



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

NOV 19 2024

CHRISTOPHER D. HOWELL

)

RICK WARREN
COURT CLERK

PETITIONER,

)

29/11/24

vs.

)

Case No. CF-2020-81

THE STATE OF OKLAHOMA

)

RESPONDENTS,

)

APPLICATION FOR POST-CONVICTION RELIEF

I, Christopher D. Howell, DOC # 878546 whose present address is 8607 SE Flower Mound Rd, Lawton, Ok 73501, hereby apply for relief under the Post-Conviction Procedure Act, Section 1080 et seq. of Title 22.

PART A

The sentence from which I seek relief is as follows:

1. (a) Court in which sentence was rendered : District Court of Oklahoma County

(b) Case number: CF-2020-81

2. Date of sentence: 11/29/2021

3. Terms of sentence: (1) 20 years in DOC (2) 10 years in DOC (3) 25 years in Doc (4) 25 years in DOC (5) 20 years in DOC (6) 25 years in DOC (7) 20 years in DOC (8) 25 years in DOC (9) 20 years in DOC (10) 25 years in DOC (11) 20 years in DOC ; counts 3&4 to run consecutive all other counts to run concurrent

4. Name of Presiding Judge: Cindy H. Truong

5. Are you now in custody serving this sentence? Yes () No ()

6. For what crime or crimes were you convicted? Lewd Acts with a Child under 16
(counts 1, 3-11) Attempted Lewd Acts with a child under 16 years of age (count 2)

7. Check whether the finding of guilty was made:

After plea of guilty () After plead of not guilty (X)

8. If found guilty after plea of not guilty, check whether the finding was made by:

A jury (X) A judge without a jury ()

9. Name of lawyer who represented you in trial court: R. Scott Adams & R. Gray

10. Was your lawyer hired by you or your family? Yes (X) No ()

Appointed by the court? Yes () No (X)

11. Did you appeal the conviction? Yes (X) No ()

To what court or courts? Court of Criminal Appeals

12. Did a lawyer represent you for the appeal? Yes (X) No ()

Was it the same lawyer as in No. 9 above? Yes () No (X)

If "no," what was this lawyer's name? Carl Hughes

Address? 1218 E. 9th Street Suite 8, Edmond, OK 73034

13. Was an opinion written by the appellate court? Yes (X) No ()

If "yes," give citations if published : _____

If not published, give appellate case no: F-2021-1405

14. Did you seek any further review of or relief from your conviction at any other time in any court? Yes () No (X)

If "Yes," state when you did so, the nature of your claim and the result (include citations to any reported opinions.) _____

PART B

(if you have more than one proposition for relief, attach a separate sheet for each proposition. Answer the questions below as to each additional proposition, labeled SECOND PROPOSITION, THIRD PROPOSITION.)

I believe that I have 2 (number of) propositions for relief from the conviction and sentence described in PART A. This is the first proposition. 1

Petitioner has been denied his right to effective assistance of appellate counsel in violation of U.S. Const. Amend. VI and XIV for failure to adhere to rule 3.5(A) of OCCA Court Rules

1. Of what legal right or privilege do you believe you were deprived in your case?

See brief.

2. In the facts of your case, what happened to deprive you of that legal right or privilege and who made the error of which you complain? The right to effective assistance of appellate counsel

3. List by name and citation any case or cases that are very close factually and legally to yours as examples of the error you believe occurred in your case. See brief

4. How do you think you could now prove the facts you have stated in answer to Question No. 2, above? Attach supporting documentation. The record indicates counsel failed to cite any authority, in violation of Rule 3.5a (Ex. 1)

5. If you did not timely appeal the original conviction, set forth facts showing how you were denied a direct appeal through no fault of your own. N/A

6. Is this a proposition that could have been raised on Direct Appeal? Yes (X) No ()

Explain: It was inadequately raised because Appellate Counsel as of right failed to site Authority or Standard of review. (Ex. 1 at 3)

This is the second proposition. 2

Newly discovered evidence that was not available for direct appeal objectively indicates knowingly false testimony has been used as substantive evidence during jury trial in violation of U.S. Constitutional Amend. V, and XIV

1. Of what legal right or privilege do you believe you were deprived in your case?

Due process and equal protection by submission of False Testimony violating Amendments 5, and 14

2. In the facts of your case, what happened to deprive you of that legal right or privilege and who made the error of which you complain? Prosecutor knowingly permitted False Testimony to go uncorrected and influence the Jury

3. List by name and citation any case or cases that are very close factually and legally to yours as examples of the error you believe occurred in your case. See Brief, Napue v. Illinois, Giglio v U.S.

4. How do you think you could now prove the facts you have stated in answer to Question No. 2, above? Attach supporting documentation. Acquisition of civil deposition after appeal became final (Ex. 3)

5. If you did not timely appeal the original conviction, set forth facts showing how you were denied a direct appeal through no fault of your own. N/A

6. Is this a proposition that could have been raised on Direct Appeal? Yes () No (X)

Explain: No, because the deposition was not available for Direct Appeal

PART C

I understand that I have an absolute right to appeal to the Court of Criminal Appeals from the trial court's order entered in this case, but unless I do so within thirty (30) days after the entry of the trial judge's order, I will have waived my right to appeal as provided by Section 1087 of Title 22.

PART D

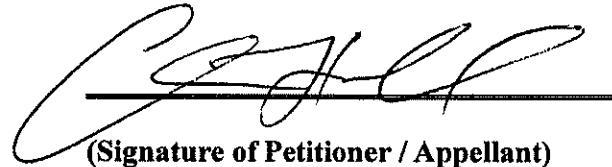
I have read the foregoing application and assignment(s) of error and hereby state under oath that there are no other grounds upon which I wish to attack the judgment and sentence under which I am presently convicted. I realize that I cannot later raise or assert any reason or ground known to me at this time or which could have been discovered by me by the exercise of reasonable diligence. I further realize that I am not entitled to file a second or subsequent application for post-conviction relief based upon facts within my knowledge or which I could discover with reasonable diligence at this time.

PART E

I hereby apply to have counsel appointed to represent me. I believe I am entitled to relief. I do not possess any money or property except the following: (If none, state "None"). None

11 | 12 | 24

Date



(Signature of Petitioner / Appellant)

STATE OF OKLAHOMA)
) SS.
COUNTY OF COMANCHE)

I Christopher Howell, being first sworn under oath, states that he signed the above application and that the statements therein are true to the best of his knowledge and belief.

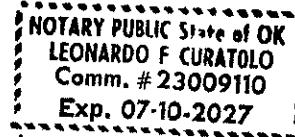


(Signature of Petitioner / Appellant)

SUBSCRIBED and sworn to before me this 18 day of November, 2024.

NOTARY PUBLIC

My Commission Expires: 07-10-2024



Leonardo F. Curatolo

Certificate of Service

This is to certify a true and correct copy of this petition for Post-Conviction was cause to be mailed, postage prepaid to the Oklahoma County Court Clerk located at County Office Bldg., 320 Robert S. Kerr Ave. Ste 409, Oklahoma City, Ok 73102



* 1 0 5 8 0 2 8 1 6 4 *

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

CHRISTOPHER HOWELL,

PETITIONER FILED IN DISTRICT COURT
OKLAHOMA COUNTY

) CASE NO. CF-2020-81
OCT 15 2024

STATE OF OKLAHOMA,

RICK WARREN
COURT CLERK
RESPONDENT. 81 _____

ORDER GRANTING PETITIONER'S LEAVE TO FILE OVERSIZE BRIEF

This matter comes on before the Court on the 15th day of October, 2024, on the Request of Petitioner's Application for Leave to File Oversized Brief in Support of Post-Conviction Relief.

Upon review of the Court file and the facts relating to this case, the Court concludes that a hearing is not necessary to review this matter and the Petitioner's request is granted.

IT IS THEREFORE ORDERED that Request of Petitioner's to file ten pages in addition to the statutory maximum of twenty pages is granted.

Cindy H. Truong
Cindy H. Truong
DISTRICT COURT JUDGE
CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

OCT 15 2024

RICK WARREN COURT CLERK
Oklahoma County
Rick Warren

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and forgoing Order was mailed on the day it was filed with the Clerk of the District Court to:

Christopher D. Howell # 878546
LCRF 5B210
8607 SE Flowermound Rd
Lawton, OK 73501

Antonae Howell
Deputy Court Clerk

BRIEF IN SUPPORT OF POST-CONVICTION RELIEF

The State of Oklahoma v. Christopher Howell

Christopher D. Howell

CF-2020-81

LCRF 5B210

8607 SE FLOWERMOUND RD

LAWTON, OK 73501

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**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

CHRISTOPHER D. HOWELL)
Petitioner,)
v.)
THE STATE OF OKLAHOMA)
Respondent.)
Case No. CF-2020-81

STATEMENT OF THE CASE

Petitioner has been tried by Jury for violations of ten (10) counts of violating 21 O.S. Supp. 2018 § 1123(A). Lewd or Indecent Acts to a child under the age of 16, as well one (1) count for Lewd or Indecent Acts to child under the age of 16 as set forth in 21 O.S. Supp. 2018 § 1123(A). The Honorable Cindy H. Truong, District Judge presides over the proceedings. (O.R. 35-39; J.T. I, 1, 4). The Jury found Petitioner guilty on all counts and recommended twenty-five years (25) for counts 3, 4, 6, 8 and 10, twenty years (20) years for counts 1, 5, 7, 9, 11 and finally, ten years (10) for count 2. (O.R. 242-252, 259-260). The Trial Court followed the recommendation of the Jury, choosing to run counts 1-2 and 5-11 concurrently, leaving counts 3 and 4 to consecutively. (O.R. 268-279; S. Tr. 12-13) It is from this Judgment and Sentence Petitioner seeks Post-Conviction Relief.

PROPOSITION I

PETITIONER HAS BEEN DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL IN VIOLATION OF U.S. CONST. AMEND. VI AND XIV FOR FAILURE TO ADHERE TO RULE 3.5(A) OF OCCA COURT RULES

STANDARD OF REVIEW

"The United States Supreme Court has not specifically set forth a standard by which to assess the effectiveness of appellate counsel. See Evitts v. Lucey, 469 U.S. 387, 392, 105 S. Ct. 830, 833, 83 L. Ed. 2d 821(1985)"(holding that the Due Process Clause requires that criminal defendants be provided the effective assistance of counsel on their first appeal of right, but declining to devise the means by which to define the 'appropriate standards for judging claims of ineffective assistance of appellate counsel.'). However, this Court has applied the *Strickland v. Washington* standard to claims of ineffective assistance of appellate counsel. See Sellers v. State, 889 P.2d at 898; Cartwright v. State, 708 P.2d 592, 594 (Okl. Cr.1985),cert. Denied, 474 U.S. 1073, 106 S. Ct. 837, 88 L. Ed. 2d 808 (1986)(Citing Hooks v State 1995 OK CR 56,n..14)

Petitioner "must satisfy both prongs of the Strickland test in order to prevail on his claim of ineffective assistance of appellate counsel."Smith v. Robbins, 528 U.S. 259, 289, 120 S. Ct. 746, 145 L. Ed. 2d 756(2000)

ARGUMENT & AUTHORITY

I. DEFICIENT PEFORMANCE

Failure to comply with statutorily required rules of OCCA, results in waiver of review on the merits of the corresponding assignment of error on appeal. See Rule 3.5(A)(5), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2010); Armstrong v. State, 1991 OK CR 34, ¶24, 811 P.2d 593, 599.

Petitioner's unwanted waiver of any right, by counsel as of right, demonstrates deficient performance. See Roe v. Flores-Ortega, 528 U.S. 470, 477, 120 S. Ct. 1029, 145 L. Ed. 2d 985(2000)

(finding unwanted waiver of right to appeal establishes deficient performance under *Strickland* in citation to Rodriguez v United States 395 U.S. 327(1969)) Any error by counsel as of right is imputed to the State of Oklahoma and external to Petitioner. Murray v. Carrier 477 U.S. 478,488(1986) (finding counsel as of right's deficient performance is imputed under 6th Amendment Ineffectiveness provisions.) Therefore, the errors found by OCCA for lack of citation to authority (Ex.1)(F-2021-1405 Brief of Appellee; p. 11), failure to separate and properly structure assignments of error (Ex.1)(F-2021-1405 Brief of Appellee; 11), as well as erroneously citing to contrary, and thus non-binding authority (Ex.1)(F-2021-1405 Brief of Appellee;11) *all* in violation of Rule 3.5(A) tit.22, ch.18, Okl. Ct. Crim. App.(2021), are imputed to the State of Oklahoma and external to Petitioner. Petitioner has pled the first prong of deficient performance and sustained his burden under *Strickland*.

