma'am.

20 Q. And then what is beyond there?

21 A. Nothing. That is the only thing in the front part of the
22 gym.

23 Q. So there is a back part?

24 A. Well, the gym, the actual gym.

25 Q. Is it an open area?

- 1 A. Yes, ma'am.
- 2 Q. So, tell us about that Thursday. How did you end up in
3 the office?
- 4 A. I was in there, and it had been a long day. I don't
5 remember what had happened. I think I was having some
6 problems with Joey. So, I went back there, and I was
7 sitting back there, and I think Rebecca came back there
8 and asked me what was wrong. And I told her, nothing.
- 9 Q. Who is Rebecca?
- 10 A. His daughter.
- 11 Q. Go on.
- 12 A. And she asked me what was wrong. And I think she went in
13 there to go and get him. And he came back there.
- 14 Q. What happened when he came back there?
- 15 A. He asked me what was going on, and I told him that it had
16 just been a long day.
- 17 Q. Was there anybody else in the room?
- 18 A. No, ma'am.
- 19 Q. So what happened after the conversation?
- 20 A. We stood up, and he locked the door, and we kissed.
- 21 Q. When you say kissed, how did he kiss you? Was it a peck,
22 or what kind of kiss was it?
- 23 A. He French-kissed me.
- 24 Q. He French-kissed you?
- 25 A. Yes, ma'am.

Minor - DIRECT EXAMINATION

176

1 Q. What does French-kissing mean to you?

2 A. He stuck his tongue in my mouth.

3 Q. And how did you feel about that kiss?

4 A. (No response.)

5 Q. That's okay. Minor, I am going to show you some
6 exhibits that have been put into evidence. There are
7 some pictures of some text messages, and we are going to
8 just go through some of them. Okay?

9 A. Yes, ma'am.

10 Q. I am going to show you State's Exhibit 209. What is that
11 a picture of?

12 A. The text message on the phone.

13 Q. Whose phone?

14 A. Mine.

15 Q. What does it say? Take your time.

16 A. Do I get the pictures --- pics that I want?

17 Q. And who is that from?

18 A. Kris.

19 Q. Who is it to?

20 A. Me.

21 Q. What is he talking about?

22 A. The pictures he was asking for on the camera.

23 Q. Okay. I want to show you what has been marked State's
24 Exhibit 210. What is that a picture of?

25 A. The phone.

Minor - DIRECT EXAMINATION

177

- 1 Q. Your phone?
- 2 A. Yes, ma'am.
- 3 Q. And what does that say?
- 4 A. Lol, maybe. Not sure yet.
- 5 Q. Who is that from?
- 6 A. I think -- I can't really tell.
- 7 Q. This is 211.
- 8 A. From me.
- 9 Q. From you?
- 10 A. Yes, ma'am.
- 11 Q. And the next one, 212 and 213, what do those say?
- 12 A. I don't beg, but please.
- 13 Q. What is he talking about, or what did you think he was
- 14 talking about?
- 15 A. He doesn't beg normally, but --
- 16 Q. I want to show you State's Exhibit 216 and 217.
- 17 A. No one will see but me.
- 18 Q. And who is that from?
- 19 A. Him, Kris to me.
- 20 Q. Kris to you?
- 21 A. Yes, ma'am.
- 22 Q. All right. State's Exhibit Number 223. What does that
- 23 say?
- 24 A. I was just assuring you.
- 25 Q. What do you think he was talking about?

Minor

- DIRECT EXAMINATION

178

1 A. That he would be the only one that sees them.

2 Q. Okay. I want to show you what has been marked State's
3 Exhibit 221 and 222. What were these?

4 A. It says what weekend works for you?

5 Q. And do you know what he was talking about there, or what
6 you think he was talking about?

7 A. When we could meet.

8 Q. Meet for what?

9 A. To have sex.

10 Q. How do you know that is what he was talking about?

11 A. I don't remember. We had talked about it or something?

12 Q. In person?

13 A. I don't remember when it was.

14 Q. That's okay. Now I want to show you what has been marked
15 as State's Exhibit 225 and 226. What do they say?

16 A. I'm looking at it, any weekend except the competition.

17 Q. Who is that from?

18 A. Kris.

19 Q. Are you sure?

20 A. Yes, ma'am.

21 Q. All right. Number 227 and 228. I will show you those.
22 What do those say?

23 A. I do trust you and not just because I have too, or
24 because I want to get you out of your panties, which I
25 do.

- 1 Q. Who is that from?
- 2 A. Kris.
- 3 Q. And who do you think he was referring to, wanting to get
- 4 you out of your panties?
- 5 A. The text message was to me.
- 6 Q. And who was sending it?
- 7 A. Kris.
- 8 Q. Had you had any previous conversations about you coming
- 9 out of your panties?
- 10 A. I do, other than meeting --- other than meeting.
- 11 Q. Other than meeting? All right. Where were y'all
- 12 planning on meeting?
- 13 A. At the gym.
- 14 Q. I need for you to talk a little louder.
- 15 A. At the gym.
- 16 Q. Did y'all talk about in person or text message?
- 17 A. In text message.
- 18 Q. All right. I am going to show you State's Exhibit 238.
- 19 What does that say?
- 20 A. It has a typo in it, but can we take pics when we play?
- 21 Q. What does it actually say with the typo?
- 22 A. Can we take pics when we play?
- 23 Q. What does that mean, take pictures when we play, or we
- 24 play?
- 25 A. Can we take pictures when we meet at the gym?

Minor [REDACTED] - DIRECT EXAMINATION

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- 1 Q. And that was to meet to?
- 2 A. Have sex.
- 3 Q. Okay. State's Exhibit 240, and we are almost finished.
- 4 What does that one say?
- 5 A. I think play at the gym would be cool.
- 6 Q. What does that mean to you?
- 7 A. That having sex at the gym would be cool.
- 8 Q. All right. State's Exhibit 242, what does that one say?
- 9 A. I want to try a kiss with you, okay?
- 10 Q. State's Exhibit 244. What does that one say?
- 11 A. Get you alone sometime Thursday.
- 12 Q. What is he talking about?
- 13 A. To kiss me.
- 14 Q. I'm sorry?
- 15 A. To kiss me.
- 16 Q. Is that the Thursday --
- 17 A. -- Yes, ma'am --
- 18 Q. -- the kiss that he is referring to?
- 19 A. Yes, ma'am.
- 20 Q. State's Exhibit 246 and 257. What do these say?
- 21 A. I can see us having sex, but the kiss should be
- 22 interesting.
- 23 Q. Who is that send from?
- 24 A. Kris.
- 25 Q. Who is he talking about having sex with, or kissing?

- 1 A. Me.
- 2 Q. All right. State's Exhibit 249, 250. What do those say?
- 3 A. So we try it out Thursday. Just a warning my hands
- 4 wonder when they kiss, that is if we get a solid chance.
- 5 Q. And then whose hands is he talking about?
- 6 A. His.
- 7 Q. His as in who?
- 8 A. Kris.
- 9 Q. Okay. And State's Exhibit 222, what does that one say?
- 10 A. Do I get my camera with good pics tomorrow?
- 11 Q. What is he talking about?
- 12 A. Good pictures of me.
- 13 Q. Pictures of you?
- 14 A. Yes, ma'am.
- 15 Q. Okay. On that phone did you text anybody else from that
- 16 phone?
- 17 A. Yes, ma'am.
- 18 Q. Who did you text from that?
- 19 A. I texted Jerry, and I think I texted Joey once.
- 20 Q. Who is Jerry?
- 21 A. A guy that has gone to church with us for a long time. A
- 22 guy that I was waiting to date until I turned sixteen.
- 23 Q. Which, was yesterday. Did your parents know about Jerry
- 24 Hall?
- 25 A. Yes, ma'am. The understanding was that when I turned

Minor - DIRECT EXAMINATION

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1 sixteen we could be together.

2 Q. Were y'all ever together by yourself?

3 A. No, ma'am. We went on a lot of church trips, but --

4 Q. Did y'all ever kiss?

5 A. Yes, ma'am.

6 Q. When?

7 A. On church trips.

8 Q. Were you being supervised then?

9 A. My cousin was with us.

10 Q. Other than that, were you ever with Jerry unsupervised?

11 A. No, ma'am.

12 Q. Did you tell Jerry anything about Kris?

13 A. Yes, ma'am.

14 Q. What did you tell him?

15 A. He knew that --- I told him that he was asking for
16 pictures.

17 Q. Did he know what kind of pictures --

18 A. -- Yes, ma'am.

19 Q. All right. I am going to show you one more text message.
20 This is State's Exhibit 254. Tell us, who this is to,
21 and what it says, and who it is from?

22 A. It is from me to Jerry. And it says, Ha, I don't know,
23 Kris says it's his turn the second weekend in February,
24 sideways smiley face.

25 Q. And what were you talking about there?

Minor - DIRECT EXAMINATION

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1 A. I was telling that Kris wanted --- what Kris wanted. And
2 I was just joking around with him. I don't remember why
3 I worded it like that. But he and I have never done
4 anything like that.

5 Q. This is a personal question, and I know there are a lot
6 of people in the room, but, have you ever had sex with
7 anyone?

8 A. No, ma'am.

9 Q. Minor, what is a double back?

10 A. It is a gymnastic skill.

11 Q. Can you tell me what it is, because I'm not a gymnast,
12 obviously? But, I don't know what a double back is.

13 A. It is two back tucks in a row without touching the
14 ground.

15 Q. Do you know how to do that?

16 A. I was training.

17 Q. You were training?

18 A. Yes, ma'am.

19 Q. Did you and Kris ever have any conversations about
20 double-back?

21 A. Yes, ma'am.

22 Q. What did y'all talk about?

23 A. We --- we talked about him teaching me a double-back, if
24 I went with him in February.

25 Q. Went with him for what?

Minor

- DIRECT EXAMINATION

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1 A. To have sex.

2 Q. Did he ever teach you how to do one?

3 A. No, ma'am. They found my phone before I ever --

4 Q. This is my last question. What time of day would you and
5 Kris Berry usually text?

6 A. I am not really sure there was a particular time that we
7 would talk. I think more when I got out of practice,
8 which was at night.

9 Q. Did you parents know about this?

10 A. No, ma'am. Not until that night my Dad found it.

11 MS. BURCH: No further questions, Your Honor. Please
12 answer any questions Mr. Cannarella has, okay?

13 THE COURT: Counsel, how long do you believe your cross
14 examination is going to take?

15 MR. CANNARELLA: It will probably last more than
16 twenty-five minutes, Judge because, I am going to go through
17 every text line-by-line.

18 THE COURT: You said you are going to? Do you intend
19 to publish portions of it as well?

20 MR. CANNARELLA: Yes, sir, all of it. And it will take
21 some time. I just don't know.

22 THE COURT: We are talking about an hour at least.

23 MR. CANNARELLA: Yes, sir.

24 THE COURT: All right. Ladies and gentlemen, let's do
25 this. We are going to take our lunch break at this time.

Minor [REDACTED] - DIRECT EXAMINATION

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1 And, Minor [REDACTED], I am sorry to break your testimony in the
2 middle. What that means is you will have to come back this
3 afternoon and complete your testimony. But let me say this to
4 you. Because you are a witness under testimony, you should
5 not talk with anyone about your testimony during the lunch
6 hour. Do you understand that, ma'am?

7 MISS. JOHNSON: Yes, sir.

8 THE COURT: Is that a problem for you?

9 MISS. JOHNSON: No, sir.

10 THE COURT: Very good. Then let's recess, and we will
11 reconvene at 2:00-o'clock. And please be back in the jury
12 room ladies and gentlemen at 2:00-o'clock. And we will all
13 remain where we are while you depart the courtroom. We will
14 see you then.

15 BAILIFF: This way, please.

16 (Whereupon, the jury exits the courtroom at
17 12:34 p.m.)

18 THE COURT: Minor [REDACTED], you may have lunch with your
19 family if you wish to do that. But, again just don't discuss
20 the testimony. All right? Are you okay?

21 MISS. JOHNSON: Yes, sir.

22 THE COURT: All right. We are going to be in recess
23 now until 2:00-o'clock. And if you would open the back door
24 and let the family in that will be fine, so that Minor [REDACTED]
25 can make lunch arrangements. And I will just let you walk

Minor - DIRECT EXAMINATION

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1 down to the table right there. You can be with the attorneys.
2 Please be seated.

3 **MR. CANNARELLA:** Can I open this door now, Your Honor?

4 **THE COURT:** Yes, you can let everyone in. We are going
5 to be in recess until 2:00-o'clock.

6 (Whereupon, a lunch recess was taken from 12:35
7 p.m. until 2:04 p.m.)

8 **THE COURT:** Counsel, let me get you to step up if you
9 will please, and let's talk a little bit about the afternoon
10 session.

11 (Whereupon, a bench conference was held.)

12 (Whereupon, court comes to order at 2:04 p.m.)

13 **THE COURT:** Are s all of our jury back?

14 **BAILIFF:** Yes, sir.

15 **THE COURT:** All right. We are going into cross
16 examination, are you ready?

17 **MR. CANNARELLA:** Yes, sir.

18 **THE COURT:** And, **Minor**, are you ready, ma'am?

19 **Minor:** Yes, sir.

20 **THE COURT:** Did you get some lunch?

21 **Minor:** Yes, sir.

22 **THE COURT:** All right. **Minor**, come on up and
23 be seated, back up here, if you will please.

24 All right. If everyone is ready; please, bring in the
25 jury.

Minor - CROSS EXAMINATION

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1 **BAILIFF:** All right, sir.

2 (Whereupon, the jury enters the courtroom at
3 2:05 p.m.)

4 **THE COURT:** All right. Ladies and gentlemen, welcome
5 back. We trust you had a nice lunch. If you will recall, we
6 ended direct examination prior to the lunch hour. And now we
7 are at cross examination.

8 Are you ready, Mr. Cannarella?

9 **MR. CANNARELLA:** Yes, Your Honor.

10 **THE COURT:** All right. Cross examination.

11 **CROSS EXAMINATION BY MR. CANNARELLA**

12 Q. **Minor**, when this kiss supposedly occurred, did you run
13 out of the building crying?

14 A. No, sir.

15 Q. So, you were not aware of the fact that this
16 investigation was that you were running out of the
17 building crying as a result of the kiss?

18 A. No, sir.

19 Q. Now, can you explain to us what the real confusion was
20 about? Was it that Monday that this supposedly happened
21 or was it on that Thursday?

22 A. It happened on Thursday, but I think I told the
23 investigators that I thought it was on a Tuesday.

24 Q. And you told them that he tried to kiss you?

25 A. I don't think that's how I said it.

Minor

- CROSS EXAMINATION

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1 Q. Okay. How did you say it?

2 A. I think I told them that he kissed me.

3 Q. Okay. Now, other than doing that, did he do anything
4 else?

5 A. No, sir.

6 Q. And it is your testimony that he did that right outside
7 of the bathroom?

8 A. No, sir. There's the office, and then there is another
9 room, and you go through the door and there is this room
10 and then you go through another door. And he did it in
11 that room.

12 Q. Well, did you ever say that there were any witnesses when
13 this happened?

14 A. No, sir.

15 Q. Who was at the gym?

16 A. There were classes going on.

17 Q. And there were adults there?

18 A. Yes, sir.

19 Q. If you wanted to go to the gym on any given day, how
20 would you get there?

21 A. My parents always took me. I couldn't drive.

22 Q. Now, would they supervise you while you were there? Did
23 they always stay there?

24 A. Not always, no.

25 Q. Who were the adults that were always there?

- 1 A. Ashley Richardson and the other coach.
- 2 Q. Kris Berry?
- 3 A. Yes, sir.
- 4 Q. Did you ever intend on meeting him at the gym alone?
- 5 A. I told him that I would. I didn't plan to. I didn't
- 6 plan to.
- 7 Q. But, because an order --- it would almost be impossible
- 8 for you and him to be at the gym alone at any time;
- 9 wouldn't it?
- 10 A. Yes, sir.
- 11 Q. So, if he ever said, let's meet at the gym, there was no
- 12 way that you and he could ever be in the gym alone?
- 13 A. Well, I mean, there were times when nobody else was at
- 14 the gym. And he, I think he had keys to the gym.
- 15 Q. Did you ever meet him there alone?
- 16 A. I was never alone with him at the gym.
- 17 Q. Now, you never told your mother about the cell phone?
- 18 A. No, sir.
- 19 Q. You never told your father about the cell phone?
- 20 A. No, sir.
- 21 Q. And you never told anybody about the cell phone?
- 22 A. Jerry knew, because I texted him off of it.
- 23 Q. And Jerry is involved in this text --- you were texting
- 24 Jerry like Tuesday, Wednesday, Thursday at the same time
- 25 you were texting Kris, right?

Minor - CROSS EXAMINATION

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1 A. Yes, sir.

2 Q. And, also involved in that conversation is Joey?

3 A. Yes, sir.

4 Q. And Joey was somebody that your parents did not want you
5 to associate with?

6 A. No, sir.

7 Q. I guess he was less motivated to achieve than you were?

8 A. Yes, sir.

9 Q. Is that right?

10 A. Yes, sir.

11 Q. Isn't that the reason they didn't want you hanging around
12 him?

13 A. Yes, sir.

14 Q. Now they were concerned about him pulling you down,
15 right?

16 A. Yes, sir.

17 Q. I guess because of his background?

18 A. Yes, sir.

19 Q. How was your relationship with Jerry affecting you?

20 A. With Jerry?

21 Q. Yes.

22 A. Jerry and I didn't really have any problems that I knew
23 of.

24 Q. Okay. But, you and Joey had some problems?

25 A. Yes, sir.

1 Q. Now, would you describe your relationship with Jerry as
2 being a romantic one?

3 A. No, sir. We didn't really get too much time together.
4 My parents are very strict.

5 Q. When would you see Jerry, at church? Is he a member of
6 the church?

7 A. Yes, sir.

8 Q. Did he join the same church that y'all were members of?

9 A. Well, he dated my cousin, and so that is how he started
10 coming to church with us, and when we pulled away from
11 our church, and him and my cousin came with us and then
12 they broke up, and then we started talking.

13 Q. Okay. You switched churches?

14 A. Yes, sir.

15 Q. He followed you?

16 A. Yes, sir. He didn't follow me. He --

17 Q. -- followed your --

18 A. -- my cousin. Because my cousin came with him.

19 Q. How old was your cousin?

20 A. She was seven -- I'm not sure. Sixteen, maybe?

21 Q. Did you ever move to another church and he followed you
22 to that church?

23 A. Well, he does go to church with us now.

24 Q. Okay, Jerry does?

25 A. Yes, sir.

Minor - CROSS EXAMINATION

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1 Q. And it is the same church that you first started going to
2 church together at?

3 A. No, sir. We go to a couple of different churches. But
4 when we went --- He started going with us for a while,
5 and then he started coming back.

6 Q. What do you mean a couple of different ones? I am lost.

7 A. We --- my parents pulled away from the church in
8 Hartsville.

9 Q. Okay.

10 A. The Church of God and Prophecy in Hartsville. And then
11 we did a home church for a while. So, he went there with
12 us, but that was --- the first part of that he was still
13 dating my cousin.

14 Q. Okay.

15 A. And then --- Then I went to, I think, Lancaster was my
16 next church, and he didn't go with us to that one.

17 Q. These are churches that you joined?

18 A. No, sir. We didn't join, we just visited.

19 Q. Visited.

20 A. And we have been to two different --- two more other
21 churches. We went back to Hartsville, and we have
22 recently --- a couple of times we have been going to the
23 Church of God and Hartsville Advent.

24 Q. Okay. Kris never threatened you, did he?

25 A. No, sir.

1 Q. And Kris never touched you on any of your body parts,
2 below your neck in a sexual way?

3 A. No not in a sexual way no.

4 Q. Now, when you do these tumbles --

5 A. -- yes, sir. When he flips upside down, then he's got --

6 Q. -- And double backs too, you tighten up, and you spring
7 off the mat and flip forward or backward as fast as you
8 can, and he helps you do that?

9 A. Yes, sir.

10 Q. And he had to work very closely with you to do that?

11 A. Yes, sir.

12 Q. And, Minor, really he was the best one for you to work
13 with in training at the gym to train you properly?

14 A. Yeah. He was always the one that coached me, because he
15 was the strongest.

16 Q. And you were pretty powerful too?

17 A. I was one of the heavier girls, I guess.

18 Q. But you had strength too, and that is what you need to
19 fall and tumble and all of that, right? He was the
20 strongest guy out there?

21 A. Yes, sir.

22 Q. That could bring you under control. But you never
23 complained about the way --- I think they call spot?

24 A. No.

25 Q. He never spotted you in an inappropriate way did he?

Minor - CROSS EXAMINATION

194

1 A. No, sir.

2 Q. Now, when you go to --- Now, when you say --- I have
3 heard this term before in gymnastics, where we are
4 playing. That means you are working on things that are
5 not in your routine; is that right?

6 A. Um --

7 Q. -- It is like you are trying out different types of
8 skills. Okay, tell us.

9 A. I don't know that we would normally refer to it as
10 playing. It is more --- we just say we are practicing
11 extra stuff. I did often practice stuff that was out of
12 my --

13 Q. -- level?

14 A. -- level. But, normally, that was during open gym for
15 like --

16 Q. -- Open gym is where anybody can do what they want to?

17 A. Yes, sir.

18 Q. And not kind of like a group isolated here, and a group
19 is isolated there, and you have your coach with your
20 training?

21 A. Yes, sir. Well, he doesn't normally spot people during
22 open gym. They normally have a rule where neither of the
23 coaches spotted the gymnasts during open gym, unless they
24 did like fifty pushups or something. And, there were
25 times when he would practice with me, or he would spot

1 me, but he didn't really do that with many other people.

2 Q. Was that unusual that he did that? Was that unusual? I
3 mean, he was the one that needed to take care of you in
4 the gym, because he had the strength to do it, right? To
5 spot you when you needed to be spotted?

6 A. Yes, sir. But, during open gym nobody got spotted.

7 Q. You were kind of on your own?

8 A. Yes, sir. Normally.

9 Q. All right. If you were going to meet Kris at the gym for
10 a wrong reason, your parents would have had to brought
11 you there, right?

12 A. No, sir.

13 Q. How were you going to get there?

14 A. I mean, he can drive.

15 Q. Has he ever picked you up from your house and brought you
16 to the gym?

17 A. No, sir.

18 Q. Has he ever gone anywhere and picked you up in a car?

19 A. No, sir. But this stuff didn't start happening until the
20 last month that I ever took gymnastics.

21 Q. January?

22 A. Yes, sir.

23 Q. The last month. What do you mean?

24 A. The last month that I was at the gym was pretty much the
25 only thing that ever --

Minor

- CROSS EXAMINATION

196

1 Q. -- I know you left the gym after that.

2 A. Yes, sir.

3 Q. Now, did you say to Sergeant Dave Young that he kissed
4 you on the lips?

5 A. I'm not sure if it was Sergeant David Young.

6 Q. Well, he is not in here. I'm pointing to a ghost. Did
7 you ever tell any officer that Kris just kissed me on the
8 lips?

9 A. I'm not really sure.

10 Q. Well, here is why I am asking you that. Because when you
11 testified a while ago, it was important for you to say
12 that he French kissed you.

13 A. Yes, sir.

14 Q. And I know that is what you say he did, but early in this
15 investigation you're quoted as, he tried to kiss me,
16 because it is in the investigation. Well, I thought that
17 you testified that he tried to kiss you, but you pushed
18 him off and no kiss ever happened.

19 A. The first --- I'm not sure how long it was, but I tried
20 to protect him for a very long time.

21 Q. I'm not saying --

22 A. Yes, sir.

23 Q. Well, and that is why you are saying now that you never
24 complained until your Daddy found the phone?

25 A. No, I am saying that even after he found the phone, the

1 people that I talked to --- I wasn't ready to talk to
2 them. They had me talking to people that night. They
3 had people at my house, I think, as soon as I got home or
4 something. And then the next couple of days afterwards.
5 And, I wasn't ready to --

6 Q. -- Open up?

7 A. -- Open up about my best friend.

8 Q. Okay. Well, when he kissed you --- you say he kissed
9 you, okay? Did he do anything else? He didn't touch you
10 in any other way inappropriately?

11 A. No, sir.

12 Q. So you are just saying he didn't touch you in any other
13 way inappropriately?

14 A. No, sir.

15 Q. You are just saying a kiss?

16 A. Yes, sir.

17 Q. Did that --- I have to ask you some of these kind of
18 tough questions, okay? But, if he kissed you, you didn't
19 become sexually aroused did you?

20 A. No, sir.

21 Q. Do you have any reason to believe that he was sexually
22 aroused when that happened?

23 A. No, sir.

24 Q. Okay. And, then after it took place, I thought you ran
25 out of the gym crying to your mama?

Minor - CROSS EXAMINATION

198

1 A. No, sir. My Mom wasn't even at the gym.

2 Q. When it happened?

3 A. Yes, sir.

4 Q. Okay. Was there ever a time that you would leave the gym
5 in tears?

6 A. There was one time that week that I did and it was
7 because Joey had called me or something. And I don't
8 remember exactly what happened. But he had called me,
9 and he had really upset me. So my Mom came to the gym,
10 and she was wondering what was wrong with me. And, Kris
11 and I --- I think we had a couple of seconds to talk. We
12 didn't have a long time. And I calmed down. And I don't
13 think I left the gym crying, but I did leave the gym
14 upset. There were times that I did leave the gym upset.

15 Q. On this Thursday night when this supposedly happened, you
16 didn't complain to anybody at the gym, and who picked you
17 up and drove you home?

18 A. My Mother, I believe.

19 Q. All right. These texts that we are going to go through;
20 and I have got them up there on the screen. Okay? And
21 I hope you understand that the reason --- and here is a
22 copy, okay? The Solicitor has a copy too. But we are
23 going to go through them. And I want you to understand
24 the reason that we are going through them is so that we
25 can see everything that was talked about. Okay? Not to

1 humiliate you, but just so the jury can look at
2 everything in context. Okay?

3 A. Yes, sir.

4 Q. All right. So, and I've got my friend here, he's got
5 these up here so the jury will be reading along with us.
6 Okay?

7 A. Yes, sir.

8 Q. All right. Okay. We will start on page one.

9 A. Yes, sir.

10 Q. And it says --- And this is what was found on that, the
11 one that you got from Kris. By the way, let me ask you
12 this before we start. Kris brought that phone to the
13 gym?

14 A. Yes, sir.

15 Q. And you knew that phone was coming?

16 A. Yes, sir. I think I found out the day before or
17 sometime. I am not sure exactly.

18 Q. Where did the money come from to buy that phone?

19 A. He has a job, and so --

20 Q. Did you give him the money?

21 A. I did not give him anything.

22 Q. You didn't give him the money?

23 A. No, sir.

24 Q. All right. Let's go to the text messages. Okay?

25 A. Yes, sir.

Minor - CROSS EXAMINATION

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1 Q. All right. The first one is from Jerry to Minor. And
2 Jerry has been sitting in the courtroom, right?

3 A. Yes, sir.

4 Q. Okay. That says, "Notin just feel lonely feelinsick in
5 my stomach. I love u 2 what u doin?" That is the
6 conversation with you, right? From Jerry to you?

7 A. I believe so, yes, sir.

8 Q. Well, do you know what he was talking about when he was
9 saying feeling sick in my stomach?

10 A. No, sir.

11 Q. And then he said, "I love u 2 what u doin?" Y'all had
12 been texting before that, apparently?

13 A. Yes, sir. I had had the phone for about a month before
14 they found it, and they delete automatically.

15 Q. Okay. Now, had you been placed on restriction, and you
16 couldn't text from your own phone provided by your Mamma
17 and Daddy. So you had been placed on restriction so you
18 couldn't text?

19 A. I think they had restricted my texting during that time.
20 I think they had a block on it.

21 Q. That was to keep you from calling Joey, probably; wasn't
22 it?

23 A. Yes, sir.

24 Q. But you liked Joey didn't you?

25 A. I did, but I just wanted to protect him. He --

- 1 Q. Protect Joey?
- 2 A. Yes, sir.
- 3 Q. From what?
- 4 A. Getting in trouble. He got in trouble a lot.
- 5 Q. That had nothing to do with you?
- 6 A. No, sir.
- 7 Q. Okay. He went to McBee High School?
- 8 A. He did.
- 9 Q. Did Joey ever get you in trouble at school?
- 10 A. He --- I got in trouble for kissing him in seventh grade.
- 11 Q. Excuse me. Okay.
- 12 A. A peck.
- 13 Q. A peck?
- 14 A. Yes, sir.
- 15 Q. Your mother teaches there?
- 16 A. Yes, sir.
- 17 Q. Do you know if your mother and Kris ever talked about the
- 18 problems that you were having with Joey?
- 19 A. No, sir. But, I knew my Mom didn't trust him very much,
- 20 so I don't see that happening.
- 21 Q. Talking to Kris?
- 22 A. Yes.
- 23 Q. Well, was your relationship with Joey interfering with
- 24 your grades at school?
- 25 A. No, sir.

Minor - CROSS EXAMINATION

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1 Q. How about with your gymnastics?

2 A. No, sir.

3 Q. So, you never confided in Kris about the problems you
4 were having with Joey?

5 A. I told Kris everything.

6 Q. On Tuesday, January 26th at 9:49, Minor says, "I'm sorry,
7 I wish I was there and could make it better." What was
8 wrong?

9 A. I'm not sure.

10 Q. That you wanted to make things better. And then we go
11 from Minor to Kris. Lough out loud, not sure yet.

12 A. You forgot a text message.

13 Q. Okay.

14 A. The one from Kris.

15 Q. Cool, do I get the pics I want on Thursday?

16 A. Yes, sir.

17 Q. And what you are saying is the pics are inappropriate?

18 A. Yes, sir.

19 Q. And you are saying to this jury that it had nothing to do
20 with Joey?

21 A. No, sir.

22 Q. All right. Then you say, "I'm sorry, I wish I was
23 there." This is Minor to Jerry. "To make it better. I
24 love you." Then from MiMinor to Kris; "Lough out loud,
25 maybe not sure yet." And what is that in response to?

Minor - CROSS EXAMINATION

203

- 1 A. The cool --- "Do I get the pictures I want on Thursday?"
- 2 Q. Okay. And then he says, "I don't beg but please."
- 3 A. He doesn't normally beg for pictures, but can he please
- 4 have them.
- 5 Q. But your first response was lol, meaning lough out loud
- 6 back to Joey?
- 7 A. Yes, sir.
- 8 Q. All right. I am on line 17, from Minor to Kris. "Haha
- 9 maybe." Right? Line 18, do you see it?
- 10 A. Yes, sir.
- 11 Q. And then here comes Jerry back, and here comes Jerry
- 12 reading the text to Kris?
- 13 A. Yes, sir. He asked what I was doing.
- 14 Q. But then he says -- does he still want your pics?
- 15 A. Yes, sir.
- 16 Q. All right. We are going to go to the next page. Okay?
- 17 A. Yes, sir.
- 18 Q. And he said no one will see but me.
- 19 A. No one will see the pictures but me.
- 20 Q. All right. And then Minor talks back to Jerry and says,
- 21 "Yeah that's what we are talking about now." And he
- 22 says, "what you are telling him and what y'all talked
- 23 about was those pictures, right?"
- 24 A. Yes, sir.
- 25 Q. All right. On line 33. Minor to Kris. "I know, what's

Minor Minor - CROSS EXAMINATION

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1 up with all of a sudden thinking I don't trust you?

2 Hahaha."

3 A. He asked me --- or he said that no one will see but him.

4 Q. And you are laughing about that, right? That is what
5 "jk" means, right, joking?

6 A. I think I was referring to thirty-four, line 34, when it
7 says, "what's up with you all of a sudden thinking I
8 don't trust you?"

9 Q. What was that suggesting? That if you did do anything
10 improper, he wouldn't tell anybody. Is that what you
11 meant by that?

12 A. No, sir. He said no one will see but me. So he was
13 pretty much saying that he thought that I thought he was
14 going to show other people.

15 Q. Okay. Well, that camera that he gave you, you never used
16 it?

17 A. No, sir.

18 Q. You never saw any pictures on it?

19 A. No, sir.

20 Q. If it had any pictures on it, you don't know anything
21 about it?

22 A. I have been told that there were pictures on it.

23 Q. Okay. But you haven't seen them?

24 A. No, sir.

25 Q. Now, the next line says, "change the subject from Minor

1 to Jerry." And that is what you just said, you were
2 changing the subject?

3 A. Yes, sir.

4 Q. All right. And Kris said, "I was just assuring you."
5 And then you say, line 45, "will you talk to J-Man
6 today?" That means, could you talk with --

7 A. -- Joey.

8 Q. Joey. Did you talk to J-man today?

9 A. Jerry was asking me.

10 Q. About Joey?

11 A. Yes, sir.

12 Q. Then you go to line 46. All right. If we start on
13 Tuesday, January 26, 2010. That is 10:03 p.m., y'all are
14 texting. And it says, "looking at like any weekend
15 except the comp obviously, yeah." What is that about?

16 A. I know that is referring to what weekend we can go to the
17 gym. But, I am not sure what happened to the text
18 messages before it, because it's --

19 Q. -- And here comes the part about the panties. "I do
20 trust you, not because I have to, but because I want to
21 get you out of your panties, which I do."

22 A. Yes, sir.

23 Q. Okay. But, you texted right?

24 A. Yes, sir.

25 Q. And it is not that difficult to make a mistake while you

Minor - CROSS EXAMINATION

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1 are texting; is that true? You have made mistakes
2 before?

3 A. I have made mistakes texting, yes, sir. But not like
4 that.

5 Q. I know, but see then it comes down to what you have got
6 on line 46, where you talked to Jerry. "Yeah, second
7 period I told you that. Caught him in another lie. Then
8 pissed him off. Then he made me cry." You are talking
9 about Joey?

10 A. Yes, sir.

11 Q. But here comes Kris back in with another text that says,
12 Period, "I want to get you out of your panties, which I
13 do," period.

14 A. No, sir. He was asking me when my period was.

15 Q. That is what that meant?

16 A. Yes, sir.

17 Q. He has asked you that before, hasn't he? Y'all talked
18 about that all the time. There is nothing unusual about
19 knowing about when someone's period is starting is there?

20 A. It depends on the context that you ask that.

21 Q. I understand that. But, that is something that is
22 discussed at the gym with other students insofar as meets
23 and performance is concerned?

24 A. I am not sure that it is talked about with other
25 students. I've never witnessed any conversation.

- 1 Q. All right. Then Jerry said, "I thought you said he
2 didn't come to school today?" That is just a
3 conversation between you and Jerry. And then Kris to
4 Minor says, "Next weekend."
- 5 A. Referring to what weekend he can meet me at the gym.
- 6 Q. Okay. Well, to practice.
- 7 A. No, sir.
- 8 Q. To play. But if he didn't get you alone in the gym, what
9 I am having a hard time understanding is how are y'all
10 going to do that even if you want to?
- 11 A. Because he can drive, and because the gym closes from
12 like Friday at 10:00 until Monday at --- I think practice
13 starts at 3:30.
- 14 Q. Well, this is real --- if he is real serious about what
15 you are saying, I am just trying to find out what the
16 plan was to pull it off. You see, it is hard for me to
17 figure all of that out, unless you can help me. If it
18 was -- all this is serious talk.
- 19 A. It was --- he was asking, and I'm not sure.
- 20 Q. All right. You had a forensic interview, and we are
21 going to look at it in a few minutes.
- 22 A. Okay.
- 23 Q. But in that forensic interview you said that he never
24 talked to you about anything of a sexual nature, other
25 than those texts? You say that on that interview. Would

Minor - CROSS EXAMINATION

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1 that be true or false in terms of did he ever say
2 anything to you of a sexual nature?

3 A. It depends. Do you think that a sexual nature would be
4 considered telling me that he had other relationships?

5 Q. Well, see, I have an advantage over you right now. Okay?

6 A. Okay.

7 Q. I don't have to --- I ask the questions.

8 A. Okay.

9 Q. So, let's go down to line 70, with Minor and Jerry. "He
10 didn't. I do have a phone remember." He called, talking
11 about Joey calling you during gym, right?

12 A. Yes, sir.

13 Q. And you say something. Okay. From Minor to Kris. Okay.
14 "And the first weekend in the month." So, I mean, this
15 is your story, and you are sticking with it, that y'all
16 were going to meet at the gym sometime?

17 A. Yes, sir.

18 Q. All right. Now, so the next at the gym. Then it is
19 Jerry to Minor. "I wish you would have told me but it
20 doesn't matter." That is on line 35, do you see it

21 Minor

22 A. Yes, sir.

23 Q. Line seventy-four. So you met at the gym, and then you
24 start back talking to Jerry. And Jerry says, "I wish you
25 would have told me." He is talking about Joey bothering

1 you, or upsetting you at school and making you cry,
2 right?

3 A. Yes, sir.

4 Q. "But it doesn't matter. I want him to leave you alone."
5 Okay. That is Jerry, a nineteen year old guy that goes
6 to church with you, right?

7 A. Yes, sir.

8 Q. Then, "I guess, lol" and Kris to you, "yeah, I guess."
9 Okay.

10 A. Hold on. I think --

11 Q. Lol --- means laugh out loud.

12 A. I think the I guess came first, and then --

13 Q. All right. But L-O-L means laugh out loud?

14 A. Yes, sir.

15 Q. Jokingly. And you say, "no, I can't do it the first week
16 of the month." And that means somehow that this is a
17 serious thing going on here that y'all --- the gym was
18 going to be the place of opportunity, if anything was
19 ever going to happen was in the gym?

20 A. Yes, sir.

21 Q. All right. And you have never been there alone there
22 before?

23 A. No, sir. I have not.

24 Q. And you don't have access to it, but you say he has
25 access to it?

Minor - CROSS EXAMINATION

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1 A. Yes, sir.

2 Q. So, then, if this was serious, the proposal was going to
3 be that he come and pick you up?

4 A. I guess.

5 Q. Okay. But there was no plan is what I am getting at?
6 There was no concrete plan for anything?

7 A. Other than him planning the weekend.

8 Q. I know. But, just other than talking here, other than
9 talking on these texts?

10 A. No, sir.

11 Q. In that forensic interview you said there was no other
12 inappropriate -- other than what you mentioned earlier,
13 there was no other inappropriate conversation. Y'all
14 didn't talk in the gym and say what time are we going to
15 meet, how are you going to get here, and all of that?

16 A. No, sir. We didn't really talk much about stuff like
17 that face to face.

18 Q. Minor, one time when I think it --- she was a gymnast
19 there too, and she is kind of like a parent --

20 A. -- She is the head coach.

21 Q. Okay. She started that business with her Mama didn't
22 she?

23 A. Yes, sir.

24 Q. Was she there on that Thursday when this kiss supposedly
25 happened?

- 1 A. Yes, sir.
- 2 Q. Sally was?
- 3 A. Oh, I'm not sure if Sally was.
- 4 Q. Ashley was but you don't know if Sally was there or not?
- 5 A. No, sir.
- 6 Q. Okay. Line 95. "Jerry, he called you and made you cry,
- 7 and I hate he is trying to take something" --- and we
- 8 can't understand that --- "means to me and that's you."
- 9 So, Jerry didn't like the fact that Joey was bothering
- 10 you?
- 11 A. What's the --
- 12 Q. I don't know. See ninety-five?
- 13 A. Yes, sir.
- 14 Q. He called you and made you cry. That is Jerry talking
- 15 about Joey making you cry, right?
- 16 A. Yes, sir. Yes, sir.
- 17 Q. And I hate that he was trying to take --
- 18 A. I think, what means the most to me.
- 19 Q. Okay. All right. So, let's go --- Now your Mamma and
- 20 Daddy, they didn't know about --- Did they know about
- 21 your talking and texting to Jerry on the phone before
- 22 your Daddy found the phone?
- 23 A. No, sir. They didn't know of the phone.
- 24 Q. They didn't know of the phone. Well, were you hiding
- 25 your relationship with Jerry from your parents?

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- CROSS EXAMINATION

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1 A. No, sir. They --- we couldn't date. We couldn't ever be
2 alone or do anything that boyfriend and girlfriends do,
3 because of our age. And, we were going to --- They knew
4 that we wanted to when I turned sixteen.

5 Q. Okay. You were fourteen and he was nineteen?

6 A. Yes, sir.

7 Q. You liked him, he liked you, but the only time you could
8 only I guess really associate with him was going to be at
9 church?

10 A. Yes, sir.

11 Q. He couldn't even parlor date at your house? Do you know
12 what I mean? Your parents forbid a fourteen and a
13 nineteen relationship?

14 A. Yes, sir.

15 Q. But you liked him and he liked you?

16 A. Yes, sir.

17 Q. Okay. I am up here on line 100. "I hinted around it at
18 the shop. But it's not information I felt like
19 volunteering to the public." Line 100.

20 A. Yes, sir. I was trying to remember. I had no idea what
21 that was referring to actually.

22 Q. Okay. You didn't want to tell anybody about Joey getting
23 you upset, I think, at school? Complaining about him;
24 that might have been it?

25 A. That may have been it.

- 1 Q. Okay. And Jerry to Minor "Can we take pics when we
2 play? Okay. Can we take picks at the gym when we play?"
- 3 A. Yes, sir.
- 4 Q. Okay. All right. Now, you are disagreeing with me when
5 I say play is a common term that is used in gymnastics to
6 work on skills outside of your level. It could mean
7 that, couldn't that? It could mean that?
- 8 A. I guess.
- 9 Q. Okay. All right. Jerry. "It's okay, but I really hate
10 him. Please let me kill him for you." I know Jerry
11 didn't mean that did he?
- 12 A. No, sir.
- 13 Q. "Nobody has to know, please?"
- 14 A. The smiley-face.
- 15 Q. Excuse me. I see. I've got you. That is the kind of
16 sideways one, right? Okay. Then Minor to Kris, "means
17 whatever that is." Then Minor to Jerry. "No playing
18 mind games. If you want to add --"
- 19 A. -- And play mind games.
- 20 Q. And --
- 21 A. -- And, like in playing mind games.
- 22 Q. Okay.
- 23 A. Like me and you.
- 24 Q. Okay. "N playing mind games. If you wanna add that two
25 the list, but yeah, it's getting kind old."

Minor - CROSS EXAMINATION

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1 A. I think that goes back to him making me cry and stuff
2 like that.

3 Q. Joey?

4 A. Yes, sir.

5 Q. What do you mean making you cry?

6 A. He was upsetting me because of some things that he was
7 saying.

8 Q. To you?

9 A. Yes, sir.

10 Q. Okay. So, 116. Minor to Jerry. "People would know.
11 So, no. But yeah. The whole crying thing is giving me
12 major headaches. Not to mention it messes up my makeup
13 too, :)."

14 A. Yes, sir.

15 Q. Because this is all of the trouble you were having with
16 Joey?

17 A. Yes, sir.

18 Q. And Jerry says, "he's not worth crying for and you don't
19 need any makeup anyway. You are perfect the way you are
20 :)."

21 Now, all right --- So, you have got to know you are
22 not really supposed to be talking to Jerry, but y'all are
23 kind of waiting until you become sixteen; right?