II.PREJUDICE

The deficient performance above, deprived Petitioner of a Direct Appeal addressing the merits of Insufficient Evidence and Double Jeopardy; Appellate Counsel failed to subject Petitioner's claim to any meaningful adversarial testing, as to deprive him of a Direct Appeal with a reliable result due to forfeiture of the claims. The Direct Appeal has been affirmed as constitutional but only because no citation to authority was submitted on the behalf of Petitioner. But-for counsel failing to apply Rule 3.5(A), the merits of the forthcoming sub-propositions would have been analyzed and determined, changing the outcome of the proceeding.

SUB-PROPOSITION I

APPELLATE COUNSEL HAS BEEN INFEFFECTIVE FOR VIOLATIONG RULE 3.5(A) OF OCCA COURT RULES, RESULTING IN INADEQUATELY PLEADING INSUFFICIENT EVIDENCE TO SUSTAIN CONVICTION IN VIOLATION OF DUE PROCESS AND EQUAL PROTECTION VIOLATING OF US. CONST. AMEND. V AND XIV

STANDARD OF REVIEW

"In Jackson v. Virginia,443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), the United States Supreme Court held that due process requires a reviewing court to determine 'whether, after

reviewing the evidence in the light most favorable to the {709 P.2d 204} prosecution, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt."(Citing Spuehler v State 1985 OK CR 132, ¶7)

ANALYSIS & AUTHORITY

(a) COUNT III

There is no evidence indicating that B.S.'s testimony with respect to Count III is reliable beyond a reasonable doubt. The State's Witness Randy McCalister unsubstantiated D. Newman as permitting Petitioner to abuse B.S. in her presence: The *exact* allegation that Count III encompasses:

A: "So I substantiated allegation of sexual abuse and also added and substantiated allegations of threat of harm with the two younger children being the victims of that and Mr. Howell being the perpetrator. I unsubstantiated the *allegations of failure to protect against Ms. Newman.*"
(J.Tr. 935; 11-16)

In fact, the *preponderance* of the evidence favors Plaintiff. The State only has B.S.' personal knowledge; B.S.' cousins – the Pavon Boys, assert personal knowledge contrary to B.S., as does *her own mother*;(J. Tr 982; J. Pavon testifying Count III never occurred), (J.Tr. 994; N. Pavon, same), (J.Tr. 1005; Jac. Pavon, same),(J.Tr.1085,1086; D. Newman, same.) The point is, *in unsubstantiating any allegations against D. Newman for permitting abuse of B.S. or her siblings*, the State substantiated that the evidence indicates Count III fails beyond a reasonable doubt. To be sure, B.S. declared under oath that Count III is her earliest memory of abuse at the hand of Petitioner (P.H. 14; 19-25). Furthermore B.S. declared under oath that her mother recognized the molestation from the kitchen, (P.H. 18; 12-17) acknowledged the touching, whereupon her mother chastised her.(P.H. 17; 23-25, P.H. 19; 21-25) *Thus, from as early as B.S. can remember her mother has been aware of Count III.* Yet, in a remarkable 180° about face, B.S. then declares under oath she did not want her mother to discover the abuse was going on because it would "*Break*" her mother. (J. Tr. 729; 19-22)

No other evidence is based upon personal knowledge of whether sexual misconduct occurred consistent with Count three (3) in favor of the State. Moreover, *D. Newman's texts to Petitioner*, corroborate her veracity, tangible evidence of her unknowing *anything* consistent with Count III.

Q: " So I'm sure that whenever he said, 'If I did something, I don't remember, 'you probably followed up with something like, what the hell are you talking about if. Was that your comment to Mr. Howell?"

A: "I said, what the fuck." (Jr. Tr. 1165)

The foregoing establishes the record indicates the weight of the evidence favors Petitioner. On the *other* hand, the States version of evidence corroborating B.S.' account of Count three (3) is impeached by B.S. Herself; she has demonstrated *conduct* inconsistent with her mother acknowledging her being molested on the back porch, by admitting she didn't want her mother to find out about Petitioner and herself because it would "break" her mother; B.S.' alleged basis for failing to include the molestation in her journal. (J. Tr 729; 19-22). This should have been used as impeachment evidence. See 12 O.S. §2608(B)(1)(" Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility ... They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness if they ... Concern the witness's character for truthfulness or untruthfulness ...") B.S. impeaches herself with her own accounts; constitutionally infirm counsel failed to properly demonstrate this. A preponderance is insufficient to sustain the "Beyond a Reasonable Doubt" standard. The pictures of the Backyard are just that. Not material of touching, age, or intent. it only tends to indicate the backyard *exists*. (J. Tr. 690;16-18) Anything is *possible* to have occurred in the backyard. To find Count three (3) sustained beyond a reasonable doubt against the backdrop of the Pavon Boys' personal knowledge, D. Newmans Personal knowledge, D. Newmans text messages interrogating Petitioner, **AND the State's own witness – DHS investigator Mr. McAlister unsubstantiating any finding of guilt by knowingly permitting abuse**

of B.S.(J. Tr 690;16-20) Is unreasonable application of the Beyond a Reasonable Doubt Standard.

There are three (3) standards of proof:

"There are three possible standards of proof: (1) *preponderance of the evidence*; (2) *clear-and-convincing evidence*; and (3) *evidence beyond a reasonable doubt*. Johnson v. Board of Governors of Registered Dentists of the State of Okla., 1996 OK 41, P17, 913 P.2d 1339, 1345, citing Addington v. Texas, 441 U.S. 418, 424, 99 S. Ct. 1804, 1808, 60 L. Ed. 2d 323 (1979). "A preponderance of the evidence is generally the measurement used in private disputes.' ..."

Cherokee Data Cpu. Parts and Serv., Inc. v. Oklahoma Dep't of Labor, 2005 OK CIV APP 81

The other children, can allege DHS investigator McAlister touched him or her in the backyard with no specific time and contrary eyewitness disclosure, simply because he visited the Edmond Home. Same evidence; A picture of the backyard and overwhelmingly controverted testimony. If the lowest standard of proof cannot be sustained, then the highest standard – beyond a reasonable doubt – certainly cannot be sustained ... The final standard is required to deprive Petitioner of his Liberty, guaranteed so by, 5th and 14th Amendment protections of the U.S. Constitution.

For these reasons, in a light most favorable to Respondent, Petitioner prays this Honorable Court vacate, remand with instructions to dismiss Count III.

(b) COUNT IV

"... All the remaining counts that I'll be talking about, I'll be asking for that same date range of August 21st of '17, through December 6th of 2019. So with that being said, for count 4 and 5, I would ask that those reflect touching the breast of B.S. With his hand under her clothing in the living room."(P.H. 106; 8-15) Petitioner's conviction and sentence of twenty five (25) years is consistent with B.S.' allegations of touching her breasts on the skin in the living room on the couch. BUT ... the only time B.S. submits personal knowledge is during the age of twelve (12) years old; She explicitly fails to recall *anything* at all during the the age of eleven (11) or ten (10) years of age.

Q: " Did anything happen when you were in the living room when you were 12 years old?"

A: "Yes."

(Aug. 21st 2019 – Dec. 6th, 2019)

Q: "Did things happen *when you were 11 years old?*"

A: "*I don't remember.*"

(Aug. 21 2018 – Aug. 20th 2019)

Q: "Okay. Did you know if they would happen *when you were 10 ?*

A: " I also *don't remember.*"

(Aug. 21 2017 – Aug 20. 2018)

(P.H. 25; 1-12)

The foregoing establishes that B.S. does not recall any breast touching on the skin in the living room at the Edmond Home on Hawks Tree Lane, *except* for during the *age of twelve (12)*.

Therefore, the State does not have any evidence – and therefore should *not* have been, bound over on evidence, suggesting a factual predicate from August 21, 2017 – December 6, 2019. On basis of direct knowledge of B.S. as the *only* evidence buttressing Count Four (4)'s age element, specifically; It is well-settled B.S.' age is an element to be found beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435(2000), Chadwell v State 2019 OK CR 19,¶6.

Petitioner has been found guilty of Count 4 and sentenced to twenty five (25) years imprisonment consistent with *the element of age under 12 being satisfied beyond a reasonable doubt.*

CONCLUSION

The evidence of B.S.' contrary actions of omitting Petitioner's name in her journal on basis it would break her mother with information she already knew, DHS unsubstantiation of permitting B.S.' abuse, and four witnesses eye witness testimony corroborating the DHS unsubstantiation, favors Petitioner by a preponderance of the evidence, foreclosing any Beyond a Reasonable Doubt conclusion in Count III. The constructive amendment of Count IV by permitting sentencing for a Count which no evidence buttresses, caused by the bind-over, resulted in a fatal variance of the evidence at trial

sustaining the conviction of Count four (4), in violation of *Jackson*. (P.H. S. Tr. 4; 3-8) (" And they recommend a sentence of ... Count 4 **25 years** ...") (S.Tr. 12; 6-8) (" Count 3 and 4 are to run consecutive, and then all other counts are to run concurrent ...") Petitioner cannot be sentenced to 25 years for a charge consistent with the age of 12 years old; 25 years is for the element *under* 12 years old.

For these reasons Petitioner respectfully requests this Court vacate the judgment of Count III and IV and remand with instructions to dismiss.

SUB-PROPOSITION II

PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILURE TO PROPERLY SUBMIT PETITIONER HAS BEEN PUNISHED TWICE FOR THE SAME CRIMINAL ACT OR TRANSACTION, COUNTS 1 & 2 AS WELL AS COUNTS 6-11 IN VIOLATION OF US. CONST. AMEND. V

STANDARD OF REVIEW

Clearly established federal law holding 5th Amendment violation for double punishment for an identical act is Blockburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932) (holding that the test for whether two offenses are distinct for double jeopardy purposes is 'whether each provision requires proof of a fact which the other does not') Holding:

"where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of additional fact which the other does not. Blockburger, 284 U.S. At 304, 525 S. Ct. at 180." (citing Davis v. State, 1999, OK CR 48, ¶ 4).

Petitioner submits counsel forfeited the *Blockburger* claim by inadequately raising the claim, (Ex.1 at 6,n.3; showing order denying Prop. III in F-2021-1405) such has been deemed forfeited for failure to comply with Rule 3.5(A)).

ARGUMENT AND AUTHORITY

The Oklahoma Legislature does not explicitly nor implicitly subdivide punishment contemporaneously for Lewd Acts with a child under 16 as opposed to *Attempted Lewd Acts with a child under 16 for the identical act.*

The foregoing is neither expressed or implied in legislative intent within the statutory construction set forth in 21 O.S. § 1123(A) The statute is silent on this issue. See Davis v. State, 1999 OK CR 48, n. 5(citing Missouri v. Hunter, 459 U.S. 359, 368-69(1983)) for the proposition the language of the statute must 'specifically authorize [] cumulative punishment under *two statutes*') Here the legislature doesn't even prescribe cumulative punishment under *one* statute.) See 21 O.S. § 1123(A)

COUNTS I & II

An example of an attempt is a thwarted molestation that never occurs, *not* a molestation that has been terminated by the same act. Therefore, Counts I and II are of the same transaction; *multiplicitous* on B.S.' bed; An attempt is a thwarted act, not a discontinued act.

COUNTS VI - XI

Are the same alleged act of molestation by groping B.S. within the scope of her *entire body* consistent with breasts, vagina *and* buttocks on B.S.'s bedroom couch; not breasts, vagina, *or* buttocks. The record confirms irrefutably that the alleged acts, substantiated by testimony, as their factual basis, indicates Petitioner's alleged buttocks touching is "in conjunction with [Pet.] touching [B.S.] breast and [her] vaginal region too..."(J. Tr. 713; 4-9)

B.S. confirms Count VI -XI & Count I & II are of the identical transaction or episodes:

Q: "When – you told me just now about him touching your breast and then touching your vaginal region and that happened during the same event, are you following me?"

A: "YES"

Q: "Okay. When he would touch your butt, is that something that he would do and he would only touch your butt or would it be at times and he was touching other parts of your body too?"

A: "The times he was touching other parts."

(J. Tr. 713; 13-21)

... Count 1 and 2 rise from the termination of the molestation alleged to have transpired on B.S.' bed on Dec. 6th, 2019. The record is in accordance.

Q: "say that to me one more time."

A: "He would just make his way to my vaginal area."

(P.H. 103; 2-3)

...
Q: "... in your own bed and you said he touched your breast **and tried to touch your vaginal area**, you blocked it?"

A: "yes"

(P.H. 98; 10-14)

...
Q: "well did he try to go down to your vaginal area?"

A: "YES"

(P.H.96; 23-25)

A continuing course of conduct is *not* the same as the same criminal act or transaction. It is well settled that Lewd Acts with a child under 16 is a lesser included offense of Attempted (Lewd Acts with a child under 16. Landers v. Robinson, 2019 U.S. Dist. LEXIS 9705[*15]

Count II, an *attempt* is a lesser included charge. Confirming clearly established Federal law as set forth in Brown v Ohio, 432 US 161, n.6, 53 L Ed 2d 187, 97 S Ct 2221(1977)(" Because we conclude today that a *lesser included and a greater offense are the same under Blockburger*, we need not decide whether the repetition of proof required by the successive prosecutions against Brown would otherwise entitle him to the additional protection offered by *Ashe* and *Nielsen*.) To be sure, the act of terminating the criminal act that is Count I cannot give rise to a separate and distinct statute; it occurred WHILE the act of Count I was occurring. Count I and II contain exact date, location, assailant, and the act of blocking the *continuing* act (Count I overlaps into Count II) overlaps into the alleged *act*.

The alleged groping of [B.S.] body spanned her vagina, breasts, and buttocks while on the couch in her bedroom – where [B.S.] alleged in a single act of molestation (J. Tr. 713; 13-21) ; the Prosecution charged separate counts for the act by labeling different sections during the groping of B.S.' body as separate and distinct acts/charges. This is improper as a multiplicitous charging document.

Multiplicity is unconstitutional.

"A multiplicitous indictment charges a single offense in several counts. Its dangers are that the defendant may be given multiple sentences for what Congress considered a single offense, and that prolix recitation may falsely suggest to a jury that a defendant has committed not one but several crimes.' United States v. Duncan, 850 F.2d 1104(6th Cir. 1988); See, C. Wright, supra, §142 at 475-76 & n.19; see also United States v. Mann, 195 F. App'x 430 (6th Cir. 2006)" Landers,[*15]

Id.

The alleged act of molestation **cannot** be charged for an **ATTEMPT** and **successful** transaction. That is akin to charging a Defendant with 1st Degree Murder for a fatal head shot **AND** then **ATTEMPTED MURDER** for THEN firing subsequent shots into an **ALREADY** deceased corpse. As evidenced by clear and convincing of the corpse with 1/3 of a Head remaining.

The act which terminated the criminal transaction is not a crime in itself, yet prosecutors attempt legal gymnastics to achieve this unconstitutional effort; Counts I and II are not a continuous **course of conduct** which establishes as a break of hours, days weeks, years; The entire case is that. Counts I and II are one continuing **ACT** of conduct. This deprived a fair sentencing, and deliberation by finder of fact. To be sure, the record is abundantly clear as to whether Petitioner in the BEDROOM, ON B.S.'s bed with her, touched B.S.'s breast AND THEN, in the same alleged act of molestation, slid his hand in furtherance of said alleged act of molestation toward B.S.'s vaginal region.

Q: "... in your own bed and you said he touched your breast **and tried to touch your vaginal area**, you blocked it?"

A: "yes"

(P.H. 98; 10-14)

Q: "well did he try to go down to your vaginal area?

A: "YES"

(P.H.96; 23-25)

CONCLUSION

Counts I and II according to clearly established federal law as set forth in *Brown* lesser included

and the greater offense are the same under *Blockburger*, and *Hunter* expresses the opinion that the statute must be explicit in authorizing cumulative punishment AND the statute must be subdivided. The Lewd Acts statute does not explicitly sub-divide cumulative punishment for an attempt and actual molestation. Together, there is no evidence of Legislative Intent by express language for a thwarted molestation to sub-divide into cumulative punishment for the same transaction of molestation. An attempt is a *prevention* of molestation; *not* the termination of an ongoing one. When Petitioner “touched [her] butt” it was “only on the couch” and when Petitioner “touched her butt” it was at “times he was touching other parts”(p.9)(J. Tr. 713; 13-21) as indicated by B.S.' testimony which is the states only evidence. Therefore Counts VI-XI are multiplicitous and violate *Blockburger* by charging Petitioner *twice over* for touching each part of B.S.' body during an act of molestation on the couch spanning the exact same time frame, “I'll be asking for *that same date range of August 21st of '17, through December 6th of 2019*”(sub-prop I, p.5)

For these reasons Petitioner respectfully requests this Court Vacate Count II, reverse and remand with instructions to dismiss as well as Vacate Counts VI-XI , reverse and remand for the same.

SUB-PROPOSITION III

APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE VIOLATION DUE PROCESS OF CONST. AMEND. V, VI AND XI ON BASIS THE RANGE OF THE COURSE OF CONDUCT TRAVERSED SEPARATE AND DISTINCT ELEMANTS B.S.' AGE COUNTS 4-11

STANDARD OF REVIEW

“In Apprendi v New Jersey, 530 U.S 466, 490, 120 S. Ct. 2348, 2362-63, 147 L. Ed .2d 435(2000), the United States Supreme Court held that '[o]ther than the fact of a prior conviction, any fact increase the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved a reasonable doubt. 'The Supreme Court further provided in Alleyne v United, 570 U.S. 99, 103, 133 S. Ct. 2151, 2155, 186 L. Ed. 2d. 314(2013) that 'any fact that increases the mandatory minimum [sentence] is 'element' that must be submitted to a jury.(citing Chadwell v. State 2019 OK CR 14, ¶ 6)

ARGUMENT AND AUTHORITY

It is well-settled B.S.' age is an element to be found beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435(2000), Chadwell v State 2019 OK CR 19, ¶6. B.S. minority below the age (12) triggers an increase the mandatory minimum of 21 O.S. § 1123(A) and is thus an element. Counts 4 and 5 charge both ages contemporaneously; Counts 6 and 7 the same; 8 and 9 the same; 10 and 11 the same. See 21 O.S. §1123(A)

"Any person convicted of any violation of this subsection shall be punished by imprisonment in the custody of the Department of Corrections for not less than three (3) years nor more than twenty (20) years, *except when the child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years.*"

Id.

"So once again when *we look at the elements*, there's been testimony to support all of these ... So counts 4 and 5 are the exact same thing ..." (J. Tr 1301; 12-16)

"*Same thing for count's 6 and 7.* So for counts 6 and 7, you have touching the breast of B.S. with his hand underneath her clothing in her bedroom this time. So this is *the one referring to all of those incidents that happened on that couch of the upstairs bedroom*" (Jr. Tr. 1301;18-22)

"*Count 8 and 9 are also pairs* and they're for *touching the vaginal area of [B.S.] with the hand on that couch in [B.S.]'s bedroom.*" (J. Tr 1302; 7-9)

"Finally Counts 10 and 11, so counts 10 and 11 are the same act by *touching the buttocks of B.S.*" (Jr. Tr. 1302: 15-17)

And it is noteworthy that B.S. admitted the touching of her buttocks was *only on the couch in the bedroom, making Counts 10 and 11 also about the location of the bedroom couch.*

The prosecution attempts to distinguish the acts by location; living room couch, bedroom couch bed, outside. The range alleging both ages inside one count charges under (12) and (12) contemporaneously; Age is an element and thus BOTH ages must be proven beyond a reasonable doubt. To satisfy under (12) exculpates (12) to (15). The Counts are each duplicitous—B.S. Cannot proven under (12) and (12)....

...contemporaneously beyond a reasonable doubt; this denies Petitioner his right to an alibi defense, as mentioned by Trial Counsel at preliminary hearing.

The way the State charged the information the Jury could have retained NINE life sentences because they concluded each occurred while under (12) and Counts 1 and 2 are only when B.S. was (12); the State is charging Petitioner *both ages* in *one count* at a time in the *same locations four times over*. *The prosecution knows what it is doing, because Counts 1 and 2 are not duplicitous; they only cover the age element consistent with 12 years old.*

The proper way to achieve the State's goal is as follows:

Instead of Counts 4 and 5 *both* alleging “ from August 21 2017-August 20, 2019” one count should have ranged from August 21 2017- August 20 2019 (the fact to be proven beyond a doubt per *Apprendi* and *Alleyne*), and the other count charging the living room couch from August 21 2019 – December 6th 2019 (the same).

The foregoing establishes B.S.' age at the time of the alleged crimes and ensures a unanimous verdict on the Living room issue; The same date ranges follow for the bed room couch; one date indicating *under 12 years old*, and the other indicating as *12 years old*. Again, the Counts would no longer be duplicitous because they separate the fact to be proven beyond a reasonable doubt and still preserve Plaintiff's right to present a complete defense extending from the 6th Amendment of the U.S. Constitution. However, Petitioner's trial did not consist of the date ranges which distinguish the fact to be proven beyond a reasonable doubt in one count and alternating in the other.

CONCLUSION

The Constitutional error prejudiced the deliberation of the jury permitting them to deliberate upon either range of punishment on all but 2 counts. There could be no defense to under 12 by proof B.S. was 12; no defense to 12 by proof B.S. was under 12. This impermissibly shifts the burden of proof unto Petitioner to prove... (13)

... B.S. was neither 12 nor under 12 and denied alibi defense.

For these reasons Petitioner respectfully request this Court Vacate counts 4-11, reverse and remand with instructions to dismiss for violating double jeopardy, depriving unanimous verdict, and depriving right to alibi defense.

SUB-PROPOSITION IV

APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THE CLAIM THE STATE OF OKLAHOMA IMPERMISSIBLY VOUCHED FOR B.S.' CREDIBILITY OVER THE OBJECTION OF TRIAL COUNSEL THROUGH WITNESSES OR CLOSING ARGUMENTS FOR THE STATE OF OKLAHOMA IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS V AND XIV

STANDARD OF REVIEW

"Vouching occurs when an attorney or witness indicates a personal belief in a witness's credibility, either through explicit personal assurances of the witness's veracity or by implicitly indicating that information not presented to the jury supports the witness's testimony." Berah v State 2018 OK CR 31, ¶90, 431 P.3d 929, 957(citing Oliver v State 2022 OK CR 15, ¶15) Defense Counsel Objected to the vouching thus the proper standard of review for the errors are an abuse of discretion.

"An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the issue; a clearly erroneous conclusion or judgment, clearly against the logic and effect of the facts." Neloms v State 2012 OK CR 7, ¶35, 274 P.3d 161, 170

ARGUMENT AND AUTHORITY

" You know that Breanna Spence is telling the truth (inferring guilt) because she's *corroborated by the medical evidence.*" (J. Tr 1304; 8-9, 17-19)(J. Tr 1305 1-3)

A: "My diagnosis was that, *given her disclosure and the exam*, everything pulled together, this is consistent with sexual abuse."(Jr. Tr 485; 4-6)

However there is *no Forensic Evidence* – other than conflicting testimony –

- indicating Petitioner's guilt. There is *no medical evidence discovered* (DNA, etc.)

Q: "Again, my question is very simple. In this case, how could you have found no sexual abuse?"

A: "Had she come in and said something that didn't make sense, didn't have -- there was no veracity to the disclosure, there were no extra details, for example, in some cases, I'll have someone just -- a small child will say, Dad patted me, and if there's no further detail, then *I can't diagnose sexual abuse based on that.* So on the disclosure in *conjunction with the physical exam*, I diagnosed sexual abuse in this case. (Jr. Tr 493; 7-17) The physical exam testimony infers something outside the record.