24 A. Yes, sir.

25 Q. And Kris says, "I think playing in the gym will be cool."
Line 123?

- 1 A. Yes, sir.
- 2 Q. And then Minor to Kris, it says, "hahaha yeah." Right?
- 3 A. Yes, sir.
- 4 Q. And then, "Hahaha thanks but you are crazy." On line
- 5 129?
- 6 A. Yes, sir.
- 7 Q. That is to Jerry?
- 8 A. Yes, sir about me not needing makeup.
- 9 Q. "The only thing that I'm crazy for is I haven't killed
- 10 somebody over you and laugh out loud about that." And
- 11 then you back to Kris, "hahaha, okay."
- 12 A. You skipped another text.
- 13 Q. What line?
- 14 A. One thirty-one.
- 15 Q. I didn't mean to do that. "I want to try a kiss with
- 16 you, okay?" Right?
- 17 A. Yes, sir.
- 18 Q. All right. He never describes what kind of kiss he is
- 19 talking about though does he?
- 20 A. No, sir.
- 21 Q. And he never says I want to touch you in any
- 22 inappropriate way?
- 23 A. In that line right there, in that line right there all he
- 24 asks is to kiss me.
- 25 Q. But that is what you told --- didn't you tell one of the

Minor - CROSS EXAMINATION

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1 investigators that he had kissed you on the lips? I've
2 asked you that before. That is all that you said is that
3 he kissed you on the lips. See, I don't know about ---
4 the first time I heard about French kissing was with you
5 today. I didn't know anything about French kissing.
6 There is nothing in the discovery that says anything
7 about French kissing.

8 A. No, sir. The first couple of days, I was trying to
9 protect him. I didn't --- I don't think that I really
10 thought about clearing it up and saying that he stuck his
11 tongue in my mouth.

12 Q. All right. Now, we have got to go to the next one, 144,
13 the next page. Okay. From Minor to Jerry --

14 A. -- Hold on, you skipped another text.

15 Q. Let's go back. I don't want to skip one.

16 A. One forty --- line 140.

17 Q. Okay.

18 A. From Kris to me.

19 Q. "Getting you alone sometime Thursday." You are saying
20 that getting you alone in the gym sometime Thursday. I
21 am glad you pointed that out to me, because I am going as
22 slow as I can, and they are going to read -- I want them
23 to read everything that is up there. Okay?

24 A. Yes, sir.

25 Q. "Get you alone sometime Thursday in the gym."

1 A. Yes, sir.

2 Q. Okay. And you say the only way that could happen is
3 because in the front part of the gym --- is that right,
4 the front part of the building?

5 A. The only way that could happen inside would be the front
6 part of the gym, correct.

7 Q. Okay. All right. I am going to try to put this up here
8 on the easel.

9 (PAUSE.)

10 Q. Okay. So, Minor, can you see that okay?

11 A. That's better.

12 Q. And that is the front door to the gym, right?

13 A. Okay.

14 Q. Am I right?

15 A. Yes, sir.

16 Q. This is the big gym area over here, where you practice?

17 A. Yes, sir.

18 Q. And now, where are you saying that this kiss took place?

19 A. Section eight.

20 Q. Back in here?

21 A. Yes, sir.

22 Q. What is section three?

23 A. (No response.)

24 Q. How about the bathroom?

25 A. That is four.

Minor

- CROSS EXAMINATION

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1 Q. All right.

2 A. The bathroom is four.

3 Q. Okay. What is five?

4 A. I'm not sure what section two is, but --

5 Q. That is the bathroom from the backside.

6 A. Okay. Okay. Okay.

7 Q. Isn't that right?

8 A. Yes, sir.

9 Q. This is the bathroom on the front side?

10 A. Yes, sir.

11 Q. And you are saying the kiss took place in section eight,
12 and not right out in the hallway in front of the
13 bathroom?

14 A. No, sir. Not right there.

15 Q. And you don't remember if there --- if you ever told
16 anybody that this act was witnessed or not?

17 A. Oh, I know I didn't say that it was witnessed.

18 Q. I know. And that is because you say there were no
19 witnesses?

20 A. Correct.

21 Q. Out of all of the people at the gym nobody saw what
22 happened?

23 A. No, sir. Because it was in the backroom. Normally,
24 pretty much everybody is in Section 1, and Sally is
25 pretty much the only one that is ever in Section 9.

- 1 Q. Let's say seven behind the counter.
- 2 A. Okay. Seven is behind the counter. Then she is normally
- 3 about the only one who is in Section 7.
- 4 Q. All right. Let's move on. "Get u alone sometime thur?"
- 5 If we go -- and I am going to go to the next page. Okay?
- 6 A. Okay.
- 7 Q. Some more Minor to Jerry. "Hahaha, hush." I don't know
- 8 --- I don't what that was about. But you can look at the
- 9 preceding text and tell me.
- 10 A. Yes, sir. It says, "The only thing I am crazy for is I
- 11 haven't killed somebody over you yet."
- 12 Q. And you think that is a joke?
- 13 A. Yes, sir. It was a joke.
- 14 Q. Yet, you said, "You should give me some pics of you so I
- 15 can see your pretty face, every night before I close my
- 16 eyes, please, :) please cake." Okay?
- 17 A. Yes, sir.
- 18 Q. "I highly doubt it." I highly doubt it, you say. And
- 19 then Jerry says, "You can use my phone and wear clothes
- 20 too, lol" with a smiley face.
- 21 A. Yes, sir. Because he knew what Kris was wanting. So, it
- 22 was kind of a --
- 23 Q. -- That is what you had been telling him?
- 24 A. Yes, sir.
- 25 Q. But, there were no pictures taken?

Minor - CROSS EXAMINATION

220

1 A. No, sir.

2 Q. And then you say, "Hahaha. And then it would probably be
3 better --"

4 A. Thank you. I said, "Hahaha thank you."

5 Q. Okay.

6 A. Because, I get to wear clothes.

7 Q. All right. And then Minor to Jerry, "Hahaha, yeah that
8 wouldn't be cool." Line 165?

9 A. Correct.

10 Q. Okay. Then we go to the next page. And it says to
11 Jerry, "What wouldn't be cool?" Okay. Now here it
12 comes. "I can see us having" -- This is Kris to Minor.
13 "I can see us having us having sex, but the kiss should
14 be interesting."

15 A. Yes, sir.

16 Q. And he said, I can see us having sex, but he didn't
17 specifically ask you if he could have sex, he said, I can
18 see us having sex, right?

19 A. No, he specifically asked before, and that was kind of
20 saying, I can see that happening in the future. But this
21 should be fun for now.

22 Q. Okay. Well, so when did he skip to say, Hey, can I have
23 sex with you? Is it on any of these threads?

24 A. Playing in the gym. Can we --

25 Q. You are saying that is what he meant by playing in the

1 gym?

2 A. Yes, sir.

3 Q. All right. That is your interpretation --- the
4 interpretation you put on it?

5 A. No -- Yes --- That is how it was.

6 Q. Well, that is how you took it?

7 A. Yes, sir.

8 Q. And that is --- And I say that because that is all that
9 was said, play?

10 A. Then it clarifies.

11 Q. Okay.

12 A. In 170.

13 Q. You are saying that clarifies what play means, right?

14 A. Yes, sir.

15 Q. All right. But he says, "I can see us having sex, but
16 the kiss should be interesting." Okay. And then you
17 talk to -- Minor talks to Jerry and you say, "you staying
18 up all night? No, if I had those kinda pics" --- talking
19 about dirty pics I guess. "I wouldn't ask anything like
20 that of you because it's kinda weird." Right?

21 A. Yes, sir.

22 Q. And then Minor to Kris, it says, "Hahaha yeah I was
23 thinking about that, jokingly, lol."

24 A. About it being interesting.

25 Q. Okay. And then Minor to Jerry, "Hahaha agreed. But I can

Minor - CROSS EXAMINATION

222

1 top that, be twenty-years-older and begging for them.
2 Hahaha." He is talking about himself and making a
3 reference to --

4 A. No, no, no, no. It says, "if I had" --- hold on. "If I
5 had those kind of pics I wouldn't mind, jk. I wouldn't
6 ask anything like that of you because it's weird." [sic].
7 And then I said, "Agree, it's weird but I can talk that.
8 Be twenty years older than what he is --

9 Q. That's why --

10 A. -- and begging for pictures."

11 Q. Being almost forty?

12 A. Yes, sir.

13 Q. And from Jerry to Minor, "right, whatever. I don't know
14 what that means." Line 186?

15 A. One eight-six.

16 Q. Right. I don't know what that colon T means?

17 A. It is a face.

18 Q. It is a what?

19 A. It is a side-face. It is like a smiley face type thing.

20 Q. "I'd rather have the real thing, but he would too."

21 A. Yes, sir.

22 Q. "Anyways I'm going to bed. We have gap at 4 tom so I'll
23 see you as soon as I get out of school." Talking about
24 you and Jerry?

25 A. At church.

Minor [REDACTED] - CROSS EXAMINATION

223

- 1 Q. All right. "Love you more. Nite."
- 2 A. Yes, sir. Gap is a street ministry we do at church.
- 3 Q. Y'all never did anything inappropriate at church?
- 4 A. No, sir. My parents were always at gap with us.
- 5 Q. Okay. He never tried to sneak a kiss?
- 6 A. No, sir.
- 7 Q. Okay. "Love you the most good night cake." That is him
- 8 talking to you, right?
- 9 A. Yes, sir.
- 10 Q. Are y'all still talking now, you and Jerry?
- 11 A. Hopefully, we can date when all of this is over with.
- 12 Q. Because you are sixteen?
- 13 A. Yes, sir.
- 14 Q. And you have gotten rid of Joey now?
- 15 A. Yes, sir.
- 16 Q. Joey is gone?
- 17 A. I haven't talked to him in a long, long time.
- 18 Q. So Kris to Minor [REDACTED]. "So we tried out Thursday."
- 19 A. The kiss.
- 20 Q. "Just a warning my hands wonder when I kiss."
- 21 A. Yes, sir.
- 22 Q. "That is if we get a solid chance."
- 23 A. Yes, sir.
- 24 Q. And he laughs about it. Right?
- 25 A. Yes, sir.

Minor

- CROSS EXAMINATION

224

1 Q. All right. And during this period of time now, you told
2 us that you were having some problems with Joey, and your
3 parents don't want you associating with him?

4 A. Yes, sir.

5 Q. But, you got some kind of feelings for Joey, but probably
6 not that much --- not really romantic feelings?

7 A. No, sir. More of a protection type thing. Because, he
8 has gotten in a lot of trouble and I didn't want him to
9 get in trouble.

10 Q. You were befriending him, and he wanted more out of the
11 relationship than you did in a way? You wanted to help
12 the child?

13 A. Yes, sir.

14 Q. But he wanted to be your boyfriend, Joey?

15 A. I'm not sure that he wanted that.

16 Q. Okay. Well, what were some of the things that annoyed
17 your parents most about Joey?

18 A. A --

19 Q. -- Was he your same age?

20 A. He was --

21 Q. -- Or was he older than you?

22 A. He was two and a half years older than me.

23 Q. Joey was?

24 A. Yes, sir.

25 Q. So he was sixteen and a half; is that right? Well,

- 1 whatever. You do the math.
- 2 A. Somewhere in there.
- 3 Q. But he was like a bigger guy in a smaller class?
- 4 A. He didn't have classes with me.
- 5 Q. Okay. What was Joey's last name?
- 6 A. He was actually --- he didn't go to school with me after
- 7 seventh or eighth grade --- was it --- No, I don't think
- 8 he went to school with me after seventh grade. He might
- 9 have been there eight, but --
- 10 Q. But when you are talking about him --- Did you finish?
- 11 A. Yes, sir.
- 12 Q. When you were talking about him in these texts right
- 13 here, you were in what grade; tenth? What grade were you
- 14 in when you were texting him?
- 15 A. Ninth.
- 16 Q. Ninth grade. All right. Joey was in what grade? Was he
- 17 in school then?
- 18 A. No, sir.
- 19 Q. Okay. Was he going to school at all?
- 20 A. I don't --- I don't know.
- 21 Q. But needless to say he was --
- 22 A. -- We only talked for --
- 23 Q. -- Calling you --
- 24 A. -- it was only a short amount of time.
- 25 Q. He was causing you some problems though?

Minor - CROSS EXAMINATION

226

1 A. Yes, sir.

2 THE COURT: The court reporter is saying don't talk
3 over the witness. She can't take two people at one time,
4 obviously.

5 MR. CANNARELLA: I apologize.

6 Q. We have gone through lines but you know --- see I want to
7 go back to 196, because "just a warning, my hands wander
8 when I kiss." Well, but his hands had never been
9 inappropriately wandered over your body when he spotted
10 you?

11 A. No, sir.

12 Q. Do you know what I mean? Because he was a good coach?

13 A. That is not what it was referring to.

14 Q. I know. I know that. But, I'm asking --- wondering when
15 I kiss I know, but he says, "just a warning my hands
16 wander when I kiss." I guess --- what did you take that
17 to mean, because he says, "lol if we get a -"

18 A. -- Which one are you talking about? Line 196, his hands
19 wandering when I kiss, what do I take that to mean, or a
20 chance for?

21 Q. Let's start at that point.

22 A. Okay. "Just a warning my hands wander when I kiss", that
23 would mean that while he was kissing me his hands would
24 wander.

25 Q. I know. That is what I was thinking too.

- 1 A. Yes, sir.
- 2 Q. That is what I asked you. But, his hands had never
- 3 wandered?
- 4 A. No, sir.
- 5 Q. All right.
- 6 A. No, sir.
- 7 Q. All right. "And that is if we get a solid chance."
- 8 A. To kiss.
- 9 Q. To kiss. On a Thursday?
- 10 A. Yes, sir.
- 11 Q. At the gym?
- 12 A. Yes, sir.
- 13 Q. And what you are saying is now y'all will have to sneak
- 14 back there in one of them rooms back in there and close
- 15 the door and do it?
- 16 A. Yes, sir.
- 17 Q. Is that --- I mean that is what you said earlier.
- 18 Supposedly y'all were in the room with a door locked?
- 19 A. Yes, sir.
- 20 Q. All right. And Ms. Sally --- Ms. Sally Richardson,
- 21 that's her name, she really --- in fact, she is the
- 22 backer of that gym, she got it started for her daughter
- 23 Ashley; is that right?
- 24 A. I'm not aware of how it got started exactly.
- 25 Q. Okay. But Sally is the older lady that stays there?

Minor - CROSS EXAMINATION

228

1 A. Yes, sir.

2 Q. And Sally is --

3 A. Ashley's mother.

4 Q. Ashley's mother. Sally kind of in part is like --- isn't
5 she like a --- I don't know. What does she do there? Is
6 she the manager? Not the manager, but what does she do?

7 A. I'm not really sure what all she does. I just --- I
8 think Ashley took care of most of the business in the gym
9 too, the coaching and the business. And Sally --- Ms.
10 Sally was just there kind of --

11 Q. She was behind there where number 7 is most of the time?

12 A. Or either out in the gym. She sat out in the gym a good
13 bit too.

14 Q. She watched the front a good bit too?

15 A. Yes, sir. But she gets about in the gym a good bit.

16 (PAUSE.)

17 Q. Okay. Let's move on, okay? I am going to say like 190
18 --

19 A. Two hundred is where we were. Two hundred.

20 Q. "If not, we can try Friday."

21 A. Yes, sir.

22 Q. Okay. And your story is the same, and you are sticking
23 with it about meeting?

24 A. No, sir. The one before that says, "So we try it out
25 Thursday" and it talks about the kiss. And then the next

1 text message says, "if not then we try Friday."

2 Q. That's what I'm talking about. " If not then, then we try
3 Friday?"

4 A. Yes, sir.

5 Q. Okay. And that's Thursday, Friday, or whatever. You are
6 saying that he is trying --

7 A. -- if the kiss --- If we do not get a solid chance on
8 Thursday to kiss, then we try Friday.

9 Q. Okay. All right. If not then we try Friday. Then at
10 6:21 a.m. the next day, that would have been Wednesday,
11 "hey, is this Joey?"

12 A. Yes, sir.

13 Q. "I don't know." Did you get something from him to
14 respond back like a number that came up there that you
15 didn't know what the number belonged to, and you said,
16 "hey is this Joey?"

17 A. I think on my phone, I got a phone call around Christmas
18 from like twenty something phone calls, like, you know,
19 he called multiple times. And, I guess -- I'm not really
20 sure what you are asking.

21 Q. Like he called you about twenty-four times on December
22 23rd, do you remember that?

23 A. December 23rd, it was one of those days he called me a
24 bunch of times. Up there in the twenties.

25 Q. Okay. And it was the next day that you supposedly got

Minor Minor - CROSS EXAMINATION

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1 the phone from Kris?

2 A. I have no idea. I don't know if it was the next day or
3 not.

4 Q. You got that phone from Kris, you got it at the gym
5 didn't you?

6 A. Yes, sir.

7 Q. Okay.

8 A. I was at my Grandparents' house when he called me that
9 many times. I think it was the 24th that he called me
10 that many times.

11 Q. And y'all went down to the gym on the 24th too didn't
12 you?

13 A. I'm not sure.

14 Q. Okay. Minor to Kris. "I want to run away. I'd rather
15 die than go through this. I miss you. I don't know what
16 to do."

17 A. Yes, sir.

18 Q. That is who?

19 A. Joey.

20 Q. Well, you hadn't been around him for a while?

21 A. No, sir.

22 Q. Because your parents wouldn't let you hang out with him?

23 A. No, sir.

24 Q. And he was still calling you?

25 A. Yes, sir.

1 Q. And you were wanting to talk to him, or do something to
2 help him with the situation?

3 A. Yes, sir.

4 Q. "I'd rather die than go through this." Go through what?

5 A. I took a lot of responsibility for him getting in
6 trouble.

7 Q. Why?

8 A. Because in seventh grade, me and him talked or whatever
9 at school. And he stayed out of trouble a good bit
10 during the seven months that we talked. And then my
11 parents finally, I guess got sick of it or something, I'm
12 not really sure. I don't really remember.

13 Q. Didn't you tell me that y'all kind of got in a little bit
14 of trouble for a little peck or something?

15 A. Yes, sir.

16 Q. That was Joey's fault?

17 A. Yes, sir. Well, Joey's fault. I'm not sure --- I don't
18 think it was Joey's fault. It was --

19 Q. -- just something that happened?

20 A. Yes, sir.

21 Q. I do not --- That is -- I do not know?

22 A. I don't know what to do.

23 Q. All right. What was happening?

24 A. Everybody was telling me --- they were telling me to
25 leave him alone, and, so, I didn't want to, because I

Minor - CROSS EXAMINATION

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1 wanted to keep him from getting into any more trouble.

2 So I didn't know whether to leave him alone, or --

3 Q. You sort of felt some responsibility for him?

4 A. Yes, sir.

5 Q. And Kris says, "he is a drug to you, a bad drug."

6 A. "Everything that you are."

7 Q. Okay. Now, you start this conversation with Kris about
8 Joey, right? So, you did confide in Kris about how
9 troubling it was with the situation that you had to deal
10 with -- with Joey? "Do you know for a fact that he does
11 not care what happens to your life? You are a cruel game
12 to him."

13 A. I told Kris everything.

14 Q. And this is Minor to an unknown. "Hey, is this Joey?"

15 A. Or his mother, Ms. Kathy.

16 Q. Yeah. So, at 10:31 a.m., and here comes a call to you
17 from Joey or his Mama, Mrs. Kathy?

18 A. Sir?

19 Q. 2:16, Minor to unknown, "Hey, is this Joey or Mrs. Kathy,
20 this is Minor?" There was the response. Do you see it?

21 A. No, sir.

22 Q. Line 217?

23 A. Okay, 217.

24 Q. "Hey, is this Joey or Mrs. Kathy?"

25 A. Yes, sir.

1 Q. Well, I know that is a text message that you sent to an
2 unknown, right?

3 A. Yes, sir.

4 Q. Is that in response to something that you had gotten that
5 you didn't recognize? A text message? What would have
6 prompted that right there? "Hey, is this Joey or Ms. K
7 --"

8 A. -- I'm not really sure. It has been almost two years.

9 Q. Then it says unknown to [REDACTED] from [REDACTED] to Kris, "It
10 doesn't matter, I love him, and he means more to me than
11 I can ever say?"

12 A. Yes, sir.

13 Q. And that is talking about --

14 A. -- Is that a question?

15 Q. Not yet. That is talking about Joey, I love him. "It
16 doesn't matter, I love him, and he means more to me than
17 I can ever say." That is Joey?

18 A. Yes, sir.

19 Q. Or Jerry?

20 A. That was Joey.

21 Q. Okay. "Then if you are willing to sacrifice your very
22 being prepare to be crushed."

23 A. Yes, sir.

24 Q. Kris is telling you basically the same thing that your
25 Mamma and Daddy is telling you about Joey?

Minor - CROSS EXAMINATION

234

1 A. Kris didn't like Joey. Kris didn't want me to be with
2 Joey either.

3 Q. Okay. And neither did your Mamma and neither did your
4 Daddy?

5 A. No, sir.

6 Q. And Jerry was kind of off limits for a while?

7 A. Yes, sir.

8 Q. Joey is gone now?

9 A. Yes, sir.

10 Q. Is he doing any better?

11 A. I doubt it.

12 Q. "If Joey really was on crack, would you want him off and
13 why?" And then Kris to Minor, "please don't ignore me
14 unless you have to. Can I have Joey's number?" He wants
15 to get Joey's telephone number?

16 A. Yes, sir.

17 Q. Minor unknown. "Tell him to text me when he gets a
18 phone."

19 A. "Tell Joey to text me when he gets a phone."

20 Q. Okay. "You do want his number --"

21 A. -- I said, "why do you want his number?"

22 Q. Why, okay, why. Why, I've got you. I need to take a
23 lesson on texting to get a grip on this mindset. "If you
24 don't want to that's okay."

25 A. Yes, sir.

- 1 Q. And then it goes back to Jerry, 6:13, "we are almost at
2 Uncle Jimmy's."
- 3 A. Yes, sir. We had church, a home church.
- 4 Q. Okay. What is a home church?
- 5 A. It means we had church in a basement in a home.
- 6 Q. Oh.
- 7 A. Which was at my Uncle's. And the next text message says,
8 "do you want to race there?"
- 9 Q. Oh. I see. So y'all were going to after church?
- 10 A. Yes, sir.
- 11 Q. And then there is a number line 251, and there is a
12 number and it says, "be careful." Right?
- 13 A. Yes, sir.
- 14 Q. Okay. Line 254, Kris to you, "Are you sure?"
- 15 A. I texted him or talked to him.
- 16 Q. Okay. "I plan on pulling him out." Whatever that means,
17 you even say what does that mean in the text later on.
18 "Pulling him out. Be strong. Stay strong. I have faith
19 in you."
- 20 A. Yes, sir.
- 21 Q. Okay. And here we go again. "Do I get my camera full of
22 good pics tomorrow?"
- 23 A. Yes, sir.
- 24 Q. Okay. And, you never took any pictures?
- 25 A. No, sir.

Minor - CROSS EXAMINATION

236

1 Q. And then you say, "Hahaha I don't know." And then a new
2 question.

3 A. I changed the subject back to Joey.

4 Q. "I'm pulling him out," right? "I'm pulling him out."
5 What -- and pulling him out of what?

6 A. I was asking him what he meant by that.

7 Q. What Kris meant by that?

8 A. Yes, sir.

9 Q. Okay. And then at 9:11, Minor to Jerry. "I miss you. I
10 really need Jerry, Minor time right now. I'm going crazy.
11 Like I feel like someone's fate is in my hands. It is so
12 hard. I just want to be in your arms so bad."

13 A. Yes, sir.

14 Q. Okay. This is Jerry?

15 A. Yes, sir.

16 Q. From Kris to Minor 271.

17 A. It is a typo.

18 Q. Oh, it is?

19 A. Yes, sir. Because the "T" is on the same --- like button
20 as a "U" and you want me to leave it alone don't you.

21 Q. Okay. That would seem to me it would be about pulling
22 Joey out?

23 A. Yes, sir.

24 Q. Right?

25 A. Yes, sir.

1 Q. Jerry to Minor: "And wish you could. :) I love you so
2 much. I need you so much."

3 A. Yes, sir.

4 Q. Minor: "I don't know what I want. I feel like someone's
5 fate is in my hands. I'm so scared." Now, is it because
6 of some conflict that is going on in your head or in your
7 life?

8 A. He was --

9 Q. -- You were talking to Kris -- Go ahead, don't let me
10 interrupt.

11 A. Okay. Joey was coming back around again, well not coming
12 back around again, but trying to speak to me again. So,
13 therefore, I kind of still felt the need to protect him
14 from --- try to keep him out of trouble. I keep saying,
15 protect him. But, when I said I feel like someone
16 else's fate is in my hands, I was saying I felt like it
17 was up to me whether or not he stayed out of trouble.

18 Q. Okay. And, Minor: the truth is that you and Kris talked
19 about your situation with Jerry and the way you felt
20 about each other. You and Kris talked about it. I mean
21 --

22 A. -- I told Kris everything.

23 Q. Okay. All right. But, did Kris know about Jerry?

24 A. Yes, sir. I think he knew that he came around and stuff.

25 Q. Okay who said, "I don't know why, but I feel like

Minor - CROSS EXAMINATION

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1 someone's fate is in my hand. I'm so scared. It says,
2 your fate is in your hands, I'll tell you what I'll do.
3 I'll keep his number until you tell me to?"

4 A. Yes, sir.

5 Q. "To get rid of him, and I can get rid of him." And then
6 we go through the next page, line -- From Minor to Jerry,
7 "I love you too. I miss you. I need to kiss you again.
8 And it is driving me crazy." And then, "good, because I
9 need to kiss you more when we go on a meeting again."

10 A. Yes, sir.

11 Q. That would be like a church?

12 A. Yes, sir. We had just gotten home from a church trip or
13 something like that.

14 Q. Well, when we are going to kiss again, that can only mean
15 you were kissing at church?

16 A. It was a church trip. We went to Gatlinburg, Tennessee.

17 Q. You and Jerry?

18 A. No, our youth group.

19 Q. Did Jerry go with you?

20 A. Yes, he did.

21 Q. Was he part of the youth group?

22 A. Yes, he was. We had a good bit of kids that were a part
23 of the youth group. It wasn't like just my family and
24 Jerry. It was a good bit --

25 Q. -- There were some chaperones?

Minor - CROSS EXAMINATION

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- 1 A. I think the only people that went with our youth group
2 was my parents.
- 3 Q. Okay. "Good, because, I need to kiss you more. When are
4 we going to meet again?" And Kris back to Minor, "no
5 more pressure from me --"
- 6 A. -- I don't know what that means.
- 7 Q. "You let me know."
- 8 A. "You let me know when you want me to take care of him."
- 9 Q. You are talking about getting a phone number and trying
10 to get Joey to leave you alone?
- 11 A. Yes, sir.
- 12 Q. Now, you went up to a Level 7 in gym, right? Kris worked
13 you up to a Level 7, right?
- 14 A. Kris and Ashley.
- 15 Q. But you got there?
- 16 A. I was a Level 7.
- 17 Q. That is good?
- 18 A. Yes, sir.
- 19 Q. Okay. Minor to Kris. Okay. Line 293. "Kris, I am
20 responsible for him, because I made myself responsible.
21 But now I will have to follow through. I would rather be
22 hurt than to hurt him. I just want to make him better."
23 That is you trying to do a kind thing for somebody else?
- 24 A. Yes, sir.
- 25 Q. "Hi, I didn't know" --- Minor to Kris --

Minor - CROSS EXAMINATION

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1 A. -- I don't know.

2 Q. You don't know. Kris says it is his turn the second week
3 in February, and that is supposed to mean like I have got
4 to meet up with him and I can't meet up with you?

5 A. Yes, sir. Like I said earlier, whenever Ms. Kendall
6 questioned me about that text message, I don't know why I
7 worded it like that. But --

8 Q. Now, Kris to Minor. "Now, you know how I feel about you,
9 but I know things you don't. And before you can fix
10 someone else you need to fix yourself." Is that right?

11 A. Yeah.

12 Q. "Jerry, he doesn't get a turn, because you are mine.
13 Lol, all mine."

14 A. Yes, sir.

15 Q. All right. "I think we are about to the end."

16 A. Yes, sir.

17 Q. "But fixing myself would mean I can't fix Joey either,
18 because I need to" --- You correct my reading of this
19 text language. "But fix myself would mean I can't fix
20 Joey either, because I need to stay away."

21 A. Yes, sir.

22 Q. What does that mean?

23 A. It means that I know that I need to stay away from him,
24 and that would pretty much be the only way I could help
25 myself. But, if I did that I couldn't help him.

1 Q. "A true dilemma. But nothing is impossible. No, I'd
2 rather be --"

3 A. -- And --

4 Q. -- In --

5 A. -- And.

6 Q. "And, I'd rather him be fixed than me." And Kris says,
7 "well some people can't be fixed. I found that out the
8 hard way."

9 A. Yes, sir.

10 Q. "But, I can't give up, but honestly, I am exhausted. It
11 is hard dealing with him, Joey. But I can't give up
12 without trying."

13 A. Yes, sir.

14 Q. And then to Jerry. "I'm about to run out of minutes."

15 A. "I am about to run out of minutes."

16 Q. All right. That is part of the thread that --- that is
17 all of what was left on that cell phone?

18 A. Yes, sir.

19 Q. Because it didn't do anything but save that. But you are
20 saying that all of the trouble you were having here --
21 all the trouble you were having inside of yourself about
22 wanting to help Joey?

23 A. Yes, sir.

24 Q. Because you felt sorry for him?

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1 A. Yes, sir.

2 Q. And that would not have been anything --- You told Kris
3 about all of this? Kris knew about all of that, right?

4 A. Yes, sir.

5 Q. And you discussed Joey with Kris so Kris was trying to
6 help you to some extent?

7 A. Well, no.

8 Q. With the problem that you were having with Joey?

9 A. The conversation started out with him asking for pictures
10 of me. And then I changed the subject to talking about
11 Joey. I don't remember what line it was, but I changed
12 the subject.

13 Q. Okay. But you were having problems with Joey even before
14 you got that cell phone?

15 A. Yes, sir.

16 MR. CANNARELLA: I beg the court's indulgence just one
17 moment, Your Honor.

18 THE COURT: Yes, sir.

19 (PAUSE.)

20 Q. But on that thread there are conversations that you say
21 were inappropriate, okay. But there are also
22 conversations with Joey on there as well?

23 A. After I changed the subject, yes.

24 Q. But what you are saying is you changed the subject. If
25 we peep through there with a fine tooth comb, that is how

1 we would pick up on that clearly if we --

2 A. -- yes, sir.

3 Q. If we stopped and spent two or three more hours going
4 over it?

5 A. Not two or three more hours.

6 THE COURT: Anything further?

7 MR. CANNARELLA: Beg the Court's indulgence just one
8 moment, Your Honor.

9 (PAUSE.)

10 MR. CANNARELLA: Your Honor that is all of the
11 questions that I have of the witness. But, intend to offer
12 into evidence her Forensic Interview that was conducted at the
13 Care House in Florence on February 2, 2010.

14 THE COURT: Counsel, when you say that you intend to
15 offer it into evidence, do you mean to publish it, or simply
16 to make it available to the record, if the jury wishes to view
17 it during deliberations?

18 MR. CANNARELLA: Well, we can do it that way. I can
19 introduce it into evidence, and the jury knows it will be a
20 forensic interview, because she was questioned by Dana
21 Collins, and if they want to review it during deliberations
22 that will be fine, because that would obviously save time.

23 THE COURT: Very good. Let me ask; is there an
24 objection from The State?

25 MS. BURCH: Your Honor, there is no objection.

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1 **THE COURT:** All right. Then without objection we will
2 mark it. And it will be up to the jury if they wish to view
3 it for their consideration during their deliberations.

4 **WHEREUPON, DEFENDANT'S EXHIBIT**
5 **NUMBER 1 IS MARKED AND ADMITTED**
6 **INTO EVIDENCE WITHOUT OBJECTION.**

7 **THE COURT:** No further questions, Mr. Cannarella?

8 **MR. CANNARELLA:** Your Honor, just beg the court's
9 indulgence for just one more moment, to consult with my
10 client.

11 **THE COURT:** Will there be redirect?

12 **MS. BURCH:** Just briefly, Your Honor.

13 **THE COURT:** All right. Briefly. Ladies and gentlemen,
14 we are going to finish with our witness before we take our
15 break to let others return to the courtroom, as well as take
16 an afternoon break.

17 **MISS. JOHNSON:** Is that someone at the door?

18 **(PAUSE.)**

19 **THE COURT:** Excuse me. Let me make something clear
20 about the door being cracked right there. That is the bailiff
21 listening at the door to see when we are going to take our
22 break so that we can let others in the courtroom. There is no
23 one listening to the proceedings at the door. Okay?

24 **MISS. JOHNSON:** Thank you.

25 **THE COURT:** I just wanted to make sure you understood

1 that.

2 Go ahead, Mr. Cannarella.

3 Q. Minor when Dana Collins interviewed you on camera on
4 February 2nd, she asked you a bunch of questions didn't
5 she?

6 A. Yes, sir.

7 Q. And you don't remember all the questions she asked you do
8 you?

9 A. No, sir.

10 Q. And you don't remember all the answers you gave do you?

11 A. No, sir.

12 Q. Well, if you told her that Kris never tried to get you
13 alone in the gym --

14 A. -- Did I, I don't recall.

15 Q. You don't recall saying that?

16 A. No, sir.

17 Q. Okay. If you said that, would that be true or false? If
18 you said --- if you told Dana Collins, Kris never tried
19 to get me alone in the gym, would that be --

20 A. -- that would be false. He asked to play at the gym one
21 weekend in February.

22 Q. So, if you said you told her he never did, you would not
23 be telling her the truth?

24 A. No. I was protecting him, trying to.

25 Q. But you would not be telling her the truth?

Minor [REDACTED] - CROSS EXAMINATION

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1 A. No, sir.

2 MR. CANNARELLA: That's all I had, Judge. And offer
3 the tape as well.

4 THE COURT: All right. The tape is in evidence. Now,
5 is there redirect?

6 MS. BURCH: Just briefly, Your Honor.

7 THE COURT: All right. Briefly, please, go ahead.

8 REDIRECT EXAMINATION BY MS. BURCH

9 Q. Minor [REDACTED] is your testimony here today that Kris Berry did
10 kiss you or try to kiss you?

11 A. He did kiss me.

12 Q. Again, over the weekend hours for the gym, what would the
13 weekend hours for the gym be, starting Saturday morning?

14 A. They did not have practice --- they had birthdays
15 sometimes on the weekends, but the only time they had
16 practice at the gym was Monday through Friday from like
17 3:30 to 8:00 except on Friday and it went to 10:00. So
18 they do not practice during the weekend.

19 Q. So, unless you were having a birthday party, would there
20 be anybody at the gym?

21 A. No.

22 Q. What did the word play in those text messages from Kris
23 Berry to you, what did the meaning of play mean to you?

24 A. To have sex.

25 Q. And, what kind of kiss did he give you? What is your

1 testimony today of the kind of kiss that he gave you on
2 the week of January 25th?

3 A. He stuck his tongue in my mouth. A French kiss.

4 Q. And what day of the week was that kiss?

5 A. Thursday.

6 Q. Let's go back just a second. Mr. Paul, if you can pull
7 up that transcript again. We will go to -- We will go to
8 probably line 45 through 50. This line 36, I think Mr.
9 Cannarella skipped these, and you said you didn't know
10 what came before line 50. Let's go over that really
11 quick. Kris says, "what weekend works for you?" What
12 was he referring to?

13 A. What weekend we could meet at the gym to have sex.

14 Q. Okay. I am just concerned about you and Kris right now,
15 not Jerry. Then the next text message that concerns the
16 two of you, you and Kris, it says, "I was just assuring
17 you." What does that refer to?

18 A. The text in 34 and 35, where it asks -- where I said,
19 what's up with you all suddenly thinking I don't trust
20 you.

21 Q. And then line 50. It says, "looking at it any weekend
22 except the cup, but obviously yes." What were you
23 referring to there?

24 A. Having sex at the gym in February.

25 Q. All right. Now, I know the forensic interview was a

Minor [REDACTED] - CROSS EXAMINATION

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1 couple of years ago.

2 A. Yes, ma'am.

3 Q. Or a year ago at this point, or a little over. Is what
4 you are saying here today, your testimony that you were
5 put under oath to give, is everything that you are saying
6 today true?

7 A. Yes, ma'am.

8 Q. This is the story?

9 A. Yes, ma'am.

10 MS. BURCH: Thank you, Your Honor. No further
11 questions.

12 THE COURT: All right. Very good. Then ma'am, you may
13 step down. If you wish to remain in the courtroom you may.
14 If you wish to leave you may. It will be your choice.

15 Minor [REDACTED]: Thank you.

16 THE COURT: And we are going to take our break at this
17 time, ladies and gentlemen. We will let you take an afternoon
18 break. If you wish to go outside we will give you that
19 opportunity. We will all remain where we are while you depart
20 the courtroom.

21 BAILIFF: Come this way, please.

22 (Whereupon, the jury exits the courtroom at
23 3:25 p.m.)

24 THE COURT: All right. Ladies and gentlemen, the court
25 will be in recess now, now for as long as the jury, because we

1 have a SLED agent with some forensic questions we have to take
2 up outside of the jury's presence. So, let's be on break
3 ourselves approximately ten minutes.

4 (Whereupon, a recess was taken from 3:26 p.m.
5 until 3:52 p.m.)

6 **THE COURT:** All right. Counsel, I am advised that The
7 State has one more witness, and then we would intend to stop
8 for the day, and take up tomorrow morning with your next
9 lengthy witness. Am I correct in that?

10 **MS. BURCH:** I believe that is correct, Your Honor.

11 **THE COURT:** All right. Then let's bring in the jury.
12 I'll explain that to the jury, and we will go ahead and take
13 the final witness.

14 (Whereupon, the jury enters the courtroom at
15 3:53 p.m.)

16 **THE COURT:** All right, ladies and gentlemen. Welcome
17 back. During the break I had a discussion with counsel
18 concerning our scheduling for the rest of the afternoon. They
19 tell me they have one short witness and one lengthy witness.
20 And rather than go into the lengthy witness, and break in the
21 middle, we are going to take the short witness, and then we
22 are going to end for the day. We will start back at 9:30
23 tomorrow morning. I just tell you that for information.

24 Please call your next witness, counsel.

25 **MR. HOLT:** Thank you very much, Your Honor. The State

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1 would at this time like to call Bart Cave to the stand.

2 **THE COURT:** Please come forward and take the oath of a
3 witness.

4 **WHEREUPON, BART CAVE**

5 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

6 **MR. CAVE:** Yes, ma'am.

7 **DIRECT EXAMINATION BY MR. HOLT**

8 Q. Mr. Cave, would you please state your whole name for
9 myself as well as for the jury?

10 A. Bart Cave.

11 Q. And where are you employed?

12 A. South Carolina Law Enforcement Division.

13 Q. And what is that more commonly known as?

14 A. SLED.

15 Q. And, what are your duties there, and what is your job
16 description?

17 A. I work for the Computer Crime Center. I handle the
18 evidence intake, and the imaging of the computer
19 evidence. I manage Administrator for our five networks
20 within our Department. I also handle stuff on Cell Phone
21 Forensic's Department.

22 **THE COURT:** Mr. Cave, would you move forward just a
23 little bit closer to that microphone, so our sound system will
24 pick up a little better. Thank you.

25 **MR. CAVE:** Yes, sir.

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1 Q. And for myself and for the jury, could you just give
2 a brief description of what cell phone forensics is?

3 A. Cell phone forensics is retrieving the information off
4 the phone, whether it be logical evidence which is where
5 you open up the phone, and you scroll through it, what
6 you see. We have a program that will take that
7 information on most cell phones, pull that information
8 off, put it into an easily viewable report instead of
9 having to look at a little two/three inch screen, it will
10 be --- you can look at it through internet explorer, or
11 any operating system that you want to use to view the
12 report.

13 Q. All right. And at any time previously, did you have an
14 occasion to look at the evidence in regard to this case?

15 A. Yes, sir.

16 Q. And what date is that?

17 A. That was back on May 20, 2010.

18 Q. And how many --- how many pieces of evidence --- Well,
19 first off, who brought you the evidence?

20 A. Todd Mozingo.

21 Q. And where does he work?

22 A. At Darlington County Sheriff's Department.

23 Q. And how many pieces of evidence did he bring to show you?

24 A. Three pieces of evidence.

25 MR. HOLT: Your Honor, at this time, permission to

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1 approach?

2 THE COURT: Yes, sir. You may approach the witness.

3 MR. HOLT: Judge, I think this would be a good time to
4 ask you to --- I believe this has been stipulated to as being
5 the defendant's cell phone. This is State's Exhibit 255.

6 THE COURT: All right. We don't have it in evidence,
7 but let me ask you, is there an objection from the defense?

8 MR. BERRY: That's not my phone.

9 (PAUSE.)

10 (Whereupon, Mr. Berry and Mr. Cannarella have a
11 private conversation off the record.)

12 MR. CANNARELLA: Your Honor, we object, because this is
13 not the defendant's cell phone.

14 THE COURT: All right. There is not consent. Then you
15 have to lay a foundation to get that evidence in to the jury,
16 Mr. Holt.

17 MR. HOLT: Yes, sir. Beg the court's indulgence just
18 one second.

19 THE COURT: Yes, sir.

20 (PAUSE.)

21 MS. BURCH: Your Honor, may we approach?

22 THE COURT: You may.

23 (Whereupon, a bench conference was held in the
24 presence of the jury, but out of their hearing range.)

25 THE COURT: Very good. Please proceed, Mr. Holt.

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1 Q. Mr. Cave --

2 THE COURT: Just a moment. Just so you won't think we
3 are having discussions outside of your presence. What this
4 discussion was about was, if there is not an admission of that
5 phone into evidence at this point, what use of it can be made
6 in testimony with this witness.

7 I tell you that, because I don't like to have sidebar and
8 bench conferences with a jury sitting here in the courtroom,
9 that make it appear that we are excluding something from you.
10 That is not our purpose. And that is for your information.
11 Go ahead, counsel.

12 MR. HOLT: Thank you very much, Judge.

13 Q. Now, let me ask you something Mr. Cave. If you could
14 just look at that particular phone, and examine the
15 serial number, and compare it to your report that you
16 said earlier that you had received the phone from Todd
17 Mazingo, and tell me, did you examine that cell phone?

18 A. Yes, I did.

19 Q. Okay. And, can you explain to the jury, so there is no
20 question, how you know you examined that particular
21 phone?

22 A. The first thing is, on the back of the phone I always
23 label it with our case number. Whenever a local agency
24 like a local sheriff's department or a police agency
25 brings us a case we enter it into our evidence, we assign

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1 it our case number. And once I do that, I will label the
2 item on the outside. And also we have a sheet that we
3 get the agent that brings it in to sign off on it saying
4 they are relinquishing that evidence to us, so we have a
5 receipt of that. And on that we take and on the back of
6 the phone there are identifiers on every phone that list
7 numbers in it. This one has a serial number listed, and
8 I use that to identify the phone. And that is also on
9 the sheet that we had Todd Mozingo to sign for that day.

10 Q. So, comparing those two pieces of information, is there
11 any doubt in your mind that you looked at I guess in your
12 phone stuff with that phone?

13 A. Yes.

14 MR. HOLT: Thank you very much. Okay.

15 Q. Now, just in regard to that particular phone --

16 A. -- Yes, sir. --

17 Q. Can you tell me if you pulled off what is called a
18 contact list off of that phone?

19 A. I was able to do that.

20 Q. All right.

21 THE COURT: Excuse me, counsel. Let's do this. Madame
22 Court Reporter, does that phone have any identifying number
23 for this Court?

24 MADAME COURT REPORTER: It has been marked for
25 identification as State's Exhibit Number 259.

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1 THE COURT: Identification only?