The above vouching for the reliability of the substantiation of B.S.' inconsistent and contradictory disclosure – the States evidence against Petitioner - "usurped the exclusive province of the jury to weigh the evidence, including credibility of all witnesses, giving an opinion as to the ultimate issue of fact." and impermissibly bolstered the credibility of the unreliable testimony & witness. (J. Tr 712: 24 - 714 :13)

Arguing outside published evidence in furtherance of bolstering the veracity of clearly improbable testimonial evidence is vouching. This adds improper weight to aggravation of the scales of guilt/innocence and punishment. Deprivation of Equal Protection of the laws consistent with deliberation and Due Process in U.S. Constitution Amendment XIV.

A: " So for the allegation of sexual abuse, fondling, *I made a substantiated finding* with [B.S.] as the victim and Mr. Howell as the perpetrator and I added allegations of harm."(J. Tr 934; 9-14)

Thereafter, Counsel for Petitioner timely objected :

A: " Your Honor, I object to this testimony that it is prejudiced and its invading the province of the jury. That's what **they're** here to find out, is *whether or not there is any sexual abuse*, and I object to this and ask that it be stricken." (J. Tr 934; 19-23)

CONCLUSION

The prosecutors vouching placed the State of Oklahoma's seal of approval on DHS McCalister, B.S.' testimony, Dr. Hines' "medical findings", Det. Wegner, and W. Spence's testimony; and the Prosecutors factual speculation created an imaginary evidentiary predicate to undergird Petitioner, and Petitioner's counsel's testimony. The combined effect of the various forms of misconduct eviscerated Petitioner's right to a fair trial. Any contrary finding and conclusion is clearly against the facts and law pertaining to impermissible vouching in order to bolster the reliability of the **ONLY** evidence against Petitioner; B.S.' unreliable testimony.

But for the vouching the jury may have returned a verdict of not guilty because the jury has in fact returned a minimum sentence for the most egregious violations. Undermining the verdict.

SUB-PROPOSITION V

PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILING TO RAISE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILING TO SUBMIT A REBUTTAL EXPERT ESTABLISHING B.S.' CONDUCT IS CONSISTENT WITH BOTH HISTRONIC PERSONALITY DISORDER AND FALSE MEMORY SYNDROME IN VIOLATION OF U.S. CONST. AMEND. VI AND XIV

STANDARD OF REVIEW

"Claims of ineffective assistance are reviewed under the standard set forth in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674(1984). Sanders[v. State], 2015 OK CR 11, ¶ 29, 358 P.3d [280,] 287{2023 U.S. Dist. LEXIS 27}. In order to show that counsel was ineffective, [Petitioner] must show both deficient performance and prejudice. Id.(citing Strickland, 466 U.S. at 687)."

ARGUMENT AND AUTHORITY

Failure to proffer a rebuttal expert is considered deficient performance when the symptoms displayed are consistent with a diagnosis that places the conduct of the alleged victim in proper perspective.

(A) DEFICIENT PERFORMANCE

HISTRIONIC PERSONALITY DISORDER

The earlier propositions establish B.S.' motivation for her non-lethal superficial cuts antedate and to date her first memories of alleged abuse, (Count III, Sub Prop. I) and is motivated by B.S.' perceived lack of attention at her mothers home.(J. Tr. 849;18-20)(“ ... she pretty much said *she wasn't getting any attention at her moms house ...*”) It is noteworthy that B.S. also left her drawer WIDE OPEN on her way to school in order for her journal to be discovered. Circumstantial evidence in the form of the fact nobody returned to B.S.'s bedroom; B.S. left with her father after school, Petitioner was ordered to reside at a hotel, the only person left is D. Newman, who had no idea what was going on for over a week. The foregoing indicates the bedroom was left undisturbed until EPD Det. Wegner executed a warrantless search of the home. B.S.' conduct is consistent with premeditated intent to disrupt the household by advising third parties thereby triggering an investigation wherein the journal would be discovered. The lack of Petitioner's name in the Journal is consistent with B.S. not wanting to trigger arrest of Petitioner but draw more attention to herself in order to compensate for the perceived lack thereof and highlight her superficial “cuts”. It is worth noting further the police report K. Wegner #201912-0029602, at p. 3/4 (Ex. 2) discloses “ ... *but the other side of me says you just got an innocent nice funny guy into really big trouble ...*” Despite B.S. cleaning up the admission with conflicting statements, the fact she texted this in confidence is something a Jury should be advised of in their deliberations. Especially when it is consistent with a clinical diagnosis that places the Petitioner's Case-In-Chief in a light more probative of innocence by establishing B.S.' motive.

The newly discovered evidence in the Civil Deposition (Ex.3) W. Spence's sworn testimony admits that B.S. is capable of manipulation for attention. (Civi Dep 102; 10-25 / 103; 1)(“And so it's kind of *hard to tell if she's just an act* or if she's really hurting inside.) The foregoing establishes the reasonable probability that B.S. may have been acting out for attention which is consistent with the lack

of evidence, and the glaring fact of her history of mental health disorders which have gone undiagnosed and untreated for the most part antedate any memories of alleged abuse Trial Counsel placing an expert witness explaining the symptoms of Histrionic Personality Disorder permits the Jury to understand B.S.' behavior which existed well before abuse allegations at Hawks Tree Lane and places an objective scientific doctrine for context that cannot be manipulated by the prosecutor; unnoticeable to the layman. (Ex. 4)

FALSE MEMORY SYNDROME

The diagnosis of false memory syndrome, (Ex. 5) consistent with the record, in conjunction with symptoms of Histrionic Personality Disorder (Ex. 4) adds weight to the fact NOBODY recalls any episode on the back porch but B.S. The State DHS even unsubstantiated D. Newman from permitting Petitioner to abuse B.S. consistent with Count III and the "back porch" episode; a clinical diagnosis explaining the reasonable probability why B.S. remembers an incident that does not exist shall very well lead into an acquittal. For the reasons consistent with failure to submit expert testimony expressing B.S.' symptoms as consistent with the above mental illnesses indicates deficient performance under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) sustaining the first prong under *Strickland*.

(B)PREJUDICE

Failure to submit an expert witness in rebuttal to the State's "medical" evidence added improper weight to the aggravation and guilt on basis the finder of fact has believed that B.S.' conduct is not motivated by attention as well as B.S.' mental illness is not the cause of the existence of *Count III*. In proper context, the Jury could have returned a verdict of not guilty; Trial Counsel's failure to submit a Mental Health expert witness deprived Petitioner of a trial wherein COUNT III could have been found not guilty by a properly informed Jury. Prejudicing right of compulsory process and complete defense.

CONCLUSION

The Histrionic Personality Disorder, that existed before allegations of abuse, once explained to the jury, in conjunction with the fact B.S. left the drawer open with the journal indicating knowingly and willfully planning to raise a fuss to discontinue her mandatory court ordered placement at her Mother, D. Newman's home, may result in acquittal. B.S. tried to erase the individuals she felt robbed her of attention from her mother. All of whom, at one time, did not exist at all. Just herself, her mother, and her father. The fact that B.S. and her mother no longer speak at all is even more corroborating evidence. For these reasons, Petitioner respectfully requests this Court Vacate the Judgment, reverse and remand for a new trial with an expert witness in order to provide Petitioner a fair trial wherein he may be found not guilty on basis the causation for the accusations are lengthy history of mental health issues.

SUB-PROPOSITION VI

PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILURE TO PROPERLY SUBMIT PETITIONER HAS BEEN DENIED HIS RIGHT TO A UNANIMOUS VERDICT IN VIOLATION OF U.S. CONSTITUTION AMEND. VI AND XIV

STANDARD OF REVIEW

"The right to a unanimous jury verdict is constitutional. Article II, Section 19 of the Oklahoma Constitution provides that '[i]n all criminal cases where imprisonment for more than six (6) months is authorized the entire number of jurors must concur to render a verdict.' Similarly, the United States Supreme Court held in Ramos v. Louisiana, 590 U.S. 140 S. Ct. 1390, 1397, 206 L. Ed. 2d 583 (2020), "[t]here can be no question either that the Sixth Amendment's unanimity requirement applies to state and federal criminal trials equally." (Citing Kurtanic v State, 2023 OK CR 13 ¶.7)

ARGUMENT AND AUTHORITY

Simply put, out of 365 days, sexual misconduct allegedly occurred 33% of the time at least; about 121 times. *WHICH* of the 121 times are used to convict? For each count from 4-11? The 50th time and the 75th on the bedroom couch?

When she was under 12? or 12? The 119th time and the 120th time in the living room? We cannot be certain beyond a reasonable doubt because the range is overly-broad, the counts are duplicitous, and the charges themselves are multiplicitous of one act, in each instance of the continued course of conduct. There is no way that the jury can find specific acts in violation of public policy unanimously. **The prosecution knows what it is doing, because Counts 1 and 2 are not duplicitous; they only cover the age element consistent with 12 years old.**

CONCLUSION

Petitioner wanted an alibi defense but Trial Counsel denied him so on the basis of the *overly broad* charges, failing to implicate a time and exact date wherein the Jury may unanimously find Petitioner guilty. Evidence in support thereof is Sub-Prop I, p. 5-6, indicating beyond a doubt that the Jury sentenced Petitioner to 25 years in Count IV without evidence of the same; clearly indicating a confused jury. The jury cannot have unanimously returned any verdict because they improperly weighed evidence. The confused jury cannot tell us which date, time and instance buttressed each conviction. This is due to the duplicitous, multiplicitous charging document which has resulted in a constructive amendment becoming a fatal variance. For these reasons Petitioner respectfully requests an evidentiary hearing wherein the jury may be examined as to which time and date for EACH count they *UNANIMOUSLY* found and concluded Petitioner guilty; Count IV is an error by the jury caused by the lack of unanimous verdict. **Had the verdict been unanimous the jury would have found that the evidence does not support a finding of 25 years punishment for Count IV.**

SUB-PROPOSITION VII

APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE A CLAIM STATING THE ERRORS WHICH OCCURED IN THE JURY TRIAL AS A WHOLE CUMULATIVELY DENIED PETITIONER A FUNDAMENTALLY FAIR TRIAL IN VIOLATION OF U.S. CONSTITUTION AMENDMENT XIV

STANDARD OF REVIEW

"The cumulative error doctrine applies when several errors occurred at the trial court level, but

none alone warrants reversal Tafolla v. State, 2019 OK CR 15, ¶ 45, 446 P.3d 1248, 1263. Although individual errors may be of insufficient gravity to warrant reversal, the combined effect of an accumulation of errors may require a new trial. *Id.*"(quoting Washington v State 2023 OK CR 22, ¶30)

ARGUMENT AND AUTHORITY

Counts 1 and 2 are error. Counts 6-11 are all one act, thus five errors exist. 6-11 should be one count. So far that is six (6) errors. The District Court attempted to cure these errors by running the vast majority concurrent. However, this just cures the *appearance* of impropriety; the jury deliberated and based its findings and conclusions on multiple acts. Therefore, the jury has believed that Petitioner has committed SIX MORE CRIMES against B.S. than he actually has. It is unreasonable to believe that the Jury did not take these facts into account in determination of punishment. This clearly is an aggravator; an isolated incident in no way receives identical punishment consistent with multiple incidents of the same kind. It shows disregard for the consequences of the act. Thus, it is clear that the Jury did just that, punished petitioner for his alleged disregard. Moreover, Petitioner received the LEAST amount of punishment for the most egregious acts ... under 12. It follows that if there was only one incident on the bedroom couch, it is more believable - and thus probative of innocence - that B.S. may be lying or mistaken due to her mental health; consistent with Count III being uncorroborated by anyone but B.S. The duplicity is error as well, and affects, 8 of the 13 charges permitted a finding ***TWICE*** for each crime because the age range spanned under 12 and 12 contemporaneously in the charging document.

These errors also add aggravating weight to the multiplicity; the Jury has been permitted to charge Petitioner with two 25 year sentences each if they so found that abuse occurred more than once while under 12 because the charging document permits such with the age range, see Sub-Prop III p. 13-14. The errors from Trial Counsel for failure to submit an Expert on Histrionic Personality Disorder

and False Memory Syndrome, also contributed to a skewed finding of guilt because it explains, through scientific fact of the reasonable probability as to *WHY* the drawer was left open when B.S. went to school to allege Petitioner abused her but, did not tell counselor/teacher until forced to and never had written Petitioner's name; consistent with her non-lethal "superficial" cuts for attention and not actual death. B.S. clearly did not truly want to die, but wanted attention and/or to never have to return to her Mother's home on basis the lack thereof. M. Spence meddled in the investigation as to force charges to be filed. The foregoing errors, and more- all errors and sub-props denied Petitioner a fundamentally fair trial.