2 MADAME COURT REPORTER: Yes, sir.

3 THE COURT: All right. That is item 259 for The State,
4 but it is for I.D. only at this point. Our record should
5 reflect that. Go ahead.

6 MR. HOLT: Yes, sir. I apologize.

7 Q. When you look at that, were you able to pull a contact
8 list off of it?

9 A. I was able to do that.

10 Q. And is that contact list reflected in your report?

11 A. It is.

12 Q. All right. Let me ask you something else. Were you able
13 to pull off any text messages off of that phone?

14 A. I was not.

15 Q. So, what does that mean?

16 A. Either there was none on there, or if some were on there
17 they had been deleted.

18 MR. HOLT: Okay. Beg the court's indulgence.

19 (PAUSE.)

20 Q. Now, looking at that same report, can you tell me if
21 there were any pictures taken and held on that cell
22 phones?

23 A. Not from that report. That phone was not supported by
24 the equipment that we use. So to get the contacts, that
25 phone is what they call a GSM phone, because I removed

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1 the sim-card from it. And when I removed the sim-card, I
2 was able extract the contact list from the sim-card.

3 Q. Okay. So, there was a contact list?

4 A. Yes, sir.

5 Q. There were no text messages?

6 A. No, sir.

7 Q. Now, pictures. Could that phone take pictures, and did
8 you find any pictures on there?

9 A. I did. That phone also contained a micro-SD-card, and on
10 the micro-SD-card, we were able to find some pictures
11 located on the micro-SD-card.

12 Q. So, just so I am clear and the jury is clear, there were
13 pictures on that cell phone?

14 A. Yes.

15 Q. Okay. And, there is also a contact list. Do you have a
16 copy of that contact list?

17 A. Yes, sir. It is right here.

18 Q. Now, did you yourself extrapolate that contact list from
19 that cell phone?

20 A. Yes, I did.

21 MR. HOLT: Your Honor, permission to approach one more
22 time.

23 THE COURT: Yes, sir. You don't need my permission.
24 You may approach the witness.

25 MR. HOLT: And, Your Honor, at this time The State

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1 would move 262, which is his report into evidence.

2 THE COURT: What says defense?

3 MR. CANNARELLA: I think I have a copy of that. Let me
4 make sure it is the same one.

5 (PAUSE.)

6 MR. CANNARELLA: No objection.

7 THE COURT: Without objection, 262 in evidence for The
8 State.

9 WHEREUPON, STATE'S EXHIBIT
10 NUMBER 262 IS MARKED AND
11 ADMITTED INTO EVIDENCE WITHOUT
12 OBJECTION.

13 MR. HOLT: No further questions at this time, Your
14 Honor. Thank you very much, Mr. Cave.

15 THE COURT: Very good. And, now cross examination.

16 MR. CANNARELLA: Beg the Court's indulgence.

17 (PAUSE.)

18 CROSS EXAMINATION BY MR. CANNARELLA

19 Q. Is that phone MP3 capable that you have, State's Exhibit
20 Number 259?

21 A. Say that one more time, sir?

22 Q. MP3 capability? Does that phone not have MP3 capability?

23 A. I am not sure if it does or not, as far --- I would have
24 to power on the phone and look in and see. As far as
25 looking at the model, I would never tell that by looking

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1 at the model.

2 Q. So, you would have to do the same thing to find out if it
3 had Bluetooth capability too, right?

4 A. Of course. That would be a feature of the phone set.
5 Now, an easier way to find that out, I guess if there was
6 a question about that is we would use a website called
7 phonescoop.com, and we would look it up and it would show
8 us the capabilities of the phone, and show us what
9 options are available for that phone. And that is what
10 we do when they bring a phone in if there is a question
11 about those features to the phone.

12 Q. Did you have a power cord to that phone when you examined
13 it, or did you use your own power cord?

14 A. We had our own power cords. On the device that we use to
15 pull the information from, it is called a Cellebrite, it
16 comes with a list of over a hundred cables, and it had a
17 cable that matched that phone, and when we plugged it in
18 it would power it enough where we could power it on.

19 Q. And in State's 262 --

20 A. -- Yes, sir.

21 Q. This information --

22 A. -- Yes, sir.

23 Q. -- It has like a list of contacts?

24 A. Yes, sir.

25 Q. That came off of a sim-card?

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1 A. Correct.

2 Q. All right. And this sim-card came out of that phone
3 right there?

4 A. Yes, sir, it did.

5 Q. Okay. But sim-cards are interchangeable, right?

6 A. Of course.

7 Q. I can take the sim-card out of my phone, and if it would
8 fit and put it in that one right there, or vice-versa,
9 right?

10 A. Correct.

11 Q. That is the only cell phone -- that was one of two cell
12 phones you got from SLED, right?

13 A. Right.

14 Q. That they brought to you?

15 A. At SLED, correct.

16 Q. That was delivered to you at SLED?

17 A. Yes, sir.

18 (PAUSE.)

19 MR. CANNARELLA: That's all the questions we have,
20 Judge.

21 THE COURT: Very good. Is there redirect?

22 MR. HOLT: There is not, Your Honor.

23 THE COURT: Any objection to the release of the witness
24 from either side?

25 MR. CANNARELLA: Not from the defense, Your Honor.

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1 **THE COURT:** All right. Hearing none, then you are
2 released from subpoena, and you are free to go, sir.

3 **MR. CAVE:** Thank you, sir.

4 **THE COURT:** Have a good day. All right. Ladies and
5 gentlemen, we are going to end our proceedings for the day.
6 And what I would ask you to do is be back in the jury room
7 tomorrow morning at 9:30, and we will take up return to
8 testimony in The State's case at 9:30 tomorrow morning.
9 Please be prompt. And Mr. Suggs will have some refreshments
10 for you, if you want to come a little early. We will see you
11 at that time.

12 Again, when you go home, please tell your loved ones you
13 cannot discuss the facts of the case. I will ask you about
14 that before we start in the morning again.

15 Have a nice afternoon, what remains of it. We will stay
16 where we are, while you depart.

17 Have a good day. Counsel, while the jury is departing,
18 counsel step up for just a moment.

19 (Whereupon, the jury exits the courtroom at
20 4:10 p.m. for the day.)

21 (Whereupon, a bench conference was held outside
22 the presence of the jury.)

23 **THE COURT:** All right. Then ladies and gentlemen,
24 having concluded our discussion here at the bench, is there
25 anything for this record on this case today before we adjourn

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1 until 9:30 tomorrow morning from The State?

2 **MS. BURCH:** Nothing from The State, Your Honor.

3 **THE COURT:** From the defense?

4 **MR. CANNARELLA:** No, Your Honor.

5 **THE COURT:** Hearing none, we are in recess in this
6 matter until 9:30 tomorrow morning.

7 (Whereupon, this case stands down for the day
8 at 4:15 p.m. on Tuesday, July 19, 2011.)

9 -- END OF TWO ONE --

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1 (Whereupon, the Court resumes proceedings at
2 9:35 a.m. on Wednesday, July 20, 2011.)

3 -- DAY THREE OF TRIAL --

4 THE COURT: All right. Ms. Parker, I am told there is
5 a matter that you wish to take up?

6 MS. PARKER: Your Honor, The State's first witness this
7 morning is David Young. We will be playing the defendant's
8 video statement during his testimony. It has been redacted.
9 I would like maybe a short, little brief instruction to the
10 jury before it is played or at some point so they will know
11 that it is not complete. You know, that it has been redacted
12 to protect the defendant's constitutional rights. But,
13 according to the rules or something.

14 THE COURT: All right. We will do that. Any objection
15 to that, Mr. Cannarella?

16 MR. CANNARELLA: I think it is just best left alone.
17 Don't say anything. Why draw any attention to the fact that
18 it has been redacted, unless the quality of the redaction is
19 so poor that it jumps from --- And, I haven't looked at it,
20 unless it jumps from one thing and it looks like somebody
21 tampered with it.

22 THE COURT: Does it appear to be redacted?

23 MS. PARKER: I think it plays pretty smooth. There
24 might be like where the defendant is talking and his hand
25 might be here, and then you know you don't see the hand move,

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1 and it's down here or something like that. But for the most
2 part I think it is good quality, but in case someone picks up
3 on it.

4 **THE COURT:** Okay. Very good. We will consider that.
5 And if I am going to give an instruction, I will do it
6 contemporaneously when you start the tape.

7 **MS. PARKER:** Thank you.

8 **THE COURT:** Please bring in the jury.

9 (Whereupon, the jury enters the courtroom at
10 9:36 a.m.)

11 **THE COURT:** All right. Welcome back, ladies and
12 gentlemen. I trust you had a nice evening. Good morning.
13 And let me ask, since we were last together, is there any
14 member of the jury panel who has had a discussion about the
15 facts of this case with anyone? If you have, please raise
16 your hand. Let the record reflect that no one raised their
17 hand. Thank you again for complying with the court's request.
18 You will recall we ended the day in The State's case. We
19 remain there this morning.

20 And Madame Solicitor, please call your next witness.

21 **MS. PARKER:** Thank you, Your Honor. At this time The
22 State calls Sergeant David Young.

23 **THE COURT:** Please come forward and take the oath of a
24 witness.

25 **WHEREUPON, DAVID BRIAN YOUNG**

DAVID BRIAN YOUNG - DIRECT EXAMINATION

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1 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

2 MR. YOUNG: I do.

3 DIRECT EXAMINATION BY MS. PARKER4 Q. Mr. Young, please start by stating your full name for the
5 record.

6 A. David Brian Young.

7 Q. And where are you employed?

8 A. I am employed with The Darlington County Sheriff's
9 Office.

10 Q. What is your position there with the Sheriff's Office?

11 A. I am an investigative Sergeant. I handle the Criminal
12 Investigation Unit.13 Q. Did you have an occasion to work on this case that we are
14 in Court with this week?

15 A. I did.

16 Q. And, please explain to the jury your first involvement in
17 the case?18 A. On the night of the incident, I was the investigator on
19 call. I was called by the responding deputies, at that
20 time Deputy Peavey and Lieutenant Hall.

21 Q. All right. And, where did you respond to?

22 A. I responded to the home of Mr. Trent Johnson, at [REDACTED]

23 [REDACTED] [REDACTED].

24 Q. And what was the date and time you got there?

25 A. It was January 29th and it was approximately around 8:30.

DAVID BRIAN YOUNG - DIRECT EXAMINATION

265

1 Q. Okay. Now, please explain kind of what was going on at
2 the Johnson residence when you arrived?

3 A. I arrived on scene. I met with the officers that had
4 responded. They had kind of briefed me of the
5 allegations that were being made. Upon going into the
6 residence I spoke with the parents of the alleged victim,
7 **Minor**. They were very distraught. I mean, the emotion
8 was really high. And they had another family member
9 there with them. And at this point is when I learned of
10 the allegations of the text and the kiss.

11 Q. And while you were there at the Johnson house that night,
12 did you witness any contact between the defendant and the
13 mother, Regina Johnson?

14 A. I did. While I was there, the mother of **Minor** Ms.
15 Regina Johnson, showed me her cell phone. And she said
16 the defendant Mr. Berry was texting her. And she did
17 show myself and Lieutenant Hall these texts that were on
18 the phone.

19 Q. And who photographed those text messages?

20 A. I did.

21 Q. Now, did you recover any evidence from the Johnson
22 residence?

23 A. I did. I photographed the text that appeared to be from
24 Mr. Berry to Regina's phone. I also took the actual
25 phone that the child had. And while we were there they

DAVID BRIAN YOUNG - DIRECT EXAMINATION

266

1 were briefly kind of flipping through the phone, showing
2 me those texts, letting me read those texts. And we did
3 take that phone and drop it into evidence.

4 Q. And what were the nature of those text messages that you
5 saw?

6 A. Very inappropriate. They were of a sexual nature.

7 Q. And, just explain; what did you do with that phone that
8 you recovered from the home?

9 A. I did bag that phone up. I did take that phone with me
10 at that time. And, after that --- after that night,
11 later on that night that phone was dropped into evidence.

12 Q. After you left the Johnson residence, what did you do
13 next as part of your investigation?

14 A. After I left the Johnson residence, myself and Lieutenant
15 Hall, we responded to the home of Mr. Berry and tried to
16 make contact with him.

17 Q. And why were you making contact with him?

18 A. We did respond to Mr. Berry's residence. We made contact
19 with him. We advised him of the allegations that were
20 being made. And we asked him if he would voluntarily
21 come to the Sheriff's Office and speak with investigators
22 about the incident.

23 Q. And, did he speak with y'all?

24 A. He did. I believe Mr. Berry drove himself to the
25 Sheriff's Office, and we met at the Sheriff's Office.

DAVID BRIAN YOUNG - DIRECT EXAMINATION

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1 Q. When you got to the Sheriff's Office, explain the
2 procedure you have in place in investigations when you
3 speak to a suspect, or a possible suspect in the case?

4 A. Myself and Lieutenant Hodges who is another investigator
5 at the Sheriff's Office, sat down with Mr. Berry. What
6 we did was we read him his Miranda Rights. Mr. Berry did
7 sign a Miranda Warning at the time we saw him.

8 Q. What is included in those Miranda Rights?

9 A. That he is waiving his rights to an attorney. That he is
10 voluntarily speaking with us.

11 Q. What are the actual Miranda Rights, just briefly?

12 A. You have the right to remain silent. Anything you say
13 can be used against you in court. You have a right to
14 talk to a lawyer before we ask you any questions, or have
15 one while you are being questioned. If you cannot afford
16 a lawyer, one will be appointed for you if you wish. If
17 you decide to answer questions now without having a
18 lawyer present, you have the right to stop answering at
19 any time. You also have the right to stop answering any
20 time you are talking with us.

21 Q. And was Mr. Berry under arrest at this point?

22 A. No, he was not.

23 Q. Now, were you provided a copy of that video statement for
24 the court?

25 A. I did. We sat down. He was Mirandized before the video,

DAVID BRIAN YOUNG - DIRECT EXAMINATION

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1 and he signed a Miranda Waiver. And during the procedure
2 of the actual interview, we had an introductory statement
3 that we prepared with all the information, date, time,
4 who was present, and during the interview we actually
5 read the defendant his rights again.

6 Q. And you have provided us a copy of that video?

7 A. I did.

8 Q. Now, before we get too much into the video, I want to
9 talk about any evidence that you may have recovered off
10 of the defendant that night. Would you please tell the
11 jury about that?

12 A. During the interview, after the interview, Mr. Berry's
13 phone was taken and dropped into evidence as well.

14 Q. Sergeant Young, I am going to show you what has been
15 marked previously for I.D. only, not in evidence, State's
16 Exhibit 259. Do you recognize that?

17 A. I do.

18 Q. What is that?

19 A. This is the phone that we received from Mr. Berry.

20 Q. When did you receive that phone from Mr. Berry
21 specifically?

22 A. After the interview.

23 Q. Okay. And what day was the interview?

24 A. It was taken that night at about 12:15, 12:30. I can
25 tell you exactly, 12:19 a.m.

DAVID BRIAN YOUNG - DIRECT EXAMINATION

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1 **MS. PARKER:** Your Honor, at this time The State would
2 move to have State's Exhibit 259 entered into evidence.

3 **MR. CANNARELLA:** No objection, Your Honor.

4 **THE COURT:** All right. Let me ask. Officer Young,
5 how do you know that is the telephone? You looked at it, but
6 how do you know that, sir?

7 **MR. YOUNG:** This is the AT&T phone, and that is the bag
8 that I sealed. During the --- this is the bag that I put the
9 phone in, and the bag that I sealed. Also, this phone was
10 sent to SLED. We did obtain a search warrant, and this phone
11 was sent to SLED. And this is the phone and the information
12 that is on that warrant.

13 **THE COURT:** Thank you. Now, there is no objection?

14 **MR. CANNARELLA:** Your Honor, I'm sorry. I missed that
15 last comment. I was talking to my client.

16 **THE COURT:** Well, I was just asking him how he knew it
17 was the telephone, and he went through the course of how he
18 knew it, including --

19 **MR. CANNARELLA:** You simply believe with all your heart
20 that is the phone that you got from Mr. Berry?

21 **MR. YOUNG:** Yes, sir.

22 **MR. CANNARELLA:** Then we don't have any objections,
23 Your Honor.

24 **THE COURT:** All right, sir. Very good. Then without
25 objection, 259 in evidence for The State.

DAVID BRIAN YOUNG - DIRECT EXAMINATION

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1 Do you need to mark that in a particular way, Madame
2 Court Reporter?

3 MADAME COURT REPORTER: Yes, sir.

4 WHEREUPON, STATE'S EXHIBIT
5 NUMBER 259 IS MARKED AND
6 ADMITTED INTO EVIDENCE WITHOUT
7 OBJECTION.

8 THE COURT: All right. Please proceed.

9 Q. You mentioned it in passing, but did you get a search
10 warrant for this phone?

11 A. I did. Yes.

12 Q. And when was that search warrant obtained?

13 A. It was obtained on April 29, 2010.

14 Q. Now, were you able after --- that was kind of late, after
15 midnight January 29th. After that day, did you recover
16 any additional evidence in the case?

17 A. I did. The next day at Mr. Berry's, Bond Hearing, the
18 parents of the victim were at the Bond Hearing, and after
19 the Bond Hearing, the father, Mr. Johnson, pulled me to
20 the side, and he had a camera that he gave me, and it was
21 dropped into evidence as well.

22 Q. I am showing you State's Exhibit 256. Do you recognize
23 that?

24 A. I do.

25 Q. Is that the camera?

DAVID BRIAN YOUNG - DIRECT EXAMINATION

271

1 A. Yes, ma'am.

2 Q. Now, what did you do with the two phones and the camera?
3 Where were they sent?

4 A. Search warrants were prepared for both items. Both
5 phones were sent to SLED, and the victim's phone for
6 analysis at SLED.

7 Q. Now, was SLED able to get anything off of the phone that
8 ~~Minor~~ had, that Kris Berry had given her?

9 A. The phone that the victim had, when we received the
10 information back, the software that they need --- we were
11 told that the software that they needed that that phone
12 was not compatible. This information was given to the
13 court, and our immediate supervisors, and we still had
14 the phone with the actual text on those phones. And the
15 solution was to prepare another search warrant and for
16 our forensic person at the Sheriff's Office to actually
17 go into the phone, power the phone up, and take
18 photographs of each screen of the text.

19 Q. And throughout your investigation, did you obtain the
20 defendant's date of birth?

21 A. Pardon me?

22 Q. Kris Berry's date of birth; do you have that?

23 A. I did.

24 Q. And what is his date of birth?

25 A. ~~_____~~.

DAVID BRIAN YOUNG - DIRECT EXAMINATION

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1 **MS. PARKER:** Your Honor, at this time, The State wishes
2 to publish Kris Berry's video statement. It is State's
3 Exhibit 263, as stipulated by Mr. Cannarella --- stipulated
4 for being in evidence as a copy.

5 **THE COURT:** All right. Very good. Is there an
6 objection, counsel?

7 **WHEREUPON, STATE'S EXHIBIT 263**
8 **WAS ADMITTED INTO EVIDENCE**
9 **WITHOUT OBJECTION.**

10 **MR. CANNARELLA:** No, Your Honor. It was a voluntary
11 statement. No objection.

12 **THE COURT:** All right. Without objection. Ladies and
13 gentlemen, because something is in evidence, it can be
14 published to the jury. And The State now intends to publish
15 the statement of the defendant taken at the Detention Center.

16 I will tell you --- First of all, you heard some
17 testimony earlier about whether there had been a Miranda
18 Warning given, and whether the statement may be voluntary and
19 freely given. I will tell you that ultimately in the charge
20 to the jury, I will charge you that in order for you to use a
21 statement in any way you must find that it is a free and
22 voluntary statement. If you find that it is not freely and
23 voluntarily given, and in accordance with the rights of the
24 defendant, then you should not use it for any purpose. And we
25 will discuss that further again in my final charge to you.

1 But also, there may be some --- Well, anytime there is a
2 discussion between any individuals, often there may be things
3 that are not relevant, or pertinent to the case. Thus, you
4 may find in one or two places there has been what we call a
5 redaction, which is the extraneous material has been removed.
6 If you see a jump or perhaps a voice over or a place where the
7 voice is silenced that would be because there may be some
8 material in there that has nothing to do with the case. And
9 for that reason and I just tell you that in advance.

10 And now, are you ready?

11 **MS. PARKER:** Yes, Your Honor. May I have permission to
12 hand out the transcript?

13 **THE COURT:** All right. We have transcripts of it. Is
14 there an objection to the transcript?

15 **MR. CANNARELLA:** No, Your Honor. No, sir. A, it is to
16 aid the testimony. It won't go back to the jury room in the
17 end though.

18 **THE COURT:** All right. Very good. We are going to
19 provide you, the Solicitor is, a copy of a transcript of the
20 discussion, because sometimes it is difficult to hear or
21 understand in a free conversation.

22 Now, Ms. Parker, are you moving to mark that as a Jury
23 Exhibit or Court's Exhibit?

24 **MR. CANNARELLA:** Your Honor, I think if it is marked at
25 all, it should be a court exhibit because, it is just an aid

DAVID BRIAN YOUNG - CROSS EXAMINATION

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1 for testimony. And my position is it would not be admissible
2 under evidence as evidence itself.

3 THE COURT: All right. Is there an objection?

4 MS. PARKER: No, Your Honor.

5 THE COURT: Very good. We will mark it as a Court's
6 Exhibit.

7 WHEREUPON, COURT'S EXHIBIT

8 NUMBER 1 IS MARKED FOR THE

9 RECORD.

10 (Whereupon, State's Exhibit Number 259 was
11 published to the jury.)

12 MS. PARKER: Investigator Young, please answer any
13 questions Mr. Cannarella may have at this time.

14 THE COURT: Cross examination.

15 CROSS EXAMINATION BY MR. CANNARELLA

16 Q. Mr. Young, on page 20 of the transcript that everybody
17 has been reading from. You said: "You know, my -- my
18 concern, you know, this --- don't get me wrong, this is
19 important. But this is still innocent if it's nothing
20 but these texts and that kiss that the young lady said."
21 That was what you answered. You ruled out that there was
22 no inappropriate touching of any purely private body
23 parts. That's true?

24 A. I wasn't told of any touching private parts, no.

25 Q. She never said he touched my boobs?

DAVID BRIAN YOUNG - CROSS EXAMINATION

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- 1 A. That is correct.
- 2 Q. She never said he touched my vagina?
- 3 A. That is correct.
- 4 Q. She never said he rubbed my buttocks?
- 5 A. No, sir.
- 6 Q. She told you that he kissed her on the lips?
- 7 A. She did.
- 8 Q. And that is in the statement that you later wrote to have
- 9 her read. This child --- Mr. Berry, and she said he
- 10 kissed her on the lips. Okay. We've got that
- 11 established. Then we have it established, that he never
- 12 touched her on the boobs, or the vagina, or the buttocks,
- 13 and she never touched him on his private parts. Just
- 14 these text messages?
- 15 A. That is correct.
- 16 Q. And on Friday the 29th, she, the child, then told you or
- 17 communicated to you that he kissed her on the lips on
- 18 Monday?
- 19 A. That's correct.
- 20 Q. And in your incident report the mother corroborates that
- 21 through your investigation, supposedly corroborates it
- 22 because she remembers, my daughter ran out of the gym
- 23 crying on Monday?
- 24 A. That's correct.
- 25 Q. But then it changed to Thursday.

DAVID BRIAN YOUNG - CROSS EXAMINATION

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1 A. After the forensic interview, it appears that that is
2 when it changed to Thursday. Yes, sir.

3 Q. Did you participate in that forensic interview?

4 A. I did not.

5 Q. But the forensic interview, Sergeant Young, is what we
6 were talking about that has been introduced but not yet
7 played to the jury; right?

8 A. Yes.

9 Q. And, on page 27, line 18, she says that this kiss
10 supposedly took place in a office in the back of the gym.
11 Do you know if she ever indicated to you if there were
12 any eyewitnesses to this?

13 A. She did tell me that night that it did happen in the
14 office of the gym on Monday but that she did indicate
15 that there were any witnesses to it, no.

16 Q. But she never told you or she never complained about any
17 of these things to anybody else prior to that?

18 A. No.

19 Q. She never complained to her Mamma, right? As far as you
20 know?

21 A. As far as I know.

22 Q. As far as you know she never complained to her Daddy?

23 A. No.

24 Q. And she never complained to her teachers?

25 A. From my understanding, this did not come out until the

DAVID BRIAN YOUNG - REDIRECT EXAMINATION

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1 father found the phone.

2 Q. She never complained to the teacher, counselor, or
3 anybody about anything?

4 A. No.

5 Q. Do you know who conducted the investigation into any
6 situation concerning the nineteen-year-old child, did
7 you? The nineteen-year-old boy, were there any
8 complaints made about him to you?

9 A. No.

10 Q. Did you read his texts too?

11 A. There were texts on there. We did look, glanced over the
12 text.

13 MR. CANNARELLA: Sergeant Young, thank you.

14 THE COURT: Is there redirect?

15 MS. PARKER: Briefly Your Honor.

16 REDIRECT EXAMINATION BY MS. PARKER

17 Q. Sergeant Young, in your experience as an investigator,
18 are minors or children always forthcoming, with their
19 facts and dates and times?

20 A. No, they are not.

21 Q. Now, Mr. Cannarella pointed out a quote that was on the
22 transcript, calling the text message innocent. Do you
23 believe the text messages are innocent?

24 A. I do not.

25 Q. Why would you tell the defendant that during the

DAVID BRIAN YOUNG - REDIRECT EXAMINATION

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1 statement?

2 A. My point to him, I just used that as an example. At this
3 point, as strong as she was, my main concern was if
4 anything had actually gone any further, like any
5 intercourse or anything like that.

6 Q. So you were just trying to get further information from
7 Kris Berry?

8 A. Correct.

9 MS. PARKER: That's all. Thank you, Sergeant Young.

10 THE COURT: All right. Sir, you may step down.

11 All right. Counsel, who is your next witness, or are
12 there further witnesses for The State?

13 MS. PARKER: We have two more witness, Your Honor.

14 THE COURT: All right. Then ladies and gentlemen,
15 let's take our morning break at this time. We are going to
16 stand down for about fifteen minutes or so. We will give you
17 an opportunity to go outside if you wish. You may leave those
18 in your chair. And, we will remain where you are, while you
19 depart the courtroom.

20 BAILIFF: Come this way, please.

21 (Whereupon, the jury exits the courtroom at
22 10:48 a.m.)

23 THE COURT: All right. The court is now in recess
24 approximately fifteen minutes.

25 (Whereupon, a recess was taken from 10:48 a.m.

1 until 11:07 a.m.)

2 **THE COURT:** All right. Is there anything for the
3 record, before we bring the jury? The jury is back from
4 their break. Is there anything?

5 **MS. BURCH:** The court reporter did remind us during the
6 break that we do need to withdraw State's Exhibit Number 5.

7 **THE COURT:** All right. State's Exhibit Number 5 had
8 been offered and is withdrawn.

9 **WHEREUPON, STATE'S EXHIBIT**
10 **NUMBER 5 WAS WITHDRAWN FROM THE**
11 **RECORD.**

12 **THE COURT:** Have you taken possession of them?

13 **MS. BURCH:** We have not.

14 **THE COURT:** We will give it back to you. We do not
15 need that. You may have it.

16 All right. Then please bring in the jury.

17 (Whereupon, the jury enters the courtroom at
18 11:08 a.m.)

19 **THE COURT:** All right. Ladies and gentlemen, welcome
20 back to the courtroom. As you will remember we are still in
21 The State's case. And State, please call your next witness.

22 **MR. HOLT:** Thank you very much, Your Honor. I think at
23 this time The State would like to call Deputy Todd Mozingo to
24 the stand.

25 **THE COURT:** Please come forward and take the oath of a

TODD MOZINGO - DIRECT EXAMINATION

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1 witness.

2 WHEREUPON, TODD MOZINGO

3 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

4 MR. MOZINGO: Yes, sir.

5 DIRECT EXAMINATION BY MR. HOLT

6 Q. Deputy Mazingo, where do you work?

7 A. Darlington County Sheriff's Office.

8 Q. And how long have you been employed with them?

9 A. Since September 2009, at the Sheriff's Office.

10 Q. Is that the first time you have been hired by law
11 enforcement, or your first experience in law enforcement?

12 A. No, sir. I previously worked for Kershaw County
13 Sheriff's office, and the Camden City Police Department.

14 Q. About how many years total in law enforcement experience
15 do you have?

16 A. Close to ten now.

17 Q. Okay. And what are your official job titles within the
18 Darlington County Sheriff's Office?

19 A. I assist with evidence. I assist with crime scenes. My
20 main role is criminal investigator. I also handle fire
21 and arson investigation.

22 Q. Okay. And, how were you involved in this particular case
23 in hand?

24 A. This case I was working evidence primarily at that time.
25 I was responsible for receiving evidence as it was placed

TODD MOZINGO - DIRECT EXAMINATION

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1 in the Evidence Locker. I was responsible for logging
2 that evidence in, as well as transporting it to SLED.

3 **MR. HOLT:** Permission to approach, Your Honor?

4 **THE COURT:** Yes, sir. You may.

5 Q. Deputy Mozingo, I am going to hand you what has been
6 marked as State's Exhibit 259. And I am going to ask you
7 a couple of quick questions about that bag. When you
8 answer I would appreciate it if you could incorporate the
9 procedure your office uses into your answers.

10 Now, can you tell me what the markings on the
11 outside of that bag mean? Who gave you that bag? How it
12 was collected and stored while it was it was in your
13 possession? As well as the general description of the
14 evidence room? And the steps your Sheriff's Office takes
15 to prevent tampering?

16 Q. Okay. This bag was labeled by Sergeant David Young,
17 dated January 30, 2010. It has the time that it was
18 collected, date and time of recovery. The case number
19 associated with the description of the item. It says,
20 subject's cell phone. And it also has got two bar codes
21 as for the evidence room. The way the evidence room is
22 set up, it's in the old detention side of the Sheriff's
23 Office. And, at one time it was a jail cell, or a series
24 of holding cells. It is a secure location, and there is
25 a two-inch sealed door that has a pass key access. Very

TODD MOZINGO - DIRECT EXAMINATION

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1 limited people have access on that pass key. It also has
2 a mechanical lock that the key to that lock is secured in
3 the office of Russ Harrell, Sergeant Russ Harrell. It is
4 locked inside of a compartment, inside of his office,
5 which remains locked as well. Inside of the two-inch
6 steel door, there is a room, prior to going into the main
7 evidence room. Inside of that room there is a evidence
8 locker which is also locked that deputies, investigators
9 can drop evidence through its slot in the outside of the
10 entire room.

11 Q. What do you mean when you say drop?

12 A. Uh-huh.

13 Q. When you say drop, can they get it out?

14 A. No.

15 Q. And I am sure the Sheriff's Office employs a lot of
16 people. Officers, deputies, support staff, can these
17 people just walk in Willie-Nellie and get what they want
18 out of the evidence room?

19 A. Nobody is allowed inside of the evidence room other than
20 the evidence officers. Nobody is allowed inside the
21 steel door.

22 Q. Now, it sounds secure. Now what you read off that bag,
23 as well as the bar codes that are on there, can you tell
24 me when that evidence was dropped in there so they
25 couldn't receive it again, how you handled it to store

1 that evidence, and then whatever else you did with that,
2 can you explain that to the jury?

3 A. I can. This was collected on January 30th, 1:30 at which
4 time it was dropped into the slot down into the locked
5 evidence locker. It was logged it, which means, it was
6 removed from that locked box and carried into the main
7 evidence room, which is a door with two more locks. And
8 it was actually labeled on February 2nd.

9 Q. Who did all of that?

10 A. I would have. It would have been labeled and put into a
11 bin, or a box. We use shelves as well as big Tupperware
12 containers that are labeled bin numbers. And those will
13 hold evidence until they are pulled. And then they will
14 be sealed and stored away. On this original label,
15 February 2, 2010, it was placed in bin 102, which at the
16 time was the bin we were working with inside of the desk
17 in the evidence room. We had small items. Anything
18 other than drugs, they had their own location. Guns have
19 their own locations. Any other items that are small in
20 nature will go in that bin until they come to court. At
21 the time that a search warrant is obtained, or that we
22 know that a piece of evidence is going to go to SLED, we
23 will remove that particular evidence, and we will label
24 it and put it in a Pre-SLED box. That is where we take
25 all of our drug analysis, where we take our DNA. Now we

TODD MOZINGO - DIRECT EXAMINATION

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1 do our own fingerprints. But at that time I think we
2 sent our fingerprints to SLED. And anything that was
3 computer electronically would go to SLED.

4 Q. Okay. So, let me ask you this. Did you ever take that
5 phone to SLED and what day did you take it?

6 A. I did. May 20, it was taken to SLED. And I did take it
7 to SLED.

8 Q. What day did you bring it back?

9 A. May 20.

10 Q. So you mean you just sat there and waited while they
11 worked on it?

12 A. I did.

13 Q. Who was the person that you gave the phone to?

14 A. Bart Cave, who was up here previously.

15 Q. Okay. Let me ask you this. Can you pull the phone out
16 of that bag?

17 (PAUSE.)

18 Q. I recognize the red sticker as being a State's Exhibit
19 sticker. But there is also a white bar code with a long
20 number on the back. What does that bar code represent?
21 Is that yours?

22 A. It is not. It is actually similar to our bar code
23 system. Once I arrived at SLED, and they assigned it a
24 case number, they would also label the phone with their
25 case number.

RUSS HARRELL - DIRECT EXAMINATION

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1 Q. So that is a SLED label?

2 A. It is.

3 Q. So, on a scale to one to a hundred, how certain are you
4 that that is the phone that you gave to SLED that they
5 looked at?

6 A. A hundred.

7 MR. HOLT: Thank you, Deputy Mozingo. I have no
8 further questions.

9 THE COURT: And cross examination.

10 MR. CANNARELLA: I have no questions.

11 THE COURT: Then sir, you may step down. Thank you.
12 Please call your next witness.

13 MR. HOLT: Thank you, Your Honor. At this time The
14 State would like to call Deputy Russ Harrell to the stand.

15 THE COURT: Please come forward and take the oath of a
16 witness.

17 WHEREUPON, RUSS HARRELL

18 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

19 MR. HARRELL: I do.

20 DIRECT EXAMINATION BY MR. HOLT

21 Q. Deputy Harrell, could you please state your full name for
22 the jury?

23 A. Russ Harrell.

24 Q. And what is your official job?

25 A. I am over evidence and crime scene and forensics.

THE STATE VERSUS KRISTOPHER W. BERRY

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1 **THE COURT:** All right. Sir, in the corner, what is
2 your name, please?

3 **MR. CANNARELLA:** Stand up.

4 **MR. BERRY:** Caleb Berry.

5 **THE COURT:** I need for you to separate from the young
6 lady who is seated beside you. You are holding hands, and I
7 mean you are a little too cozy for the courtroom. All right.
8 This is not the movie theater. All right, sir. Very good.
9 Thank you.

10 This court is in recess until 2:00-o'clock.

11 (Whereupon, a lunch recess was taken from 12:41
12 p.m. until 2:00 p.m.)

13 **THE COURT:** Is the defense ready for your next witness?

14 **MR. CANNARELLA:** Judge, I am. But, I would want to
15 cover a matter briefly, regarding --

16 **THE COURT:** We are missing State's counsel, but go
17 ahead. I told them we were going to start at 2:00, so go
18 ahead.

19 MOTION

20 **MR. CANNARELLA:** Well, judge, there are some military
21 records. And, in regard to the military records, there was a
22 discharge that I think said less than honorable discharge.
23 And what it related to was this, and whether or not these are
24 crimes of dishonesty.

25 **THE COURT:** All right.

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1 **MR. CANNARELLA:** Or The State to be able to impeach my
2 client.. And to credibility.

3 One, he tells me was called misappropriation which he
4 used a computer that belonged to the military, and he used it
5 -- I say he used it without consent, because he was using it
6 for his personal use. But he had access to that computer. It
7 is not like he took that computer and stole it from anyone --
8 or stole it from the military without returning it. I call it
9 use of a computer without permission.

10 Now, there was a separation in lieu of court-martial,
11 which may be some type of plea bargaining process. But that
12 involved falsifying government documents.

13 **THE COURT:** Okay.

14 **MR. CANNARELLA:** All right. And, Your Honor, the third
15 one was that he trespassed on some private property, and he
16 opened a door, that he described to me as being a storage
17 barn. So, I don't think --- he wasn't charged with breaking
18 and entering.

19 **THE COURT:** All right.

20 **MR. CANNARELLA:** So, the only one they may have a shot
21 at might be falsifying.

22 **THE COURT:** Well, first of all, the issue of a
23 discharge, and a dishonorable discharge, if I understood it
24 correctly; is that right?

25 **MR. CANNARELLA:** They called it less than honorable

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1 discharge.

2 MR. BERRY: It is general other than honorable.

3 THE COURT: Go ahead, Mr. Cannarella. What is your
4 position on it?

5 MS. PARKER: The record said a discharge other than
6 honorable is how they worded it.

7 THE COURT: And what is your position as to whether or
8 not that is admissible?

9 MR. HOLT: And I don't know if that makes a difference,
10 Judge. I don't think it does. But it definitely makes a
11 difference. We are talking about truth and veracity here.
12 These military convictions really, are what they are. It took
13 place before a tribunal, where I am sure he had an attorney, a
14 JAG attorney. He did this. He was convicted of this. He was
15 found guilty of less than honorable things. I think --- How
16 can it not go to the truth and veracity of what he was saying.
17 It fit regularly under Rule -- Just like a regular conviction.

18 THE COURT: How old are these?

19 MR. HOLT: In 2004 is when some of them were, and some
20 of them were in 2005. It looks like charges were received 11
21 January, 2005.

22 THE COURT: Okay. Just a moment, please.

23 (PAUSE.)

24 THE COURT: And, now back to The State, do you believe
25 all three come in, and, if so, under Rule 609, how do you

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1 perceive that?

2 MR. HOLT: And, your question to me is, how it would
3 come in? Or do I believe I am entitled to use all three? I
4 do believe that. Yes, sir.

5 THE COURT: All right. And I am asking you under Rule
6 609, upon what do you base that entitlement? I am not
7 arguing. I am just letting you make the record reflect why
8 you believe it is appropriate.

9 MR. HOLT: I was looking at Rule 608. If you want to
10 talk strictly about 609, I think it fits within the time
11 limit. I think just generally it fits the exact rule.
12 Subject to Rule 403, I don't see a problem with that. Rule
13 609 (a)(2), that if he be convicted of a crime, shall be
14 admitted if it involves dishonesty or false statement
15 regardless of the punishment.

16 THE COURT: Okay. And tell me again please what the
17 three charges are, Mr. Cannarella. There was a
18 misappropriation of a computer.

19 MR. CANNARELLA: And separation in lieu of a
20 court-martial which was for falsifying government documents.

21 THE COURT: Yes, sir.

22 MR. CANNARELLA: And the third one was opening an
23 unlocked storage building on private property at a mall. And
24 there was no adjudication for that, although it may have been
25 considered by the military as a basis for the less than

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1 honorable discharge. I don't think that the local Sheriff's
2 Office charged him with anything.

3 MR. HOLT: Basically, what he did was he broke into a
4 building, had sex with someone who wasn't his wife. He was
5 convicted of that. I read this as that was one of the things
6 that they took into consideration when they gave him an other
7 than honorable discharge.

8 THE COURT: Okay.

9 MR. HOLT: That is just how I read it. Now, that being
10 said, Your Honor, I'm not an expert at reading these
11 documents.

12 THE COURT: May I see what you have? Thank you.

13 (PAUSE.)

14 THE COURT: All right. Counsel, Rule 609 says that the
15 evidence that the witness has been convicted of a crime shall
16 be admitted if it involves dishonesty, or false statement
17 regardless of the punishment.

18 I find that each of these specifications involve
19 dishonesty and will therefore permit them in.

20 Now, the question is, because this goes further and says
21 that the reason to go into that building where he was
22 unauthorized to go was to commit adultery with someone other
23 than his wife. Now, what says The State as to whether that is
24 admissible? Is it your intention to pursue that issue,
25 counsel?

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1 **MR. HOLT:** We are not going to pursue that, Your Honor.

2 **THE COURT:** Very good. The Court would most likely
3 exclude it, because of the similar nature, although somewhat
4 different. And it is obviously in the parameters, but similar
5 nature of the allegations here. But for that reason then you
6 may ask about the separation and about those three specific
7 issues, if the defendant wishes to testify.

8 The Court finds that all of that complies with Rule
9 609(a)(2).

10 All right. Please bring in the jury.

11 **BAILIFF:** Yes, sir.

12 (Whereupon, the jury enters the courtroom at
13 2:07 p.m.)

14 **THE COURT:** All right. Ladies and gentlemen, welcome
15 back to the courtroom. As you will recall at the break for
16 lunch, we were in the defendant's case. Please call your next
17 Mr. Cannarella.

18 **MR. CANNARELLA:** Your Honor, may I approach the bench
19 just --

20 **THE COURT:** You may.

21 (Whereupon, a bench conference was held in the
22 presence of the jury, but out of their hearing range.)

23 **THE COURT:** Just one moment, ladies and gentlemen.

24 **(PAUSE.)**

25 **THE COURT:** All right. Counsel, I am advised that

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1 during the break that Defendant's Exhibits 2, 3, and 4 were
2 agreed to go into evidence without objection. Am I correct?

3 **MS. BURCH:** Yes, Your Honor.

4 **THE COURT:** All right. Defendant's Exhibits 2, 3, and
5 4 are in evidence.

6 **WHEREUPON, DEFENDANT'S EXHIBITS**

7 **NUMBERS 2, 3, AND 4 ARE MARKED**

8 **AND ADMITTED INTO EVIDENCE**

9 **WITHOUT OBJECTION.**

10 **MR. CANNARELLA:** That's correct.

11 **THE COURT:** Then please call your next witness.

12 **MR. CANNARELLA:** Thank you, Your Honor, Kris Berry.

13 **THE COURT:** Please come forward and take the oath of a
14 witness.

15 **WHEREUPON, KRISTOPHER WILMONT BERRY**

16 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

17 **MR. BERRY:** I do.

18 **DIRECT EXAMINATION BY MR. CANNARELLA**

19 Q. Kris, what is your full name?

20 A. Kristopher Wilmont Berry.

21 Q. Where are you from?

22 A. Hartsville, South Carolina.

23 Q. How long have you lived there?

24 A. I broke in time. I graduated therein '92. I spent
25 thirteen years in The Marine Corp. and then I returned in

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1 2005.

2 Q. Where is your family from?

3 A. My grandfather moved to South Carolina --- Moved to
4 Hartsville from Saluda in 1952, and he raised his family
5 there. And my father still resides in Hartsville, and my
6 mother is deceased.

7 Q. What was your grandfather's name?

8 A. Wilmont Berry.

9 Q. And what is your father's name?

10 A. Otis Marvin Berry. Everyone knows him as Marvin.

11 Q. How much education do you have, Kris?

12 A. I have graduated high school. I have had many, many --
13 much military education. And I am three classes short of
14 a degree in psychology.

15 Q. Who are you married to?

16 A. Susan Dukes Berry.

17 Q. Where is Susan from?

18 A. Susan is from Hartsville, South Carolina, as well.

19 Q. How many children do you have, Kris?

20 A. We have two great children.

21 Q. What are their names?

22 A. Caleb Kristopher Berry and Rebecca Lynn Berry.

23 Q. How old is Caleb?

24 A. Caleb is eighteen.

25 Q. How about your daughter?

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1 A. Rebecca is sixteen.

2 Q. Are they in school?

3 A. My son graduated this past year, and will be going into
4 the Marine Corp. at the end of this month. And my
5 daughter is still at Mayo of science there.

6 Q. Where do you work now?

7 A. Currently, I am a personal trainer at The Fitness World
8 chains, all over Lee County, Florence County, and
9 Darlington County.

10 Q. Is that the chain where --

11 A. I am in all the gyms. My main office is in Darlington
12 here. But, I train in Hartsville. I train in the
13 Women's Gym in Florence. A few other gyms up in Cheraw
14 as well. And I go out to McBee, A. O. Smith and train at
15 the gym there as well.

16 Q. How long have you been working?

17 A. About a year. August would be a year, so it's over ---
18 this past August would be a year.

19 Q. When you say train, what are you talking about?

20 A. I am a fitness consultant and nutritionist. I train
21 individuals in weight loss, muscle strength, flexibility,
22 dexterity. I do some rehab with some people, because
23 they just can't afford going to a rehabilitation
24 specialist. So what I do is -- I have been through a lot
25 of rehab with what I've done. I don't try to pass myself

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1 off as a rehabilitation specialist. But I try to help
2 them out as much as I can, going based on what I have had
3 done myself.

4 Q. So, what you try to do is teach, or train them in
5 something that you were self-taught?

6 A. Yes. Through the years, I have worked with children from
7 probably about the time I was twenty-one. I did the
8 soccer leagues for the Marine Corp. base in Camp
9 Pendleton. I worked with soccer with my son. I have
10 done gymnastics. I have worked with children and marines
11 as well. They have a very large personality base, and I
12 got to try my skills out working with marines to see what
13 kind of individuals they are, and what techniques and I
14 guess tricks of the trade in working with them and it
15 translated over into children too. So, most everything
16 that I have learned I have learned from the school of
17 hard knocks.

18 Q. Who was the person you worked for that you referred to
19 them as a chain? Who was the person you worked for?

20 A. That would be Curtis Boyd.

21 Q. He is from Darlington?

22 A. I believe he is from Darlington. He's Karate Curtis,
23 most everybody knows who Karate Curtis is in Darlington.
24 He has a gym in Hartsville as well. He teaches karate at
25 his Do Jo.

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1 Q. And that is in Darlington?

2 A. The main Do Jo is in Darlington?

3 Q. Where you work is in Hartsville?

4 A. No, I work --- I work Hartsville, Darlington, Florence.
5 I work at all of them. It depends on where my client base
6 is.

7 Q. Where is the one in Hartsville?

8 A. It is where the old Newman Furniture used to be, in
9 Rose's --- in Hartsville Mall.

10 Q. Why did you start going by Wilmont or Will?

11 A. When everything happened, my name, my address, everything
12 was put across every newspaper, and every internet site
13 that was out there. The name that I had worked so hard,
14 Kris Berry, was attached to something that I wasn't ---
15 that just did not --- that did not apply to me. So, what
16 I did was I went by Will Berry, and Will is short for
17 Wilmont. My employers knew about it. They knew
18 everything that had happened. And he says, you know
19 what, I have faith in you. And you have done great
20 things so far that I have seen. So, I am going to give
21 you a chance. So, I went by the name of Will, so that.
22 One, Curtis's Gyms would not be associated with the
23 events that had happened. And kind of gave me a just a
24 new lease so that I could continue on doing the things
25 that I had been doing.

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1 Q. How long had you worked for Sally at the gym?

2 A. I was never officially an employee. I was a volunteer.
3 I came in there one day and Ashley was having a hard time
4 throwing some of the larger cheerleaders. Ashley is
5 about a hundred and twenty pounds.

6 Q. Is that Sally's daughter?

7 A. Yes, yes it is. That is Sally's daughter. And that was
8 probably in 2005, because I think that is when my
9 daughter started on a team. I came in to watch her. She
10 was struggling. And I said, hey, can I help? And she is
11 like yes, please. So she put me to work immediately.
12 And, as time went on, she tested me on you've got your
13 coaching license now, and before I knew it, I had my own
14 class. I was assisting. And it was a lot of work. But
15 I loved it, because I could go in there on the worst day
16 of my life, and I could actually talk with these kids and
17 enjoy the time being spent with them, watch them achieve
18 things. And from about 2000 --- I think it was 2006
19 October, or 2005. I am not sure of the time, up until
20 this happened. I worked my way from being just a regular
21 coach all the way up to being right there by the head
22 coach.

23 Q. How old were the children that you were training?

24 A. I trained children from ages three, all the way up to
25 women in their twenties. And I even worked as a personal

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1 trainer for Sally, and a few of the older parents that
2 were there.

3 Q. Did you have another job?

4 A. Yes, I worked for Terminex full time, so therefore I
5 became a volunteer. My daughter got tuition paid for
6 there, but I never took a paycheck from the gymnastic
7 center, because I had a full time job. I didn't feel the
8 need that I needed to double dip and make a whole lot
9 more money off of Ashley, who was a struggling gym. I
10 felt that Terminex paid the bills, paid the medical, so
11 therefore I didn't need anything more. So, I was a
12 volunteer at the gymnastic center for about thirty or
13 forty hours a week.

14 Q. Did you always act as a volunteer, or did you ever get on
15 the payroll?

16 A. From time to time, Ashley would pay me. Whenever I had
17 private lessons, I would get paid for those. Towards the
18 end, whenever she got in with Bank of America, I became
19 an employee. I filled out a paper. But every once in a
20 while she would pay me five dollars here, or ten dollars
21 there, or she would pay me for the meets and things like
22 that. And she would buy me lunch occasionally. But, I
23 never really got a paycheck out of her or anything like
24 that.

25 Q. Well, did your presence increase the attendance there?

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1 A. Absolutely. Because, I went from coaching just
2 gymnastics --- I created a boy's team. I just started
3 competing myself, because the best way to teach the
4 skills are to learn the skills yourself. And I didn't
5 want to be a hypocrite. I wanted to be able to say, hey,
6 this is how you do this. So that is what I did. I
7 learned. I broke myself. I stayed sore. I created a
8 boy's team and a boy's program at that gym. I got a
9 boy's team and boy's equipment at that gym. And the next
10 thing I know, I have an entire amount of cheerleaders.
11 Cheerleaders were coming in and out, and some of them
12 were not the smallest girls that were coming through
13 there, so I started getting them and I started one
14 tumbling. I had the boy's team and I had the higher
15 level girl's team as well. Ashley and I split the girl's
16 team. I picked up the cheerleaders, mostly just the
17 tumbling classes. And I always had the boy's classes as
18 well.

19 Q. But you never took any formal lessons yourself though?

20 A. No. No, I was self-taught. I tried to get from all the
21 coaches in The State, hey, how do you do this, because
22 Ashley was not a boy's gymnastics instructor. She had
23 never done -- never seen boys gymnastics other than
24 tumbling. So, it was new for her as well to have to do
25 some of the skills and equipment, she had no idea. So I

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1 had to go through The State and find the men coaches who
2 would show me how to do these things. And I learned how
3 to do these things. And I started doing them myself.
4 And I actually competed for about two years as the oldest
5 gymnast in The State.

6 Q. When did you meet **Minor** Johnson?

7 A. I can't really say that I actually met her. With a lot
8 of those kids they came in. There was one point in time
9 when I first came in there, there were some girls there,
10 and they were unruly, unqualified. They were stubborn,
11 and not really cooperative. And I can't say that I blame
12 them, they had been doing gymnastics longer than me. I
13 was learning. But these girls eventually --- and **Minor**
14 was part of this as well, as well as my own daughter, it
15 got to the point one time where I threw the entire team
16 out of the gym. I told them to leave and go. At that
17 point, my gymnasts came back in, and the parents were
18 called, because I had never --- I felt that I didn't want
19 to betray anyone's trust. I wanted their loyalty. I
20 wanted them to know that if they did something wrong with
21 me, unless they just wanted to tell their parents that
22 they were just bad that day that it would stay in the
23 gym, because I needed to have their loyalty to trust me,
24 because I was spotting them for doing truly difficult
25 skills. Skills that would terrify most people. So,

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1 Minor came through there, and we actually started a
2 compulsory level which is --- there are different levels
3 in gymnastics. When we started a compulsory level team,
4 that is when Ashley started having more time with --- we
5 put Minor and several of the other girls into compulsory
6 gymnastics to include my daughter, and a few of the
7 others so that we could put them on a college track.

8 Q. When you first started training Minor, what level was
9 she?

10 A. I believe she was what is called a Prep-op 1, which is a
11 preparatory optional to get her ready for optional
12 gymnastics. But we had not decided to go into
13 compulsory, which is mandatory to go high levels until I
14 got there, and Ashley was --- she said, alright, we can
15 do this. We have a good coach, and we can actually do
16 compulsory and put girls on a college track.

17 Q. How old was Minor?

18 A. Minor, I don't know her exact age then. I have no idea.
19 But I know she was two years, possibly six, go down to
20 five --- two years --- probably three years ago, so, well
21 over thirteen. I don't know.

22 Q. So you were around her for two or three years?

23 A. Yes, along about that time, yes.

24 Q. And, she ultimately rose to a Level 7 gymnast?

25 A. She rose to a Level 7 gymnast. But not in the

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1 traditional way.

2 Q. Seven out of ten?

3 A. Yes.

4 Q. What do you mean by the traditional way?

5 A. With **Minor's** age --- she was thirteen whenever she was in
6 Level 6. You have what is called score out. You have to
7 achieve a specific score to get out of Level 5, to move
8 to 6 and out of 6 to move to 7. And when you get to 7
9 you can actually choose your own routines, but you have
10 to have specific skills. **Minor** did not score out of
11 Level 6, but with her age we were able to what is called
12 petitioner her into Level 7. We had to show that she had
13 the skills. We had to show that she was working the
14 skills. And we didn't get them in until the last week
15 before the petition was shut out, because for whatever
16 reason, she was not coming to the gym to work the skills
17 with us so that we could show the State Chairman she was
18 actually getting the skills she needed so she would
19 survive as a level 7. So, through efforts of Ashley, and
20 through efforts of myself, and even through Trent and
21 Regina pushing her to get to the gym to get those videos,
22 we got her into Level 7, closer towards --- before the
23 season started.

24 Q. When you say those videos, what are you talking about?

25 A. We have to have videos to show the State Chairman that

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1 she is working specific skills.

2 Q. Now, is that chairman the person who lets y'all compete
3 in statewide events?

4 A. No, she is a representative for the United States of
5 America Gymnastics. That is all --- She is basically the
6 president of South Carolina. She oversees all the
7 training of the coaches, and all the training, all the
8 camps and everything like that, but for girls only.

9 Q. So you have to meet this chairman, and you have to show
10 this chairman videos of your students?

11 A. We didn't have time to meet with her. **Minor** barely met
12 the deadline. So we had to post them on YouTube, and it
13 was very difficult for her to agree to get those posted
14 on YouTube, but we managed to get them in there so that
15 they could see them in time before the Board closed. And
16 it was a photo finish. It was at the very end.

17 Q. Okay. So she made Level 7 that way. Well, why was it
18 important to put her in Level 7 at that time? Was
19 something coming up or what?

20 A. When she was at --- At being thirteen, if you are in
21 Level 7, you have to do --- I think she may have actually
22 been ready to turn fourteen. You have six --- you have a
23 few years. If you are in your ninth grade year, you have
24 to go to Level 10, in order to be declared collegiate,
25 which is college gymnastics, or elite. My daughter was

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1 on the track. She has to do Level 9 in her eleventh
2 grade year, and Level 10 in her senior year in order to
3 be declared elite which is what the professional gymnasts
4 are, collegiate which means she gets to go to college
5 level gymnastics and compete at a college level. So it
6 is a fast track. Normally you don't see gymnasts at that
7 age --- in that range pushing to go in --- they usually
8 go the opposite direction, which is recreational
9 gymnastics.

10 Q. Okay. But **Minor** was pushing to go elite?

11 A. We were pushing her to go collegiate because we wanted
12 Rebecca to have a college scholarship. We wanted **Minor**
13 to have a college scholarship. We wanted Hartsville
14 Gymnastics to be put on the board to be respected as a
15 gym that you know our girls are doing this. Our girls
16 have done that. These are our girls. And they are out
17 there. We have them in colleges. This is prestige.

18 Q. So, you worked primarily with **Minor** because of her
19 strength, and you being a stronger male to help her
20 through these exercises when she tumbles, and falls, or
21 whatever she does?

22 A. I was the only one who could stop her in midair, and
23 there were several times that I saved her doing skills.
24 Me also, being a Marine as long as I was, I wasn't afraid
25 of getting hit. And being a coach, you are going to get

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1 hit. And being hit by Minor as much power as she had, it
2 is very painful. And the problem with that is that with
3 the gymnasts, especially whenever they are being spotted,
4 when a gymnast hits a coach, it damages the gymnast more
5 than the coach. And no one seems to understand that,
6 because they are going to be hesitant through that skill.

7 Q. Okay. Your family and Minor family, did y'all have a
8 relationship outside of the gym, family to family?

9 A. No, but our daughters had a relationship. We didn't have
10 a relationship family to family other than, hey how are
11 you? Hey, what's going on? But our daughter's had a
12 relationship.

13 Q. What, did that consist of?

14 A. As close as two teammates could be. In their training
15 you know of six hours a week at the gym, so they trained
16 together, they suffered together, they ripped and cried
17 together. They suffered the same injury. They spoke the
18 same language, which is, you know, hey, do you have your
19 --- Minor had come to spend the night over at our house
20 at one point in time. We made sure that my son was not
21 there, and that was a stipulation. And it was something
22 that we could go along with. And I stayed in my room the
23 entire time, because I was allowing my daughter to have
24 her friends over. It was another friend, it was Minor
25 and her. And there was even a time where Rebecca even

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1 spent the night over at their house as well.

2 Q. Just didn't occur frequently, but it had occurred in the
3 past without incident?

4 A. I would not know without incident. She broke her finger
5 in the pool, in their grandfather's pool --- in Minor's
6 grandfather's pool. But, it happened in the distant
7 past, because as time wore on, MiMinor and Becka kind of
8 seemed to be on different personalities and different
9 paths than one another. And, they had a working
10 relationship inside of the gym as well.

11 Q. How was MiMinor emotionally insofar as your training was
12 concerned?

13 A. Well, it wasn't necessarily --- she had a closer bond
14 with Ashley to start with. She would talk with Ashley
15 about everything. I required an eating log, because
16 gymnastics is a sport that is riddled with eating
17 disorders. And coaches look the other way. Well, as a
18 nutritionist I just couldn't do that. So, I had the
19 girls provide an eating log. And we started looking at
20 it and seeing who was eating correctly. And I would look
21 and see the first place people would loose weight, being
22 a personal trainer. It is one of the things that I do.
23 We got involved, because it looked like Minor just wasn't
24 eating. So, I think that is where the relationship
25 started, because Ashley had a similar eating disorder as

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1 well, because she was a gymnast, and she got put out of
2 her gym because she had an eating disorder. So she knew
3 what it was like. So they started talking really well
4 together. Ashley and **Minor** were just meshing well. They
5 became friends. No doubt about it. And Ashley said,
6 well, you are a nutritionist.

7 Q. Kris, is it true that you have to know a lot of intimate
8 things, if you will, about the children? **Minor** testified
9 that she told you everything. Well, what about when a
10 woman is starting her period, and how does that affect
11 her performance?

12 A. Okay. For women there, one of the things that I know a
13 lot about is how the woman's body works, once again, as a
14 personal trainer. But for those girls to be so hormonal
15 and be on a beam that is four and a half inches wide, I
16 have to know why they are being this way. What is going
17 on in your life that is causing you to be this way? You
18 are in a catastrophic injury sport. Where like six-years
19 old you are going to get --- you can get damaged for
20 life. So I have to know, okay, her hormones are up and
21 down, especially with a girl just coming into puberty.
22 They have no grip on their hormones. They have no idea.
23 So I have to know, you know, okay, who is on their
24 period, and who is not on their period. And, when we go
25 to meets and things of that nature, I have to know what

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1 to put in that bag. I have to know what to have in case
2 a girl has an accident or anything like that. I have to
3 know what it is. And it is not something that I consider
4 intimate knowledge, it is professional knowledge.

5 Q. How much did her parents interact with her at the gym?

6 A. At the gym, her parents would typically drop her off and
7 pick her up. And that was about the --- I mean, Regina
8 would come in and she would talk with Sally every once in
9 a while. Then Trent would come in, and he knew Trent was
10 there because Coyt would come running through the gym,
11 and everyone loved Coyt at the gym. It was a family
12 atmosphere. But as far as interaction, Regina had to
13 call to find out whenever it was time to pick up you know
14 **Minor** a lot of times.

15 Q. Did you ever discuss with Regina any problems that **Minor**
16 had?

17 A. Not entirely, but it was the other way around. Because a
18 lot of things **Minor** told me, she said she wanted to have
19 held in confidence. And, I mean, Regina asked, and
20 Regina said, you know, if you guys don't do something
21 about this, gymnastics is going away. And for the child
22 it may not have been a bad idea, but once again, we were
23 just trying to get our names on the gymnastics map for
24 having great gymnasts, and we saw a lot of potential in
25 this girl. But, as far as interaction, there really

1 wasn't a whole lot.

2 Q. What was threatening her gymnastics career?

3 A. Well, according to her and according to Regina, it was a
4 boy named Joey who she was having something to do with at
5 school, or in her life outside of the gym.

6 Q. Did you discuss that with Regina?

7 A. We talked about it, because whenever we were discussing
8 gymnasts I was right there with the head coach, and a lot
9 of times Ashley said I was the head coach. So I wanted
10 to know what was going on with my gymnasts. And several
11 times Regina said, I'm going to take her out of school
12 and home school her if she doesn't get away from this
13 boy. Or I am going to take her out of gymnastics. You
14 had better talk to her if you want to keep her as a
15 gymnast. So, we wanted to keep **Minor** as a gymnast, so we
16 talked to her.

17 Q. Did you ever meet with a boy named Joey?

18 A. No, I have never even seen a picture of a boy named Joey.
19 I don't know anything about him other than what **Minor** has
20 told me about him.

21 Q. So, what did you try to do to help the situation out with
22 Joey?

23 A. I talked to her. I counseled her. I told her to open a
24 line of communications with her Mom about this. I told
25 her basically everything a coach would tell her, and it

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1 just wasn't taking effect. It wasn't taking hold,
2 because all she wanted to do was talk and save this kid.

3 Q. What did you decide to do to help her?

4 A. Well, it came down to Thanksgiving of 2009, **Minor** called
5 me and said that Joey had called her and really upset her
6 and she didn't know what to do, or what was going on.
7 Her text features had been taken off of her phone. I
8 think that is what she told me, that it had been blocked
9 or something of that nature. And she said she really
10 needed a way to talk to me whenever she wanted to talk to
11 me. That being a way most teenagers now days the best
12 way to talk to them -- and this is getting up there with
13 adults as well is through text messages. So, it was
14 discussed after Thanksgiving about a phone so that she
15 could talk with me in times of hard times, and whenever
16 she needed to talk with me.

17 Q. So what happened as a result of that conversation in
18 order to be able to communicate with one another?

19 A. Well, we ended up talking with one another. I ended up
20 giving her a phone, not as a Christmas present, and she
21 knew it was coming. I told her, alright, I will get you
22 a way that we can communicate back and forth. She
23 provided the money for a phone. I bought a phone. I
24 bought the cheapest phone that was out there. And we
25 texted.

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1 Q. When did you start texting?

2 A. I told her not to text with Joey on the phone, because I
3 did not want to provide a means for her to stay in
4 contact with a kid that was very dangerous. I didn't
5 want any --- I didn't want to be the means to provide
6 that. So we started texting, and most everything we
7 talked about was Joey this, Joey that, Joey the other.
8 And every once in a while she would clam up so I would
9 refer to make jokes with her, and laugh with her, and
10 everything like that so that she would open up. Because,
11 anybody can tell that has watched her at a meet the only
12 way that she opens up is by making her laugh. And
13 sometimes the jokes were crude, and the jokes were
14 inappropriate. But, it got through to her to open up and
15 talk to me about Joey.

16 Q. Well, what did she talk to you about Joey?

17 A. About how she loved him, and that she couldn't be without
18 him, and that she was responsible for Joey, and that Joey
19 meant so much to her that she had to stay with him. That
20 she didn't care about herself. She didn't care about
21 anybody else other than Joey. And that was evident in
22 the text messages that were sent. I mean, she told me
23 that she said he tried to kiss me at school today. He
24 tried to --- you know --- he tried to hug me. He tried
25 to hold me. He tried to do all these things to me. He

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1 won't stop calling me. He won't stop --- I mean, I asked
2 her, is he texting you? No, he is not texting me. Okay,
3 but, he kept doing all these things to her and the only
4 way I could get her not to clam up and be in that tight
5 shell was to sit and joke with her like I had done in
6 gymnastics. It worked at the meets, it worked --

7 Q. When you say joked at the meets, what do you mean?

8 A. Well, being a gymnast, especially a compulsory gymnast,
9 it is stressful. I mean it is really stressful. It is
10 stressful for the coaches too. Because, that child's
11 successes and failures fall on tenths of a point.
12 Whether they are a Level 6, or whether they are a Level
13 7, it can rest on one-tenth, or even a hundredth of a
14 point. You didn't get out, you didn't, or you got out.
15 And for us, compulsory gymnastics wasn't an option. We
16 didn't have forty hours a week to train at the gym. So,
17 whenever she fell off the beam, that is five tenths, that
18 is a half a point gone off of her score that she has to
19 make up, and the beam was **Minor** worst event.

20 Q. Okay. Well now these text messages that you sent to her,
21 that you were questioned about in your interview --

22 A. -- Yes --

23 Q. -- Why did you word those text messages the way that you
24 did?

25 A. The way --- The reason I worded those text messages ---

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1 and by no means am I saying they were appropriate in any
2 way, shape or form, was because of being in front of her,
3 she could see my body language, and I didn't have to be
4 as crude to make her laugh at things. In a text message
5 all I gave her was content. So I had to find something
6 that I knew she would laugh about, and I knew she would
7 open up about, and I knew she would crack her shell so
8 she would talk to me more about Joey. But, they weren't
9 the text messages that I should have sent in the joking
10 way that I sent them.

11 Q. What was your intention in sending those messages like
12 you did?

13 A. I had to get her to open up. I had to get her to talk to
14 me. I had to get her to explain to me what was going on
15 with Joey. Why do you feel this way? We would talk at
16 the gym, and she would go home and we would text, and I
17 knew she would not clam up about things. What's going
18 on? You're not telling me. You are not talking to me.
19 How do I make you talk to me? I make you laugh.

20 Q. You admit that they were inappropriate?

21 A. Yes, they were crude inappropriate jokes. And I lost
22 sight that **Minor** was fourteen.

23 Q. What do you mean by that?

24 A. I looked --- whenever I have friends, I look at them as
25 equals. And I treat them as equals. And I lost sight

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1 that **Minor** was fourteen, and I treated her as an equal,
2 so I joked with her on the same level as an equal, and
3 that is where I lost sight. And I did that because I
4 considered her a friend. And the inappropriateness of
5 the jokes themselves was not what they should have been.

6 Q. Have you ever touched her inappropriately?

7 A. No.

8 Q. Did you ever make plans to meet alone so that you could
9 do that?

10 A. No, never.

11 Q. In the text messages though it talks about meeting at the
12 gym?

13 A. Yes, they do.

14 Q. What was that about?

15 A. The Monday before all this happened, I promised **Minor** at
16 the Capital City Classic Meet that if she scored out ---
17 it was a joke, I never thought she would score a Level 7
18 so quickly, that we would train double-backs, because she
19 had the power. She could flip over. She was over my
20 head when she was flipping. And for me as a coach that
21 was exciting, because that is a higher level skill. That
22 is prestige. That is where I wanted to put Hartsville.
23 Hey, I have a girl training double-backs. I have a girl
24 doing this. So we went Monday --- I came in early, and
25 she was there by 4:30, and I begged Ashley, let me set

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1 the system up. We have a bungee system in the gym. It
2 is the only mobile bungee system in the entire state.

3 Q. When you say double-backs, do you mean running on a mat,
4 jumping up in the air, and flipping over and landing on
5 your feet?

6 A. She would do what is called round-off. I don't know if
7 you guys know exactly what that is.

8 Q. Is that what we would see --

9 A. -- Two back flips in the air before she hit the ground.
10 And she was requiring a very hard spot at the time, which
11 means I have to be extremely hands on, because the
12 probability of her hitting her head on the ground was
13 extremely high because she may not know where she is at
14 in the air, and I have to be there to remind her. So, I
15 had to keep hands on her and spot her extremely hard,
16 even on the bungee system, which keeps her up in the air
17 flipping.

18 Q. Well, when those text messages talk about meeting at the
19 gym, either Thursday or Friday or maybe next Monday or
20 whenever, what was the purpose of those texts insofar as
21 meeting at the gym was concerned?

22 A. I worked during the day so I wasn't able to do any
23 private lessons, and my schedule was full. And on the
24 weekends was the only time I could do any private lessons
25 whatsoever.

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1 Q. How would you have arranged to have met her there by
2 yourself?

3 A. I would have never arranged to meet with her by myself,
4 never.

5 Q. How could it have happened though?

6 A. I don't know, because she is fourteen and can't drive.
7 Who was going to take her? It would not have happened.
8 That's one of those --- it would have never happened.

9 Q. Well, those texts talk about having --- one of them said
10 sex would have been nice, but the kiss would be
11 interesting?

12 A. That goes into a different conversation all together.
13 Rather than set up a meeting with her on the weekend or
14 something like that, those messages that you are
15 discussing, they fall into that inappropriate joke that
16 was carried a little too far.

17 Q. Well, how did the joke get started?

18 A. Well, in the text messages themselves -- and I don't
19 think anybody did anything on purpose, or anything like
20 that. But I know from looking at those conversations
21 that there is a text message that should be there that is
22 not. And it says Joey tried to kiss me today. And by
23 itself it is not a text message that really mattered.
24 But knowing **Minor** whenever she clams up, she won't talk
25 to anyone. And I am not there to make her laugh about

1 things in a more appropriate manner.

2 Q. So that is why you used that strong language like that?

3 A. Yes, that is why I told such a vulgar joke, yes.

4 Q. And what was the purpose of it?

5 A. To get Minor to open up and talk about Joey.

6 Q. Well, when we read --- you read those texts with me many
7 times?

8 A. Yes.

9 Q. Now point to the place --- we have gone through those
10 texts. So you are saying that through language you used
11 towards her got her to open up?

12 A. Yes, it did.

13 Q. In your opinion did she open up to you in those texts?

14 A. Absolutely she does.

15 Q. How did she do that?

16 A. The next day, I had been asking for Joey's phone number.

17 I had been asking for pictures of Joey. The very next

18 day at 6:21 a.m. she texted a number and said is this

19 Joey or is this Ms. Kathy? I believe she was actually

20 trying to verify a number for me because later on that

21 same day she gave me that same number. Was I going to

22 text him? Probably not. Was I going to call him?

23 Probably not. But I wanted to see if she truly wanted to

24 get rid of Joey? By giving me the information on Joey,

25 she was doing that. And we talked about Joey, the entire

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1 next day and how she was responsible for him. And that
2 he is a drug. And she was opening up and talking to me
3 about Joey. I mean, the jokes were bad. I know they
4 were bad now looking at them. But all I wanted to do at
5 that time --- I got tunnel vision --- I wanted her to
6 open up and talk to me.

7 Q. Why was it so important that she get straightened out or
8 away from Joey? Why was that so important?

9 A. I would have lost one of the best gymnasts in Hartsville.

10 Q. How do you know?

11 A. Because her mother said if y'all don't do something, she
12 is coming out of gymnastics.

13 Q. Her parents didn't like Joey?

14 A. No, her parents didn't like Joey. Nobody liked Joey.

15 Q. Okay. That is one of them. You said sex would be nice,
16 but the kiss would be interesting. Were you asking her
17 for sex when you --

18 A. -- Absolutely not.

19 Q. Were you trying to induce her to meet you at the gym for
20 that?

21 A. No. Absolutely not.

22 Q. How about when it comes to, can I try a kiss with you, or
23 something of that nature in those texts?

24 A. That was the very first one in response to Joey tried to
25 kiss me, and I said well I want to try a kiss with you

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1 too then.

2 Q. And why would you say that to her?

3 A. It made her laugh. And her response was laughing. Her
4 response to most of those texts were laughing so I
5 thought I was getting through to her. And the next day
6 low and behold she opened up and talked to me about Joey,
7 so -- inappropriate, but --

8 Q. When you were questioned about the kiss?

9 A. Yes.

10 Q. That was like Friday night, early Saturday morning with
11 Sergeant Young and Lieutenant Hall, right?

12 A. Yes.

13 Q. Now, they were asking you about the kiss?

14 A. Yes.

15 Q. When did they ask you if it all had happened?

16 A. They told me that she had said that I had kissed her on
17 that Monday, and that is what my warrant was read to me
18 and that is what everything has read up until about a
19 week ago that I kissed her on a Monday.

20 Q. Now, it changed to a Thursday?

21 A. Yes.

22 Q. Well, were you at the gym on Monday?

23 A. Yes, I was. I was training double backs with **Minor** on
24 Monday.

25 Q. How about Tuesday?

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1 A. I was at the gym on Tuesday.

2 Q. Training double backs with her on Monday --

3 A. -- Yes --

4 Q. -- **Minor** --

5 A. -- Yes --

6 Q. -- that is like suspended in something that you can flip
7 backwards or --

8 A. -- You are able to hit the ground.

9 Q. It is kind of bungee, right?

10 A. It is a bungee, yes. That is exactly what it is, bungee.

11 Q. And you were training with her on Monday?

12 A. Just until her class started from 4:00 until 4:30.

13 Q. But she has made allegations against you that there were
14 conditions attached to your training her for
15 double-backs. Do you remember that allegation?

16 A. I remember the allegation, yes.

17 Q. Okay. Do you know what it was?

18 A. Yes.

19 Q. Was it sex or double backs?

20 A. That was get out of 7 for double backs, and she did that.
21 And she did that that weekend. She got out of Level 7.

22 Q. But you said --- she said you are saying I will train you
23 for double backs if you have sex with me?

24 A. I never did that. No. No. I'm sorry, I never did that.

25 Q. Well, in those text messages I believe there is a text in

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1 there on Tuesday or Wednesday about saying trying a kiss
2 with you, okay?

3 A. Yes.

4 Q. And that would have been like the 26th or the 27th of
5 January?

6 A. I believe so.

7 Q. So January 25th was a Monday?

8 A. Yes, it was.

9 Q. Okay?

10 A. Yes.

11 Q. And that is when you were first --- that is when she
12 first claimed this kiss happened?

13 A. Yes.

14 Q. But, during the course of those texts, you mentioned
15 something about trying a kiss with you and that was on a
16 Tuesday or Wednesday, right?

17 A. Yes.

18 Q. Okay. And then you were charged with it happening on a
19 Thursday?

20 A. I don't believe I was ever charged with kissing her on
21 Thursday.

22 Q. You were charged with --

23 A. -- for Thursday, okay, then it came down within the last
24 week, it came down for a kiss on Thursday.

25 Q. Well, did you ever kiss her?

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1 A. No.

2 Q. Have you ever embraced her intimately?

3 A. Affectionately or intimately?

4 Q. Have you ever embraced her intimately?

5 A. No.

6 Q. Have you ever embraced her affectionately?

7 A. Absolutely.

8 Q. Have your lips ever touched any part of her body?

9 A. The top of her head.

10 Q. Now, when you were accused of kissing her, was it
11 supposedly substantiated by her having run out of the gym
12 crying on Monday; is that your understanding?

13 A. When I read the incident report it said that Regina had
14 reported her being upset about something on Monday. If
15 she ran out of the gym I was too busy coaching to pay a
16 whole bunch of attention. I really don't know if she ran
17 out of the gym or not. When I am coaching I forget to
18 drink water. I forget to eat. I forget everything but
19 coaching. I don't know --- I know she had a great day
20 training double backs. I thought it was a wonderful
21 thing.

22 Q. What about the text that says --- now I'm going to go
23 through some of them with you. Okay? Cook, do I get
24 pics? And at some point it says, when do I get my cam
25 full of good pics?

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1 A. Yes.

2 Q. Well, what were you talking about?

3 A. I had been asking for information on Joey. Finally she
4 gave me a phone number. So I was always asking -- I
5 wanted to know what the guy looked like. I wanted to put
6 a face with the name. What is so special about the way
7 this guy looks? I mean, I know we talked, and she has a
8 weakness for guys with great abs. I wanted to see what
9 it was about this kid, if it was something physical that
10 really had her hooked on him. So I had been begging for
11 pictures, begging for pictures. Please, let me see what
12 he looks like. Maybe, I don't know. Maybe, I don't
13 know. But, there has to be a response to the text that
14 is not on there, or even to a conversation. But do I get
15 the pics I want on Thursday, I've been asking for
16 pictures of Joey. I had been asking for them.

17 Q. And that is why you gave her the camera?

18 A. Yes. That is precisely why I gave her the camera.

19 Q. Now what about that text that contains the word panties?
20 What was that about?

21 A. I have a very small phone. I had a very small phone, and
22 it was one that you touched three times for A, B, C, D,
23 all on the same tone. I type so quickly so many times
24 that every once in a while and in the text messages there
25 are typographical errors of all sorts from her, from me,

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1 and Jerry and everybody else. If you read that text
2 message, and revolve which I do, it says, I believe, I do
3 trust you and not because I have to, or because I want to
4 get you out of your panties. It is a negative. I
5 solidify that negative with what I thought was, which I
6 don't and a few messages later it said period. Like the
7 case was closed. I don't want to get you out of your
8 panties. It is a typo.

9 Q. Why would you be talking to her like that?

10 A. Because I told her --- I joked. I always told her that
11 all Joey ever wanted to do was to get her out of her
12 panties. And it was an inside joke about that is all
13 Joey wanted from you anyway. He wants to get you out of
14 your pants. He wants to get you out of your panties. It
15 is crude, but it made her lighten up and would always
16 make her talk to me about the situation with Joey going
17 on.

18 Q. What you did not say was can I get you out of your
19 panties?

20 A. No, I did not say that.

21 Q. What you did not say is can I take your panties off?

22 A. No, I did not or would not say that.

23 Q. What do you mean by playing at the gym with me?

24 A. In this I am really thankful I didn't use the real term
25 we used in the gym. When you are working skills that are

1 routine oriented, and we were in the middle of a season,
2 so it was more important to have your routine down solid
3 than to go out and screw around and play around with
4 other skills. We constantly get on people, and I don't
5 know if anybody has ever seen the movie quit screwing
6 around, you're going to mess up your routine. To play
7 means that you are not practicing skills that are at your
8 level or at your routine. Anytime you play, anytime you
9 screw around, it is working skills that are not routine
10 oriented, that are not level based. That are much higher
11 than what you should be. Or this is kind of fun. **Minor**
12 and I would do that during open gym, and she would work
13 boy skills with me, because that was the only time I had
14 to work out. So that she could work out with me she
15 would work boy skills. She screwed around, she played
16 around. And that is what the term play means.

17 Q. Well in there somewhere where you say get you alone
18 sometime Thursday.

19 A. Yes.

20 Q. That is in those texts that the jury and I saw up there
21 on the wall yesterday.

22 A. Yes.

23 Q. I am going to get you alone sometime Thursday. What did
24 you mean by that?

25 A. It is a carry over of that joke, because she wasn't

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1 opening up. It starts with a kiss and it carries on
2 because she is laughing. Her responses are laughter. I
3 think she is joking with me. I think she is breaking
4 open. I think that's breaking open. Like I said, it is
5 inappropriate, and most vulgar jokes are inappropriate
6 and told at an inappropriate time and heard by the wrong
7 people or inappropriate people. But it was a carry over.
8 It was just a bad joke.

9 Q. Did you ever try to plan anything to meet her down there?
10 Did y'all ever take any steps to get in the car, talk to
11 her on the phone, or say how can I pick you up or bring
12 her down?

13 A. No, I would never try to get her alone at the gym. I
14 never tried to do anything like that.

15 Q. And you bought her the phone to text you?

16 A. I purchased the phone, yes, to text.

17 Q. Did you know Jerry?

18 A. I had no idea who Jerry was. I knew nothing about him.
19 And from talking nobody else did either.

20 Q. Well, was there ever any problems with any people at the
21 gym?

22 A. Yes. We understand that girls are working out in
23 leotards. And we have -- especially with the higher
24 level girls we have closed practices which we don't just
25 allow people to come in and just spectate unless you have

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1 a purpose of being there. And her cousin had come in a
2 couple of times. Well, it's her cousin, but we still
3 asked him to leave. But then there were other
4 individuals who [Minor] had met at the church who had come
5 in, and we didn't feel comfortable with them being there,
6 because not only was [Minor] being watched, but anytime
7 [Minor] was practicing so was my daughter. And we asked
8 him --- you have to go, this is a closed practice, leave.

9 Q. Are you aware of anyone else that [Minor] complained to
10 about this?

11 A. No, not that I know of.

12 Q. Did you ever go to her school?

13 A. Yes, I did. I went to her school twice.

14 Q. For what?

15 A. As I said before, being a nutritionist, I read her log.
16 I was wondering what she was eating, because like I said,
17 gymnasts had that predisposition of having eating
18 disorders. Her log said she wasn't eating. Not just
19 eating the wrong things, but she wasn't eating. So,
20 Ashley and I, with the consent of her Mother went to the
21 school. We got visitors passes and we proceeded to
22 embrace her and eat lunch with her, with her friends. I
23 did it with Ashley twice, and I think Ashley actually
24 went a few times by herself as well.

25 Q. You are going to be asked this by the Solicitor as to why

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1 you left the Marines.

2 A. Yes.

3 Q. And there is a reason why you left the Marines?

4 A. Absolutely.

5 Q. And why did you leave the Marines?

6 A. I left by choice. The reason I left is whenever I was a
7 recruiter, I was instructed on the proper ways to lie,
8 and didn't like it, because it is not the way the Marine
9 Corp. is founded. I loved the Marine Corp. I've got
10 numerous declarations. I've been all over the place. I
11 have done great things. I have changed doctrines for the
12 Marine Corp., and I loved it. I had influence. But when
13 I became a recruiter it is not the same world. I met a
14 young lady who was overweight. And I tried to --- I did
15 everything I could, but I broke a cardinal rule.

16 Q. What did you do?

17 A. I helped her loose weight, but I became friends with her.
18 And as an infantry man you never become close friends
19 with those around you, because you don't know what is
20 going to happen to them.

21 Q. Well, did you happen to prepare any documents?

22 A. Yes, I did. When this young lady got injured, all I
23 could think about --- and the Marine Corp. was
24 responsible, therefore I felt responsible. All I could
25 think about was taking care of her and taking care of her

1 family.

2 Q. So, what did you do that they didn't like?

3 A. I met an unqualified person.

4 Q. Did you change any documents?

5 A. Yes, I did.

6 Q. Okay. What did you do?

7 A. She was unqualified at the time to join the Marine Corp.
8 But I wanted it to appear as though I was working with
9 someone so that they would give me time to go and be with
10 this family that I felt responsible. So I changed her
11 weight. I changed --

12 Q. You changed it on paper?

13 A. On paper that I never submitted, because I knew she was
14 unqualified, and I was never going to put her in the
15 Marine Corp. When I was suspended, because everyone
16 thought that I had told them to go to the newspaper, my
17 office was searched and that paperwork was found.

18 Q. And in that paperwork, you may have said well hey, she
19 weighs a hundred and twenty-five, and she weighed what?

20 A. A hundred and thirty, or somewhere around there. She
21 weighed more than she should.

22 Q. That was one thing.

23 A. Yes. I did not put on there that she was taking
24 psychiatric medicines.

25 Q. You left that out?

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1 A. Yes, I did.

2 Q. So you misrepresented her weight, and you didn't say
3 anything about her taking pills?

4 A. Yes, I didn't say anything about that.

5 Q. All right. How about --- was a computer involved in an
6 unrelated incident?

7 A. In an unrelated incident yes it was involved. I started
8 a close combat program with the Marine Corp. And I was
9 given no budget, so I managed to acquire the things that
10 I needed to get the school started, and it did start.
11 Unfortunately, I managed to appropriate a computer from a
12 storage room that I needed for the program to work, and I
13 did not report it when I was asked about it.

14 Q. Those are two things?

15 A. Yes.

16 Q. Put some wrong numbers down on a piece of paper?

17 A. Yes.

18 Q. And didn't say there was a person taking some pills on
19 that same piece of paper, right? That's one thing.

20 A. Yes.

21 Q. And you used a computer without permission; is that
22 right?

23 A. Yes.

24 Q. Okay. And the third thing was --- What was the third
25 thing; that you went into a storage building?

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1 A. Yes. It was trespassing at a mall that the recruiting
2 was --- the Recruiting Office for the Marine Corp., I was
3 suspended from being there. So, I went to a storage room
4 that I should not have gone to and opened the door, and I
5 --- it was trespassing.

6 Q. Do you know if **Minor** considered all of this to be a joke?

7 A. Her responses in her text messages were always hahaha,
8 lol.

9 Q. Did you any other place?

10 A. In person we joked similarly in person, but she never ---
11 it wasn't never why do you talk to me this way? It was
12 just a carry over from the jokes.

13 Q. Well, have you ever heard her describe all of this as ---
14 this is crazy?

15 A. Yes, I have.

16 Q. Where?

17 A. In her forensic interview with Dana Collins, when Dana
18 Collins steps out of the room, **Minor** entire demeanor
19 changes. She opens her legs, she bends her head down,
20 and goes, this is crazy. What am I thinking?

21 Q. Okay.

22 **MR. CANNARELLA:** I'm through, okay? So, answer any
23 questions John Holt may have.

24 **MR. BERRY:** Yes, sir.

25 **THE COURT:** Cross examination.

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1 MR. HOLT: Your Honor, would it be possible that we
2 take a bathroom break before we go into cross examination?

3 THE COURT: Yes. We will take a break, ladies and
4 gentlemen. We will take about a ten minute break. Please
5 enjoy your break. Please don't discuss anything with your
6 lawyer while we are on break.

7 (Whereupon, the jury exits the courtroom at
8 3:05 p.m.)

9 THE COURT: All right. Court is in recess.

10 (Whereupon, a recess was taken from 3:05 p.m.
11 until 3:15 p.m.)

12 THE COURT: All right. How long do you believe your
13 cross will be? How long do you anticipate?

14 MR. HOLT: Your Honor, thirty-five minutes, thirty?

15 THE COURT: I don't ask that to limit you, I'm just
16 asking for planning purposes.

17 All right. Are you ready?

18 MR. HOLT: Yes, sir, Your Honor. Thank you for the
19 break.

20 THE COURT: Bring in the jury then.

21 BAILIFF: All right, sir.

22 (Whereupon, the jury enters the courtroom at
23 3:15 p.m.)

24 THE COURT: All right. Welcome back to the courtroom
25 ladies and gentlemen. And now cross examination.

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1 MR. HOLT: Thank you, Your Honor.