CONCLUSION

The errors exist, thus, a reasonable fact finder may return an aggregate amount of errors deprived Petitioner of a fair jury deliberation and criminal procedure. For these reasons, Petitioner respectfully requests this Court Vacate the judgment, reverse and remand with instructions for a new trial free of all errors herein.

PROPOSITION II

NEWLY DISCOVERED EVIDENCE THAT WAS NOT AVAILABLE FOR DIRECT APPEAL OBJECTIVELY INDICATES KNOWINGLY FALSE TESTIMONY HAS BEEN USED AS SUBSTANTIVE EVIDENCE DURING JURY TRIAL IN VIOLATION OF U.S. CONST. AMEND. V, AND XIV.

STANDARD OF REVIEW

"B.S.' false testimony and the Prosecutors false statement is deemed to be material 'if there is any reasonable likelihood that false testimony could have affected the judgment of the jury."

United States v Agurs, 427 U.S. 97, 103 96 S. Ct. 2392, 2397, 49 L. Ed. 2d. 342(1976)(emphasis added); accord Giglio v United States 405 U.S. 150, 154, 92 S. Ct. 763, 766, 31 L. ed. 2d. 104(1972); Napue v Illinois, 360 U.S. 264, 271, 79 S. Ct. 1173, 1178, 3 L. Ed. 2D 1217(1959)

ARGUMENT AND AUTHORITY

There are three areas of the Jury Trial wherein false testimony has been published to the jury by testimony which has clearly affected the judgment of guilt and punishment regarding a material element. Moreover the manipulation of the investigation by Misty and Wade Spence may come to light in this pleading. Warranting an Evidentiary Hearing wherein Misty Spence may be directly examined for her participation in the investigation. The substantive evidence indicative of False Testimony/Evidence unavailable during Direct Appeal, is the Civil Deposition of Wade Spence. (Ex.3) This Court permits the use of Civil Depositions as substantive evidence tending to create a genuine issue of material fact. Lenzy v State 1993 OK CR5 3, ¶15 ("Citing *Arnold*, this Court found that the District Court of Washington County did have jurisdiction to pursue the perjury charge against her since the deposition had been used in a civil proceeding in that court.") Thus, Petitioner shall compare Wade Spence's ("W. Spence") trial testimony in contrast to W. Spence's civil deposition sworn testimony.

A. Interference With the Investigation

Under oath, W. Spence testified himself and his Wife were not involved with the investigation in any way shape or form:

Q: "Mr. Spence, there's been some inferences and some statements during this trial that you haven't been a part of, for example, *at some time someone might have said something like you and/or your wife were driving this investigation*. Looking back over the course of this, is there anything you can think of that you did that would have directly tried to influence or drive this investigation to make this detective or anybody else at OCPD do something they shouldn't do?" (Jr. Tr. 872; 10-19)

A: "Absolutely not." (Jr. Tr. 872; 20)

".... and when they go out to El Reno, Oklahoma, he goes out there and he again goes to the ...

forensic interview on 12/13 of '19 and he meets with Misty and Wade Spence. And again, Dorian is not contacted. On 12/13 of '19 on the same date after the forensic interview, Misty Spence emails him some paperwork and documents. Again, how did she get the email? And again Dorian is not contacted. On 12/13 of '19, after the forensic interview and after the first meeting, he meets again with Wade Spence and he calls him and leaves a voicemail., and Wade Spence calls him back and they have another conversation, Again, no contact with Dorian. Again on 12/13 of '19, after the forensic interview and after the meeting, he then calls Misty Spence again. Again, there's no contact with Dorian. On 12/13 of '19, after interviewing with Misty Spence, he calls her back and leaves another message and does another interview with Misty Spence. (Side note : In the Discovery Police report, Det. Kenneth Wegner calls Wade the afternoon of 12/13 after seeing them at the Forensic Interview and conducts an interview with Wade at 1:10pm and then Misty at 1:34pm.) On 12/16 of '19, Misty Spence calls him and he again speaks with him and again does not contact or have any contact with Dorian. On 12/18 of '19, the detective again meets in person with Misty Spence at the police headquarters. (Jr. Tr. 1324; 2-25) On 12/17 of '19, after meeting with her at the police headquarters, he then talk to her again on the telephone, and again, he has no contact with Dorian. On 12/18 '19, he meets with Misty Spence again at the police headquarters, and again, has no contact with Dorian Newman. (Jr. Tr. 1325; 1-6) W. Spence testified at Criminal Trial that Misty Spence ("M. Spence"), B.S., and himself rode to the Children's Hospital together:

A: "Once the patrol supervisor came out, I - - he made his phone calls, as what a supervisor does, and they **requested us to take her to Children's Hospital to get a SANE exam.**"

Q: "And did you do that?"

A: "Yes, sir, we did."

Q: "Who went with you to childrens hospital?"

A: "Just me and my wife, Misty."

Q: "was Breanna in the car with you?"

A: "yes, sir."

(Jr. Tr 844; 14-23)

W. Spence testified under oath in Civil Deposition that the M. Spence and B.S. led him to the Children's Hospital as he followed:

Q: "Did you have any conversations with Breanna about why she was at the hospital?"

A: "I did not, no. She rode with Misty, Misty may have."

Q: "And I'm just asking about what you know."

A: "I did not honestly, no, no, I didn't I mean I know what a SANE exam entails. But I didn't talk to Breanna about it. **Misty was in the room with her.** I kind of stayed outside a little bit."

(Civi Dep 57; 4-13)

This theme of deflecting any impropriety with the investigation of the case unto M. Spence continues throughout W. Spence's civil deposition. Here are even more instances indicating that M. Spence led the investigation:

Q: "Was this part of the criminal investigation?" (Civi Dep 158; 9-10)

A: "*It was during the criminal investigation*" (Civi Dep 158; 11)

Q: "And why was Misty doing that?" (Civi Dep 158; 12)

A: "She was just looking them up and *if we found anything that*, I don't know, *could help the case or to – looked out of the ordinary*" (Civi Dep 158; 13-15)

Q: "What other things are you aware of that Misty was actively investigating?" (Civi Dep 158; 23-24)

A: "She was – I've said, Twitch is open record. Anybody and everybody could look at it. Breanna had showed videos of her mom on Twitch, and **Breanna doesn't have Twitch or anything.** So she looked up Twitch and then – was it Instagram, maybe? I don't know. There was another one that Dorian had wide open for everybody to see." (Civi Dep 158; 25, 159; 1-7)

Q: "Was there anything else that Misty did in investigating and saved and showed you?" (Civi Dep 159; 8-9)

A: "It was just those – just her – Dorian's social media videos." (Civil Dep; 159, 10-11)

Q: " Following up about the Twitch videos, in one of your discovery responses it says (as read): "We found hundreds of videos of Dorian playing games on her Twitch channel. For one thing since it says "we" but also because of your testimony that you're not a very, like, social media or tech savvy guy..." (Civi Dep; 167, 1-7)

A: "I'm not, I'm not." (Civi Dep 167, 8)

Q: "I'm guessing that someone else found those videos, not you personally?" (Civi Dep; 167, 9-10)

A: "Not me personally. And I don't know if there's other people that helped Misty find them or what, but it was all..." (Civi Dep; 167, 11-13)

Q: "It would have **primarily been Misty then?**" (Civi Dep; 167, 14)

A: "Misty" (Civi Dep; 167, 15)

Q: "Is that right? (Civi Dep 167; 16)

A: "**Yeah. She spent a lot of time** on her phone finding videos. " (Civi Dep; 167; 17-18)

Q: "And these hundreds of videos, are they all saved somewhere?" (Civi Dep; 19-20)

A: "They are, yeah. The DA's office got them. Mr. Sullivan may have them. I don't know but..." (Civi dep; 167; 21-23)

The trial record confirms M. Spence driving the investigation

A: "... places him under arrest on January the 9th of 2020. And before he does that, he calls Misty and Wade Spence." (Jr. Tr. 1327;1-2) A sign of authority and control over Det. Wagner. M. and W. Spence are heavily involved in the investigation constructively by proxy and directly meeting in person a lot.

The above, clearly indicates M. Spence participating in a parallel investigation whereby she provides the D.A.'s office with unlawful support and evidence to cross-reference in order to ensure a

more thorough and robust investigation than the D.A.'s office would without M. Spence's participation because of her expertise in Child Crimes. The following demonstrates the times M. Spence met *in person* with Detective Wagner ("Det. Wegner") as well other phone conversations. It is worth noting that W. Spence met with Det. Wegner as well after the Forensic Interview (see page 24; side note) The key factor is, **WHY** would Det. Wagner have to meet *in person* with M. Spence? A phone call can disclose any material information or, in the alternative, email can contain whichever documents needed as a PDF attachment. All of which can be accessed with M. Spence's smart phone. Moreover, **WHY** would M. Spence need to meet in person with Det. Wegner multiple times when she has already demonstrated she can on 12/13/19 (see page 21). **There is no need for in person interaction except to evade detection and exchange documents/evidence unrecorded.**

A phone call would log into her call log the duration of conversation. Text messages would memorialize the correspondence that was inappropriate in the first place. M. Spence and Det. Wagner's conduct is consistent with interfering with the investigation. To be sure the foregoing was an exact citation of the Closing Argument for the Defense wherein it has been undisputed that M. Spence has contributed to the investigation when, in fact, it is against Departmental Policy for her to have done so.

The foregoing objectively indicates the reasonable probability M. Spence participated in the investigation and yet the Prosecutor knowingly advised the jury that nothing happened. The D.A., and the witnesses have knowingly submitted false testimony, in violation of Napue v. Illinois, 360 U.S. 264, 269-70, 79 S. Ct. 1173, 1177, 3 L. Ed. 2d 1217(1959)(*"The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears."*).

These factors indicate M. Spence has personal knowledge regarding the investigation and needs to be Directly Examined in an post-conviction evidentiary hearing regarding her clear influence in this investigation.

B. Petitioner As Cause For B.S.' Cutting

A: "I would submit to you that this cutting behavior that we've heard so much about that *every single witness, including her mother, including the defendant, agreed that the cutting behavior started after when Breanna told you that she started being touched by Christopher Howell.*" (J. Tr. 1308; 6-11) The foregoing is patently false and can be proven so beyond a reasonable doubt.

"[T]he basic [tenet] of Giglio *does not depend* on whether misleading information was {2009 U.S. App. LEXIS 102} given to the jury in the form *of a closing argument by a prosecutor rather than through the testimony of a witness.'* **Armour v. Salisbury, 492 F.2d 1032, 1037(6th Cir. 1974)**)(quoting **Douglas v Workman, 560 F.3d 1156,1192(10th Cir. 2009)**)

Q: "Let me as it a different way. Have you seen your daughter have any scars on her are since that first time you took her to dinner?

A: "No, I haven't. I haven't seen any scars since that – since then so – I just think that it was – before that time, I think she was – I think it might have been on a – doing it several – several times, not just once. I think she did it several times before then. (Civ. Dep. 106; 7-17) The newly discovered evidence indicates that the Prosecutor falsely told the Jury Petitioner is the cause of B.S. self-mutilation.

C. B.S.' Motive to Lie (The record suggests B.S.' has no motive to lie)

A: "She has no motive. And her own behavior corroborates what she is saying.(J. Tr. 1307; 11-12)

Actually B.S. does; W. Spence testifies about the cutting being caused by B.S.' lack of attention.

Q: "Did she ever give you an explanation *as to why she was cutting on herself?"* (Jr. Tr. 849; 16-17)

A: "She gave – it took awhile, it took awhile, but she – she pretty much just said she wasn't getting enough attention at her mom's house." (Jr. Tr. 849; 18-20) ; See also (Civi Dep. 25; 15-19)

The newly discovered evidence indicates the Prosecutor falsely told the Jury B.S. cant lie.