2 CROSS EXAMINATION BY MR. HOLT

3 Q. Mr. Berry, do you want me to call you Kris, or do you
4 want me to call you Will?

5 A. Whichever you prefer.

6 Q. Kris. How old are you exactly right now?

7 A. Thirty-six.

8 Q. And around 2009 how old were you?

9 A. Thirty-five.

10 Q. All right. And you got involved in gymnastics roughly
11 about what year?

12 A. Two thousand and six, I believe.

13 Q. So, you didn't study it when you were young?

14 A. No.

15 Q. All right. Now, all this time you keeping track of all
16 the jobs you had and coaching around the time this
17 happened. And I'll tell you what I've got. I've got
18 full time Terminex, full time volunteer, nutritionist,
19 you do gym equipment. You've got two kids. You are a
20 student at Coker. You are also a competing gymnast. You
21 are also a fitness instructor. Okay. Now that is nine.
22 Now, my question then, did you think it was appropriate
23 to take on another job which was the counseling and the
24 care taking of a fourteen year old child that was not
25 your daughter?

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1 A. I wasn't a fitness instructor at this time.

2 Q. Okay.

3 A. And all the gymnastics fell into one category. So, I was
4 full time Terminex, full time volunteer, full time
5 father, and part time student.

6 Q. Let's talk about the phone. You gave her the phone?

7 A. She gave me the money to purchase the phone, yes.

8 Q. She paid for that?

9 A. Yes.

10 Q. How about the camera, who paid for that?

11 A. I paid for that.

12 Q. But you weren't making any money that the gymnast made,
13 and you were using your Terminex to pay for your own
14 family, do you think it was wise to purchase that camera?

15 A. Ebay has wonderful deals on digital cameras.

16 Q. So you went on the internet in hopes of buying a camera
17 cheap to give to a fourteen year old child who was not
18 your daughter?

19 A. No, I purchased it a long time back.

20 Q. All right. Before we get into the crux of the questions
21 I am getting ready --- I counted the words Marines around
22 twelve times for the fifty-seven minutes you were up
23 there. It was important to you that you were in the
24 Marines; correct or incorrect?

25 A. The integrity of the Marines was very important to me.

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- 1 Q. The integrity. All right. But, I think when Mr.
2 Cannarella paraphrased it, you decided to leave the
3 Marines because of writing something wrong on a piece of
4 paper, and breaking into a building, and stealing
5 something?
- 6 A. No, that is not why --- that is not the choice I made. I
7 chose to leave the Marine Corp. rather than facing a
8 court-martial and hurting my family.
- 9 Q. Okay. When you say you chose to leave the Marine Corp.,
10 don't you sign up for years at a time? You can't just
11 walk away can you?
- 12 A. Yes.
- 13 Q. You can't just say I'm tired of being a Marine, I'm
14 taking off; can you do that?
- 15 A. No, you cannot do that.
- 16 Q. Okay. So there was probably a process that was involved,
17 where a part of you decided to leave the Marine Corp.,
18 what was the name of that process?
- 19 A. Due process, I believe.
- 20 Q. All right. Bear in mind that I know the answer. What
21 due process, what is the real word that we are looking
22 for? What is the thing that was going on when you
23 decided to leave the Marine Corp.?
- 24 A. It was an adjudication, I guess.
- 25 Q. That is not what I'm looking for, but it will work. Let

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1 me ask you this. You claim that you taught a class on
2 close combat skills, or you created a class?

3 A. Yes. I created a school of the skills that already
4 existed on the West Coast.

5 Q. Okay. What I am saying is close combat, and I'm not a
6 Marine. But that is fighting?

7 A. Yes. It is fighting, it is everything. Rifles,
8 bayonets, it is mind set.

9 Q. So, on top of all these other jobs you know how to do,
10 and have taught people, you taught the Marine Corp., how
11 to fight?

12 A. Yes.

13 Q. Okay. What were they doing before you got there?

14 A. Fighting.

15 Q. Okay. Now, during the course of your time as a coach,
16 how many other children did you give cell phones and
17 cameras to?

18 A. My daughter.

19 Q. Obviously. Besides your daughter, how many other
20 children did you give cell phones and cameras to?

21 A. My son.

22 Q. Children that were not of your blood, children that are
23 not last named Berry?

24 A. No.

25 Q. Did you give stuff to?

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- 1 A. No.
- 2 Q. Okay. Don't you think it is a little bit unusual?
- 3 A. At the time, no.
- 4 Q. Have you ever given --- Let me ask you this, you have a
- 5 family, you have a cell phone plan with them?
- 6 A. Yes.
- 7 Q. Why didn't you just add **Minor** to your cell phone?
- 8 A. Because, I already had seven lines. My nephew and my
- 9 sister are on my line, and they wouldn't accept it.
- 10 Q. Okay. If, you had added her on would that name have
- 11 shown up on your bill, if **Minor** has a phone in
- 12 your name?
- 13 A. No.
- 14 Q. All right. Fair enough. Now, you claimed that you gave
- 15 her the camera so that she could take a picture of Joey,
- 16 correct?
- 17 A. I didn't claim that. That is why I gave her the camera
- 18 for.
- 19 Q. All right. Let me ask you this, what difference does it
- 20 make what Joey looks like?
- 21 A. Because you can put a name to a face, you can identify
- 22 that person so much easier. Police do it in all
- 23 profiling. Everybody is easier talking about a person,
- 24 knowing what a person is, by taking a look at them.
- 25 Q. That is pretty thorough.

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1 A. Yes.

2 Q. Trying to help this fourteen year old girl get through
3 her fourteen year old boyfriend and you need photographs
4 of him?

5 A. Yes.

6 Q. Why not look him up in the yearbook for free, quickly?

7 A. Because **Minor** really wanted to get rid of him, and she
8 was really dedicated to getting rid of him. And she
9 would have taken the effort to take the pictures. Like
10 she researched his phone number and gave that to me.

11 Q. Well, if Joey is interfering so much in her life, why
12 does she have to research his phone number?

13 A. I never claimed he was interfering with her life, her
14 mother did.

15 Q. But, now you were making it your life's mission to solve
16 it; correct or incorrect?

17 A. Not my life's mission, but a mission.

18 Q. Well, I'm just going to take these text messages, okay?

19 A. Yes.

20 Q. And, not --- you explained away everything brilliantly,
21 but I'm just looking at this one right here, and it
22 starts at 9:51.

23 A. Okay.

24 Q. On 1/26/2010.

25 A. I don't know which one you are talking about.

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1 MR. HOLT: Mr. Cannarella, do you have your copy?

2 MS. BURCH: I have mine.

3 MR. CANNARELLA: Which one is it? Let me see.

4 (PAUSE.)

5 Q. Here you go, let's use Defendant's Exhibit 3. 1/26/2010,
6 you start texting at 9:51 p.m.

7 A. What line are you on?

8 Q. Kris to Minor, "lol maybe not sure yet." Or Minor to
9 Kris. That is 9:51. You started off with, "cool, do I
10 get the pics I want Thursday?" "Maybe not sure yet."

11 Minor to Kris 9:51. You started off with, "Cool, do I
12 get the pics I want Thursday?" I don't have a time on
13 that. It was probably the first text.

14 A. I'm with you so far.

15 Q. Okay. All right. That is the first text. "Cool, do I
16 get the pics?" That is from you?

17 A. Yes.

18 Q. All right. Now, then that whole string quits at 1:31
19 a.m. the following morning with, "you know he does not
20 happen to be your life. You are a cool game to him."
21 That is also from you -- and you sent that --

22 A. -- 1:31 a.m.

23 Q. Yes.

24 A. Are you sure of those times?

25 Q. I just know what is printed out on these sheets.

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1 A. 1:31 a.m. is not on here.

2 Q. Well, did you ever stay up late and talk to her? How
3 late would you stay up texting Minor?

4 A. According to this, the latest text I sent was at 11:21
5 p.m.

6 Q. Maybe my record is wrong. The point that I am trying to
7 make is, even if you were staying up, texting her at
8 eleven something at night, isn't that kind of weird for a
9 thirty-six year old man to be texting a fourteen year old
10 girl at 11:30 at night?

11 A. I think it is more appropriate statement would be a
12 fourteen year old texting a thirty-six-year old.
13 Because, she was talking to me initially. And the
14 conversation started with her. I stayed up late because
15 I have post traumatic stress disorder and I try to avoid
16 my dreams.

17 Q. I am sure there are a number of reasons you stay up late,
18 but what I want to know is, could you have quit texting
19 her?

20 A. Absolutely.

21 Q. Did you continue to text her late at night regardless of
22 who you think started or did not start that conversation?

23 A. Just that one night.

24 Q. Okay. Now, was your wife aware that you were texting
25 this late at night?

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- 1 A. Yes.
- 2 Q. Was she aware that you gave a young girl a phone?
- 3 A. Yes.
- 4 Q. Was she aware that you gave a young girl a camera?
- 5 A. I am not entirely sure she knew or not about that.
- 6 Q. Did you and your wife sit around and talk about **Minor's**
- 7 problems a lot?
- 8 A. Yes.
- 9 Q. All right. Around this same time, 2009, you said you had
- 10 a daughter and a son. Who were they dating?
- 11 A. My daughter hasn't dated anyone. And my son was dating
- 12 Alexis Weaver at the time.
- 13 Q. Okay. Now, when you say dating, I mean whatever children
- 14 do at --
- 15 A. -- My daughter has dated no one, talked to no one,
- 16 boyfriend or girlfriend.
- 17 Q. So your daughter was a fourteen year old girl at this
- 18 time she was, and she never had a crush, she never spent
- 19 time talking on the phone, she never had any interest in
- 20 the opposite sex that you were aware of?
- 21 A. I didn't say she didn't have interest, but no one
- 22 interested her.
- 23 Q. Might I get a fair statement from that that you were a
- 24 little more tied up in what **Minor's** was doing than what
- 25 your own daughter was doing?

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1 A. Oh, absolutely not.

2 Q. Okay.

3 A. I knew everything that was going on in my child's life.

4 Q. Okay. That's fine. Now, who else was aware that you
5 were helping **Minor** out?

6 A. Just my wife.

7 Q. You and your wife?

8 A. Just my wife.

9 Q. All right. Now, were you here the other day when **Minor**
10 parent's testified?

11 A. Yes.

12 Q. All right. They said they were not but you claim that
13 her Mom, Regina, got you to do this? Do you remember
14 that?

15 A. Oh, yes.

16 Q. So, by process of comparing, you are saying the Mom is
17 aware, and Mom is saying she is not aware. Somebody is
18 being untruthful. Who is being untruthful and why?

19 A. The mother is fully aware that I was helping her, just
20 not to the extent. Whether she chose not to ask or
21 something like that, I don't know. That would be a
22 question for her. But, **Minor** knew that I wanted her to
23 open up a line of communication with her mother. And I
24 knew it was a Mother/Daughter thing more than a
25 Father/Daughter thing. So, when I was asked for help, I

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1 gave help. She saw me helping her at the gym. She saw
2 me help her at meets. And that is the extent that Regina
3 knew that I was helping her. She didn't spend any time
4 in the gym, so she wouldn't have known.

5 Q. But she claimed that she did spend time at the gym, so
6 who is being untruthful there?

7 A. I am absolutely certain that I am being truthful because
8 she would drop her off and pick her up.

9 Q. But, did you or did you not testify that maybe **Minor** ran
10 out some days, because when you were coaching you would
11 forget to drink water, forget to eat, don't think about
12 anything but you and the child there? During these times
13 could she have come in and watched?

14 A. **Minor** or Regina?

15 Q. Regina.

16 A. No, because I believe she would have followed her
17 daughter out if she had been there.

18 Q. Well, we can admit that the first four people that
19 testified before you, all their testimony was about how
20 everybody at the gym got together and watched everybody
21 the entire time, regardless of where the walls were?

22 A. Yes.

23 Q. But then you testified that while you were so busy
24 coaching, you oftentimes would not be aware of what was
25 going on because you were so intent on one thing you were

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1 doing coaching?

2 A. With the children I was with. The moment a child walked
3 through that front door, they became Sally's
4 responsibility. And on Friday when **Minor** run out of
5 the gym, Sally went after her to bring her back.

6 Q. I thought you said you weren't --- okay. First of all,
7 you aren't aware she went out, you don't know, she may
8 have. But, now your testimony is that Sally went out
9 there and got her. So, what is the truth?

10 A. I told you the truth. When a child leaves, I no longer
11 pay attention. I pay attention to the class as a whole,
12 the team. That's what matters. When she left this is
13 the only information that I got from Sally, and therefore
14 if it doesn't happen back in the gym, I usually don't
15 concern much because Sally is the front desk manager, and
16 I'm the head coach.

17 Q. Can we admit that a thirteen year old girl would probably
18 not marry, run away with, or have some romantic conquest
19 with whoever she likes when she is thirteen?

20 A. What thirteen year old girl are we speaking of?

21 Q. Any thirteen year old girl?

22 A. I don't follow your line. But, yes, we can agree on
23 that.

24 Q. Well, and we can agree that two thirteen year old girls
25 lie and cry what is not important, and should not be

1 important to a grown man?

2 A. But for that thirteen year old, it may be the world to
3 her.

4 Q. Obviously, it is important to the thirteen year old girl.
5 What I am trying to bring out is that it is probably ---
6 what I am saying is that there is a bunch of thirteen
7 year old girls that live on my block, and I don't care
8 who none of them are dating. You know, it is not
9 important in the grand scheme of things. Can we admit
10 that that is not important?

11 A. Unless it is your child, yes, we can agree.

12 Q. Obviously, if it is not your child. Now, can we admit
13 that **Minor** parents were kind of strict; and I don't
14 mean like crazy strict, but what I mean is, they have
15 rules, can't have phones in certain places, they take
16 their daughters on mission trips. They pick their
17 children up, even by your own admission. They drop them
18 off at the gym. They seem to be, from their testimony,
19 very much involved in their children lives. Can we admit
20 that that is true?

21 A. That is not true.

22 Q. That is untrue?

23 A. Yes.

24 Q. So everything that they testified to is a lie?

25 A. Oh, absolutely not. They testified to quite a few

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1 things.

2 Q. But what I'm talking about is that they testified that
3 they were very involved with their children.

4 A. Had they been involved with their children, they would
5 have known the extent that Minor was with Jerry.

6 Q. Or they could have known the extent that she was involved
7 with you?

8 A. Absolutely.

9 Q. Yes. You are absolutely right. Jerry wasn't really
10 hiding. You said Jerry, did you mean Joey?

11 A. No, I said Jerry.

12 Q. Okay. Were you here for Jerry's testimony?

13 A. Absolutely.

14 Q. Because didn't he testify that he spent a lot --- Trent
15 was a role model. Trent was a mission teacher. I think
16 everybody on the jury has a pretty good idea what kind of
17 person he is. What you are saying is that somehow or
18 another Jerry was conniving behind everybody's back to
19 see Minor more often than was testified to?

20 A. They didn't know that Minor and Jerry had kissed.

21 Q. A church kiss.

22 A. A kiss.

23 Q. Then we can both admit that people can hide kisses and
24 get away with it?

25 A. If they want to.

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1 Q. Yes we can admit that one. All right. So, explain to me
2 as well as the jury, why these people who have their
3 lives so well in hand, job, rules, charities, why did
4 they need Kristopher Wilmont Berry, part time gymnastic
5 coach, taught the Marines how to fight, built stuff in
6 his spare time, eleven jobs, why did they need you to
7 take time out of your busy day to look out and tutor
8 their daughter in regards to children?

9 A. Because they didn't do it themselves.

10 Q. Okay. In regards to Joey?

11 A. Because they couldn't do it themselves.

12 Q. Okay.

13 A. That is the impression Ashley and I got. Because **Minor**
14 listened to us.

15 Q. I just want to ask you this. And I'm not trying to trick
16 you, and I'm not trying to talk down to you. You had a
17 lot going on in your life at this time.

18 A. Yes, I did.

19 Q. Her parents had her pretty much in hand. Don't you think
20 you went a little bit overboard with a phone, a camera,
21 staying up until --- I say 1:30, you say 11:30, staying
22 up that late texting her? Being that involved in her
23 life, don't you think you went a little bit overboard
24 with your gymnastics? They paid you to train her for
25 gymnastics, but instead you bought her a phone, bought

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1 her a camera, stayed up until 11:30 at night texting her.
2 Don't you think that is over and beyond what a gymnastics
3 teacher should be doing?

4 A. First of all, I was volunteer. And as a volunteer, I
5 enjoyed doing what I was doing. When I was asked for
6 help, I gave help wherever was needed. If I had to go
7 above and beyond the call of duty, more than likely, yes.
8 But it is still a call to duty.

9 Q. Where did you buy the phone from?

10 A. I believe Wal-Mart.

11 Q. How much did you pay for it?

12 A. I think it was about twenty dollars.

13 Q. Did you tell your daughter you bought another girl a
14 phone?

15 A. No.

16 Q. Did you ever see Joey?

17 A. No, never.

18 Q. How long did she have the camera?

19 A. I don't know exactly how long she had the camera. I
20 don't remember the exact day I gave it to her. But it
21 had to be sometime in between December 24th and whenever
22 --- I don't know the exact date I gave her the camera.

23 Q. More than a month or less than a month?

24 A. Probably less than a month.

25 Q. More than three weeks or less than three weeks?

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- 1 A. Around about three weeks, I guess.
- 2 Q. Let's say three weeks. And she never brought you a
3 picture?
- 4 A. Nope.
- 5 Q. So if she don't see a boy that you claim is messing her
6 life up so much in three weeks, she is probably not
7 having that big of a deal?
- 8 A. It was an extremely big deal.
- 9 Q. Pull your copy out, whatever you've got with the times on
10 it.
- 11 A. What day are we on?
- 12 Q. First text, and I'll read it. From Kris. "Cool, do I
13 get the pics I want Thursday?" Do you see that one?
- 14 A. Yes.
- 15 Q. Okay. Now, to be a picture of Joey, and I think your
16 reasoning is that if you know him you can help her
17 better. Your part time gymnastics, volunteering with
18 this girl, you need a picture of her boyfriend. Why did
19 you need pics? P-I-C-S. And I know the amount of
20 texting you have on your own phone is called a T-9.
- 21 A. No.
- 22 Q. A T-9.
- 23 A. No, I didn't use T-9.
- 24 Q. Okay, not T-9, but just regular A, B, C's?
- 25 A. Yes.

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1 Q. So, to get to S, you had to go down to that button that
2 said S to put it in, so there is no mistake there,
3 correct or incorrect?

4 A. Not there.

5 Q. So the word pics, is that singular or pleural?

6 A. I could have put an "X" and it would have been the same
7 thing, picture or two pictures.

8 Q. That don't answer my question.

9 A. Two pictures are pleural.

10 Q. All right. So, this is what I'm trying to get at. Do
11 you need multiple pictures of Joey so that you can better
12 handle this volunteer counseling you are giving this
13 girl?

14 A. Any picture would have been nice.

15 Q. So, why didn't you say picture instead of pictures,
16 pleural?

17 A. There is on particular reason.

18 Q. All right. She sent you back lol maybe not sure yet?

19 A. Yes.

20 Q. You are not claiming there is any kind of message between
21 those?

22 A. I don't think so, no.

23 Q. All right. Now, your next one is, "I don't beg, but
24 please."

25 A. Uh-huh.

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- 1 Q. All right. And her next one is, "hahaha, maybe."
- 2 A. (No response.)
- 3 Q. And your next one is, "no one will see but me."
- 4 A. Yes.
- 5 Q. Correct or incorrect?
- 6 A. That is correct.
- 7 Q. Are we losing any text?
- 8 A. No. Nothing else.
- 9 Q. Well, why does it matter who sees a picture of Joey and
- 10 who doesn't?
- 11 A. Because her other friends, my sister, my wife, anything
- 12 like that --- any people she felt that would have
- 13 betrayed her to her parents did not need to see those
- 14 pictures.
- 15 Q. So we are admitting now that we are worried about what
- 16 her parents are going to think when they find out about
- 17 all of these texts?
- 18 A. This one is if she sent me --- gave me pictures of Joey.
- 19 Q. All right. Next is, I know --- "what's up with all of a
- 20 sudden thinking I don't trust you, hahaha just kidding."
- 21 A. Yes.
- 22 Q. Anything missing in that?
- 23 A. No. It seems to be intact.
- 24 Q. And you send her back, "what weekend works for you?"
- 25 What does that mean?

KRISTOPHER WILMONT BERRY - CROSS EXAMINATION

407

1 A. That is what weekend would you like to come back and do
2 double backs.

3 Q. 9:58 at night?

4 A. Yes. We were texting.

5 Q. I was just assuring you. That your next text to her?

6 A. Yes.

7 Q. 9:59. What does that mean?

8 A. It means I would let her know. I am not going to betray
9 her trust to Joey or anyone else.

10 Q. Showing the picture of Joey?

11 A. Yes, or letting anyone know that she had taken a picture
12 of Joey, because I believe he was completely off limits
13 in any way shape or form.

14 Q. All right. Looking at it, "any weekend except comp
15 obviously, but yeah." What does that mean?

16 A. Well, I guess where I'm trying to nail down the time to
17 have her come in for a private lesson. We had
18 competition in February, and any weekend except for that
19 competition.

20 Q. You said a private lesson?

21 A. Yes.

22 Q. It is my understanding that coaches can't be alone with
23 students at any time?

24 A. That is absolutely correct.

25 Q. Who would be there for these private lessons?

1 A. Her parents, because she had no other way to get there,
2 or her grandmother, because her grandmother brought her
3 to things as well.

4 Q: But to hear you tell it, you are the only one involved in
5 this girl's life at the gym. Her parents are never up
6 there.

7 A. But I am never alone with a child.

8 Q. That is a little bit contradictory; don't you think?

9 A. Not a bit. No.

10 Q. Period, with this many text messages, yes?

11 A. Yeah, we missed one text message there, line thirty, or
12 line thirty-one. I'm sorry. 10:03.

13 Q. Oh, at three minutes after 10:00-o'clock at night, you
14 sent her a message. "I do trust you, not just because I
15 have to or because I want to get you out of your panties
16 which I do." But it is your testimony that you meant to
17 say that, I don't now I do?

18 A. In the text message that I sent and the message she sent,
19 yes. I do trust you and not just because I have to or
20 just because I want to you out of your panties. And it
21 should say which I don't period.

22 Q. But it says I do.

23 A. Oh, it says that. But as you look through the text
24 messages it is riddled with typos from everybody. So it
25 is a common error, or a common occurrence that somebody

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409

1 will type so fast and hit send.

2 Q. All right. Let's skip on down.

3 A. Okay.

4 Q. We ain't getting nowhere. "Can we take pics when WDM
5 play?"

6 A. Which is, I'm sorry?

7 Q. It looks like ten down from the next one.

8 A. Oh, yes, line 59.

9 Q. And it says sent at 10:16 at night.

10 A. Yes.

11 Q. Can we take pics? What does the WDM stand for?

12 A. That is just a typo for me.

13 Q. Okay. When we play?

14 A. Yes.

15 Q. All right. Now, explain to me what your version of play
16 meant?

17 A. It is the only version of play. It is whenever you are
18 not --- it is whenever you are not working on skills that
19 are routine oriented, or level oriented. It is playing
20 and the other term that I use in the gym is screwing
21 around. Quit screwing around, quit playing.

22 Q. All right. You are saying that is the only definition of
23 playing?

24 A. In this context, that is the only definition of playing.

25 Q. But in the real world, okay, there is another definition

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410

1 of play.

2 A. In the gymnastics world it is.

3 Q. Now, I live in the real world.

4 A. This did not take place in the real world. This took
5 place in the gym where all the terms are different in
6 tone.

7 Q. Okay. Well then in the world that you don't live in,
8 does play mean anything else?

9 A. It can mean lots of things like the actual performance.

10 Q. But you know what I am getting at don't you?

11 A. Playing in the dirt. I don't know what you are thinking.
12 But, I know what it stands for.

13 Q. "Kris, I think playing at the gym will be cool." That is
14 the next one. Do you see it?

15 A. Yes.

16 Q. We can agree that is at 10:24?

17 A. Yes. That is what it says.

18 Q. Now, you say that play is when you do anything other than
19 what you are supposed to do at your skill set level?

20 A. Yes.

21 Q. So you were the coach at the gym?

22 A. Yes.

23 Q. And you are saying how serious you take everything?

24 A. Yes.

25 Q. Then why would you want to talk her into playing at the

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411

1 gym? Should you or should you not be getting away from
2 playing --- and if your testimony is to believe you would
3 then double back and triple somersault and that kind of
4 stuff, should you be getting her away from playing?

5 A. I should have at that point, but doing double backs is
6 prestigious for the coach, prestigious to the gymnast,
7 and prestigious to the gym.

8 Q. Is play prestigious?

9 A. When they are considered double backs, yes, absolutely.

10 Q. But I thought --

11 A. It is a Level 9 skill. It is a very difficult skill.

12 Q. I thought playing is when you did something that was
13 below your skill level?

14 A. Above your skill set.

15 Q. Above your skill set?

16 A. Way above.

17 Q. So when you say, I think playing at the gym will be cool,
18 what you are really doing is meaning that training her in
19 stuff above her level will be cool?

20 A. Absolutely.

21 Q. At a private lesson?

22 A. Yes. There is no other way to train at that level for a
23 gymnast.

24 Q. But don't you see how that can be misconstrued in the
25 real world?

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412

- 1 A. Yes.
- 2 Q. All right. Now, her response to that is, hahaha, yeah.
- 3 A. Yes.
- 4 Q. Okay. Now, everything you did was honest and on the up
5 and up. But if we were to consider that it wasn't, don't
6 you think, hahaha yeah, would be kind the equivalent of
7 her trying to move away from that, that kind of serious
8 kind of playing talk?
- 9 A. No, it is a very generic response used in that entire
10 text message.
- 11 Q. Okay. Then your next thing is, "I don't want to try to
12 kiss WU okay?"
- 13 A. I want to try a kiss with you.
- 14 Q. And "W" means with?
- 15 A. Yes.
- 16 Q. And "U" means **Minor**?
- 17 A. Yes.
- 18 Q. All right. So she sent hahaha, yeah, the one above it at
19 10:24, and directly after that, within one minute --- the
20 first one was sent at 10:24, the second one was sent at
21 10:25, you would have had to start texting directly after
22 you got it. There is no way one could be missing?
- 23 A. Yes, there is. This is where a text is missing. But it
24 is from her.
- 25 Q. But let's just say this. Can you --- I've never heard of

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413

1 it. You can send and answer two texts in under a minute?

2 A. No, because this text was sent between 10:16 and 10:22,
3 with a break in conversation of six minutes. When we
4 were going one minute, two minutes, and then all of a
5 sudden a six minute break. There is a text that should
6 be in there.

7 Q. All right. Okay. All right. So, what is missing in
8 between her going hahaha, yeah, and you going, I want to
9 try a kiss with you?

10 A. A text saying Joey tried to kiss me this week.

11 Q. And so your immediate response to another fourteen year
12 old trying to kiss this fourteen year old, who is not
13 your daughter is, I want to a kiss with you too?

14 A. Not the way you say it, no.

15 Q. What other way is there to say it?

16 A. Joey is involved, she clams up, and we discussed this.
17 And one way to get her away from it is to joke about a
18 similar situation. Joey tried to kiss me at school.
19 Well, I'm trying a kiss with you too. Well, her
20 response, hahaha, okay. A laugh. And it was taken as a
21 joke. Same as a joke.

22 Q. But, can we both agree that this is kind of like the
23 Marines. There is a simple answer and then there is a
24 really long complicated around about answer?

25 A. It is the right answer. We will treat this like the

KRISTOPHER WILMONT BERRY - CROSS EXAMINATION

414

1 Marines. It is only a right answer.

2 Q. And you are saying that your answer is right?

3 A. Yes, it is the right answer.

4 Q. But isn't your answer also the longest answer?

5 A. No.

6 Q. Can I get you alone sometime Thursday?

7 A. No, that is not what it says.

8 Q. It says, get you alone sometime Thursday? Is that what
9 it says?

10 A. Yes. And the response was a joke. Hahaha, all right.
11 Get you alone sometime Thursday, went along with the
12 joke. I'm not saying it was a good joke. I'm saying it
13 was a very inappropriate joke.

14 Q. Okay. That is your version. But right here on my text
15 message it says, get you alone sometime Thursday. That
16 is from you. And then right after that, from you is, "I
17 can see us having sex, but the kiss should be
18 interesting."

19 A. Still a very bad joke. It is a continuation. She is not
20 opening up yet, so the only way to get her to open up is
21 --- it is a bad joke. It is vulgar. It is crude.
22 Inappropriate. But, still a joke. All that entire
23 thread, and at the end of it the next day she gave me
24 Joey's number, and we talked about Joey. So, I'm not
25 saying it was great. I'm saying I would never do it

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415

1 again.

2 Q. You are saying you did all of that to get Joey's number?

3 A. No, I did all of that to get her to open up and talk to
4 me about Joey and she did.

5 Q. All of this is happening like at 11:00-o'clock at night,
6 correct or incorrect?

7 A. Yes. I chose to spare no time.

8 Q. What I am trying to get at is, you are up late at night
9 doing this, with your eleven other jobs, with your own
10 two children. Wouldn't your time had been better spent
11 doing that?

12 A. I'm not following your question, sir.

13 Q. All right. What I am trying to get at is you are
14 obviously a very busy man with everything that you have
15 on your plate?

16 A. I like to stay busy, yes.

17 Q. You obviously have your own children?

18 A. Yes.

19 Q. And I assume they have some type of problems as well?

20 A. No.. My children come to me with any problems and we work
21 them all out. I have a very open line of communication
22 with my children.

23 Q. All right. So what you are saying is that you have your
24 family so well in hand that you can help out this poor.
25 dysfunctional family, that don't know what they are

1 doing?

2 A. I would say I have my family well in hand. But I do know
3 what is going on with them.

4 Q. All right. Let's get back to the phone, and you and I
5 can both agree that we are never going to see eye-to-eye
6 on this?

7 A. Absolutely.

8 Q. All right. Why not just text her on the phone that she
9 has?

10 A. Because it was blocked.

11 Q. Who blocked it?

12 A. Her parents did.

13 Q. What business do you have getting a fourteen year old
14 girl another cell phone if her parents had blocked her
15 cell phone? What business do you have doing that?

16 A. I would not condone getting her the cell phone. And it
17 is something that I should have brought to the parents.
18 And there is where I abuse their authority. And that is
19 where I did wrong. But when her mother asked me to do
20 whatever it took to get Joey out of her life, I did it.
21 I'm not saying I did it correctly or appropriately. But
22 I did everything I could to do it.

23 Q. You say you knew **Minor** better than anybody?

24 A. No, I didn't know her better than anybody, because I
25 didn't know anything about Jerry, her other best friend

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1 that knew her better than anybody.

2 Q. Who was that?

3 A. **Minor** s --

4 Q. -- Is that the one who told her Daddy about the phone?

5 A. I don't know, but I know that was the one who was dating
6 her cousin. I'm talking about the other underage boy.

7 Q. Did you ever know **Minor** to lie?

8 A. Absolutely.

9 Q. You knew her to lie?

10 A. Yes. Absolutely.

11 Q. Okay. So you did everything you have done to help get
12 rid of this girl from Joey? How did you know it wasn't
13 lie?

14 A. Oh, reading the text I knew it was lie. Joey was an
15 issue. But I didn't know that at the time.

16 Q. You read her texts?

17 A. Well, reading all the texts, Joey was a liar.

18 Q. Did you have her phone before this?

19 A. No, I did not.

20 Q. All right. So you know this now?

21 A. Yes. But at the time, I took what she said to me as the
22 truth.

23 Q. Even you knew she was a liar?

24 A. Well, she lied about her eating disorder.

25 Q. You knew that because you went to see her at school?

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- 1 A. No, because I know the signs of an eating disorder.
- 2 Q. Did you or did you not go to see her at school?
- 3 A. Yes, I did.
- 4 Q. Were her parents at school with her?
- 5 A. Her mother is.
- 6 Q. Did her mother know you were eating lunch with her?
- 7 A. Yeah, because we came to see her before and after.
- 8 Q. Nobody thought that was weird?
- 9 A. No, her mother asked us to do it.
- 10 Q. Don't you see where if you give a girl a camera, and then
- 11 you text her on a phone that you gave her, and say give
- 12 me pics; don't you see where that is wrong?
- 13 A. But she knew the camera was for Joey. The phone was
- 14 wrong. I know that. I know that now. But, to text her
- 15 on the phone, she knew the pictures I wanted. There was
- 16 no other way I thought they could be taken. I guess the
- 17 easy answer is, I wanted pictures of Joey, and now she is
- 18 going along with this.
- 19 Q. All right. So you are saying we are missing text
- 20 messages?
- 21 A. Yes, at least one.
- 22 Q. Saying Joey was a lie?
- 23 A. Yes, I believe so, yes.
- 24 Q. Okay. Are you saying that everything is a conspiracy
- 25 against you?

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1 A. No, I wouldn't say it is a conspiracy at all.

2 Q. All right. And it is your testimony that you know how
3 attracted she is to people who have abdominal muscles?

4 A. She made a big deal about Cirque Du Soleil and those guys
5 have awesome abs. So, it was a safe assumption.

6 Q. Okay. So you know everything about her?

7 A. No.

8 Q. What this girl was doing?

9 A. No, I don't know everything about her doing. Had I
10 known, I would have known about Jerry.

11 Q. All right. Now, I just want to look at this text
12 message, and I want to just ask you one question. You
13 claim there are missing words, missing texts, and an
14 inside joke?

15 A. Yes.

16 Q. Would you at least admit that when you read it, start to
17 finish, it reads like nothing is missing? It reads like
18 a complete conversation?

19 A. No, I definitely disagree with you on that.

20 Q. You disagree with me?

21 A. Yes, they are sporadic, they are phrased. There are
22 things that are in here that are admitted, and they are
23 trying to ask if I was asking about her period, and then
24 when she asked the question and I gave her the answer
25 before. There is a text missing. And I am not saying it

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1 is a conspiracy, because the text doesn't matter. It may
2 have been an accident. While Trent was copying these
3 down one by one, he may have inadvertently deleted one.

4 Q. Let me stop you right there. Trent --- that is not what
5 I'm working off of. I am working off of what the police
6 looked at.

7 A. And if the text was not there after Trent had possession
8 of the phone for a few hours, showing my wife and
9 everyone else, then it is a possibility that the text
10 might have been accidentally deleted.

11 Q. Showing your wife? When did he show your wife?

12 A. Oh, he took her to the Belk parking lot and showed her
13 the text messages.

14 Q. Where were you?

15 A. I was at home.

16 Q. I thought that **Minor** came and told you that he had found
17 the phone and y'all were at the gym together?

18 A. Ashley told me to leave, because Trent was coming to
19 shoot me.

20 Q. Well, if this is as innocent as you say it is, why didn't
21 you just meet with him and say, hey, look Trent, it ain't
22 that?

23 A. He met with Jerry before he met with me, and got Jerry's
24 story. Therefore, there was no --- He went to the
25 police.

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421

1 Q. Well, don't you probably think it was because Jerry was a
2 boy and you were a grown man, and he was the maddest at
3 you?

4 A. Jerry was nineteen, and he opened --

5 Q. -- I see Jerry right there --

6 A. -- Yes --

7 Q. There is a difference between Jerry and you; we at least
8 have to agree on that?

9 A. By law, no.

10 Q. Are you telling me that there ain't no difference between
11 you and that boy right there?

12 A. By the law, no.

13 Q. What does the law say about buying a fourteen-year-old
14 girl a cell phone, if you know about the law so much?

15 A. It is not illegal to purchase a fourteen-year-old a cell
16 phone.

17 Q. All right. Let's talk about your time in the Marines.
18 You said they taught you how to lie.

19 A. The recruiters did.

20 Q. What are some of the techniques they taught you?

21 A. Basically how to convince a child to pass the screening
22 test.

23 Q. They taught you to lie with children?

24 A. No, they taught me to teach children to lie. I never
25 lie.

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422

1 Q. [Minor] says, and you heard her testimony --

2 A. -- Yes --

3 Q. -- Daddy called her at the gym after he found the phone.
4 She went to talk to you.

5 A. Yes.

6 Q. You said let's say the whole story was about Joey?

7 A. I think if you read the text messages the whole story was
8 about Joey.

9 Q. Not the way I read it. That is what we are here for.

10 A. When you read Wednesday, it is all about Joey. There is
11 nothing else other than Joey.

12 Q. We have already come to an understanding that we are not
13 going to agree on that. What I want to say is, that she
14 came and told you, and you said, let's tell them it is
15 all about Joey?

16 A. No, I did not say that.

17 Q. You didn't say that?

18 A. No, I did not.

19 Q. So, [Minor] is lying there too?

20 A. Absolutely. And her statement, incident report, forensic
21 interview, and now --

22 MR. HOLT: Permission to approach, Your Honor?

23 THE COURT: Yes, sir.

24 Q. This is the phone that I have put into evidence, 259,
25 that David Jones says he picked up from you when he did a

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423

1 search warrant. Is it your testimony that that is or
2 that is not your phone?

3 A. This does not look like my phone.

4 Q. But I am not asking you to what looks like what --

5 A. -- I do not believe this is my phone. It has been over a
6 year and a half, but I do not believe this is my phone.

7 And it doesn't matter to me in a hill of beans. I turned
8 in a cell phone. And does it matter? No, it doesn't
9 matter, because this matters.

10 Q. That is all I'm saying.

11 A. It doesn't matter --

12 Q. -- Let's do it hypothetically then. Hypothetically, if
13 that was your phone --

14 A. -- Yes --

15 Q. -- Shouldn't there be text messages on there, that line
16 up --

17 A. -- oh, there was --

18 Q. That would correct all the mistakes that you say were
19 made?

20 A. Absolutely, no. There were not any text messages on my
21 phone, because I texted with a large group of people. I
22 text with a large group of people. And I made sure that
23 I did not delete text messages off my phone. As a matter
24 of fact, I was hoping they could get the text messages.

25 MR. HOLT: No further questions, Your Honor.

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1 **THE COURT:** All right. Redirect?

2 **MR. CANNARELLA:** No questions, Your Honor.

3 **THE COURT:** All right. Sir, you may step down.

4 **MR. BERRY:** Thank you.

5 **THE COURT:** Please watch your step as you step down.

6 **MR. BERRY:** Do I need to give this to you?

7 **THE COURT:** Yes, sir. You can leave it right there.

8 Our court reporter will put that back in evidence.

9 And defense, please call your next witness.

10 **MR. CANNARELLA:** The Defense rests, Your Honor.

11 **THE COURT:** Is there reply testimony from the State?

12 **MS. BURCH:** Yes, Your Honor. There is.

13 **THE COURT:** All right. Ladies and gentlemen, when a
14 witness is presented you have direct and then cross and then
15 redirect if new issues are brought up. The case in chief
16 works the same way. They put up their case. The defense puts
17 up their case. If there is some new issue that is brought up
18 in reply, they are allowed to approach that issue or present
19 on that issue. Please call your reply witness.

20 **MS. BURCH:** Your Honor, I believe the witness is in the
21 back. The SLED Agent Bart Cave.

22 **THE COURT:** Very good.

23 **MS. BURCH:** Your Honor, I think we may have an issue we
24 need to take up with you before the witness testifies.

25 **THE COURT:** Well, what I would like to do is for you to

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425

1 come up over here and discuss it.

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

4 **THE COURT:** All right. Ladies and gentlemen, from time
5 to time we have a matter of law that we need to discuss
6 outside of your presence. Just like we won't be in the jury
7 room with you when you discuss facts. I am going to ask you
8 to step from the courtroom for a moment, while we take up an
9 issue, and then we will be back with you.

10 (Whereupon, the jury exits the courtroom at
11 4:00 p.m.)

12 **THE COURT:** All right. Go ahead.

13 **MS. PARKER:** Your Honor, we would like to call Bart
14 Cave from SLED who processed the cell phone that the defendant
15 has denied is his. Because, he was able to recover some
16 deleted files, or some files that were in a memory card that
17 was inside that cell phone. And one of the photos is of the
18 defendant Kris Berry. I believe it is a mirror shot where he
19 is holding the phone. It actually kind of identifies the
20 phone he is holding in his hand. His reflection is coming
21 back into the picture from the mirror. We certainly feel like
22 we would be entitled to get into that, Your Honor. On our
23 direct we tried to make it real clear that procedures and
24 stuff was followed. And the phone was recovered, yet he still
25 denies that this was his phone.

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1 **THE COURT:** Very good. And Mr. Cannarella, do you want
2 to be heard?

3 **MR. CANNARELLA:** Your Honor, that really has become a
4 collateral matter. It's not pertinent to the main issues. He
5 on the witness stand testified that that didn't look like his
6 phone, but it had been some time ago. And, it doesn't make
7 any difference whether this was my phone or not. He
8 referenced the text messages, and that is the crux of their
9 case. This is purely collateral matter. And what do they
10 gain by challenging or proving whether that was his phone or
11 not, because we have already admitted that we made the text,
12 and that is okay.

13 **THE COURT:** Very good.

14 **MR. CANNARELLA:** And if they want that picture in
15 there, it unduly prejudices the jury and suggests something to
16 them that is unfair.

17 **THE COURT:** And what is your response to what you have
18 just heard?

19 **MS. PARKER:** Your Honor, we initially offered in our
20 case in chief, Bart came from SLED to talk about that phone to
21 show --- and the purpose of that was to show that all text
22 messages had been deleted off of that phone. And also, if you
23 look at the contacts -- and nowhere in those contacts is there
24 a phone number that corresponds to the phone number assigned
25 to that pay as you go phone that **Minor** had. So, we

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1 were offering that, I guess to intend to show the guilt of the
2 defendant that night before law enforcement made contact with
3 him to go through that phone, and delete anything that he
4 believed would be incriminating. So, we wanted to present
5 that to the jury. But now he has denied it is his phone. And
6 it makes law enforcement --- it just makes --- just the
7 impression that it gives that you know that law enforcement or
8 the Darlington County Sheriff's Office somehow conspired
9 against him. That this isn't the phone that he gave David
10 Jones.

11 **THE COURT:** Very good. And, Mr. Cannarella, the court
12 is prepared to rule on the threshold issue, then we have
13 something else we need to take up.

14 First of all, the record should reflect that yesterday
15 when this occurred -- and 259 was marked for identification.
16 The reason it was marked for identification was because the
17 State offered it. And then walked over to the defense table
18 whereupon Mr. Berry, although not a witness, and not under
19 oath and not on the stand, but audibly within the courtroom
20 denied that it was his phone. Heard clearly by the jury, and
21 heard clearly by the court, and emphatically stated that it
22 was not his phone. And thus, it was not placed into evidence
23 but marked for identification only. And then the next morning
24 a foundation was laid by the investigating officer who said it
25 was the phone that we took from the defendant. And thus, the

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1 foundation was laid. And it was admitted as Exhibit 259.

2 Today on the stand the defendant continues to dissemble
3 about this phone, stating that it looks like his, or it may
4 look like his. He doesn't think it is his. I can't remember
5 exactly what it was. But it left a clear impression with the
6 court that the phone may not be his.

7 All right. Now, for those reasons, this goes to
8 credibility and believability, not just about the phone, and
9 the ownership of the phone, but the reliability of this
10 witness, the defendant, as a witness.

11 Now, for all of those reasons, the court believes this is
12 directly relevant and probative. It is about more than the
13 text messages. It is about credibility. And now the question
14 is whether or not this photograph, which is of a nude
15 defendant with his hands covering his private parts, but
16 taking a picture of himself in the mirror, retrieved from that
17 phone; whether it is more prejudicial than probative. So, now
18 we have a Rule 403 analysis. So, let me hear from you on
19 that.

20 **MR. CANNARELLA:** Your Honor, we will stipulate that the
21 SLED agent testified that he pulled a picture of this
22 defendant off of the phone. And that establishes the fact
23 that there was a picture of him on the phone. So that leaves
24 the jury to believe well yes, that must have been his phone.
25 And they can establish that in the minds of the jury without

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1 introducing a naked picture of him. There are other ways of
2 doing it. But we will stipulate to that, so we are not really
3 contesting now that there is a picture of him on the phone
4 from which the jury could reasonably conclude, well that is
5 his phone.