D. Prongs of Napue/Giglio Violation

Section A is material, because it turns on the credibility of W. Spence, bias impeachment instructions shall be required for all of the State's witnesses whom exhibited conduct consistent with Bad Faith or Conflict of Interest in violation of Departmental Policy, affecting punishment per *Napue*.

Section B is material, because it is an irrefutable fact that B.S.' personal knowledge and & W. Spence's admitting the cutting began and ended in elementary school (Civi Dep. 106; 8-25) and therefore cannot be solicited to the Jury as causation for B.S. mental condition. This clearly affects the weight of the evidence against Petitioner and has not been corrected prior to deliberation; The false testimony infers existence of abuse on circumstantial evidence known to the D.A. as false by admission that the "cutting" cannot be the fault of Petitioner.

Section C indicates by the record itself, in conjunction with (Ex. 2) , that B.S. has a clear motive to lie, and her conduct is consistent with such motive. Furthermore, circumstantial evidence suggests, more than not, that B.S. intended to draw attention to her journal but not create an actual criminal case against Petitioner. Testimony has been elicited from witnesses for the State and solicited by the State in closing arguments. The foregoing infected to fact-finding function of the trial requiring a new trial.

CONCLUSION

Sections A,B,C, are material to punishment because they aggravate inferences prejudicing the intent element; no evidence supports the intent element. The Prosecutor knew the statements were improper; his own witnesses admitted that B.S. acts out for attention, the cutting began in elementary school prior to count III and that B.S. "superficial" non-lethal conduct in order to garner attention. It is not far fetched that a juvenile whom abuses *herself* for attention would go to such lengths to draw attention to her journal for even MORE attention. This is consistent with *Histrionic Personality Disorder*.

CONCLUSION IN SUM

The presiding Judge Cindy Troung, as an effort to cure the errors of duplicity and multiplicity ordered the sentences to run concurrent but one. The fact is that the multiple counts affected the determination of guilt by providing the inference that Petitioner committed more crimes than alleged, some six more on the bedroom couch. The false testimony in the closing arguments placed the State's seal of approval on the determination that Petitioner is the cause for B.S. cutting herself and that she has no motive to lie about Petitioner sexually abusing her. And finally Trial Counsel's failure to submit an Mental Health Expert witness to explain the B.S.' conduct is consistent with Histrionic Personality Disorder and False Memory Syndrome deprived Petitioner of a fair trial wherein he may be acquitted because any layman would not have been able to find the diagnosis alone. The false testimony is mandatory reversible error, however the other violations in conjunction, deprived Petitioner of a fundamentally fair trial wherein a reasonable jurist may return a verdict of not guilty on basis of a mentally ill B.S. with motive to lie due to lack of attention, desired to never return to her mothers home as indicated by the fact B.S. no longer communicates with her mother. Finally, had M. Spence been called as a witness it would have become clear to the Jury that she drove the investigation, violated departmental policy and is the reason the case is even before the Court. This is what Petitioner requested for his defense Case-In-Chief but Ineffective Counsel recklessly disregarded this fact and Appellate Counsel, good friends with Trial Counsel deliberately mishandled the Direct Appeal. For these reasons, Petitioner respectfully requests this Court grant post-conviction relief and Order a new trial devoid of perjury, with a Mental Health Expert Witness, and M. Spence as a witness to be directly examined for "fruit of the poisonous tree" derived from her investigations.

ORIGINAL

EXHIBIT

1

**IN THE COURT OF CRIMINAL APPEALS OF
THE STATE OF OKLAHOMA**

CHRISTOPHER DANIEL HOWELL,)

Appellant,) **NOT FOR PUBLICATION**

v.) **Case No. F-2021-1405**

THE STATE OF OKLAHOMA,)

Appellee.) **FILED**
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC 21 2023

SUMMARY OPINION
JOHN D. HADDEN
CLERK

MUSSEMAN, JUDGE:

Appellant, Christopher Daniel Howell, appeals his Judgment and Sentence from the District Court of Oklahoma County, Case No. CF-2020-81, Counts 1 and 3-11, Lewd or Indecent Acts to a Child Under the Age of 16, in violation of 21 O.S.Supp.2018, § 1123(A); and Count 2, Attempted Lewd or Indecent Acts to a Child Under the Age of 16, in violation of 21 O.S.Supp.2018, § 1123(A).

The Honorable Cindy H. Truong, District Judge, presided over Howell's jury trial. The jury found Appellant guilty of all counts and assessed the following sentences: Count 1 - twenty years, Count 2 - ten years, Count 3 - twenty-five years, Count 4 - twenty-five years, Count 5 - twenty years, Count 6 - twenty-five years, Count 7 - twenty

EXHIBIT

1

years, Count 8 - twenty-five years, Count 9 - twenty years, Count 10 - twenty-five years, and Count 11 - twenty years. Judge Truong imposed the same and ordered Counts 3 and 4 to run consecutive, and all other counts to run concurrent with each other, along with credit for time served and a fine of \$500.00.¹ Howell appeals his judgment and sentence and raises the following issues:

- I. whether the trial court abused its discretion in allowing the admission of highly prejudicial testimony that was not relevant to the jury determination of guilt or innocence of the defendant;
- II. whether the testimony of Sheila Sizemore should not have been admitted because no expert witness report had been disclosed to the defense and because her testimony contained hearsay evidence of a child under thirteen years of age without complying with 12 O.S. § 2803.1; and
- III. whether at least six and probably eight of the counts must be dismissed due to a total failure of proof.

We affirm the Judgment and Sentence of the district court.

I.

In Proposition I, Appellant claims that the trial court improperly admitted testimony that was irrelevant and highly prejudicial. Appellant's Amended Brief in Chief and Appellant's Reply Brief are wholly void of any statutory or other legal authority to support this

¹ Appellant will be required to serve 85% of his sentence before becoming eligible for parole consideration. 21 O.S.Supp.2015, § 13.1.

proposition. By failing to adequately support his argument with citation to authority, Appellant has not complied with Rule 3.5(A)(5), *Rules of the Court of Criminal Appeals*, Title 22, Ch.18, App. (2023) (requiring argument in support of a proposition of error supported by citation of authorities, statutes and parts of the record). This claim is therefore forfeited. Proposition I is denied.

II.

In Proposition II, Appellant claims that the expert testimony of the victim's counselor was improperly admitted because she did not provide an expert report and testified to child hearsay without complying with Title 12, Section 2803.1 of the Oklahoma Statutes. We will review the admission for an abuse of discretion as Appellant challenged the admission at trial. *Day v. State*, 2013 OK CR 8, ¶ 11, 303 P.3d 291, 297.

The admissibility of evidence is within the discretion of the trial court and will not be disturbed absent a clear showing of abuse, accompanied by prejudice to the accused. See *Jackson v. State*, 2006 OK CR 45, ¶ 48, 146 P.3d 1149, 1165; see also *Tryon v. State*, 2018 OK CR 20, ¶ 51, 423 P.3d 617, 635. An abuse of discretion is a clearly erroneous conclusion and judgment, contrary to the logic and effect

of the facts presented. *Pullen v. State*, 2016 OK CR 18, ¶ 4, 387 P.3d 922, 925; *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

Title 12, Section 2702 of the Oklahoma Statutes provides that an expert may provide testimony based on technical or specialized knowledge, skill, experience, training, or education if it will assist the trier of fact to understand the evidence or to determine a fact in issue. Similarly, Title 22, Section 2002(A)(1)(d) requires that the State to disclose, upon request of the defense, any reports or statements made by experts in connection with the case. The defense did not request a report and Appellant received treatment notes as part of discovery.

Hearsay is not admissible except as provided by law. *Vance v. State*, 2022 OK CR 25, ¶ 21, 519 P.3d 526, 532; see also 12 O.S.2011, § 2802. Hearsay is admissible if it contains “statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, if reasonably pertinent to diagnosis or treatment.” 12 O.S.2011 § 2803(4). Testimony is admissible under this section if; (1) the declarant’s motive was consistent with receiving medical care; and (2) it was reasonable for the medical professional to rely on the

information in diagnosis or treatment. *Kennedy v. State*, 1992 OK CR 67, ¶ 11, 839 P.2d 667, 670; *Thompson v. State*, 2019 OK CR 3, ¶¶ 11-16, 438 P.3d 373, 377-78. Although not binding, we agree with the Oklahoma Supreme Court's reasoning in *In re J.D.H.*, 2006 OK 5, ¶¶ 17-18, 130 p.3d 245, 249-250, that while not a medical doctor, a therapist is a qualified mental health professional who is involved with the child for purposes of treatment and that the statements made to the therapist by the child are necessary for treatment.

Review of the record shows that the testimony of the victim's counselor was properly admitted. The State properly identified the witness and her expected testimony and obtained testimony that qualified her to testify as to her opinions. Her testimony regarding the victim's statement included only statements made for the purpose of mental health treatment and were needed by the counselor to provide treatment.² The admission of the testimony was not an abuse of discretion. Proposition II is denied.

² The testimony of the counselor did not include statements by the victim describing sexual contact performed with or on the child, so the admissibility would not be determined based upon the applicability of 12 O.S.Supp.2013, § 2803.1.

III.

In Proposition III, Appellant asserts that his challenge is to sufficiency of the evidence of several of the charges and claims that being charged with several of the same offenses amounts to double jeopardy. However, Appellant's argument focuses on a claim that he has been punished multiple times for the same conduct, so we will review only that argument.³

Appellant did not raise the argument at trial, waiving review for all but plain error. *Irwin v. State*, 2018 OK CR 21, ¶ 4, 424 P.3d 675, 676. Plain error review requires the defendant to prove: (1) the existence of an actual error; (2) that the error is plain or obvious; and (3) that the error affected his substantial rights, meaning the error affected the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. Even where this showing is made, this Court will correct plain error only where the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings or represented a miscarriage of justice. *Id.*

³ Appellant has forfeited his claims of insufficient evidence and double jeopardy as mere mention of an issue does not constitute the raising of a proposition of error on appeal. See Rule 3.5(A)(5), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2023).

Title 21, Section 11 of the Oklahoma Statutes provides that "in no case can a criminal act or omission be punished under more than one section of law." 21 O.S.Supp.2019, § 11. Section 11 claims should be analyzed by focusing on the relationship between the crimes, specifically (1) the particular facts of each case; (2) whether the facts set out separate and distinct crimes; and (3) the intent of the Legislature. *Sanders v. State*, 2015 OK CR 11, ¶ 8, 358 P.3d 280, 284; *Davis v. State*, 1999 OK CR 48, ¶ 13, 993 P.2d 124, 126. Section 11 does not bar the charging and conviction of separate crimes which may only tangentially relate to one or more crimes committed during a continuing course of conduct. *Davis*, 1999 OK CR 48, ¶ 13, 993 P.2d at 126-27.

After review of the record, we find no plain or obvious error under Section 11, as Appellant's convictions arise from separate and distinct acts. Proposition III is denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2023), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA
COUNTY, THE HONORABLE CINDY H. TRUONG,
DISTRICT JUDGE**

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OPINION BY: MUSSEMAN, J.

ROWLAND, P.J.: Concur
HUDSON, V.P.J.: Concur
LUMPKIN, J.: Concur in Result
LEWIS, J.: Concur

LUMPKIN, JUDGE: CONCURRING IN RESULT

I concur in the result reached in this opinion. However, I write to reiterate the need to ensure witnesses meet the statutory requirements for an expert, thereby allowing them to testify in that capacity.

Our evidence code allows expert opinion testimony but places restrictions on who may give such testimony. Who may give expert testimony is set out in 12 O.S.2021, § 2702, as follows:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise, if:

1. The testimony is based upon sufficient facts or data;
2. The testimony is the product of reliable principles and methods; and
3. The witness has applied the principles and methods reliably to the facts of the case.

The subject witness in this opinion is referred to only as the victim's counselor, with no mention of her qualifications as an expert. However, the record reveals that she had a master's degree in counseling psychology, had been a licensed professional counselor

for expert witness and treated patients who suffered abuse throughout her years of practice. Thus, the trial court properly found her to be an expert in the area upon which she testified. The record shows compliance with our statutory requirements in this case. However, merely holding oneself out as a "counselor" with nothing more is insufficient to qualify as an expert under those requirements.