6 THE COURT: All right.

7 MR. CANNARELLA: He might be lying to say it is not,
8 but SLED will say that they found a picture on the memory card
9 out of that phone, there was a picture of that man right
10 there, without having to describe what he looks like. And
11 that way they can get to the jury the fact that the SLED agent
12 said, yeah, I got it out of his phone. Okay. So, that gets
13 them what they want.

14 THE COURT: All right.

15 MR. CANNARELLA: Without having to show naked pictures
16 of a man in the phone. That is too prejudicial, because they
17 are going to get what they want without introducing that
18 prejudicial photograph.

19 THE COURT: Thank you. What says the State?

20 MS. PARKER: Your Honor, we would agree to --- I do not
21 know if I have the capability to crop that picture, to
22 electronically crop it, but we could I guess cut and paste
23 physically with scissors, and try to cut the picture to show
24 --- or maybe cover up the picture to show you know from here
25 up, instead of all this down here. You know, it is a full

1 shot, to reduce the prejudicial impact.

2 **MR. CANNARELLA:** We will stipulate that there is a
3 picture that came out of that phone.

4 **THE COURT:** Counsel, actually, I am disinclined to
5 allow the State --- I am disinclined to allow the State to
6 crop the picture, because it may indicate that some worse
7 activity is occurring, other than just a covering of the
8 defendant's private part, which is basically what he is doing
9 with his right hand.

10 And the court also finds that this is probative, because
11 on the issue that the defendant testified that he believed
12 that the victim liked men that had --- I can't recall the
13 description, but it was good abs. This is a picture of the
14 defendant's abdomen, and the muscles of his abdomen, and it
15 may somehow be related to that testimony.

16 I find that it is further relevant and probative for that
17 reason.

18 The court is going to permit the picture in over
19 objection of Mr. Cannarella, because I believe it is the
20 appropriate thing to do.

21 But, also, just so the record will be clear, there are
22 consequences when you take the stand. And you take a
23 position. And there is proof to the contrary of that
24 position. You must simply just bear the consequences.

25 For these reasons, the court believes it is fair to put

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1 the picture in as well.

2 Is there anything further for the record, before we bring
3 the jury back in?

4 MS. BURCH: No, Your Honor. Would you like for us to
5 have that exhibit marked?

6 THE COURT: Mark it over defendant's objection.

7 WHEREUPON, STATE'S EXHIBIT

8 NUMBER 264 IS MARKED AND

9 ADMITTED INTO EVIDENCE OVER

10 OBJECTION.

11 THE COURT: And also, Mr. Holt, for the record, I would
12 like for you to mark as a Court's Exhibit the military dossier
13 that you have so that any review of this will have the benefit
14 of seeing what was contained in the record, within the
15 Military records.

16 MR. HOLT: Yes, sir.

17 THE COURT: Please bring in the jury. And, Ms. Burch,
18 we will re-swear the witness, although he has testified
19 before.

20 (Whereupon, the jury enters the courtroom at
21 4:10 p.m.)

22 THE COURT: Counsel, step up a moment while the jury is
23 coming in, please?

24 (Whereupon, a bench conference was held in the
25 presence of the jury, but out of their hearing range.)

BART CAVE - DIRECT EXAMINATION

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1 **THE COURT:** All right. Please call your next witness.

2 **MS. BURCH:** Thank you, Your Honor. The State would
3 call Agent Bart Cave.

4 **THE COURT:** Please come forward to again take the oath
5 of a witness.

6 **WHEREUPON, BART CAVE**

7 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

8 **MR. CAVE:** I do.

9 **REPLY TESTIMONY OF MR. CAVE**

10 **DIRECT EXAMINATION BY MS. BURCH**

11 Q. Good afternoon, Mr. Cave.

12 A. I'm not an agent, I'm just an administrative employee.

13 Q. I'm sorry. I thought you were. Well, please state your
14 name for the record so that we can be clear.

15 A. Bart Cave.

16 Q. All right. Mr. Cave, I am going to show you what has
17 been marked as State's Exhibit 259. Do you recognize
18 that?

19 A. Yes, ma'am.

20 Q. I want to show you what has been marked as State's
21 Exhibit 262. Is that your report that you did off of
22 that phone?

23 A. It is one of the reports, yes.

24 Q. There is another one?

25 A. Yes, ma'am.

BART CAVE - DIRECT EXAMINATION

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1 Q. May I see that one?

2 A. I don't know if it has been entered into evidence.

3 THE COURT: Ms. Burch, he is saying there may be other
4 reports that are not in evidence.

5 MS. BURCH: I'm sorry, Your Honor.

6 Q. Mr. Cave, can you explain to us the difference between a
7 SIM's card and SD card?

8 A. Yes, ma'am. In the back of what you call a GSM phone,
9 AT&T Mobile, you have a SIM card that goes into the
10 phone. Most people are used to seeing them. This card
11 only stores text data and tower information. Therefore,
12 if this phone got damaged, you could take this card out
13 and go get you another phone, whether it be prepaid, or
14 regular phone, put this card in there, and it would have
15 all of your contacts, your text messages, your phone
16 number, and the tower information so that you could then
17 cut that phone on, and you could make calls, and you
18 would not be without a phone for that long. Then again,
19 if you had what is called a Micro-SD card, it is a very
20 small card like this. You are used to seeing a much
21 larger one like you see in cameras and the ones in
22 computers. And what this is, is no different than say a
23 flash drive or a hard drive in your computer. This
24 allows you to store pictures, videos, documents, files,
25 any of that stuff just like you would on a flash drive or

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1 anything else. That way, if you need to have information
2 that you need to go to quickly, you can have access on
3 your phone, but you can also take this out at any time,
4 have an adaptor and plug it into a computer, and you can
5 open it in your computer by going to Window's Explorer,
6 and it would show up as a removable storage device.

7 Q. So, it is interchangeable with other machines?

8 A. Yes, ma'am. This is a common device for 90% of the
9 phones, you know, made today. The one phone that doesn't
10 use it is an I-Phone. All the rest of the phones have a
11 Micro-SD slot on there.

12 Q. Do you recall if you pulled any pictures off of that SD
13 card?

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

15 Q. I am going to show you an exhibit, and I just want you to
16 tell me if you recognize this. This has been marked as
17 State's Exhibit 264, I will let you look at it first.

18 (PAUSE.)

19 Q. Do you recall pulling that picture off of that SD card?

20 A. Yes, ma'am. That is one of the pictures I pulled off of
21 there.

22 Q. Is it in the same condition that it was in whenever you
23 pulled it off of that card?

24 A. Yes, ma'am.

25 MS. BURCH: Your Honor, at this time, we would like to

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1 move State's Exhibit 264 into evidence.

2 MR. CANNARELLA: And, Your Honor, we object to that
3 because that is unfairly prejudicial. There is no real issue
4 about where the text message came from. All that is intended
5 to arouse the passion and prejudices of the jury for
6 irrelevant reasons.

7 THE COURT: All right.

8 MR. CANNARELLA: We will stipulate that those text
9 messages came out --- wherever they came from, if it came out
10 of that phone or anywhere else, that the text messages ---
11 that photograph right there is prejudicial to this jury.

12 THE COURT: All right. Mr. Cannarella, you made a
13 speech to the jury in your objection, and thus the court is
14 going to clarify what the issues are, and where we find
15 ourselves.

16 First of all, there was or apparently there is a dispute
17 or a discrepancy about the ownership of the phone. You have
18 been listening to the testimony here in the courtroom. And
19 this is for you to decide. It came up during the prior
20 testimony in the defense case, and thus the State has called a
21 rebuttal witness on that issue.

22 I will tell you ladies and gentlemen, that the photograph
23 which I am going to admit over the objection of the defense is
24 not to be considered by you as to whether or not the defendant
25 committed the crimes for which he is charged here. It is not

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1 for that purpose. It is being admitted for the purpose of
2 determining credibility and believability of the witness, if
3 you believe that it is important. It is up to you to give
4 weight to any evidence. You give it the weight that you deem
5 it is entitled to. That is the purpose for which the State
6 puts it in.

7 And I tell you that you should use it only for that
8 purpose.

9 It is the same thing that the evidence came in about the
10 Military record of the defendant. It is not for the purpose
11 of showing whether or not he may have committed the crime for
12 which he is charged today. But whether he is credible and
13 believable as a witness when he took the witness stand.

14 Now, you may proceed.

15 **MS. BURCH:** Thank you, Your Honor.

16 Q. Mr. Cave, if you will look at that picture, 264, and just
17 describe it to the jury.

18 A. It looks like he is standing in a bathroom.

19 Q. Who is standing?

20 A. The defendant. He is holding up a small phone in front
21 of a mirror taking a picture of himself with nothing on,
22 and covering up with his other hand.

23 Q. And it was stored on the SD card that was in what has
24 been offered as the defendant's phone?

25 A. Yes, ma'am.

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1 **MS. BURCH:** No further questions, Your Honor. Please
2 answer any questions Mr. Cannarella may have.

3 **MR. CAVE:** Yes, ma'am.

4 **MR. CANNARELLA:** If that is all he has, Your Honor, I
5 don't have any questions.

6 **THE COURT:** All right. Sir, you may step down.

7 **MR. CAVE:** I just wanted to apologize for my appearance
8 today, sir. It was short notice, and I --

9 **THE COURT:** I don't think you knew you were going to be
10 on the witness list today, so that is fine, sir. Please watch
11 your step as you leave the witness box.

12 All right. Is there any further reply testimony from the
13 State?

14 **MS. BURCH:** No, Your Honor.

15 **THE COURT:** All right. Then ladies and gentlemen, the
16 testimony in the case is closed. But there is no need for us
17 at 4:40 in the afternoon to start arguments, charge, and then
18 you retire too deliberate. It is far too late in this day to
19 begin that process. I am going to ask you to come back
20 tomorrow morning, at 9:30 in the morning. What I would ask
21 you to do again, please keep an open mind, first of all
22 because you have not heard the arguments of the lawyers, nor
23 the charge on the law from the court. Secondly, don't discuss
24 this case either among yourself, if you run into one another
25 this evening somewhere or with a family member, because it is

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1 just not yet appropriate to have deliberations on the case.

2 Now, you are Mr. Owens, I believe, am I correct?

3 MR. OWENS: Yes, sir.

4 THE COURT: All right. Mr. Owens, you have had the
5 random chance of sitting in the foreman's seat throughout this
6 trial mostly. And, I know that you as well as other members
7 of the jury have paid close attention. And I am going to
8 appoint you foreperson of this jury. Don't let that worry
9 you. What that basically means, and I will talk with you a
10 little bit further about your role in my charge tomorrow, but
11 you just make sure everyone's opinion is heard, because
12 ultimately your verdict must be unanimous on these issues.
13 But I just tell you that in advance, so you can sort of,
14 settle that in your mind. And thank you in advance for
15 serving in that important position.

16 Now, we will see you tomorrow morning at 9:30. No more
17 testimony. It will be arguments from counsel, the charge on
18 the law, and you retire too deliberate.

19 Let's all remain where we are out of respect for this
20 jury as they depart this courtroom. We will see you at 9:30
21 tomorrow morning.

22 (Whereupon, the jury exits the courtroom at
23 4:19 p.m.)

24 MOTIONS

25 THE COURT: All right. Now, the jury is clear. Now,

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1 at the close of all the evidence, are there Motions from the
2 State or the defense with regard to the case?

3 MS. BURCH: None from the State, Your Honor.

4 MR. CANNARELLA: Your Honor, the defense motions are
5 the same now as they were at the close of the State's case.
6 And, the record would just reflect that insofar as the kiss
7 and the lewd act is concerned, there is no accompanying
8 actions or conduct that satisfy the elements of a lewd act
9 that typically accompany a kiss, even if it is a tongue to
10 tongue kiss.

11 And insofar as the solicitation is concerned, there is
12 --- he was just expressing what he wishes to do, but he is not
13 asking to do it.

14 THE COURT: All right. Counsel, again your argument is
15 basically an argument for the jury.

16 The court finds that with regard to the law, the State
17 has met a sufficient factual burden. There is evidence before
18 this jury tending to prove the guilt of the accused.

19 For that reason, the court denies any Motions to Directed
20 a Verdict in the defendant's favor.

21 MR. CANNARELLA: Thank you, Judge.

22 Very good. Just one moment, please.

23 (PAUSE.)

24 THE COURT: All right. Mr. Berry, your case has been
25 called, and your participation is no longer necessary with the

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1 preparation for closing argument. When you were a witness it
2 was different.

3 Your bond, whenever a case is called, your bond is no
4 longer in place. We are going to take you into custody this
5 evening. You will be brought back tomorrow to the courtroom
6 for the conclusion of the trial. Please go with the officer.

7 **MR. BERRY:** May I give my equipment, my stuff, my keys
8 to my car, everything to my children?

9 **THE COURT:** Yes, sir. You may turn and give whatever
10 personal effects you have to your family.

11 **(PAUSE.)**

12 **THE COURT:** All right. Anything further now for our
13 record, before we close this record for the day. From the
14 State?

15 **MS. BURCH:** Nothing, Your Honor.

16 **THE COURT:** From defense?

17 **MR. CANNARELLA:** No, Your Honor.

18 **THE COURT:** Counsel, let's go back in the back and have
19 a brief charge conference so that when we come tomorrow
20 morning, all we will need to do is argue and charge.

21 Court is in recess until 9:30 tomorrow morning.

22 (Whereupon, this case stands down for the day
23 at 4:22 p.m. on Wednesday, July 20, 2011.)

24 -- END OF DAY THREE --

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1 (Whereupon, the Court resumes these proceedings
2 at 9:20 a.m. on Tuesday, July 19, 2011.)

3 -- DAY FOUR OF TRIAL --

4 THE COURT: All right. Is the defense ready to argue?

5 MR. CANNARELLA: As soon as my client gets here, Judge.

6 THE COURT: All right. Very good. How about the
7 State?

8 MR. HOLT: We are, Your Honor. I just had to take my
9 presentation device down. I think I need two seconds after
10 Paul finishes to hook up three cables.

11 THE COURT: All right. How long do you believe your
12 closing will be, Mr. Cannarella?

13 MR. CANNARELLA: No more than thirty minutes, Judge.

14 THE COURT: All right. And, Mr. Holt?

15 MR. HOLT: Thirty-five to forty, Judge. It is going to
16 be very brief.

17 THE COURT: Okay. Very good.

18 (PAUSE.)

19 THE COURT: All right. Very good. Mr. Berry is in.
20 Welcome back to the courtroom.

21 Ladies and gentlemen of the jury, the closing, as you
22 know, is a time when lawyers may express an opinion about what
23 they believe the evidence has or has not shown. And I am
24 going to ask you to please be respectful of counsel during
25 their arguments. Their backs will be turned to you. Please

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1 do not indicate by a nod or a shake of your head, or any type
2 of body language response as to what your position is on their
3 argument. I ask you that out of respect for this jury.

4 All right. Please bring in the jury.

5 **MR. CANNARELLA:** You were talking to everybody about
6 that, Judge, right?

7 **THE COURT:** I am.

8 **MR. CANNARELLA:** I'm sorry.

9 **BAILIFF:** All right, sir.

10 (Whereupon, the jury enters the courtroom at
11 9:33 a.m.)

12 **THE COURT:** All right. Mr. Foreman, ladies and
13 gentlemen of the jury, welcome back. I trust you had a nice
14 evening.

15 And let me ask since we were last together, has any
16 member of the jury panel had a discussion with anyone
17 concerning the facts of this case, if so, please raise your
18 hand. Let's let the record reflect that no one has raised
19 their hand.

20 We are now at the point in the case where the lawyers
21 will come before you in what we call closing argument. As I
22 mentioned to you in the beginning, the way this case would end
23 is, we would have closing argument, charge on the law, and
24 then you would retire to deliberate.

25 The way that the closing arguments are structured is that

CLOSING ARGUMENT BY MR. CANNARELL

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1 And what the process is, is they take them over there to The
2 Care House, and they get a statement from them. And over
3 there at that time they are usually accompanied by their
4 parents, and they are accompanied by a medical examiner,
5 because the process is, and you will find out on the tape,
6 which is in evidence, which again talks about that the medical
7 examiner follows to see if the child has ever been molested,
8 because they want objective proof if the charges are more than
9 just simple innocent as David Young described the text
10 messages. Okay, that is one thing.

11 Now another. I am sure you saw how annotated I got
12 yesterday about this photograph that has come into evidence of
13 the defendant. Well, you know, Judge Baxley explained to you
14 the purpose for that photograph was evidence that was brought
15 in because the defendant denied or said, I don't know if this
16 is my phone or not. So that played really good into the hands
17 of the prosecution. Because then the principle of law that
18 comes in, well if he is denying that that is his phone, then
19 we can pull out a not so appealing picture of him off of the
20 SD-card that came out of that phone, and that is a picture of
21 him standing up there in a mirror alone showing --- revealing
22 his abs to himself. That came off of his phone. There is no
23 allegations anywhere that anybody else had any access to that
24 phone so they could view those pictures. It came off of his
25 phone. And I want to make sure that you understand that that

CLOSING ARGUMENT BY MR. CANNARELL

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1 picture didn't come off of that camera phone, or off of a
2 phone that that child had. But see that picture is supposed
3 to be used only for the purposes of saying that it is really
4 his phone and he denied it. Well, what reason would he have
5 to deny that that was his phone if he didn't on the witness
6 stand really believe that it wasn't his phone. But see what
7 they want to do is, they want to get up here and say, that
8 when all of this started happening, Kris took his phone and
9 deleted all of his text messages off of there. Well, you have
10 got all of the text messages that came in that we put up on
11 the screen, that are from Kris to Minor to Kris, Minor
12 to Jerry, and Jerry to Minor. That is there. So the point
13 that I am trying to make is, when you see that picture, that
14 picture has nothing to do -- like the Judge told you, that
15 picture has nothing to do with guilt or innocence. But you
16 know that it could be real inflammatory. You know, there are
17 a few people that you just don't like after sitting up here
18 watching this trial, and he is one of them and this is another
19 good reason for me not to like him. I am just going to
20 convict him based on this picture. Because it inflames, it is
21 calculated really to want you to make a decision based on your
22 emotions. See, you don't make decisions in this courtroom
23 based on your emotions. You base the decisions in this
24 courtroom based on evidence which comes from the witness stand
25 whether you like him or whether you don't like him. You have

CHARGE ON THE LAW

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1 intent to perform a sexual activity in the presence of that
2 person.

3 Now, during the course of this trial, the defendant
4 testified. Took the stand here in the courtroom, you observed
5 that, under oath, and made certain explanations. But I charge
6 you, it is not incumbent upon the defendant to prove his
7 explanations or anything else for that matter. The
8 defendant's plea of not guilty places the burden of proof of
9 the State to prove the defendant guilty beyond a reasonable
10 doubt. And the defendant must be proven guilty beyond a
11 reasonable doubt before any finding of guilt can occur on a
12 particular charge. You must gauge credibility and
13 believability of the defendant as you would any other witness.
14 Again I say to you, as I have said many times, the burden of
15 proof is always --- it always remains on the State. And the
16 defendant is not required to prove his innocence. The burden
17 of proof remains with the State.

18 Now, these charges, although they arise out of what might
19 be called core operative facts, are independent. Meaning,
20 that the defendant has more than one charge against him. He
21 has two charges. And I charge you that these Indictments are
22 separate and they are distinct, and you must consider them
23 individually. And your verdict on one does not control your
24 verdict on the other. Again I say to you, your verdict on one
25 does not control your verdict on the other.

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1 the video, then please knock on the door so that we can send
2 in one of our Clerk's personnel in to operate the computer for
3 them, so as not to have a problem with access and things that
4 may be unrelated to this case. All right, sir?

5 **CLERK OF COURT:** Yes, sir.

6 **THE COURT:** Please bring our alternates back when you
7 come out.

8 **CLERK OF COURT:** Yes, sir.

9 (Whereupon, the jury begins deliberations at
10 11:22 a.m.)

11 **THE COURT:** All right. Ms. Williamson and Mr.
12 Yarborough, I want to thank you for your service in this case.

13 (Whereupon, Judge Baxley thanks the alternate
14 jurors off the record.)

15 **THE COURT:** All right. Ladies and gentlemen, before we
16 recess awaiting on the call of the jury, let me just say this
17 while we are all assembled together.

18 This case has been well tried. I am in the courtroom
19 every day. I know you are not, and as I told the jury, for
20 that you say, thank goodness. But, I watch a lot of lawyers
21 all over this state. And this is a difficult case, because of
22 the human emotion and lives that are entangled within it. And
23 it could have easily broken down into finger-pointing, and
24 constant objections, and arguments that would have made this
25 process much more difficult, but it didn't. And I attribute

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1 that to the way that you ladies and gentlemen conducted
2 yourself throughout the trial, and the way your counsel
3 conducted themselves. I am grateful for the professionalism
4 shown on everyone's part. This case is now in the hands of
5 the jury. That is the strength of our system. And we will
6 respect whatever their decision is. But, regardless of what
7 it is, your side, your position has been taken. You heard it
8 happen right here in the courtroom, fully taken to this jury
9 in a professional cogent, concise argument. So, again I
10 commend you for the way you have conducted yourselves
11 throughout this trial, and the lawyers you chose to represent
12 you in these proceedings.

13 Now, we will stand down awaiting the call of the jury.
14 We have some probation matters we are going to take up as
15 well. But for the next few minutes we will be in recess,
16 probably for five to ten minutes.

17 **CLERK OF COURT:** They want to see the video.

18 **THE COURT:** Yes, if they want to see the video, please
19 take the computer back to them.

20 Court is in recess now pending further call of the jury,
21 and probation matters.

22 (Whereupon, the court is in recess awaiting the
23 call of the jury from 11:25 a.m. until 3:08 p.m.)

24 **THE COURT:** All right. We are advised that the jury
25 has a verdict. Is there anything for the record, before the

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1 jury comes in and the verdict is read. What says the State?

2 MS. BURCH: Nothing from the State.

3 THE COURT: And from defense?

4 MR. CANNARELLA: Nothing, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, again
6 this has been a highly contested and hard fought case.
7 Please, out of respect for this jury, withhold any reactions
8 that you may have. Remember the decorum of this court. And
9 please maintain order when the verdict is published. And
10 please bring in the jury.

11 (Whereupon, the jury enters the courtroom at
12 3:12 p.m.)

13 THE COURT: Welcome back to the courtroom ladies and
14 gentlemen of the jury, Mr. Foreman. I am advised Mr. Foreman
15 that the jury has reached a verdict. Is that correct?

16 MR. FOREMAN: Yes, sir.

17 THE COURT: Would you please give your verdict form to
18 our clerk?

19 MR. FOREMAN: Yes, sir.

20 THE COURT: Thank you. Let's let the record reflect
21 that the verdict form is appropriately filled out, and is
22 signed by the foreperson.

23 And now, the defendant, please rise. And the clerk will
24 publish the verdict.

25 PRESENTATION OF VERDICT

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1 **CLERK OF COURT:** Your Honor, this is case numbers
2 2010-GS-16-1364 and 2011-GS-16-0894, The State of South
3 Carolina versus Kristopher Wilmont Berry, Defendant.

4 The verdict. Please answer both questions below, sign
5 the verdict form, return to the courtroom.

6 Question one: Charge. As to the charge of committing
7 or attempting a lewd act on a minor, we the jury unanimously
8 and beyond a reasonable doubt find the defendant, Kristopher
9 Wilmont Berry not guilty.

10 If this is your verdict, would you so signify by raising
11 your right hand, please? Okay. All twelve jurors --

12 **THE COURT:** Let's let the record reflect that all
13 twelve jurors have raised their hand.

14 **CLERK OF COURT:** As to count two. As to the charge of
15 criminal solicitation of a minor, we the jury, unanimously and
16 beyond a reasonable doubt find the defendant, Kristopher
17 Wilmont Berry, guilty.

18 If this is your verdict, would you so signify by raising
19 your right hand please? All twelve.

20 **THE COURT:** All right. Let's let the record reflect
21 that all twelve jurors have responded affirmatively.

22 **CLERK OF COURT:** This is signed by the foreperson, Mr.
23 Chad Owens, July 21, 2011.

24 **THE COURT:** All right. Mr. Berry, you may be seated.
25 And now, while we are in the presence of the jury, are there

THE STATE VERSUS KRISTOPHER W. BERRY

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1 any inquiries or Motions for which a jury response would be
2 necessary; first from the State?

3 MS. BURCH: No, Your Honor.

4 THE COURT: And now from defense?

5 MR. CANNARELLA: Your Honor, out of an abundance of
6 precaution, I would like for the court to poll the jury.

7 THE COURT: All right. Ladies and gentlemen, the
8 defense has asked that the jury be polled, and this is what
9 that process is. We will call each of the jurors by name.
10 When your name is called, please stand. And you are going to
11 be asked two questions by the Clerk, which are basically going
12 to be this. Was this your verdict? And is it still your
13 verdict? If you would please respond accordingly when your
14 name is called. You may proceed, Mr. Clerk.

15 POLL THE JURY

16 CLERK OF COURT: Okay. Thank you, Your Honor.
17 The foreperson, Mr. Chad Owens. Was that your verdict?

18 MR. OWENS: Yes.

19 CLERK OF COURT: And is it your verdict now?

20 MR. OWENS: Yes.

21 CLERK OF COURT: Okay. Thank you. Loretta Moore, was
22 that your verdict then?

23 MS. MOORE: Yes, it is.

24 CLERK OF COURT: And is it your verdict now?

25 MS. MOORE: Yes, it is.

THE STATE VERSUS KRISTOPHER W. BERRY

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1 CLERK OF COURT: Thank you. Janie Thomas, was that
2 your verdict then?

3 MS. THOMAS: Yes.

4 CLERK OF COURT: And is it your verdict now?

5 MS. THOMAS: Yes.

6 CLERK OF COURT: Okay. Thank you. Edward Johnson, was
7 that your verdict then?

8 MR. JOHNSON: Yes, sir.

9 CLERK OF COURT: And is it your verdict now?

10 MR. JOHNSON: Yes.

11 CLERK OF COURT: Okay. Thank you. Natasha Caesar, was
12 that your verdict?

13 MS. CAESAR: Yes.

14 CLERK OF COURT: And is it your verdict now?

15 MS. CAESAR: Yes.

16 CLERK OF COURT: Okay. Thank you. Melissa Smith, was
17 that your verdict then?

18 MS. SMITH: Yes.

19 CLERK OF COURT: And is it your verdict now?

20 MS. SMITH: Yes.

21 CLERK OF COURT: Okay. Thank you. Sophia Gregg, was
22 that your verdict then?

23 MS. GREGG: Yes.

24 CLERK OF COURT: And is it your verdict now?

25 MS. GREGG: Yes.

THE STATE VERSUS KRISTOPHER W. BERRY

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1 CLERK OF COURT: Okay. Thank you. Chanise Grant, was
2 that your verdict then?

3 MS. GRANT: Yes.

4 CLERK OF COURT: And is it your verdict now?

5 MS. GRANT: Yes.

6 CLERK OF COURT: Okay. Thank you. Mary McInville, was
7 that your verdict then?

8 MS. MCINVILLE: Yes.

9 CLERK OF COURT: And is it your verdict now?

10 MS. MCINVILLE: Yes.

11 CLERK OF COURT: Okay. Thank you. Anthony Wilson, was
12 that your verdict then?

13 MR. WILSON: Yes.

14 CLERK OF COURT: And is it your verdict now?

15 MR. WILSON: Yes.

16 CLERK OF COURT: Okay. Thank you. Tracy Tuplin, was
17 that your verdict then?

18 MS. TUPLIN: Yes.

19 CLERK OF COURT: And is it your verdict now?

20 MS. TUPLIN: Yes.

21 CLERK OF COURT: Okay. Thank you. Angela Gilmore, was
22 that your verdict then?

23 MS. GILMORE: Yes.

24 CLERK OF COURT: And is it your verdict now?

25 MS. GILMORE: Yes.

THE STATE VERSUS KRISTOPHER W. BERRY

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1 **CLERK OF COURT:** Thank you. My records reflect that
2 that would be all twelve jurors. If your name was not called,
3 would you please stand. Thank you.

4 **THE COURT:** Thank you, Mr. Clerk. Now, all the jurors
5 have responded in the affirmative to both questions. Are
6 there questions while in the presence of the jury from
7 defense?

8 **MR. CANNARELLA:** No, Your Honor.

9 **THE COURT:** All right. Very good. Then ladies and
10 gentlemen, we are going to go into a sentencing proceeding
11 now. But, I always give the jury the option of remaining or
12 departing. You are not required to be here for the sentencing
13 proceedings. You may wish to, but again that is your
14 decision.

15 What I am going to do is I am going to come down and
16 speak to you though. I am going to let you leave the jury
17 box, go back to the jury room, and then if you wish to come
18 back and have a seat in the back of the courtroom, which would
19 allow you to leave at any time if you wish, then we will give
20 you that opportunity.

21 In a few days -- and in fact, Mr. Suggs, do you have
22 everything ready?

23 **CLERK OF COURT:** I do, Your Honor.

24 **THE COURT:** The county has a small check for your per
25 diem, and for your service here. It is certainly not enough

SENTENCING HEARING

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1 your daughter would feel the same.

2 What I saw in this case was a very mature young lady who
3 redirected and refocused a predator who was just working on
4 her, and she had the sense of self, and presence of mind to
5 change the subject, and switch it out, and push it back, and
6 that is a high mature level of someone of her age in dealing
7 with someone two, going on three times her age, and it was
8 very impressive. But for her reluctance, and for her
9 responses, this case --- we may have been trying something
10 here far worse, and I am glad that we were not.

11 And finally I would say to you, I don't want you to take
12 the jury's decision of a not guilty on a lewd act, and somehow
13 believe that the jury rejects your versions of facts, or
14 doesn't accept what you say, or find you not to be a credible
15 witness. I think there was a substantial question of whether
16 or not a kiss is a lewd act under South Carolina law. The
17 jury reached the decision on the facts. I respect that
18 decision, but I don't want you to receive it somehow as a
19 repudiation on that issue, because it clearly is not.

20 Now, with that, do you have something that you wish to
21 say?

22 STATEMENT BY MR. TRENT JOHNSON

23 MR. JOHNSON: Yes, sir. I am very proud of **Minor**.

24 THE COURT: Let me say to you, please remember you
25 testified, so you remain under oath from the time you

SENTENCING HEARING

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1 There have been no convictions. Thank God for his plea,
2 I guess it was a plea. But the Court martial he agreed to a
3 plea. It is interesting that the women there --- that there
4 were women involved there too. I think he is a deviant. And,
5 while I have nothing but sympathy for his family, in some
6 strange way sympathy to him and it is all because I don't feel
7 like he had the moral capacity to understand that even now I
8 committed a very serious crime. A lewd act took place. It
9 took place. And I understand what the jury --- they had to
10 weigh the evidence, and make up their own mind. But it took
11 place. So we --- These are some of the first experiences that
12 our fourteen-year-old daughter got to have. And I am sure
13 there are a thousand other things, but I will stop here.

14 Thank you, Your Honor.

15 **THE COURT:** All right. Thank you, Mr. Johnson for your
16 comments.

17 All right. Ladies and gentlemen, one comment I will make
18 before I sentence the defendant. There was a reference to a
19 witness just a moment ago that was made in the courtroom. The
20 State, before this case was called to trial attempted to put
21 in some evidence, what we call prior bad acts. There was a
22 young lady who came forward and said that she had had a
23 similar experience with the defendant. But I excluded that
24 evidence, because under South Carolina Rules of Evidence, it
25 has to be similar in almost every respect. That young lady

SENTENCING HEARING

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1 was not a gym student. She was not the recipient of a
2 telephone or a camera from the defendant. There were several
3 dissimilarities. That conduct had never been charged. That
4 is, there were no criminal charges that had ever been brought.
5 Thus, under prevailing precedence, the court did not permit
6 it. That was a reference that was just made by Mr. Johnson as
7 to that witness. Again, it is not that we are attempting to
8 hide things from the jury. It is just an opportunity --- or
9 at that point a responsibility on the court to protect the
10 rights of the defendant to prevent unconvicted conduct
11 allegations really from coming before the jury. Because the
12 real question was, did this occur? Were these allegations
13 proved by the Solicitor to the jury.

SENTENCE OF THE COURT

14
15 **THE COURT:** All right. Mr. Berry, sir, you know, you
16 are not charged with robbery here, but really this is what it
17 was, because, you have stolen the innocence of a young girl.
18 You have stolen the privacy of a family. And you have stolen
19 the dignity of a young girl and her family. To have your
20 first crush published here in the courtroom for all the public
21 to see, and the embarrassment of all that what you might call
22 private drama in a fourteen-year-old's mind, is a very
23 demeaning thing. And you took the position throughout this
24 trial that all that you did was in the sense of and an
25 opportunity to protect **Minor** when really that was inconsistent

SENTENCING HEARING

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1 with the very fact that you chose to go forward to trial. To
2 air all of this out with overwhelming and substantial evidence
3 against you, and not only damage those who are the victims
4 here, but damage your family who is seated behind you. In
5 other words, as I look around you, sir, I see people in deep
6 distress all around you, while you sit there in a sea of calm
7 over actions that you have taken. And I hope you will listen
8 to what Mr. Johnson has said, because there is accuracy in his
9 words that you need to be aware sir that what you have done is
10 a serious crime. And you have not only committed solicitation
11 of a minor, but again you have stolen the dignity and the
12 innocence and really the young and tender years of at least
13 one person, and perhaps others.

14 For those reasons, I sentence you to ten years in The
15 Department of Corrections. I provide that after you serve
16 five of those, you will be place on Probation.

17 I am going to require you to pay a five thousand-dollar
18 fine.

19 And while you are on Probation, I am going to require you
20 to follow the rules of Probation. And one of those rules
21 shall be that you shall have no social or business contact
22 with any female under the age of twenty-one-years.

23 I am going to remand you now to the custody of the
24 Detention Center for transport to The Department of
25 Corrections.

SENTENCING HEARING

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1 Good luck to you, sir.

2 All right. As we close this record, is there anything
3 further now from defense?

4 **MR. CANNARELLA:** Your Honor, would you repeat that
5 sentence one more time.

6 **THE COURT:** The sentence is ten years, suspended upon
7 --- requiring him to serve five. Then, after service of five
8 he shall be on Probation for five-years. During that
9 probation, he will be required to serve all of the rules of
10 probation, including this rule that I am adding which is, no
11 social or business contact with any female under the age of
12 twenty-one-years while he is on Probation.

13 **MR. CANNARELLA:** A split sentence.

14 **THE COURT:** It is a split sentence.

15 **MR. CANNARELLA:** Five-years suspended to five --

16 **THE COURT:** A ten-year sentence, five of which he must
17 serve actively, the other five on Probation. Again, he is
18 going to be required to register as a sex offender. He is
19 going to be on the Child Abuse Registry. And also, Mr.
20 Cannarella, you should inform you client that he is subject to
21 a Sexual Violent Predator Proceeding, when he reaches the end
22 of his sentence from the Attorney General's Office, if they
23 believe that to be appropriate, which would keep him in
24 detention longer than he would have to serve under the five
25 year sentence.

SENTENCING HEARING

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1 All right. Anything further now from the State?

2 MS. BURCH: No, Your Honor. Thank you.

3 THE COURT: From the defense?

4 MR. CANNARELLA: No, Your Honor.

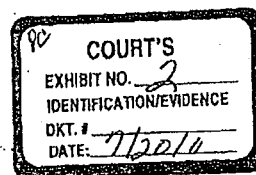
5 THE COURT: All right. Hearing none, then ladies and
6 gentlemen, to the Berry family, I am sorry that it has ended
7 this way. I wish you well, ladies and gentlemen.

8 And to the Johnson family, as you close this chapter and
9 move forward, best wishes to you.

10 This court is now in recess.

11 (Whereupon, these proceedings were concluded at
12 5:53 p.m. on Thursday, July 21, 2011.)

13 --- END OF TRANSCRIPT ---



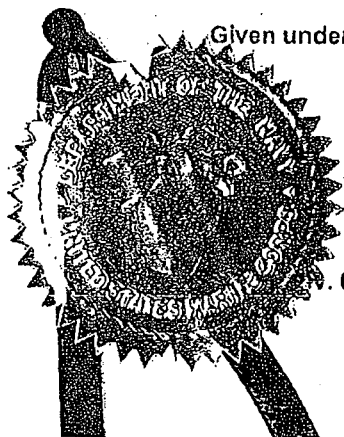
HEADQUARTERS U.S. MARINE CORPS

Quantico, VA 22134-5030

Certificate

I HEREBY CERTIFY that the attached reproductions are true copies of the DD Form 214, DD Form 215 and disciplinary documents from the Official Military Personnel File of Kristopher W. BERRY, 0303, a former member of the U.S. Marine Corps, and that the original record: (A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (B) was kept in the course of regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice.

the original(s) of which are in my official custody on file in the Manpower Management Division, Headquarters, U.S. Marine Corps.



Given under my hand this

15th

day of

July

2011

J. A. SHATTUCK

Deputy, Manpower Management Support Branch

Manpower Management Division

09-08)

Adobe 8.0 Designer

CAUTION: NOT TO BE USED FOR
IDENTIFICATION PURPOSESTHIS IS AN IMPORTANT RECORD.
SAFEGUARD IT.ANY ALTERATIONS IN SHADED AREAS
RENDER FORM VOID

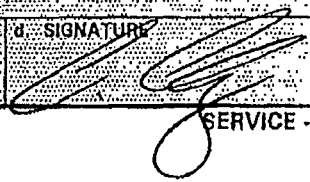
CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) BERRY, Kristopher Willmont		2. DEPARTMENT, COMPONENT AND BRANCH USMC-11		3. SOCIAL SECURITY NUMBER [REDACTED]				
4a. GRADE, RATE OR RANK LCpl	b. PAY GRADE E-3	5. DATE OF BIRTH (YYYYMMDD) 19740907		6. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD) 00000000				
7a. PLACE OF ENTRY INTO ACTIVE DUTY Ft Jackson MBPS Ft Jackson, SC 29207-6025		b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) [REDACTED]						
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 1st Marine Corps District LI NY 11530			b. STATION WHERE SEPARATED MCRSC Springfield, MA (RUC 80001)					
9. COMMAND TO WHICH TRANSFERRED N/A			10. SGLI COVERAGE AMOUNT: \$ 250,000					
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 0351, Assaultman, 3 years 7 months 0311, Rifleman, 2 years 4 months 8552, Martial Arts Trainer, 2 years 2 months 8411, Recruiter, 1 year 6 months			12. RECORD OF SERVICE					
			a. DATE ENTERED AD THIS PERIOD			YEAR(S)	MONTH(S)	DAY(S)
			b. SEPARATION DATE THIS PERIOD			2005	03	09
			c. NET ACTIVE SERVICE THIS PERIOD			12	04	27
			d. TOTAL PRIOR ACTIVE SERVICE			00	00	00
			e. TOTAL PRIOR INACTIVE SERVICE			00	01	13
			f. FOREIGN SERVICE			00	07	02
			g. SEA SERVICE			00	11	07
h. EFFECTIVE DATE OF PAY GRADE			2005	03	09			
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) Marine Corps Good Conduct Medal (x3), Navy and Marine Corps Achievement Medal, Military Outstanding Volunteer Service Medal, Combat Action Ribbon, Army Commendation Medal, Global War on Terrorism, Armed Forces Expeditionary Medal (x2), National Defense Service Medal (x2), Humanitarian Service Medal (x3), Sea Service Deployment Ribbon (x2)			14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) Marine Corp Recruit Training, 12 wks, 1092, Marine Combat Training, 4 wks, 0293, Close Combat Instructor, 2 wks, 0595, Close Combat Trainer, 16 wks, Assault Climbers, 3 wks, 0799, Anti-Tank Assaultman, 4 wks, 0493, Corporal Leadership Course, 4 wks, 0597, German Army Mountain Warfare Training, 12 wks, 0500					
15a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM			YES ☒ NO ☐					
b. HIGH SCHOOL GRADUATE OR EQUIVALENT			YES ☒ NO ☐					
16. DAYS ACCRUED LEAVE PAID 0.0/0.0		17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION						
18. REMARKS Item 13: CONT: Navy Meritorious Unit Commendation, Joint Meritorious Unit Award (x2), Certificate of Commendation (x7), Certificate of Appreciation (x3), Letter of Appreciation (x6), Meritorious Mast (x2), Letter of Commendation Item 14: CONT: Good Conduct Medal period commenced: 20031121 Member contributed \$1,200 to MGIB. Ser: 80001-2005-002 The information contained herein is subject to computer matching within the Department of Defense or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and/or continued compliance with, the requirements of a Federal benefit program.								
19a. MAILING ADDRESS AFTER SEPARATION (Include ZIP Code) 300 Westover Drive Hartsville, SC 29550			b. NEAREST RELATIVE (Name and address - Include ZIP Code) [REDACTED]					
20. MEMBER REQUESTS COPY 6 BE SENT TO: SC			DIRECTOR OF VETERANS AFFAIRS ☒ YES ☐ NO ☐					
21. SIGNATURE OF MEMBER BEING SEPARATED [Signature]			22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) C. Chavez, GySgt, Admin Chief					

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)		
23. TYPE OF SEPARATION Discharged		24. CHARACTER OF SERVICE (Include upgrades) UNDER OTHER THAN HONORABLE CONDITIONS
25. SEPARATION AUTHORITY MARCORPSEPMAN PAR 6419	26. SEPARATION CODE KFS1	27. REENTRY CODE RB-4
28. NARRATIVE REASON FOR SEPARATION In Lieu of Trial By Court Martial		
29. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD) None		30. MEMBER REQUESTS COPY 4 (Initials)

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CORRECTION TO DD FORM 214,
CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) BERRY, KRISTOPHER		2. DEPARTMENT, COMPONENT AND BRANCH USMC-11		3. SOCIAL SECURITY NUMBER (Also, Service Number if applicable)	
4. MAILING ADDRESS (Include ZIP Code)					
5. ORIGINAL DD FORM 214 IS CORRECTED AS INDICATED BELOW:					
ITEM NO.		CORRECTED TO READ			
11		SEPARATION DATE ON DD FORM 214 BEING CORRECTED: 20050309			
		Primary Speciality corrected to read: 0351, Assaultman, 3 years 7 months, 0311, Riflemen, 2 years 4 months, 8552, Martial Arts Trainer, 2 years 2 months			
14		Helicopter Suspension Course, 3 wks, 0903, SOTG Qualified Assault Climber, 3 wks, 0799, Infantry Squad Leader Course, 4 wks, 0299, Military Operations Urban Terrain, 2 wks, 1099			
		SER: 80001-2005-003			
6. DATE (YYYYMMDD) 20050309		7. OFFICIAL AUTHORIZED TO SIGN			
		a. TYPED NAME (Last, First, Middle Initial)	b. GRADE	c. TITLE	d. SIGNATURE
		Chavez, C.	GySgt	Admin Chief	

DD FORM 215, FEB 2000
(PRTF-WHS/DIOR)

PREVIOUS EDITION IS OBSOLETE.

SERVICE - 2

ONMPK

C

OFFENSES AND PUNISHMENTS (1070)

GOOD CONDUCT MEDAL PERIOD COMMENCES:

981013 (2D AWD) 03/12/21
 981013 03/12/21
 981013 03/12/21

SELECTED MARINE CORPS RESERVE MEDAL / ARMED FORCES RESERVE MEDAL PERIOD COMMENCES.