Incident Report
The City of
OKLAHOMA CITY
Police

Incident Number 2019-0100327	CAD Incident # 201912-0029602
Report Type Incident Supplement	Page 1 of 4
Date / Time Occurred 12/11/2017 00:00 to 12/11/2019 00:00	Date / Time Reported 12/11/2019 14:35

Arrested Suspects	Additional Suspects	Unknown Suspects	Victims	Other Persons	Vehicles	Items	Evidence Count	Leoka
Related Incident #		<input type="checkbox"/> Hate Crime		<input type="checkbox"/> Domestic Violence		<input type="checkbox"/> Drive by Shooting		
Cleared by Exception NOT APPLICABLE (NOT EXCEPTIONAL CLEARED)				Exceptional Clearance Date				
Situation								
Cargo Theft N/A	Incident Type PERSONS CRIME		Leoka NONE					
Incident Address:								
Street Address 4900 EXPLORER DR	City EDMOND	State OKLAHOMA	Zip 73012	Division SPRINGLAKE				
Administrative Info								
Reporting Officer WEGNER, KENNETH	Commission Number 1695	Approving Supervisor TURNER, KYLIE	Commission Number 1589					

Narrative Information

THIS IS AN INVESTIGATIVE FOLLOW UP REPORT

RE: Cellebrite information from Breanna Spence's phone.

This is to document information obtained from Breanna's iPhone 7 Plus, Serial number FCCWW1P2HFY7

EXHIBIT

2

EVIDENCE:

Cellebrite Report: Digital Evidence Management Unit (DEMU)
Cellular Device Search Waiver; DEMU, OCPD Property Room

On Tuesday, 12/17/2019, at approximately 9:00am, I met with Breanna Spence's step-mother, Misty Spence, at OCPD Headquarters. Misty provided me with Breanna's cell phone and completed a cellular device search waiver. On signing of the waiver, I took the device to the OCPD Computer Forensics Unit for processing. On Wednesday, 12/18/2019, at approximately 8:10am, I picked the phone up from the Computer Forensics Unit and met with Misty Spence at OCPD Headquarters at approximately 8:20am, to return the phone. The following are some of the messages I observed looking through the Cellebrite report provided by the Computer Forensics Unit.

CHRISTOPHER HOWELL CONTACT:

On 7/10/2019, at 10:56PM (UTC -5), Christopher Howell (405-420-1779) instant messaged "Banana Head" (Breanna Spence, 405-471-4063) with "So you watching lost boys?" Breanna responds at 10:57pm with "Stand by me," and Christopher responds at 10:58pm with "Oh I thought you wanted me to come watch the movie with you! Never mind. Ice only." There were no further messages for the night.

On 7/20/2019, at 10:52pm, Chris messages Breanna with "How's that 100?" Breanna responds at 10:55pm with "Good." Chris responds at 10:55pm with "That's your response...LOL!" Breanna sends a response at 10:55pm (content missing) and Chris responds at 10:56 with "Ok..." Chris messages at 10:56pm, "Miss you too! LOL!" and at 10:56pm, Breanna messages back with "sorry miss you." Chris messages at 10:57pm with "Haha."

On 7/27/2019, at 9:11pm, Chris messages Breanna with "Your bro and sis are down for bed. Keep it down a lil Please." Breanna responds at 9:27pm with "Yes sir." At 9:41pm Breanna messages Chris with "It's hot up here could you please turn the air on up here please" to which Chris responds at 9:42pm with "Ok."



Incident Report
The City of
OKLAHOMA CITY
Police

Incident Number 2019-0100327	CAD Incident # 201912-0029602
Report Type Incident Supplement	Page 2 of 4
Date / Time Occurred 12/11/2017 00:00 to 12/11/2019 00:00	Date / Time Reported 12/11/2019 14:35

On 8/31/2019, at 11:38pm, Chris messages Breanna with "Goofballs!" Breanna responded (content missing). At 11:38pm, Chris messages Breanna "Having fun?" and Breanna responded "Yessss," to which Chris responded "Nioce." At 11:40pm, Chris messaged Breanna with "Love you," Breanna responded, "Love you to." At 11:41pm, Chris messaged Breanna "Need anything else" Breanna answered "No" and "Thank you tho." At 11:41, Chris messaged "Ok! You're friend Avery is nice!" and Breanna responded at 11:42pm with "Ya." At 11:42pm, Chris messaged "Y." At 2:16am on the morning of 9/1/2019, Chris messaged Breanna with "You girls still up?" and Breanna did not respond.

On 10/11/2019, at 11:11pm, Chris messaged Breanna with "How's the temp upstairs?" and Breanna responded "Good." At 11:12pm, Chris messaged Breanna "To Cold?" and Breanna responded "No." Chris messaged Breanna with "It's 50 Up there," and Breanna responded, "It is well I like it 50." Chris messaged "You're gonna die at that temp Without more temp," and at 11:13pm, Chris sent a head exploding emoji." At 11:13pm, Breanna responded, "It's fine," and Chris messaged "Wyd" (What you doing). At 11:14pm, Breanna messaged "Watching Netflix," and Chris responded, "Nice Can I come watch?!" At 11:15pm, Breanna messaged "I'm about to go to bed," and Chris responded "I'm kidding dork! Have fun!" At 11:17pm, Chris messaged Breanna with "Gnight. Thanks for being awesome. If you need anything in life let me know!" At 11:18pm, Breanna responded "Ok."

On 12/05/2019 at 9:43pm (UTC -6), Chris messaged Breanna with "To hot or cold upstairs?" and there is no response from Breanna.

On 12/08/2019 at 12:10am, Chris messages Breanna "To cold or hot upstairs?" to which Breanna responds, "It's fine." At 12:10pm, Chris messages Breanna with "Sorry if I made you mad." At 12:11am, Chris messages Breanna "I'm new at this." At 12:14am, Chris messages Breanna "Did I mess up?" At 4:13pm, Chris messages Breanna with a picture taken from a Tweet made by @JuiceWorlddd from 4/24/2017 which states "My goal is to get overly famous, shine for a couple years..then fake my death." This is the last day of recorded messages between Chris and Breanna.

SAYDI SELLERS CONTACT:

On 12/14/2019 AT 9:38PM, Breanna messaged Saydi Sellers (BOB 405-906-9398) with "So basically the detectives went and talked to my mom at her house and did a brief summary of what happened to me and basically Chris is not aloud to see the kids or me and my step mom said that I could call her so I did on my dads phone and she wasn't aloud to ask anything that would upset me and if she did then I could hang up on her but I could hear the sadness in her voice and I could tell that she loved me still and was sorry for me." At 9:39pm, Breanna messaged "Also the stuff I had to do the day I was gone I had an interview" "In el Reno."

On 12/14/2019, at 9:41pm, Saydi messaged Breanna "Yeah the detective called my mom and there going to call my this week" "So I got involved too." At 9:42pm, Breanna messaged Saydi "And the ocpd is going to ask questions next week at my dads house and ask misty and my dad questions to." At 9:43pm, Breanna messaged Saydi "Ok we need to stop talking about this," and Saydi responded "Yeah." Breanna messaged "Sorry but I have to stop."

"ZANDER" CONTACT

On 12/08/2019, at 12:48am, Breanna messages "Zander" (ZANTA 405-508-5527) with "I hate life" "I want it to just end." At 1:47am, Zander messages "don't say that." On 12/10/2019, at 11:09pm, Zander messages Breanna "you ok?" and Breanna responds at 11:10pm with "Ya I'm fine I'm not at my moms so my stepdad isn't around." Breanna messages "You think I'm an idiot don't you," and at 11:11pm, Zander responds with "ok we" " I really do hope everything gets better and if there is anything I can do tell me" "and I don't think you're an idiot." At 11:12pm, Breanna messages "Ok thank you for offering to help and you do especially for me letting this get this bad and I'm just scared." Zander responds "I know that it's scary that why I'm trying to help." At 11:13pm, Breanna messages "Ya and I appreciate you trying to help."

On 12/10/2019, at 11:14pm, Zander messages "but like I said please tell me if you need something ok. You have to promise me you will tell me if there is something you need." At 11:15pm, Breanna messages "Ok I promise but only if you get me your favorite candy tour favorite chips and if you like chocolate o and what kind of pink vans you want that you DON'T have!!" "I mean tell me**"

On 12/11/2019, starting at 2:50pm, Zander and Breanna have a message conversation in which she expresses being "scared" and her situation "might involve the police. Breanna comments about the mount of time the process is taking, expressing continued fear throughout police being called to the school. At 4:35pm, Breanna messages there are "6 or 5" "cops" at the school, before messaging at 4:58pm she is on her way to the hospital.



Incident Report

The City of
OKLAHOMA CITY
Police

Incident Number 2019-0100327	CAD Incident # 201912-0029602
Report Type Incident Supplement	Page 3 of 4
Date / Time Occurred 12/11/2017 00:00 to 12/11/2019 00:00	Date / Time Reported 12/11/2019 14:35

On 12/11/2019, at 6:45pm, Breanna messages Zander "But I'm still gonna have to go through so much like question having to re say the story more the once my moms gonna get questioned my brother and sister thankfully won't be taken or anything I don't know what will happen to Chris tho." At 7:40pm, Zander messages Breanna "I'm really sorry that al this happened and I hope It's gets better soon." At 8:26pm, Zander messages Breanna "sorry I keep texting you I just want to know you're doing ok."

On 12/11/2019, at 8:56pm, Breanna messages Zander "O thank you ya I fell like I did the right thing but the other side of me says you just got an innocent nice funny guy into really big trouble and ya I know he's not innocent but I keep having flashbacks in my mind of us always saying stupid jokes or him getting along with everyone of my friends." At 8:58pm, Zander responds "well if you think it was right then it was right but at the same time I understand why you feel that way."

On 12/11/2019, at 9:48pm, Breanna messages Zander "And I don't want this situation to cause you stress or anything and if it does please tell me," to which Zander replies, "it doesn't I just never wanna ses you sad" "see*." At 9:49pm, Breanna messages "I know but it's just hard to say that you are basically getting raped at home to your boyfriend it's hard and I'm afraid it would break up our relationship." At 9:50pm, Zander messages "It's a hard time and I'm just trying to make it better don't worry about me and it wouldn't break us up." At 10:01pm, Breanna messages "I know that and you are an awesome bf for trying to help most bfs don't care and just do nothing about it you are the one person I go to for these kind of things." At 10:02 Zander messages "well I'm trying my hardest to help and if I'm makng it worse please tell me." Breanna responds at 10:20pm with "Your not making worse your actually the one keeping me breathing you and Saydi if it wasn't for you and her I wouldn't be here and I appreciate you for that."

On 12/15/2019, at 9:21pm, Breanna messages Zander "Saydi is involved now," and Zander responds "how?" At 9:22pm, Breanna messages "Beacause I told them that I only told Saydi because I trust her and she's my bff and because her moms a therapist or something and thought I could get help from her and so now they are going to have an interview with her and the council." At 9:23pm, Zander messages "I'm really sorry," and Breanna responds at 9:24pm with "Ya me too I feel bad for getting her involved."

On 12/15/2019 at 9:27pm, Breanna messages Zander "Ya I'm not aloud to be alone with my mom right now because they don't want Chris to be there but I'm able to see the family on Christmas other then Chris family or him because there obviously gonna be on his side so on Christmas my aunt and cousins are going to go with me to my moms side of the family's Christmas because if anyone makes me feel uncomfortable or upset I could just leave anytime." At 9:28pm, Breanna messages "I really miss them."

DORIAN NEWMAN CONTACT:

On 12/13/2019 at 1:51pm, Dorian (Mother Dearest (ice) 405-693-6885) messaged Breanna "Bree, what is going on? You can talk to me honey." There is no response, and no messages following Dorian's.

"BELLAMIE" CONTACT:

On 12/11/2019, at 2:56pm, "Bellamie" (405-339-3030) messaged Breanna "What happened with Saydi," and Breanna responded, "The things that happened to me upset her." At 2:59pm, Bellamie messages "Till 6th hour," "You told her not me," and Breanna responds at 3:00pm "That's only because her mom is a therapist or something."