BERRY

KRISTOPHER W

250 45 C3 Q3

NAME (LAST, FIRST, MIDDLE)

SSN

UNIT PUNISHMENT BOOK (5812)
NAVMC 10132 (REV. 4-02) (Previous editions ☐ be used.) (EF)
SN: 0109-LF-984-4100

Distribution:

Original copy to SRB/OOR
Copy to: OMPF, UNIT FILES, MEMBER

← Staple Additional pages here.

1. OFFENSES (To include specific circumstances and the date and place of commission of the offense.)

6. UA fr Taunton High School, Taunton, MA dur the prd 0800, 23 Oct 03 through 1000, 23 Oct 03.

2. I have been advised of and understand my rights under Article 31, UCMJ. I also have been advised of and understand my right to demand trial by court-martial in lieu of non-judicial punishment. I ☒ (do not) demand trial and (will) (will not) accept non-judicial punishment subject to my right of appeal. I further certify that I (have) (have not) been given the opportunity to consult with a military lawyer, provided at no expense to me, prior to my decision to accept non-judicial punishment.

(DATE) 24 Oct 03

(Signature of accused) [Signature]

3. The accused has been afforded these rights under Article 31, UCMJ, and the right to demand trial by court-martial in lieu of non-judicial punishment.

(DATE) 24 Oct 03

(Signature of immediate CO of accused) [Signature]

4. BOOKER STATEMENT: I have been given the opportunity to consult with a lawyer, provided by the Government at no cost to me, in regard to a pending NJP for violation of Article (s) 86 of the UCMJ. I understand I have the right to refuse that NJP. I ☒ (do not) choose to exercise that right. I further understand that acceptance of NJP does not preclude my command from taking other adverse administrative action against me.

(DATE) 24 Oct 03

(Signature) [Signature]

5. UNAUTHORIZED ABSENCES (in excess of 24 hours) AND MARKS OF DESERTION

6. FINAL DISPOSITION TAKEN AND DATE

Forf of \$1118 pay per month for 2 months. Total for \$2236. 21 Nov 03.

7. SUSPENSION OF EXECUTION OF PUNISHMENT, IF ANY.

21 Nov 03. Forf of \$1118 pay per month for 2 months. Total for \$2236 susp for 6 months.

8. FINAL DISPOSITION TAKEN BY (Name, grade, title)

THOBURN III, Major, Commanding Officer

9. Upon consideration of the facts and circumstances surrounding (this offense) (~~these offenses~~) and upon further consideration of the needs of military discipline in this command, I have determined the offense (s) involved herein to be minor and properly punishable under Article 15, UCMJ, such punishment to be that indicated.

(Signature of CO who took final disposition in 6) [Signature]

10. DATE OF NOTICE TO ACCUSED OF FINAL DISPOSITION TAKEN.

2003/11/21

11. The accused has been advised of the right of appeal.

2003/11/21

(DATE)

(Signature of CO who took final action in 9) [Signature]

12. Having been advised of and understanding my right of appeal, at this time I ☒ (do not intend) to file an appeal.

2003/11/21

(DATE)

(Signature of accused) [Signature]

13. DATE OF APPEAL, IF ANY.

Not Appealed.

14. DECISION ON APPEAL (IF APPEAL IS MADE), DATE THEREOF, AND SIGNATURE OF CO WHO MADE DECISION.

(DATE)

(Signature of CO making decision on appeal)

15. DATE OF NOTICE TO ACCUSED OF DECISION ON APPEAL.

16. REMARKS

17. Final administrative action, as appropriate, has been completed.

UD# 440

DTD 03/21/03

INIT [Signature]

18. UNIT

Recruiting Station Springfield, 105 East Street, Chicopee, MA 01020

19. INDIVIDUAL (Last name, first name, middle initial)

Berry, Kristopher W.

20. GRADE
Sgt, E-5

21. SSN

250 49 0303



RECORD OF CONVICTION BY COURT-MARTIAL (1070)

1. ORGANIZATION
AITCo, SOI, MCB, CamPen, CA 92055

2. TRIED BY
(Check one)



SUMMARY COURT-MARTIAL



SPECIAL COURT-MARTIAL



SPECIAL COURT-MARTIAL

DATE OF TRIAL

990615

3. SUMMARY OF CHARGES AND SPECIFICATIONS

Chg 1: Viol Art 121 UCMJ:

Spec 1: Did, at Camp Pendleton, CA, between about February 1999 and May 1999, steal the following items, to wit: one (1) ACER open Pentium Computer, one (1) Optquest Monitor, each of a value of over \$100.00, and one (1) Zenith Keyboard, of some value, all military property, the property of the United States Government.

4. FINDINGS OF EACH CHARGE AND SPECIFICATIONS

Chg 1: G, Spec 1, Chg: G

4A. ACCUSED:



WAS REPRESENTED BY COUNSEL



WAIVED REPRESENTATION BY COUNSEL



WAS NOT REPRESENTED BY COUNSEL

5. SENTENCE ADJUDGED:

Red to E-4, for of \$990.00 pay per mo for one mo (total for \$990.00) and 60 days restr. Restr for 60 das be suspended for six mos, at which time, unless sooner vacated, the restr will be rem w/o further act.

6. CONVENING AUTHORITY'S ACTION:

The courts-martial had jurisdiction over the accused and the offense to which there is an approved finding of guilty;
The specification as to which there is an approved finding of guilty states and offenses; and
The sentence is legal.

DATE OF ACTION

990707

7. COMPLETE ONE



DISBURSING OFFICER NOTIFIED Date:



PAY STATUS NOT AFFECTED

8. SIGNATURE
R. D. GARCIA

R.D. Garcia

9. GRADE
2NDLT

10. TITLE AND ORGANIZATION
LEGALC, HQSPTBN, SOI, MCB, CAMPEN, CA

BERRY

KRISTOPHER

W.

250 49 0303

NAME (Last)

(First)

(Middle)

SSN

NAVMC 118(13) (REV. 9-88)

SN: 0000-00-000-2906 U/I: PADS OF 50

(File in SSB)

13 ☐

(Signed copy to Commandant of the Marine Corps) (Code 1A)

UD# 194-990712



UNITED STATES MARINE CORPS
MARINE CORPS RECRUIT DEPOT/EASTERN RECRUITING REGION
P.O. BOX 18001
PARRIS ISLAND, SOUTH CAROLINA 29905-8001

5800

SJA/MJO

03 FEB 2005

SECOND ENDORSEMENT on Sgt Berry's ltr 5800 DEF/JAS of 02 Feb 05

From: Commanding General, Marine Corps Recruit Depot/Eastern
Recruiting Region, Parris Island, South Carolina
To: Commandant of the Marine Corps (MMSB), Headquarters U.S.
Marine Corps, 2008 Elliot Rd., Suite 200, Quantico, VA

Subj: REQUEST FOR SEPARATION IN LIEU OF TRIAL BY SPECIAL COURT-
MARTIAL IN THE CASE OF SERGEANT KRISTOPHER W. BERRY, [REDACTED]
[REDACTED] 351/8411, U.S. MARINE CORPS

1. Readdressed and forwarded.
2. Based on the foregoing proceedings, the request of Sergeant Berry for separation in lieu of trial by court-martial is approved. Sergeant Berry will be separated from the U.S. Marine Corps pursuant to paragraph 6419 of reference (a). The characterization of service is other than honorable.
3. By copy hereof, the Commanding Officer, First Marine Corps District is directed to take the aforementioned action within ten working days of receipt of this action and report the separation date as a new ECC via unit diary entry immediately. Assign the reenlistment code as RE-4 and the separation code as KFS1.

R. T. TRYON

Copy to:
1MCD
SJA
DC

The proceedings have been reviewed
and are sufficient in law and fact.

M. W. FISHER, JR.
Col USMC
Staff Judge Advocate

Stallworth GySgt Matthew

From: CMC WASHINGTON DC MRA MM MMEA85
 Posted At: Monday, December 20, 2004 9:30 AM
 Conversation: SUBJ/RELIEF FOR CAUSE C/O K W BERRY 250 49 0303/0351 USMC
 Posted To: MMEA85
 Subject: R 201429Z DEC 04 SUBJ/RELIEF FOR CAUSE C/O K W BERRY 250 49 0303/0351 USMC
 Importance: Low

TO FIRST MCD GARDEN CITY LI NY(uc) (E-mail)
 CC CMC WASHINGTON DC MRA MM MMEA85
 CMC WASHINGTON DC MRA MM MMEA82
 (E-mail)
 CG MCRC QUANTICO VA(uc) (E-mail)

MSGID/GENADMIN/CMC MMEA-85//
 SUBJ/RELIEF FOR CAUSE C/O K W BERRY [REDACTED] B/0351 USMC//
 REF/A/DOC/CO MCRS SPRINGFIELD MA/YMD:20040412//
 REF/B/DOC/MIFE/YMD:19890622/1000//
 NARR/REF A IS RELIEF FOR CAUSE PACKAGE. REF B IS MCO P1000.6 (ACTS
 MANUAL)//
 GENTEXT/REMARKS/-//
 RMKS/1. ACK RECEIPT OF REF A. RELIEF FOR CAUSE IS APPROVED
 2. IAW REF B, PARA 3105.3B, SNM'S DIST HQ IS AUTH TO VOID AMOS
 8411.//

OMPF



UNITED STATES MARINE CORPS

1ST MARINE CORPS DISTRICT

605 STEWART AVENUE, GARDEN CITY, N.Y. 11530-4761

IN REPLY REFER TO:

1330

Legal

10 SEP 2004

FIRST ENDORSEMENT on CO, RS SPR ltr 5800 Admin of 12 Apr 04

From: Commanding Officer, 1st Marine Corps District
 To: Commandant of the Marine Corps (MMEA)
 Via: (1) Commanding General, Marine Corps Recruit
 Depot/Eastern Recruiting Region (Attn: AC/S Rctg)
 (2) Commanding General, Marine Corps Recruiting Command
 (A)

Subj: RELIEF FOR CAUSE OF SERGEANT KRISTOPHER W. BERRY
 [REDACTED] /0351/8411 USMC

Encl: (4) Command Investigation dtd 29 Mar 04

1. Forwarded, recommending that Sgt Berry be relieved for cause due to recruiter malpractice.
2. By engaging in recruiting malpractice, Sgt Berry has forfeited the privilege of serving as a recruiter. The Commanding Officer, Recruiting Station Springfield and I have lost all trust and confidence in Sgt Berry. A command investigation (enclosure (4)) revealed that he provided diet pills to an applicant to help her lose weight in order to be within standards. Furthermore, he encouraged Ms. [REDACTED] to lie about a qualifying psychological condition.
3. Sgt Berry's SDA pay was terminated 2 June 2004.

T. F. May
 T. F. MAY
 Acting

Copy to:
 CO, RS SPR
 PersO

180-040927



UNITED STATES MARINE CORPS
MARINE CORPS RECRUIT DEPOT/EASTERN RECRUITING REGION
P.O. BOX 18001
PARRIS ISLAND, SOUTH CAROLINA 29905-8001

5800
SJA/MJO

03 FEB 2005

SECOND ENDORSEMENT on Sgt Berry's ltr 5800 DEF/JAS of 02 Feb 05

From: Commanding General, Marine Corps Recruit Depot/Eastern
Recruiting Region, Parris Island, South Carolina
To: Commandant of the Marine Corps (MMSB), Headquarters U.S.
Marine Corps, 2008 Elliot Rd., Suite 200, Quantico, VA

Subj: REQUEST FOR SEPARATION IN LIEU OF TRIAL BY SPECIAL COURT-
MARTIAL IN THE CASE OF SERGEANT KRISTOPHER W. BERRY, [REDACTED]
[REDACTED]/0351/8411, U.S. MARINE CORPS

1. Readdressed and forwarded.
2. Based on the foregoing proceedings, the request of Sergeant Berry for separation in lieu of trial by court-martial is approved. Sergeant Berry will be separated from the U.S. Marine Corps pursuant to paragraph 6419 of reference (a). The characterization of service is other than honorable.
3. By copy hereof, the Commanding Officer, First Marine Corps District is directed to take the aforementioned action within ten working days of receipt of this action and report the separation date as a new ECC via unit diary entry immediately. Assign the reenlistment code as RE-4 and the separation code as KFS1.

R. T. Tryon
R. T. TRYON

Copy to:
1MCD
SJA
DC

The proceedings have been reviewed
and are sufficient in law and fact.

M. W. Fisher Jr.
M. W. FISHER, JR.
Col USMC
Staff Judge Advocate



UNITED STATES MARINE CORPS

Recruiting Sub Station Fall River
101 President Avenue, Fall River, Ma, 02720
Telephone 508-674-5533

From: SNCOIC RSS Fall River
To: Commanding Officer, RS Springfield

Sub: SGT Berry case of [REDACTED]

[REDACTED] enlisted into the Delayed Entry Program on 030919. He was interviewed by the NCOIC on 040407. The following was discussed during this interview. Mr. [REDACTED] stated that at the time of enlistment he was currently under the care of a physician, and taking anti-seizure medication. He stated that he told Sgt. Berry of his medical condition to include the fact that he had had multiple seizures in the last few years but intended to take himself off. Sgt. Berry's reply was for him to go about what he was doing and that he would put himself on the line. Mr. [REDACTED] said that he and Sgt. Berry knew it was a disqualifying factor and that they could get in trouble. But Sgt. Berry was willing to help him because he knew how bad he wanted to be a Marine. This is one more example of Sgt. Berry's questionable recruiting ethos where in he is willing to risk not only his career but the lives of individuals and Marines alike to write a contract. Mr. [REDACTED] is a motivated young man that comes from a Marine Corps family.

M. A. Cianci

MA Cianci *SGT/RS*

GYSGT/ SNCOIC

Enclosure (5)



RU. 2/0 1

APR. 1. 2001 11:44AM

JUL 1 2004 3:40AM

NO. 3/0 P. 12



UNITED STATES MARINE CORPS

Recruiting Sub Station Fall River
101 President Avenue, Fall River, Ma, 02720
Telephone 308-674-5553

To: Executive Officer, RS Springfield
From: Staff Sergeant Cianol, M.A.,

Sub: SGT Berry case of [REDACTED]

[REDACTED] is a young lady that Sgt. Berry was working to process into the United States Marine Corps. Do to the fact that Sgt. Berry had been working this applicant for an extended period of time, The NCOIC requested a meeting with her. Sgt. Berry was to arrange this meeting. After the third unsuccessful attempt, SSgt. Killough was assigned to arrange the meeting which took place the same day. Upon meeting with [REDACTED], SSgt. Cianol personally interviewed her. The following is the results of that interview.

Miss [REDACTED] disclosed to SSgt. Cianol in the presence of SSgt. Killough (ANCOIC) that she had not set an appointment with Sgt. Berry, she had met him in school and had agreed to swing by the office sometime. Miss [REDACTED] stated that she had recently been switched from Paxil to Prozac in the first week of Jan. as a result of depression and anxiety attacks she suffers from. She is also under the care of a psychologist for these matters. She had smoked Marijuana days prior to the interview. Miss [REDACTED] said she annotated these in the MCOB during screening and does not recall what Sgt. Berry said about them. She currently weighed 145 lbs. Which was down from 150lbs at the time of the interview. At 5 foot 4 inches this put her at 12lbs above her max weight at the time of the interview. For this issue Sgt. Berry Had her coming in three times a week and doing physical training to include boxing and calisthenics. Which she estimated 15 people attend. She also stated Sgt. Berry gave her a copy of the Mayo Clinic diet which she attempted but could not maintain do to the cost and time restraints. Miss [REDACTED] was also noted as having two tattoos, 1) deceased boyfriends initials on her hip 2) @ twenty black dots on the top of her left hand. She explained the "interview" as not having taken the EST, (despite she failed the ASVAB in high school) did go through screening in the MCOB, and then Sgt. Berry talked about himself for a while. At this point SSgt. Cianol showed her the benefit tags and asked if she had ever seen them. She stated that she had only seen three of them, the ones that Sgt. Berry said applied to her. No action plan was discussed with her and she had no idea what the delayed entry program was. Nor did she have any idea what the enlistment process consisted of. She stated she had no intention of enlisting till after she turned 18. When asked if she was told any of these things might hamper her from becoming a Marine, she stated that she was never given any indication there may be a problem.

With this information SSgt. Cianol began to question Sgt. Berry about the interview, again in the presence of SSgt. Killough. Sgt. Berry stated that he had never claimed her as an appointment. And that she had scored a 42 on the EST. Initially he denied any knowledge of medications or psychological counseling. After further questioning he admitted she did in fact tell him about seeing a psychologist, and being on Prozac. But did not recall anxiety or

Enclosure (4)



JB
9/28/04

I met Sgt. Kris Berry on Yahoo instant messenger on August 27, 2004. He contacted me while I was in a chat room talking with friends. I was told he was single, with no children. We talked on line for over an hour that night, eventually exchanging phone numbers. I called Kris that night to verify that his phone number was real. We did not have any contact on line again. He called me on my cell phone on Wednesday, September 1, 2004. We talked for almost an hour; he was still representing himself as a single person. We talked again on Thursday, September 2, 2004; where we made plans to meet the following evening. Sgt. Berry said he did not have to work that day and would drive to Marlborough, to my home, to meet me. He was here from 5:00 pm until almost 10:00 pm. While Sgt. Berry was here, we engaged in sexual activity. He left me with some of his writing. We kept in touch via text messaging and a few emails until Thursday September 9, 2004 when we text messaged all day long. I offered to go see Sgt. Kris Berry at his home. He refused, stating he lived with another marine in a barrack style one-room place. He offered to meet me in Taunton, half way, stating he still had access to the building where he used to work. I drove to a building in Taunton, at the end of Route 140. Sgt. Berry was waiting for me in an empty parking lot. He said the place used to be a mall. Sgt. Berry took me into the building through a back door, near a loading dock. While we were there, we engaged in sexual activity in a small room at the back of a large empty room; he had placed a poncho liner on the floor. Sgt. Berry was acting nervous, frequently stopping to listen and smell the air. I finally asked if we were supposed to be in the building. Sgt. Berry said no. Then he said he definitely heard someone and we needed to get out of there. When we were outside, I asked if he had a key to the place, and he held up a short screwdriver and said, "Yeah, this is my key". Sgt. Berry wanted to walk around the building. We walked around the building to a recruiting office, where he wanted to show me a wall-sized mural in an office. The mural is a reddish, brown version of

ENCLOSURE (3)

JB
9/28/04

JB
9/28/04

the marine eagle, globe and anchor emblem. While we were there, he talked about his previous job and something along the lines of "He still wanted to get the guys back one day". He also said the he was the recruiter of the month at one time, and wasn't given credit for his hard work.

Wednesday, September 15, 2004 I was told by Sgt. Berry that his Grandfather had had a heart attack. On Thursday, September 16, 2004, I was told he needed to go home to South Carolina. On Friday, September 17, 2004, I called Sgt. Berry and he told me he was in South Carolina for two weeks, with his family.

On Friday, September 17, 2004, I phone the Marine Corps. detachment to inquire as to whether Kris Berry was truly a marine. I spoke with a woman who said she supports 200 marines in Newport RI and none of them were named Kris Berry. She gave me the number for the Army Reserve Center in Providence RI. I phoned after four o'clock and no one answered. The following morning I phoned the Reserve Center again. First Sgt. Parisi answered the phone, and I questioned him about whether or not there was a Sgt. Kris Berry at that site. First Sgt. Parisi asked what my relationship was to Sgt. Berry and why I was making these inquiries. I replied that our relationship was of a personal nature and when prompted, explained that it was of a romantic nature. In the course of the conversation with Sgt. Parisi I found out that Sgt. Kris Berry has a wife and two children. I asked that he call Sgt. Berry into his office, as I wanted to confront him. Instead, Sgt. Kris Berry called me directly, asking me "why I was calling his unit". Sgt. Berry agreed to give me his home address, so I could go and talk to her. [REDACTED] and I spent one hour forty-five minutes talking.

After speaking with First Sgt. Parisi several times during the week of September 20, 2004, he told me that he was bumping the situation back to Sgt. Kris Berry's prior command.

ENCLOSURE (3)

JB
9/28/04

Sgt. Kris Berry contacted me via phone on September 23, 2004, with his wife on the other line, asking me what my intentions were. He had called earlier in the day, leaving a voicemail, stating "Hi [REDACTED] this is Kris, I'm calling you trying to be courteous and everything like that, there's some issues that need to be discussed between you and I and [REDACTED] is going to listen into it as well. Uhm, the second time you and I had sex we did so in an illegal place and if there's charges come up they're are going to find out there were two people in there and not just one so we need to discuss this and get everything straightened out. Alright, bye." Sgt. Berry also text messaged me twice on Sunday, September 26, 2004, asking if he could call me.

Date:

9/28/04

Time:

8:20 PMSigned: [REDACTED]



UNITED STATES MARINE CORPS
FIRST MARINE CORPS DISTRICT
605 STEWART AVENUE
GARDEN CITY, NEW YORK 11530-4761

1910
SJA/MJO
2 FEB 2005

FIRST ENDORSEMENT on Sgt Berry's ltr 5800 DEF/JAS of 02 Feb 05.

From: Commanding Officer, First Marine Corps District, Eastern
Recruiting Region, Parris Island, South Carolina
To: Commanding General, Marine Corps Recruit Depot/Eastern
Recruiting Region, Parris Island, South Carolina

Subj: REQUEST FOR SEPARATION IN LIEU OF TRIAL BY SPECIAL
COURT-MARTIAL IN THE CASE OF SERGEANT KRISTOPHER W.
BERRY, [REDACTED] /0351/8411, U.S. MARINE CORPS

1. Forwarded, recommending approval.
2. I recommend an other than honorable characterization of service.

W. J. Foersch
W. J. FOERSCH

Copy to:
Sgt Berry
SJA
DC

OMPRF



UNITED STATES MARINE CORPS
 Depot Law Center
 Marine Corps Recruit Depot/Eastern Recruiting Region
 P.O. Box 19610
 Parris Island, SC 29905-9610

5800
 DEF/jas
 02 Feb 05

From: Sergeant Kristopher W. Berry, [REDACTED] U. S. Marine Corps

To: Commanding General, Marine Corps Recruit Depot/Eastern Recruiting Region, Parris Island, South Carolina 29905

Via: Commanding Officer, First Marine Corps District, Eastern Recruiting Region, Parris Island, South Carolina 29905

Subj: **REQUEST FOR SEPARATION IN LIEU OF TRIAL BY SPECIAL COURT-MARTIAL IN THE CASE OF SERGEANT KRISTOPHER W. BERRY, [REDACTED] /0351/8411, U. S. MARINE CORPS**

Ref: (a) MCO P1900.16F (MARCORSEPMAN)
 (b) Rule 410, Military Rules of Evidence

Encl: (1) Memorandum of Advice Concerning Separation in Lieu of Trial
 (2) Copy of Preferred Charge Sheet
 (3) Purpose and Scope of NDRB and BCNR
 (4) Pertinent Pages of Sgt Berry's OMPF
 (5) Letters written on behalf of Sgt Berry
 (6) Statement by Sgt Berry
 (7) Statement by [REDACTED]

1. In accordance with paragraph 6419 of reference (a), I respectfully request that I be administratively separated in lieu of trial by special court-martial. I understand that the least favorable characterization of discharge that may be awarded under these circumstances is an **other than honorable discharge**. I am requesting a **general (under honorable conditions) discharge** in lieu of trial by special court-martial. My attorney has explained to me that this request is not binding on the Separation Authority, and that he may nevertheless characterize my discharge as under **other than honorable conditions**.

2. I have been afforded the opportunity to consult with a lawyer. I have been advised concerning this matter by Captain J. A. Schwab, U. S. Marine Corps, a Judge Advocate certified in accordance with Article 27(b) of the Uniform Code of Military

Subj: REQUEST FOR SEPARATION IN LIEU OF TRIAL BY SPECIAL COURT-MARTIAL IN THE CASE OF SERGEANT KRISTOPHER W. BERRY, [REDACTED]
[REDACTED] 0351/8411, U. S. MARINE CORPS

Justice. I am satisfied with the advice of this attorney. A memorandum of his advice is included in enclosure (1).

3. My attorney has explained to me and I understand the elements of the offenses set forth in enclosure (2). For purposes of this request, I admit that I am guilty of the charged offenses of violating Article 84 of the UCMJ, unlawful enlistment; Article 92 of the UCMJ, violating a lawful regulation; Article 130, unlawful entry; and Article 134 of the UCMJ, adultery and obstruction.

4. Having discussed this matter with counsel, I believe this request is in my best legal and personal interest. I understand that I have an unqualified right to withdraw this request at any time prior to it being approved by the discharge authority, and that any statement submitted by myself or my counsel in connection with this request for separation in lieu of trial by special court-martial is not admissible against me in a court-martial except as provided by Military Rule of Evidence 410.

5. I understand that my separation from the Naval Service, affected by acceptance of this request, will most likely be with a separation under other than honorable conditions, which will be issued without further referral to or consideration of my case by an administrative discharge board. I understand that by accepting a separation under other than honorable conditions, I may be deprived of virtually all rights as a veteran under both Federal and State legislation and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of the separation received there from may have a bearing. I have been advised of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records, as contained in Chapter 1 of the ref (a) and in enclosure (3).

6. I further understand that even though I have acknowledged that I would most likely receive a separation under other than honorable conditions as a result of the submission of this request for separation in lieu of trial by special court-martial, the discharge authority may direct my separation with the type of separation warranted by my military record, either

Feb 01 05 06:44p

Defense Section, PISC

(843) 228-3648

P.1

Subj: REQUEST FOR SEPARATION IN LIEU OF TRIAL BY SPECIAL COURT-
MARTIAL IN THE CASE OF SERGEANT KRISTOPHER W. BERRY, [REDACTED]
[REDACTED]/0351/8411, U. S. MARINE CORPS

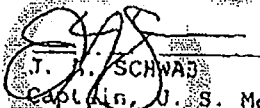
honorable or general under honorable conditions, as provided in
enclosure (4).

7. I understand that I may submit a statement in my behalf. I
also understand that any statements submitted by me or my
counsel in connection with this request would not be admissible
against me in a court-martial except as provided by reference
(b).

050131
Date


K. W. BERRY
Sgt, U. S. Marine Corps
Accused

050201
Date


J. A. SCHWAB
Captain, U. S. Marine Corps
Detailed Defense Counsel

ADVICE CONCERNING SEPARATION IN LIEU OF TRIAL (SILT)

I understand that a charge has been preferred i.e., someone has signed charges under oath, against me for allegedly violating the following articles of the Uniform Code of Military Justice: Article 84, fraudulent enlistment; Article 92, dereliction of duties; Article 107, false official statement; Article 130, unlawful entry; and Article 134, adultery.

Captain J.A. Schwab, U. S. Marine Corps, has explained to me that I can request a separation in lieu of trial discharge from the Commanding General to avoid trial by special court-martial. The following has also been explained to me:

a. I am eligible to request a separation in lieu of trial discharge since a charge has been preferred against me for an offense punishable by a punitive discharge (such as a bad conduct discharge).

b. The elements of the offense for which I would be tried at a court-martial and the evidence that would be used at trial to prove the offense. Also, in my separation in lieu of trial discharge request, I must acknowledge guilt of an offense or a lesser-included offense punishable by a punitive discharge.

c. If I were tried by a special court-martial, then I could plead guilty or not guilty at trial. If I plead guilty, or was found guilty at trial, then I could receive the following punishment: bad conduct discharge; forfeiture of two-thirds (2/3) pay per month for one year; confinement for one year; and reduction to E-1. I understand that I would have to serve the remainder of my enlistment (as extended by the time of unauthorized absence, if any) if the court-martial did not award a bad conduct discharge, or if it did award such a discharge, but the officer who convened the court-martial suspended the discharge.

d. A finding of guilty at a special court-martial is a federal conviction, and a bad conduct discharge awarded by a special court-martial is a punitive discharge. A separation in lieu of trial discharge is an administrative separation, and if the Commanding General approves my request, then I will avoid trial by special court-martial, a federal conviction, and a possible punitive discharge. The character of most administrative discharges is one of the following: honorable, general (under honorable conditions), or other than honorable (OTH). The character or quality of a separation in lieu of trial discharge is almost always under "other than honorable conditions" (OTH). An OTH discharge is the worst characterization of administrative discharge. An OTH discharge has several adverse effects. It will cause me to lose almost all of the military, Veterans Administration and other benefits given to someone who receives a discharge under honorable conditions. An OTH discharge may cause me difficulty in obtaining a civilian or government job. It may also adversely affect my status in the community.

e. An OTH discharge is not upgraded to honorable or general by the passage of time or by my future good conduct in the civilian community. I may ask the Navy Discharge Review Board or Board for Correction of Naval records to upgrade my OTH discharge, but they will probably not do so since I requested the discharge to avoid trial by court-martial. The purpose and scope of those agencies is attached hereto and I have read and understand the contents. An other than

ENCLOSURE (7)

Jan 26 05 11:21a

Defense Section, PISC

(843) 228-3649

p. 6

honorably discharge awarded for a period of continuous absence of 180 days or more is a conditional bar to benefits administered by the Veterans Administration despite any action of the Navy Discharge Review Board.

f. I should request a separation in lieu of trial discharge only if I do not desire to serve the remainder of my enlistment and only if I do not desire to choose a trial by court-martial.

g. After reading and understanding all the information typed above, I request a separation in lieu of trial discharge to avoid trial by special court-martial. Under no circumstances do I desire to serve the remainder of my enlistment, and I will accept a separation in lieu of trial discharge in order to leave the Marine Corps.

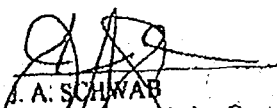
h. My request for a separation in lieu of trial discharge is freely and voluntarily made without coercion or pressure in any form from any person.

050127
Date

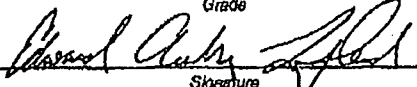
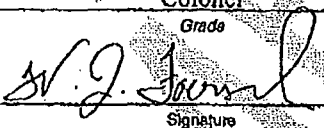
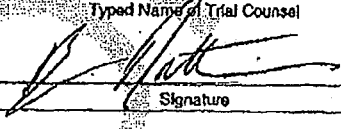

K. W. BERRY
Sgt, U.S. Marine Corps
Accused

I advised the accused of the information explained above, and I am fully satisfied that the accused understands the information and consequences of requesting a separation in lieu of trial discharge.

050202
Date


J. A. SCHWAB
Captain, U. S. Marine Corps
Detailed Defense Counsel

CHARGE SHEET					
I. PERSONAL DATA					
1. NAME OF ACCUSED (Last, First, MI)		2. SSN	3. RANK/RATE	4. PAY GRADE	
BERRY, KRISTOPHER W.		50 [REDACTED]	Sgt	E-5	
5. UNIT OR ORGANIZATION			6. CURRENT SERVICE		
~~RS New Jersey~~ <i>BPN 10JAN05</i> First Marine Corps District, Garden City, NY			a. INITIAL DATE Reenlist: 29 Jun 02		
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED		
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	9. DATE(S) IMPOSED		
2450.70 \$2367.90	<i>BPN 10JAN 05</i> N/A	2450.70 \$2367.90	N/A		
II. CHARGES AND SPECIFICATIONS					
(SEE SUPPLEMENTAL PAGES)					
III. PREFERRAL					
11a. NAME OF ACCUSER (Last, First, MI)		b. GRADE	c. ORGANIZATION OF ACCUSER		
CLAUSEN, JASON J.		LCpl	HqSvcBn, MCRD, PISC		
d. SIGNATURE OF ACCUSER		e. DATE			
<i>[Signature]</i>		21 Oct 04			
AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this <u>21st</u> day of <u>October</u> , 20 <u>04</u> , and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.					
B.P. NUTTER Typed Name of Officer Captain, U.S. Marine Corps Grade and Service <i>[Signature]</i> Signature			HqSvcBn, MCRD, PISC Organization of Officer Trial Counsel Official Capacity to Administer Oaths (See A.C.M. 307(b)—must be commissioned officer)		

12. On <u>28 October</u> , 20 <u>04</u> , the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)		
<u>E. A. LOFLAND</u> Typed Name of Immediate Commander		<u>IMCD, GARDEN CITY, NY</u> Organization of Immediate Commander
<u>Captain</u> Grade  Signature		
IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY		
13. The sworn charges were received at <u>1300</u> hours, <u>25 October</u> 20 <u>04</u> at <u>IMCD, GARDEN CITY, NY</u> Designation of Command or		
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)		
FOR THE <u>COMMANDING OFFICER</u> <u>E. A. LOFLAND</u> Typed Name of Officer <u>Captain</u> Grade  Signature		<u>Legal Officer</u> Official Capacity of Officer Signing
V. REFERRAL SERVICE OF CHARGES		
14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY <u>FIRST MARINE CORPS DISTRICT</u>	b. PLACE <u>GARDEN CITY, NY</u>	c. DATE <u>1 NOV 2004</u>
Referred for trial to the <u>Special</u> court-martial convened by <u>Special court-martial convening order #01-9403</u> <u>BN</u>		
DATED <u>19</u> <u>28</u> <u>MAY</u> 20 <u>04</u> <u>BN</u> , subject to the following instructions: ² <u>None.</u>		
By <u>////////////////////</u> of _____ Command or Order		
<u>W. J. FOERSCH</u> Typed Name of Officer <u>Colonel</u> Grade  Signature		<u>COMMANDING OFFICER</u> Official Capacity of Officer Signing
15. On <u>12 JANUARY</u> , 20 <u>05</u> , I (caused to be) served a copy hereof on (each of) the above named accused.		
<u>B. P. NUTTER</u> Typed Name of Trial Counsel  Signature		<u>Captain, USMC</u> Grade or Rank of Trial Counsel
FOOTNOTES 1 -- When an appropriate commander signs personally, inapplicable words are stricken. 2 -- See R.C.M. 601(a) concerning instructions. If none, so state.		

SUBJ: CHARGE SE-LT IN THE CASE OF SERGEANT . KISTOPHER W. BERRY, [REDACTED], U.S. MARINE CORPS

Charge I: Violation of the Uniform Code of Military Justice, Article 84

Specification: In that Sergeant Kristopher W. Berry, U.S. Marine Corps, First Marine Corps District, Garden City, New York, did, at or near Recruiting Station Springfield, Massachusetts, on or about 19 September 2003, effect the enlistment of [REDACTED], as a Private in the United States Marine Corps, then well knowing that the said Mr. [REDACTED] was ineligible for such enlistment because Mr. [REDACTED] enlistment package failed to document:

- a) his prescription drug use reported by Mr. [REDACTED] during the applicant screening process, whereby without an appropriate waiver, such enlistment was prohibited by MCO P1100.72B (Military Personnel Procurement Manual), dated 10 December 1997; and
- b) that Mr. [REDACTED] was under the care of a physician for the treatment of seizures, a permanently disqualifying medical condition, which made Mr. [REDACTED] enlistment prohibited by MCO P1100.72B (Military Personnel Procurement Manual), dated 10 December 1997.

Charge II: Violation of the Uniform Code of Military Justice, Article 92

Specification 1: In that Sergeant Kristopher W. Berry, U.S. Marine Corps, First Marine Corps District, Garden City, New York, who knew or should have known of his duties at Recruiting Station Springfield, Massachusetts, on or about 19 September 2003, was derelict in the performance of those duties in that he willfully failed to follow applicant screening procedures set forth in MCO P1100.72B (Military Personnel Procurement Manual), dated 10 December 1997, by:

- a) failing to document a permanently disqualifying medical condition of seizures in the enlistment package of [REDACTED]; and
- b) coaching Mr. [REDACTED] to conceal that he was under the care of a physician for seizures,

as it was his duty to do.

SUBJ: CHARGE SIX AT IN THE CASE OF SERGEANT KRISTOPHER W. BERRY, [REDACTED], U.S. MARINE CORPS

Specification 2: In that Sergeant Kristopher W. Berry, U.S. Marine Corps, First Marine Corps District, Garden City, New York, who knew or should have known of his duties at Recruiting Station Springfield, Massachusetts, on or about 04 February 2004, was derelict in the performance of those duties in that he willfully failed to follow applicant screening procedures set forth in MCO P1100.72B (Military Personnel Procurement Manual), dated 10 December 1997, by:

- a) failing to document the permanently disqualifying medical conditions of depression and anxiety attacks in the enlistment package of [REDACTED];
- b) recording a fraudulent score on the enlisted screening test in [REDACTED] enlistment package;
- c) coaching Ms. [REDACTED] to conceal that she was under the care of a psychologist for the treatment of depression and anxiety attacks; and
- d) providing Ms. [REDACTED] with One-a-Day Diet Pills so that she could lose weight,

as it was his duty to do.

Charge III: Violation of the Uniform Code of Military Justice, Article 107

Specification: In that Sergeant Kristopher W. Berry, U.S. Marine Corps, First Marine Corps District, Garden City, New York, did, on or about 14 April 2004, with intent to deceive, make to Major Alan D. Thoburn III, U.S. Marine Corps, an official statement, to wit:

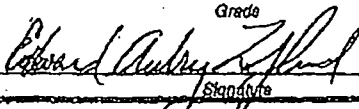
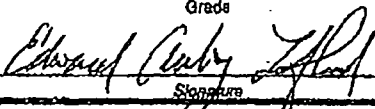
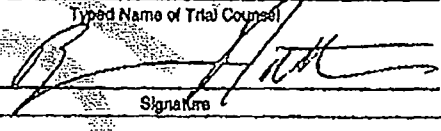
- a) that Gunnery Sergeant [REDACTED], U.S. Marine Corps, and Gunnery Sergeant [REDACTED], U.S. Marine Corps, engaged in and trained recruiters to "coach" applicants to conceal medical and moral issues in their enlistment packages;
- b) that Gunnery Sergeant [REDACTED], U.S. Marine Corps, and Gunnery Sergeant [REDACTED], U.S. Marine Corps, engaged in and encouraged the practice of providing diet supplements to overweight applicants;

SUBJ: CHARGE STATEMENT IN THE CASE OF SERGEANT CHRISTOPHER W. BERRY, [REDACTED], U.S. MARINE CORPS

- c) that Gunnery Sergeant [REDACTED], U.S. Marine Corps, and Gunnery Sergeant [REDACTED], U.S. Marine Corps, lied to applicants about enlistment programs and their availability; and
- d) that Gunnery Sergeant [REDACTED], U.S. Marine Corps, and Gunnery Sergeant [REDACTED], U.S. Marine Corps, engaged in and encouraged the practice of giving applicants unearned referral credits, also known as "feeding the pool,"

or words to that effect, which statement was totally false, and was then known by the said Sergeant Berry to be so false.

CHARGE SHEET				
I. PERSONAL DATA				
1. NAME OF ACCUSED (Last, First, MI) BERRY, KRISTOPHER W.		2. SSN [REDACTED]	3. RANK/RATE Sgt	4. PAY GRADE E-5
5. UNIT OR ORGANIZATION First Marine Corps District, Garden City, NY		AFADB 13 Oct 92 DOB [REDACTED]	6. CURRENT SERVICE a. INITIAL DATE: Reenlist: 29 Jun 02 b. TERM: 3 yrs	
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	9. DATE(S) IMPOSED	
\$2450.70	N/A	\$2450.70	N/A	
II. CHARGES AND SPECIFICATIONS				
(SEE SUPPLEMENTAL PAGES)				
III. PREFERRAL				
11a. NAME OF ACCUSER (Last, First, MI) MESSICK, SHAWN A.		b. GRADE LCpl	c. ORGANIZATION OF ACCUSER HqSvcBn, MCRD, PISC	
d. SIGNATURE OF ACCUSER <i>Shawn Messick</i>			e. DATE 10 January 2005	
AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this <u>10th</u> day of <u>JANUARY</u>, 20<u>05</u>, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.				
B.P. NUTTER Typed Name of Officer Captain, U.S. Marine Corps Grade and Service <i>[Signature]</i> Signature		HqSvcBn, MCRD, PISC Organization of Officer Trial Counsel Official Capacity to Administer Oaths (See R.C.M. 307(b)—must be commissioned officer)		

12. On <u>12 January</u> , 20 <u>05</u> , the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.) <u>E. A. LOFLAND</u> Typed Name of Immediate Commander <u>Captain</u> Grade  Signature <u>1MCD, GARDEN CITY, NY</u> Organization of Immediate Commander		
IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY		
13. The sworn charges were received at <u>0800</u> hours, <u>11 January</u> , 20 <u>05</u> , at <u>1MCD, GARDEN CITY, NY</u> Designation of Command or		
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)		
<u>E. A. LOFLAND</u> Typed Name of Officer <u>Captain</u> Grade  Signature FOR THE <u>COMMANDING OFFICER</u> <u>Legal Officer</u> Official Capacity of Officer Signing		
V. REFERRAL: SERVICE OF CHARGES		
14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY <u>FIRST MARINE CORPS DISTRICT</u>		b. PLACE <u>GARDEN CITY, NY</u>
c. DATE <u>12 JAN 2005</u>		
Referred for trial to the <u>Special</u> court-martial convened by <u>Special court-martial convening order #01-03</u>		
DATED <u>28</u> <u>March</u> , 20 <u>03</u> , subject to the following instructions: ² <u>To be tried in</u> <u>conjunction with the charges preferred on 21 October 2004 and referred on 1 November 2004.</u>		
By <u>////////////////////</u> of _____ Command or Order		
<u>T. F. MAY</u> Typed Name of Officer <u>Lieutenant Colonel</u> Grade  Signature <u>COMMANDING OFFICER</u> Official Capacity of Officer Signing		
15. On <u>12 JANUARY</u> , 20 <u>05</u> , I (caused to be) served a copy hereof on (each of) the above named accused. <u>B. P. NUTTER</u> Typed Name of Trial Counsel  Signature <u>Captain, USMC</u> Grade or Rank of Trial Counsel		
FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken. 2 - See R.C.M. 801(e) concerning instructions. If none, so state.		

SUBJ: ADDITIO. CHARGE SHEET IN THE CASE SERGEANT
KRISTOPHER W. BERRY, [REDACTED], U.S. MARINE CORPS

**Additional Charge I: Violation of the Uniform Code of
Military Justice, Article 130**

Specification: In that Sergeant Kristopher W. Berry, U.S. Marine Corps, First Marine Corps District, Garden City, New York, did, at or near Taunton, Massachusetts, on or about 9 September 2004, unlawfully enter a mall, the property of Mill River Professional Center, LLC, with intent to commit a criminal offense, to wit: wrongfully commit adultery with Ms. [REDACTED], a woman not his wife, therein.

**Additional Charge II: Violation of the Uniform Code of
Military Justice, Article 134**

Specification 1: In that Sergeant Kristopher W. Berry, U.S. Marine Corps, First Marine Corps District, Garden City, New York, a married man, did, at or near Marlborough, Massachusetts, on or about 3 September 2004, wrongfully have sexual intercourse with Ms. [REDACTED], a woman not his wife.

Specification 2: In that Sergeant Kristopher W. Berry, U.S. Marine Corps, First Marine Corps District, Garden City, New York, a married man, did, at or near Taunton, Massachusetts, on or about 9 September 2004, wrongfully have sexual intercourse with Ms. [REDACTED], a woman not his wife.

Specification 3: In that Sergeant Kristopher W. Berry, U.S. Marine Corps, First Marine Corps District, Garden City, New York, did, at or near Recruiting Station Springfield, Massachusetts and at or near Middletown, Rhode Island, on or about or between 18 September 2004 and 23 September 2004, wrongfully endeavor to impede an investigation and wrongfully endeavor to influence the testimony of Ms. [REDACTED] as a witness before a court-martial in the case of United States versus Sergeant Kristopher W. Berry, U.S. Marine Corps, by stating to the said Ms. [REDACTED]:

- a) "Don't go talk to 1stSgt Parisi,"
- b) "Why are you doing this? You're going to ruin me; I'll do anything if you don't do this,"
- c) "The second time you and I had sex, we did so in an illegal place, and if there's charges come up, they're going to find out there were two people in

SUBJ: ADDITIO. A CHARGE SHEET IN THE CASE OF SERGEANT
KRISTOPHER W. BERRY, 250 49 0303, U.S. MARINE CORPS

there and not just one, so we need to discuss this
and get everything straightened out," and

d) "Keep your mouth shut and this will go away,"

or words to that effect.

OMPRF

COPY

**PURPOSE AND SCOPE OF THE BOARD FOR CORRECTION OF NAVAL RECORDS
(BCNR) AND THE NAVAL DISCHARGE REVIEW BOARD (NDRB)**

The Board for Correction of Naval Records, consisting of not less than three members, was established pursuant to 10 U.S.C. 1552, and considers all applications properly before it for the purpose of determining the existence of an error or an injustice, and to make appropriate recommendations to the Secretary of the Navy. Application may be made by the member or former member, or such other persons, as the board determines to be competent for such purpose. The Board for Correction of Naval Records, unlike the NDRB, may review discharges awarded by general court-martial. Other types of cases reviewed by this board include, but are not limited to those involving requests for physical disability retirement; the cancellation of a physical disability discharge, and substituting, in lieu thereof, retirement for disability; and increase in the percentage of physical disability; the removal of derogatory material from an official record; the review of non-judicial punishment; and the restoration of rank, grade, or rating. Also, this board will review the case of a person who is in a Reserve component and who contends that the release from active duty should have been honorable, rather than under other than honorable conditions.

The law requires that applications be filled with the Board for Correction of Naval Records within 3 years of the date of the discovery of the error or injustice. However, the board is authorized to excuse the fact that the application was filed at a later date if it finds it to be in the interest of justice to consider the application. The board is empowered to deny an application without a hearing if it determines that there is insufficient evidence to indicate the existence of probable material error or injustice to the respondent.

This board will consider no application until the applicant has exhausted all other effective administrative remedies afforded by existing law or regulations, and such other legal remedies as the board shall determine are practical and appropriately available to the applicant.

An application to the board for the correction of a record shall not operate as a stay of any proceeding being taken with respect to the person involved.

The board will consider the applicant's case on the basis of all the material before it, including but not limited to, the application for correction filed by the applicant, any documentary evidence filed in the support of such applicant, and all available pertinent records in the Department of the Navy. The applicant's service record is but one of the records which may be considered by the board. In cases other than denied applications, the record of proceedings of the board will be forwarded to the Secretary of the Navy who will direct such action as determined to be appropriate.

In connection with review of executed discharges by the Board for Correction of Naval Records, there is no law or regulation that provides that an unfavorable discharge may be changed to a more favorable discharge solely because of the expiration of period of time after discharge during which the respondent's behavior has been exemplary. To permit relief, an error or injustice must be found to have existed during the period of the enlistment in question and

respondent's good conduct after discharge, in and of itself, is not sufficient to warrant changing an unfavorable discharge to a more favorable type of discharge.

Applications for review and explanatory matters may be obtained by writing the Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370.

The Navy Discharge Review Board (NDRB), consisting of five members, was established pursuant to 10 R.S.C. 1553 in order to review, on its own motion; or upon the request of any former member of the Navy or Marine Corps; or in the case of a deceased member or former member of the Navy or Marine Corps, upon the request of the surviving spouse, next of kin, or legal representative, or if incompetent by the member's guardian; the type and nature of final discharges in order to determine whether or not, under reasonable standards of naval law and discipline, the type and nature of the discharge should be changed, corrected, or modified, and if so, to decide what modification should be made. The board may also issue a new discharge in accordance with the facts presented to it.

The NDRB may review all final separations from the naval service, irrespective of the manner evidenced or brought about, except a discharge awarded by a general court-martial, or a discharge executed more than 15 years before date of review application. Such review is based on all available records of the Department of the Navy pertaining to the former member, and such evidence as may be presented or obtained by the board.

The NDRB has no authority to revoke any discharge; nor to reinstate any person in the military service subsequent to discharge; nor to recall any person to active duty; nor to waive prior disqualifying discharges to permit enlistment in the naval service or any other branch of the Armed Forces; nor to cancel enlistment contracts; nor to change, correct nor modify any document other than the discharge document; nor to change the reason for discharge from or to physical disability; nor to determine eligibility for veterans' benefits. The board may, at its discretion, record a recommendation for re-enlistment as part of its decision in any case; however, such recommendation is not binding upon the Commandant of the Marine Corps nor upon the Secretary of the Navy. Relevant and material facts germane to the former member concerned found by a general or special court-martial, or by a court of inquiry or board of investigation where the former member was in the status of a defendant or an interested party, as approved by the reviewing authorities, shall be accepted by the board as established facts in the absence of manifest error or unusual circumstances clearly justifying a different conclusion. Relevant and material facts stated in a specification to which the former member concerned pleaded guilty before a general or special court-martial, or where, upon being confronted by such a specification, the former member elected to request discharge for the good of the service, shall be accepted by the board as established facts in the absence of manifest error or unusual circumstances clearly justifying a different conclusion, or unless the former member shall show to the board's satisfaction, or it shall otherwise appear, that arbitrary or coercive action was taken against the member at the time, which action was not apparent to the reviewing authority from the face of the record.

The evidence before the board which may be considered in connection with the particular discharge document will normally be restricted to that which is relevant and material to the

former member's particular term of Marine Corps service or during that term of Marine Corps service, or at the time of separation.

In order to warrant a change, correction, or modification of the original document evidencing separation from the Marine Corps, the former member concerned must show to the satisfaction of the board, or it must otherwise satisfactorily appear, that the original document was improperly or inequitably issued under standards of naval law and discipline existing at the time of the former member's original separation, or under such standards differing therefrom in the former member's favor which subsequent to separation, were made expressly retroactive to separations of the type and character had by the former member.

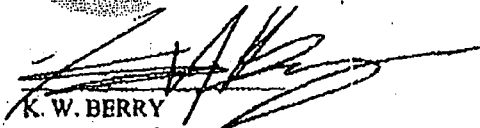
In connection with review of executed discharges by the NDRB there is no law or regulation that provides that an unfavorable discharge may be changed to a more favorable discharge solely because of the expiration of period of time after discharge during which the respondent's behavior has been exemplary. To permit relief, an error or injustice must be found to have existed during the period of the enlistment in question and the respondent's good conduct after discharge, in and of itself, is not sufficient to warrant changing an unfavorable discharge.

Application for review and explanatory matter may be obtained by writing the Navy Discharge Review Board, Department of the Navy, Washington D.C. 20370.

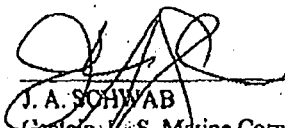
STATEMENT OF THE INDIVIDUAL

I have been advised of the purpose and procedure for making application to the Board for Correction of Naval Records and the Navy Discharge Review Board.

050127
Date


K. W. BERRY
Sgt, U.S. Marine Corps
Accused

050202
Date


J. A. SCHWAB
Captain, U.S. Marine Corps
Detailed Defense Counsel

Joseph SSgt Christian M

From: DMDS MCRC
 Sent: Monday, December 20, 2004 2:02 PM
 To: 1MCD DMS Messages; TRAFFIC ANALYSIS DMS
 Subject: R 201429Z DEC 04 SUBJ/RELIEF FOR CAUSE C/O K W BERRY 250 49 0303/0351 USMC
 Importance: Low



Org_Adde.txt

MSGID/GENADMIN/CMC MMEA-85//
 SUBJ/RELIEF FOR CAUSE C/O K W BERRY [REDACTED] 0351 USMC//
 REF/A/DOC/CO MCRC SPRINGFIELD MA/YMD:20040412//
 REF/B/DOC/MIFE/YMD:19890622/1000//
 NARR/REF A IS RELIEF FOR CAUSE PACKAGE. REF B IS MCO P1000.6 (ACTS
 MANUAL)//
 GENTEXT/REMARKS/-//
 RMKS/1. ACK RECEIPT OF REF A. RELIEF FOR CAUSE IS APPROVED.
 2. IAW REF B, PARA 3105.3B, SNM'S DIST HQ IS AUTH TO VOID AMOS.
 8411.//

8411
 ADmos void 041220
 B.I. doc Relieved Recruiter
 B.I. mos 9516

To 0000
 Lt # 0000

002/-050104



UNITED STATES MARINE CORPS
MARINE CORPS RECRUITING COMMAND
3280 RUSSELL ROAD
QUANTICO, VA 22134-5103

*Routed
12/7/04
Hinge*

IN REPLY REFER TO:
1330.

G-1

DEC 02 2004

THIRD ENDORSEMENT on CO, RS SPR ltr 5800 Admin of 12 Apr 04

From: Commanding General
To: Commandant of the Marine Corps (MMEA-85)

Subj: RELIEF FOR CAUSE OF SERGEANT KRISTOPHER W. BERRY
[REDACTED] /0351/8411 USMC

1. Forwarded for voidance of 8411 MOS. Sergeant Berry is pending a Special Court Martial. Any orders/discharge will be addressed at the completion of the court martial.

[Signature]
E. I. HARRISON
By direction

Copy to:
CG ERR
CO, 1ST MCD



UNITED STATES MARINE CORPS
MARINE CORPS RECRUIT DEPOT/EASTERN RECRUITING REGION
PO BOX 19001
PARRIS ISLAND, SOUTH CAROLINA 29905-9001

IN REPLY REFER TO:

1610

RCT

15 NOV 2004

SECOND ENDORSEMENT on CO, RS SPR ltr 5800 Admin dtd 12 Apr 04

From: Commanding General, Marine Corps Recruit Depot/Eastern Recruiting Region

To: Commandant of the Marine Corps (MMEA-85)

Via: Commanding General, Marine Corps Recruiting Command

Subj: RELIEF FOR CAUSE OF SERGEANT KRISTOPHER W. BERRY
[REDACTED] B/0351/8411 USMC

1. Forwarded, approved. The character of relief is "Relief for Cause" due to recruiter malpractice.

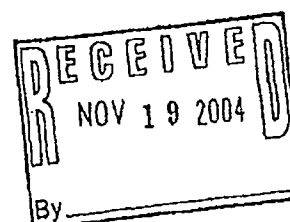
2. Accordingly, the following recommendations are made:

a. That his additional MOS of 8411 be voided.

b. That he be transferred from RS Springfield.

R. T. Tryon
R. T. TRYON

Copy to:
CG, MCRC
CO, 1st MCD
Dir, Rctg Scol





UNITED STATES MARINE CORPS

1ST MARINE CORPS DISTRICT

605 STEWART AVENUE, GARDEN CITY, N.Y. 11630-4761

IN REPLY REFER TO:

1330

Legal

10 SEP 2004

FIRST ENDORSEMENT on CO, RS SPR ltr 5800 Admin of 12 Apr 04

From: Commanding Officer, 1st Marine Corps District
 To: Commandant of the Marine Corps (MMEA)
 Via: (1) Commanding General, Marine Corps Recruit
 Depot/Eastern Recruiting Region (Attn: AC/S Rctg)
 (2) Commanding General, Marine Corps Recruiting Command
 (A)

Subj: RELIEF FOR CAUSE OF SERGEANT KRISTOPHER W. BERRY
 [REDACTED] /0351/8411 USMC

Encl: (4) Command Investigation dtd 29 Mar 04

1. Forwarded, recommending that Sgt Berry be relieved for cause due to recruiter malpractice.
2. By engaging in recruiting malpractice, Sgt Berry has forfeited the privilege of serving as a recruiter. The Commanding Officer, Recruiting Station Springfield and I have lost all trust and confidence in Sgt Berry. A command investigation (enclosure (4)) revealed that he provided diet pills to an applicant to help her lose weight in order to be within standards. Furthermore, he encouraged Ms. [REDACTED] to lie about a qualifying psychological condition.
3. Sgt Berry's SDA pay was terminated 2 June 2004.

T. F. May
 T. F. MAY
 Acting

Copy to:
 CO, RS SPR
 PersO



UNITED STATES MARINE CORPS

RECRUITING STATION SPRINGFIELD
103 EAST STREET
CHICOPEE MASSACHUSETTS 01020-3467

BY REPLY REFER TO:
5800
Admin
12 Apr 04

From: Commanding Officer, Recruiting Station Springfield
To: Commandant of the Marine Corps (MMEA)
Via: (1) Commanding Officer, 1st Marine Corps District
(2) Commanding General, Eastern Recruiting Region
(3) Commanding General, Marine Corps Recruiting Command (A)
Subj: RELIEF FOR CAUSE OF SERGEANT KRISTOPHER W. BERRY 250 49 0303/0351/8411
USMC
Ref: (a) Volume III, Guidebook for RS Operations
Encl: (1) Change of Primary Duty Fitness Report
(2) Recruiter's Training Record
(3) Acknowledgement of Relief

1. Request Sergeant Berry is relieved for cause due to recruiter malpractice. Specifically, a command investigation substantiated Sergeant Berry provided diet pills to Ms. [REDACTED] to help her lose weight in order to be within standards to join the Delayed Entry Program. Additionally, Sergeant Berry coached Ms. [REDACTED] to lie about a disqualifying psychological condition in order for her to process for enlistment.

2. Sergeant Berry History Screen in MCRISS is current and all investigations/inquiries have been entered.

3. No disciplinary action has been taken.

4. Sergeant Berry has been suspended from recruiting duties and I recommend his SDA pay be terminated immediately.

A. D. Thoburn III
A. D. THOBURN III



UNITED STATES MARINE CORPS

RECRUITING STATION SPRINGFIELD
103 EAST STREET
CHICOPEE MASSACHUSETTS 01020-3467

IN REPLY REFER TO:

5800

Admin

13 Apr 04

From: Sergeant Kristopher W. Berry [REDACTED] /0351/8411 USMC
To: Commanding Officer, Recruiting Station Springfield
Subj: RELIEF FOR CAUSE OF SERGEANT KRISTOPHER W. BERRY [REDACTED] [REDACTED] /0351/8411
USMC

Ref: (a) Volume III, Guidebook for RS Operations

Encl: (1) Change of Primary Duty Fitness Report
(2) Recruiter's Training Record

1. I acknowledge that I have been relieved for Cause as a canvassing recruiter for Recruiting Station Springfield.

2. I do/^{KWB}~~do not~~ desire to make a rebuttal to this relief.
KRISTOPHER W. BERRY

Enclosure (3)



UNITED STATES MARINE CORPS

RECRUITING STATION SPRINGFIELD

105 EAST STREET
CHICOPEE MASSACHUSETTS 01020

IN REPLY REFER TO:

5800

KWB

14 Apr 04

From: Sergeant Kristopher W. Berry [REDACTED] 351 USMC
 To: Commanding Officer, Recruiting Station Springfield

Subj: REBUTTAL STATEMENT CONCERNING RELIEF FOR CAUSE.

1. Before anything continues I feel that the time line needs to be corrected and upon closer examination of the evidence it will become apparent. I met [REDACTED] on 031218 at Bridgewater Raynham High School. I set an appointment with her on 031219. She did not show up for this appointment. This is the only time I counted her as an appointment. I then talked to her on 040107 and she said she would come by; however, I never annotated it on my S&R because she gave me the impression she was not coming in. I annotated this on her card. On February 4th I spoke with her at school and she said she would stop in, not as indicated in the upper and lower half of letter E. Only when she showed up did I put her name on my S&R. I interviewed her that day, not as indicated by the IO in the interview with SSgt Cianci and SSgt Killough in Letter C and Letter D. I then scheduled a follow up with her the next day, not an appointment as the IO indicated in Letter H. Another Time Gap that should be mentioned is from the time the SSgt Cianci searched my office on 20 February until the time it was officially reported on 3 March. This time can be verified by the Sergeant Major as I talked to him on that night. There are a few statements in the IO statement that I would also like to clear up. I did not say that I could no longer claim responsibility for my applicants. I said I did not want to be responsible for them.

2. Another point I would like to bring to light is the accusations of coaching Miss [REDACTED] into lying. As annotated by the IO She was never under the impression that she was disqualified for enlistment. Why then would she need to be coached to lie to the SNCOIC? She freely gave them the information they asked for. I NEVER coached her to lie to anyone and if you read through the information provided by the IO then it will become increasingly apparent. Another reason I never told her to lie about her qualifications is the fact that

Enclosure (3)

Subj: REBUTTAL STATEMENT CONCERNING RELIEF FOR CAUSE.

I really never had any solid plans to enlist her into the Marine Corps. What needs to be brought to light, though, is the fact that as recruiters, we are taught to "coach" these young men and women so that they pass screening at MEPS. In the past I have personally received verbal counseling for not ensuring that these kids are telling the "right" story at Meps. I have a package of one young man, [REDACTED] where he told me he was allergic to shellfish and I informed him to tell MEPS. He was determined disqualified and I received another verbal counseling by GySgt Soares on the points of "schooling" That Friday we were given a class on how to "school" and applicant. In fact what was to be my very first contract, [REDACTED], was schooled in front of me to prepare him for enlistment. He had done numerous amounts of drugs to include cocaine, acid, and marijuana. He came in as a referral from a young man recently graduated from Parris Island. Mr. [REDACTED] said he would not enlist under anyone other than GySgt Soares. GySgt Soares and myself met with him and this young Marine and GySgt Soares completed his package, unfortunately I signed my name to this package. Under the DASF where drugs used are to be annotated, they are all No's. This applicant was disqualified for a separate reason. Looking at this package you can see that the only handwriting on it is my signature. I have other packages to compare the handwriting to and they are in fact GySgt Soares handwriting. Even SSgt Cianci is at fault for this practice. A young lady, [REDACTED], came into my office looking for information. SSgt Cianci was being trained to take over and was at my office helping out. I am not entirely sure what I was doing but I was busy and he spoke with her. I do not know if she was given the EST but I am 100% sure she was never interviewed. When I asked SSgt Cianci about it he said, "she is all set just put some tags down and do up her package." She also informed him that she was going through Alcoholics Anonymous and living at a home for Alcoholics. She was told that it would disqualify her and that she needed to keep it to herself. On DD Form 2807-2 where number 16 should be marked Yes it is marked No. The Sunday she was to go up to join she brought in her sponsor and decided she was not ready to be a Marine. I was once again Chasticed for this. These are just two instances where those appointed above me showed me that this was the correct way of doing things. Additionally, the last thing SSgt Cianci would say to an applicant upon leaving screening would be "I don't care if you remember pushing your little sister down the stairs when you were three, if it ain't

Enclosure (3)

Subj: REBUTTAL STATEMENT CONCERNING RELIEF FOR CAUSE

in that package it didn't happen!" And when an applicant did remember something that was not brought up the recruiter and discovered at MEPS, [REDACTED] for example, I was chasticed for not knowing and then for not telling him to keep his mouth shut! One additional piece of paperwork that was done outside of the scope of enlistment was the Mental and Moral Screening Sheet. This paperwork had one sole purpose and that was to "protect" a recruiter from allegations from the applicant. So in fact, after we were told to coach these applicants to lie we had them fill out a form which they lied on so that when the truth came to light we had proof that they were the liars and not us. This is very similar to the situation I am in now. This is not Malpractice it's common practice?

3. The next point I would like to clarify is the use of Diet pills and a Diet plan. Up until 14 April I had no idea that over-the-counter vitamin/diet pills were not allowed to be used. Many copies of the Mayo Clinic diet were in my desk upon taking over as the recruiter in Taunton. We were told to get them where they needed to be by any means. One of these means were once again taught to me by GySgt Soares and then continuously encouraged by SSgt Cianci. This means was the magnesium citrate. It is a diuretic which is very effective at dehydration. The recruiters called it the "Green bottle of Death." SSgt Cianci was fond of another form which he called "White Lightin'." He would boast and jest about how he had used it when he was a recruiter and its effectiveness throughout the office. So once again is this Malpractice or Common Practice?

4. Referral Credit is credit given to a poolee or command recruiter who brought that person in to enlist. This is the way it should work but does not. I am being accused of giving undue credit to [REDACTED]. I did put her down as the source and here is my reasoning. GySgt Soares taught me that if you had a poolee who has proven his or her worth, who has gone above and beyond what any normal poolee would to reward them. I bring up the name [REDACTED]. GySgt Soares enlisted this young man and told him he would be a PFC before he went to boot camp. I had no knowledge of this until Jason told me about it. I addressed it to GySgt Soares and he told me about it. [REDACTED] was given two names neither of which did he know and was promoted before leaving bootcamp. Even more recent was Poolee [REDACTED]. He

Subj: REBUTTAL STATEMENT CONCERNING RELIEF FOR CAUSE.

had done a great job for Sgt Daponte and received a referral while in boot camp of someone he did not know. Poolee [REDACTED] was an exceptional poolee who helped many of my poolees and prospects get into physical shape before going to boot camp or joining. She brought in several people for interviews but none of them joined. Was it wrong to attempt to reward her hard work? I am sure that is, now. Once again was this Malpractice or common practice?

5. The "Lying recruiter" Stygma is going to be stuck with RSS Fall River for quite some time and not because of this instance. I will first tell you about a young man named [REDACTED]. His brother had Cancer and he wanted reserves. He did not want college and wanted a 4X4 plan. I was told that it was not a problem and for several months I mentioned it on and off throughout the period. On the day he was to ship he was told he could not have a 4X4 and had to sign a 6X2. He was being lied to and I was the instrument being used to try and correct it. I was being yelled at by GySgt Soares to "talk " this "kid" into a 6X2. Eventually the RS found a 4X4 but by this time [REDACTED] did not know who to believe and I do not blame him. I talked to him as I was told to get him to ship but when I went to talk with him in my office I was yelled at once again for wasting time with him. Eventually, GySgt Soares talked with him and called him a "Pussy" and said that he was afraid of the war. This young man said he would never join as long as GySgt Soares was in charge, I would not either. This is not the only instance where a poolee was outright lied to. [REDACTED] wanted to switch to reserves and GySgt Soares managed to convince him that he could do this after boot camp. He convinced him that Marines do it all the time. He then told me that "WE" needed to get our stories straight in case Mr. [REDACTED] said something different. He did not go to boot camp that time but did go on a reserve job later after GySgt Soares left. Another recent instance was with SSgt Cianci and [REDACTED]. This young man wanted to be infantry reserve and SSgt Cianci convinced him to be a Motor Vehicle Operator. Mr. [REDACTED] tried in vain to convince SSgt Cianci and opted to take the job after being told he could switch it when he moved away. Seeing through this Mr. [REDACTED] opted not to join because he was just being told what he wanted to hear. So as far as the "Lying Recruiter" Stygma, RSS Fall River had this long before this particular instance. So it would seem that lying to applicants is common practice, not malpractice

Subj: REBUTTAL STATEMENT CONCERNING RELIEF FOR CAUSE.

6. My NJP will be a subject that will haunt me for sometime as it is right now. I admitted that I was in my office when I was suppose to be at a Band Talk. The Band Talk was cancelled. The reason I was in there was a subject all on its own. Since mid-summer I had been having marital problems and when I would bring up the subject the SNCOIC would redirect or have nothing to do with it. I spoke with other recruiters as well about it. That morning I had a huge

fight with my wife and for nearly 12 years I have never left her being angry. I was worried and when I found my talk was cancelled I went to my office and sat in the back and spoke with her to try and patch things up. I love my family and nothing is more important to me. I admit that I did things that were less than truthful but I did these things to keep my family. I cannot fight a three front war. When I was advised of my rights by the Sergeant Major, I was not sure if it would be better to just let the CO know what was going on in writing or appear in person. I opted not to appear and wrote a statement. This was a mistake because had I appeared and explained in person what I had explained in writing the CO said he more than likely would have let it go. Had I been the Sergeant Major I would have advised me to appear. As it were, I was found guilty and I am going to appeal this to the BCNR at a later date. I was told that I could not write a statement to accompany this entry in my book as well. This is not a "pattern" of misconduct. This is an act of desperation and it seems that the command does not seemed concerned for the welfare of its recruiters their families and even in some cases the families of the applicants or the applicants themselves. I can site several instances for each of these. When my Nephew was found to have a rare disease that was lethal I asked several times to talk with GySgt Soares on this in person and on my S&R I was told to "Go see the CO" and on my S&R it says "then request Mast!" I am a potential donor and could have the same disease myself. It is hereditary and I could develop it later in my thirties. It is not like this is an isolated instance. The SNCOIC treating recruiters as though they were slaves or POWs IS common practice.

7. The subjects I have spoken of are what goes on everyday. This is the way, we as recruiters, are taught to recruit. I have written an additional statement on this particualr topic and how it is eating away at the Marine Corps and Recruiting. Also,

Enclosure (3)

Subj: REBUTTAL STATEMENT CONCERNING RELIEF FOR CAUSE

the cases mentioned in this rebuttal, I can provide proof for by talking with the individuals and the paperwork so you can see for yourself. I have spoken with Major Thoburn and he has said that I am not being charged with anything but I am being relieved because I am a "Liar." A liar I may be but it was not until I became a recruiter that I became a liar. I was never that good at it nor did I see the need for it. I have had a rocky past I admit but I have made up for my short comings by more than a large margin. In the beginning, I was even rewarded heartily for my actions as a recruiter.

8. Sir, I will leave willingly. But I will not sit idly by and get dragged through the dirt by the same individuals who taught me to do these things. The statements on my Fitness Report are untrue as is evident by this statement. I am asking you, Sir, please send me back to my old unit, 3rd Bn 5th Mar 1st Mar Div under a Good of the Service relief. I obviously do not belong here and I do not wish to be around these type of people who teach you the "finer" arts of recruiting and then attempt to destroy your entire life when it suits them. I may have become a horrible liar but I am a product of my environment and I wish to leave that environment. This is not how the Marine Corps operates.

Respectfully Submitted



K. W. Berry

Enclosure (3)



UNITED STATES MARINE CORPS

RECRUITING STATION SPRINGFIELD
105 EAST STREET
CHICOPEE MASSACHUSETTS 01020-3467

IN REPLY REFER TO:

5800

Admin

4 Mar 04

From: Commanding Officer, Recruiting Station Springfield

To: Sergeant Kristopher W. Berry [REDACTED] /0351/8411 USMC

Subj: SUSPENSION OF RECRUITING DUTIES

1. In view of circumstances surrounding an impending investigation involving potential recruiter malpractice, you are hereby suspended from all recruiting activities. This suspension is effective immediately and will be in effect until vacated in writing.
2. Your appointed place of duty during this period will be your residence during normal working hours. Normal working hours are defined as Monday through Friday 0730 - 1630 daily. You will be required to check in with the Sergeant Major twice daily, at 0800 and 1600.
3. At no time will you have direct contact (in person) or indirect contact (phone, email or third party) with any Recruiting or Military Entrance Processing (MEPS) personnel. Additionally, you will have no contact with any potential applicants or poolers. You are restricted from all recruiting facilities and MEPS.
4. This suspension is not directed as a punishment or guilty finding of any kind. It is to protect yourself, other recruiters and the command while an investigation is completed.

A. D. Thoburn III
A. D. THOBURN III

RECEIVING ENDORSEMENT

4 Mar 04

1. I have read and understand the provisions set forth in paragraphs one (1) through four (4) above. Any questions concerning this suspension were answered to my satisfaction. I will address further questions to the Sergeant Major or Executive Officer as appropriate. I verify my residence as 34 Mayflower Drive, Middletown, RI and my phone number is 1-401-847-6048.

1- 508-345-0235

K. W. Berry
K. W. BERRY

Enclosure (3)

JUL 7 2004 3:36AM

NO. 370 P. 2



UNITED STATES MARINE CORPS

RECRUITING STATION SPRINGFIELD
105 EAST STREET
CHICOPPEE, MA 01020

IN REPLY REFER TO:

5830

CO

29 Mar 04

FIRST ENDORSEMENT on Capt Fehmel's Invo ltr 5830/XO dtd 29 Mar 04

From: Commanding Officer
To: Commanding General, Eastern Recruiting Region
Via: Commanding Officer, 1st Marine Corps District

Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES
SURROUNDING RECRUITER MALPRACTICE; CASE OF SERGEANT
KRISTOPHER W. BERRY [REDACTED] 0351/8411 USMC.

1. Forwarded. Do not concur with the recommendations of the Investigating Officer. Due to Sergeant Berry's consistent lack of integrity, further counseling and punishment would serve no real value. It is my belief Sergeant Berry has a character flaw that cannot be corrected. Request Relief for Cause due to recruiter malpractice and a history of personal misconduct followed by administrative separation.

2. Point of contact at this command is Captain M. D. Fehmel at (413) 594-9786.

A D T
A. D. THOBURN III

Enclosure (-4)

JUL 7 2004 3:37AM

NO. 370 P. 3



UNITED STATES MARINE CORPS

 RECRUITING STATION SPRINGFIELD
 105 EAST STREET
 CHICOPEE MA 01020

 5830
 XO
 29 Mar 04

 From: Investigating Officer
 To: Commanding Officer

 Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING
 RECRUITER MALPRACTICE; CASE OF SERGEANT KRISTOPHER W. BERRY
 [REDACTED] /0351/8411 USMC

Ref: (a) JAGMAN (JAINST 5800.7C)

 Encl: (1) 5830 CO ltr dtd 5 Mar 04
 (2) Acknowledgement of Rights, Sgt Berry
 (3) Statement, Sgt Berry
 (4) Statement, SSgt Cianci
 (5) Statement, SSgt Killough
 (6) Transcript, Phoncon Between IO and [REDACTED]
 (7) Prospect Applicant Card, [REDACTED] dtd 031218
 (8) Prospect Applicant Card, [REDACTED] dtd 040204
 (9) Scheduling and Results Sheets, Sgt Berry dtd 4, 5, 6, 7
 February 2004 and 19, 20 December 2004
 (10) USMEPCOM Form 680-3A-F, [REDACTED]
 (11) DD Form 2807-2, [REDACTED]

1. Per reference (a), the following personnel were contacted:

NAME	RANK	TITLE	PHONE NUMBER
Cianci, M. A.	SSgt	NCOIC	[REDACTED]
Berry, K. W.	Sgt	Recruiter	[REDACTED]
Killough, D. S.	SSgt	Recruiter	[REDACTED]
[REDACTED]	Civ	Applicant	[REDACTED]

2. Summary of Findings

a. On 040303, the Non-Commissioned Officer in Charge (NCOIC) of Recruiting Sub-Station (RSS) Fall River, Massachusetts, Staff Sergeant M. A. Cianci, called the Commanding Officer and stated that he had recovered several documents from the Permanent Contact Station of one of his recruiters, Sergeant K. W. Berry, that suggested malpractice. Enclosure (4) (7) (8) (9) (10) (11)

b. On 040305, the Commanding Officer initiated an investigation, appointed Captain M. D. Fehmel as the Investigating

Enclosure (4)

JUL 17 2004 3:37AM

NO. 370 P. 4

Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING
RECRUITER MALPRACTICE; CASE OF SERGEANT KRISTOPHER W. BERRY
[REDACTED] /0351/8411 USMC

Officer and suspended Sgt Berry from his recruiting duties.
Enclosure (1)

c. On 040322, the Investigating Officer interviewed SSgt Cianci. He stated that after some suspicious appointments claimed by Sgt Berry during December 2003, he decided to contact a random sample and verify their qualification in order to see if Sgt Berry was claiming legitimate interviews. SSgt Cianci was able to contact Ms. [REDACTED] who was claimed as an appointment on 031219. As a result of SSgt Cianci's questioning, he determined her to be disqualified due to history of anxiety, current prescription medications, overweight and a failing ASVAB score. However, despite all of these disqualifying factors, the applicant told SSgt Cianci that she was under the impression that she was able to enlist. SSgt Cianci also discovered that Ms. [REDACTED] had not taken the EST yet had a passing score of 42 annotated. Since SSgt Cianci also found a started enlistment package on Ms. [REDACTED], he decided to interview Sgt Berry separately with the Assistant SNCOIC, SSgt Killough present. During this questioning, SSgt Cianci states that Sgt Berry admitted to giving Ms. [REDACTED] weight loss pills along with a radical diet plan and also failed to inform her to that her psychological problems would disqualify her from enlistment. Enclosure (4) (7) (8) (9) (10) (11)

d. On 040324, the Investigating Officer spoke with SSgt Killough. He stated that after some suspicious appointments claimed by Sgt Berry during December 2003, the NCOIC decided to contact a random sample and verify their qualification in order to see if Sgt Berry was claiming legitimate interviews. SSgt Cianci was able to contact Ms. [REDACTED] who was claimed as an appointment on 031219. SSgt Killough was asked by SSgt Cianci to sit in on her questioning as a witness. SSgt Killough states that SSgt Cianci determined her to be disqualified due to history of anxiety, current prescription medications, overweight and a failing ASVAB score. However, despite all of these disqualifying factors, SSgt Killough states that the applicant told SSgt Cianci that she was under the impression that she was able to enlist. SSgt Killough and SSgt Cianci also discovered that Ms. [REDACTED] had not taken the EST yet had a passing score of 42 annotated. Since an enlistment package on Ms. [REDACTED] was found in PCS Taunton, the NCOIC decided to interview Sgt Berry separately once again with SSgt Killough present. During this questioning, SSgt Killough states that Sgt Berry admitted to giving Ms. [REDACTED] weight loss pills along with a radical diet plan and also failed to inform her to that her psychological problems would disqualify her from enlistment. Enclosure (5) (7) (8) (9) (10) (11)

JUL 7 2004 3:37AM

NO. 370 P. 5

Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING
RECRUITER MALPRACTICE; CASE OF SERGEANT KRISTOPHER W. BERRY
[REDACTED] /0351/8411 USMC

e. On 040325, the Investigating Officer spoke with Ms. [REDACTED]. She stated that she had first met Sgt Berry in her high school in December. Soon after she went into his office to talk about joining the Delayed Entry Program. Since she was a little overweight and had marijuana in her system, Sgt Berry developed a diet plan with her. With a secondary intent of washing away the THC in her system, Sgt Berry gave her a copy of the Mayo Clinic Diet and a bottle of One-a-Day Diet Pills. Ms. [REDACTED] also states that she attended physical training sessions a few times per week for at least 3 weeks. During her initial meeting with Sgt Berry she also states that she disclosed a history of anxiety attacks and visits to a psychologist, which she annotated in the MCOB. She states that Sgt Berry never gave her any indication that her condition would be any problem for her enlistment. She also states that she had taken the ASVAB twice before, failed both times and did not take the Enlisted Screening Test in her initial meeting with Sgt Berry. In February, she once again met with Sgt Berry to prepare her paperwork needed for enlistment. Enclosure (6)

f. On 040326, the Investigating Officer interviewed Sgt Berry after reading him his rights. He states that he met Ms. [REDACTED] at a high school visit during December and set an appointment with her for which she failed to show. He created a PAC card for this appointment with a source and activity of Area Canvass. He saw her at school again during January and set another appointment, which she again failed to show. She eventually came into his Taunton office during February and he claimed her as an interview and created a new PAC card with a source and activity of Command Recruiting, Area Canvass. He admits that he gave false credit to a command recruiter that had performed well for him. Sgt Berry states that he conducted basic screening utilizing the MCOB and found out that she had a history of anxiety but could not recall if she was prescribed medication for it. He also concluded that she was overweight, had marijuana in her system and had failed the ASVAB twice in school. He admits to making up an EST score based off of her school performance. Due to her overweight condition, he gave her a copy of the Mayo Clinic diet, provided weight loss pills and assigned her to his pool PT program. She attended these meetings approximately twice per week for at least three weeks. When asked why he claimed her as an interview and wasted the time on a disqualified applicant, he stated that he did so to "keep the NCOIC off of his back" and to allow him to spend time with his family and the [REDACTED] family, who were nursing their daughter as a result of a January 28th vehicle accident with Sgt [REDACTED]. Because of this incident Sgt Berry claims that he can no longer claim responsibility for his applicants and is intimidated by them when they come in for appointments. He also states that he lied to

JUL 7 2004 3:38AM

NO. 370 P. 6

Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING
RECRUITER MALPRACTICE; CASE OF SERGEANT KRISTOPHER W. BERRY
[REDACTED] 0351/8411 USMC

Ms. [REDACTED] and his NCOIC in regards to her qualification to enlist in hopes to avoid responsibility for her. Sgt Berry states that he set up a false appointment with Ms. [REDACTED]'s parents to obtain parental consent once again to deceive his NCOIC into believing that he was conducting himself in accordance with the Volume I and the three phases of the day so as to spend more time with his family and the [REDACTED]. He admits that he has continuously lied for this purpose. Sgt Berry further stated that he desires to be relieved so he can return to the Fleet Marine Force where he no longer has to be responsible for any more applicants' lives. Enclosure (2)(3)

g. The Prospect Applicant Card (PAC) dated 031218 shows the source and activity for Ms. [REDACTED] as area canvass but the (PAC) dated 040204 shows the source and activity as area canvassed by a Command Recruiter. Ms. [REDACTED] stated that she has never heard of CDR Wordell. Enclosure (6)(7)(8)

h. Sgt Berry shows Ms. [REDACTED] as an appointment on 031219 at 1600, yet admits that she was disqualified. Source and Activity was noted as area canvass. Sgt Berry then rescheduled Ms. [REDACTED] as his third appointment 2 months later on 040205. Sgt Berry then has Ms. [REDACTED] scheduled for a Parental Consent meeting on 040207, which would be the next step in processing her for enlistment despite the fact that he knew her to be disqualified. Enclosure (9)

i. Enclosure (10) was prepared for processing Ms. [REDACTED] despite the fact that Sgt Berry knew her to be disqualified.

j. Enclosure (11) was prepared for processing Ms. [REDACTED] despite the fact the Sgt Berry knew her to be disqualified. All items are listed in the "No" column. Based on Ms. [REDACTED] interview, items 16 and 49 should have been annotated in the "Yes" column.

3. Opinions

a. That Sgt Berry provided diet pills and a radical weight loss plan to Ms. [REDACTED]. FoF (c)(d)(e)(f)

b. That Sgt Berry attempted to coach Ms. [REDACTED] into deceiving SSgt Cianci in order to process for enlistment into the Delayed Entry Program. FoF (c)(d)(e)(f)(h)(i)(j)

JUL 27 2004 3:38AM

NO. 370 P. 7

Subj: INVESTIGATION TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING
RECRUITER MALPRACTICE; CASE OF SERGEANT KRISTOPHER W. BERRY
[REDACTED] /0351/8411 USMC

c. That Sgt Berry told Ms. [REDACTED] to lie about her psychological problems and misled her as to the disqualification of numerous other enlistment factors. FoF (c) (d) (e) (f) (h) (i) (j)

d. That Sgt Berry's manipulation of official government documents show that he was attempting to make Ms. [REDACTED] qualified on paper and process her for enlistment. FoF (h) (i) (j)

e. That Sgt Berry has established a pattern of misconduct. On 031121 he was subject to Non-Judicial Punishment for unauthorized absence for lying to his SNCOIC about being at a school visit when he was actually in his office.

f. That Sgt Berry attempted to provide undue enlistment credit to CDR Wordell. FoF (g)

g. That Sgt Berry's actions could have lasting effects in RSS Fall River's AOR should the stigma of the "lying recruiter" stem from similar situations. FoF (e)

4. Recommendations

a. That Sergeant Berry be Relieved for Cause, receive Commanding Officer, First Marine Corps District Office Hours, reduced to Corporal and returned to the Fleet Marine Force.

5. Point of contact for this matter is the undersigned at (413) 594-9786.

M. D. [Signature]
M. D. KEHMEI



FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

The State of South Carolina,

vs.

Kristopher Wilmont Berry

) IN THE COURT OF GENERAL SESSIONS
) FOR THE FOURTH JUDICIAL CIRCUIT
) CASE NOS. 2010-GS-16-1364

ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL

SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

2011 AUG 22 AM 10:32

FILED

The above case was tried before this Court during the week of July 18, 2011, and the jury convicted Defendant of solicitation of a minor. Defendant was sentenced to ten years' incarceration, suspended to five years' probation after active service of five years' incarceration. Defendant now moves for a new trial under Rule 29 of the South Carolina Rules of Criminal Procedure on the basis that the Court erred in admitting State's exhibit number 264, a photograph of Defendant standing nude before a mirror, found on a cell phone. Defendant argues that this picture was overwhelmingly prejudicial, not necessary in light of Defendant's counsel's offer to stipulate certain facts, and of no probative value.

After review, the Court finds that this evidence was properly admitted. The cell phone had been used to send incriminating messages to the fourteen year old victim in this case, and was taken from Defendant upon arrest. All such messages had been deleted from the phone. Defendant openly and adamantly, in the presence of the jury, denied that the cell phone in question belonged to him. The State then, in reply, produced and offered into evidence the photograph taken from the phone, which positively proved ownership/possession of the cell phone. Defense counsel's offer to stipulate that the phone belonged to Defendant came too late, and the Court cannot require the State to accept an offer of stipulation on a fact in controversy. Defendant himself placed this issue directly in controversy, and the photograph was the best evidence available on this issue, and thus highly probative as to phone ownership. Moreover, the photograph, which appeared to be an image of Defendant's flexed abdominal muscles, was further probative on the issue of Defendant's testimonial statement that he perceived the victim was impressed by men with well-developed abdominal muscles. It is also highly probative on the issue of Defendant's credibility. While the Court acknowledges that the photograph was prejudicial to the Defendant to some extent, its probative value is much greater than its prejudice. For these reasons, the motion for a new trial is DENIED.

August 19, 2011

J. Michael Baxley, Presiding Judge

This judgment was entered on the 22 day of August 2011 and a copy mailed first class this 8/22 day of August 2011 to attorneys of record as follows:

Attorney for State
John W. Holt, IV, Esquire
1 Public Square, Room 410
Darlington, SC 29532

Attorney for Defendant
Paul V. Cammerella, Esquire
Post Office Box 38
Hartsville, SC 29551

TRUE CERTIFIED COPY

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

CLERK OF COURT

WITNESSES

David Young

Darlington County Sheriff

Law Enforcement Case #: 201001-0668

863

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER

J653835

ARRESTED ON: 2010-01-30

ACTION OF GRAND JURY

Grand Jury Foreperson

Date: SEP 02 2010

VERDICT

TRUE BILL

Petit Jury Foreperson

Date

DOCKET NUMBER:

2010-GS-16-1364

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:

September 2010

THE STATE

vs.

Kristopher Wilmont Berry

INDICTMENT FOR

Criminal Solicitation of a minor

§16-15-0342

CDR Code: 2999

TRUE CERTIFIED COPY
 W. B. Rogers, Jr.
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF DARLINGTON

Criminal Solicitation of a minor

§16-15-0342

At a Court of General Sessions, convened on September 20, 2010, the Grand Jurors of Darlington County present upon their oath:

CRIMINAL SOLICITATION OF A MINOR

CDR: 2999 16-15-342(A)(E)

That Kristopher Wilmont Berry, a person eighteen years of age or older, did in Darlington County, on or about January 11, 2010 thru January 29, 2010, knowingly contact or communicate with or attempt to contact or communicate with Minor, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5), or with the intent to perform a sexual activity in the presence of that person, in violation of Section 16-15-342, S. C. Code of Laws, 1976, as amended.

TRUE CERTIFIED COPY
Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
 WILLIAM B. ROGERS, JR.
 SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 26th, 2013



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