On 12/13/2019 at 6:46pm, Bellamie messages Breanna "Why weren't you at school," and Breanna responds at 6:51pm "I had to deal with something that involves what happened." At 6:52pm, Bellamie sends to emoji faces, and Breanna responds, "I can tell you now that I got this over with btw." Bellamie messages "Your not gonna tho," and Breanna responds "But at school on Monday and this time I actually will it's just I couldn't then because I hadn't done the thing I did today yet so I'll tell you Monday I promise." Bellamie responds "No you won't" "Don't bother," and AT 6:54PM Breanna messages "YES I WILL YOU DON'T KNOW WHAT I HAD TO DO OR WHAT IM GOING THROUGH RIGHT NOW AND COULDN'T TELL YOU YET BECAUSE I COULDN'T HAVE GOTTN INTO SERIOUS TROUBLE WITH MY PARENTS AND COPS."

On 12/13/2019, at 6:55pm, Bellamie messages "Ok but you told saydi," and Breanna responds, "That's different her moms a therapist I though she could help," and at 6:56 Breanna messages "And I'm going to therapy anyway." Bellamie proceeds to ask Breanna to tell her what is going on, and Breanna refuses until the two begin messaging in CAPS at each other in what appears to be an argument over Bellamie not wanting to tell Breanna why Bellamie isn't going to be at school, and her telling Breanna at 7:03pm "LEAVE ME ALONE."

On 12/13/2019, at 7:03pm, Breanna messages "FINE FINE CHRIS BASICALLY RAPED ME HAPPY NOW TELL ME" "And I had an interview today." At 7:04pm, Bellamie messages "WHAT," and Breanna responds "Yes that is what happened." Bellamie messages "Bree," and Breanna responds, "That's why I've been upset and crying."



Incident Report
The City of
OKLAHOMA CITY
Police

Incident Number 2019-0100327	CAD Incident # 201912-0029602
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Date / Time Occurred 12/11/2017 00:00 to 12/11/2019 00:00	Date / Time Reported 12/11/2019 14:35

END OF REPORT
Detective Kenneth Wegner #1695

EXHIBIT

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April 18, 2023
1-4

WADE SPENCE
SPENCE vs HOWELL

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18		18	
19		19	
20		20	
21		21	
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25	REPORTED BY: SHELLEY MARBURGER, CSR	25	
Page 2		Page 4	
1	A P P E A R A N C E S	1	S T I P U L A T I O N S
2	For the Plaintiff:	2	It is hereby stipulated and agreed by and
3	Randall Sullivan	3	between the parties hereto, through their
4	Attorney at Law	4	respective attorneys, that the deposition of WADE
5	1900 Northwest Expressway	5	SPENCE may be taken on behalf of the Defendants on
6	Suite 605	6	April 18, 2023, in Oklahoma City, Oklahoma, by
7	Oklahoma City, Oklahoma 73118	7	Shelley A. Marburger, Certified Shorthand Reporter
8	For the Defendant Christopher Howell:	8	for the State of Oklahoma, pursuant to agreement.
9	Shena E. Burgess	9	It is further stipulated and agreed by
10	Attorney at Law	10	and between the parties hereto, through their
11	Bradford Place	11	respective attorneys, that all objections, except
12	Suite 300	12	as to the form of the question and responsiveness
13	9175 South Yale Avenue	13	of the answer, are reserved until the time of
14	Tulsa, Oklahoma 74137	14	trial, at which time they may be made with the
15	For the Defendant Dorian Newman:	15	same force and effect as if made at the time of
16	Millicent G. Woodland	16	the taking of this deposition.
17	Attorney at Law	17	* * * * *
18	2 West 2 Street	18	
19	Suite 900	19	
20	Tulsa, Oklahoma 74103	20	
21	Kyle Goodwin	21	
22	Attorney at Law	22	
23	420 Northwest 6th	23	
24	Second Floor	24	
25	Oklahoma City, Oklahoma 73102	25	
	Also Present: Kim Sullivan		
	* * * * *		

EXHIBIT

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	Page 5		Page 7
1	WADE SPENCE		
2	of lawful age, being first duly sworn, deposes and		1 night's sleep last night?
3	says in reply to the questions propounded as		2 A. Good enough. Good enough.
4	follows:		3 Q. I know your profession, so sometimes that
5	*****		4 doesn't happen.
6	EXAMINATION		5 A. Yeah, it's good.
7	BY MS. BURGESS:		6 Q. All right. So you did get some sleep?
8	Q. Mr. Spence?		7 A. Yeah. I'm little stressed, but --
9	A. Yes, ma'am.		8 Q. Well, hopefully not over this.
10	Q. My name is Shena Burgess. I'm going to		9 A. Yeah.
11	be taking the first round of questions with you.		10 Q. Give me your full name, sir.
12	A. Okay.		11 A. It's Wade, Lockwood is my middle name,
13	Q. I got voted first, so.		12 and Spence.
14	MR. SULLIVAN: Congratulations.		13 Q. Normal spelling?
15	MS. BURGESS: Thank you.		14 A. Yes, ma'am.
16	Q. (By Ms. Burgess) Sometimes I ask a bad		15 Q. Are you a married man, sir?
17	question.		16 A. Yes.
18	A. Okay.		17 Q. Who are you married to?
19	Q. If you have no clue what I'm asking, just		18 A. Misty Spence.
20	tell me. I'll rephrase.		19 Q. And how long have you been married?
21	A. Okay.		20 A. Eleven years, I believe.
22	Q. And any time you need a break, this is		21 Q. I won't ask you the date.
23	not a marathon where we're not going to let you		22 A. Okay. I know the date.
24	leave this room, ask for a break. I'm one of		23 Q. Have you been married before?
25	those people, and even when I teach class, I		24 A. Yes -- yes, I have.
			25 Q. How many times?
	Page 6		Page 8
1	forget to give my students breaks because I just		1 A. Three.
2	keep going like a train.		2 Q. Who was the person before Misty?
3	A. Okay.		3 A. Before Misty was Cassandra Delgado.
4	Q. So just let me know.		4 Q. Can you spell that, please?
5	A. Will do. Thank you.		5 A. D-e-l-g-a-d-o.
6	Q. The only thing I ask is if I ask you a		6 Q. And there are some times I'm going to ask
7	question, so I don't forget what the heck I asked		7 you to spell things just so the court reporter
8	you, answer it and then we'll take the break.		8 doesn't throw anything at us later on. Okay?
9	Okay?		9 A. Uh-huh.
10	A. Okay.		10 Q. How long were you married to Cassandra?
11	Q. Fair?		11 A. A year, just a year.
12	A. Yes, ma'am.		12 Q. Any children with Cassandra?
13	Q. All right. Can I assume if I've asked		13 A. No, ma'am.
14	you a question and you've answered it, that you've		14 Q. And who was before Cassandra?
15	told the truth?		15 A. Dorian Newman.
16	A. Yes.		16 Q. And how long were you married to Dorian?
17	Q. Okay. Have you -- are you on any		17 A. I don't remember. Three years, maybe. I
18	medications that affect your thinking today?		18 can't remember.
19	A. No.		19 Q. About two years?
20	Q. Should you be?		20 A. No, about three years.
21	A. No.		21 Q. Okay.
22	Q. Have you had any alcohol in the last 24		22 A. Yeah.
23	hours?		23 Q. Was that to the end of the divorce?
24	A. No.		24 A. Yeah.
25	Q. Okay. Are you -- did you get a good		25 Q. And what years were you married to

<p style="text-align: right;">Page 13</p> <p>1 A. Ten years. Ten -- no, I'm sorry. That's 2 not right. Five years as an officer, yeah. Ten 3 years. I'd say about 10 years. About 10 years, 4 yeah.</p> <p>5 Q. Where are you assigned right now --</p> <p>6 A. South --</p> <p>7 Q. -- as a lieutenant?</p> <p>8 A. Southwest division.</p> <p>9 Q. Patrol?</p> <p>10 A. Yes.</p> <p>11 Q. During the time period -- the time period 12 where all this kind of is focused on is when your 13 daughter was between 10 and 12. Is that correct?</p> <p>14 A. Yeah. Yes, ma'am.</p> <p>15 Q. Okay. And so that would have been three 16 to five years ago. Where were you assigned during 17 that time period?</p> <p>18 A. Well, I was two different places. I was 19 Spring Lake division and I was in the gang unit. 20 I was in the gang unit when I found out.</p> <p>21 Q. How long were you in the gang unit?</p> <p>22 A. Ten -- nine months, nine months.</p> <p>23 Q. And were you a supervisor for the gang 24 unit?</p> <p>25 A. Yes, ma'am.</p>	<p style="text-align: right;">Page 15</p> <p>1 Friday and drop her off on my Monday.</p> <p>2 Q. Were you the one actually picking her up 3 from school?</p> <p>4 A. That day? No, not that day. Because the 5 day -- the day that we found out?</p> <p>6 Q. No.</p> <p>7 A. Is that what you're talking about?</p> <p>8 Q. No. No, I'm talking about generally.</p> <p>9 A. Oh, from school? My wife would pick her 10 up. Sometimes I'd pick her up.</p> <p>11 Q. Because she was going to school in 12 Edmond. Right?</p> <p>13 A. She was, yes, ma'am.</p> <p>14 Q. And Misty works in Edmond?</p> <p>15 A. She does.</p> <p>16 Q. And so --</p> <p>17 A. We both -- we both kind of picked her up.</p> <p>18 You know she'd pick her up on her way home from 19 work, or I'd pick her up.</p> <p>20 Q. And you weren't living in Edmond?</p> <p>21 A. No.</p> <p>22 Q. Okay. During that time period, were you 23 still in Choctaw?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. And your sister would pick her up from</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. And what shift did you have?</p> <p>2 A. I was 2 Shift, which is 4:00 in the 3 afternoon to 2:00 in the morning.</p> <p>4 Q. And what days of the week did you work 5 that shift, if it was regular?</p> <p>6 A. Yeah. We work eight -- we work eight on, 7 six off. So I -- at that time I was working 8 Wednesday to Wednesday.</p> <p>9 Q. And during that time period, you had 10 joint custody of your daughter?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. And I believe your joint custody was 13 Tuesday to Tuesday?</p> <p>14 A. It might -- it might have been, yeah.</p> <p>15 It's changed a couple times.</p> <p>16 Q. Do you have any independent memory what 17 it was at the time?</p> <p>18 A. Well, she -- Dorian was -- when I changed 19 shifts -- because I would change from, say, 20 Tuesday to Tuesday, Wednesday to Wednesday, 21 Thursday to Thursday. So when I did, we would 22 just agree to change it to my days off.</p> <p>23 Q. So your daughter would only be with you 24 during the six days that you had off?</p> <p>25 A. My week off. I would pick her up on my</p>	<p style="text-align: right;">Page 16</p> <p>1 school?</p> <p>2 A. Yeah, yeah. She would pick her up 3 sometimes, too, yes.</p> <p>4 Q. And your sister's name?</p> <p>5 A. Audrey, A-u-d-r-e-y.</p> <p>6 Q. Last name?</p> <p>7 A. Hallmark, like the card.</p> <p>8 Q. Did she live in Edmond?</p> <p>9 A. No, she lives in Guthrie.</p> <p>10 Q. And when you were making the -- I hate 11 this word -- exchange of the child.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Because it sounds so informal, especially 14 when you're dealing with a human, were you picking 15 up Breanna at school or did you have a meeting 16 place?</p> <p>17 A. It really -- it really fluctuated all the 18 time. We would sometimes meet at OnCue in Edmond, 19 sometimes. Sometimes I'd pick her up at Dorian's 20 house. Sometimes I would just get her from 21 school. It really just fluctuated on what 22 everybody had going on.</p> <p>23 Q. And would that have also been true if 24 Misty was the one picking her up?</p> <p>25 A. Yes, ma'am. Yeah. Misty would pick her</p>

Page 9	Page 11
1 Dorian?	1 MR. SULLIVAN: Both.
2 A. Oh, I can't remember. I can't remember	2 THE WITNESS: Two cars at once.
3 the day we got married, honestly. I don't	3 Yeah. And now the prices of cars are crazy, you
4 remember the date.	4 know.
5 Q. Were you in Vegas?	5 Q. (By Ms. Burgess) Luckily mine are both
6 A. Yes, we did get married in Vegas. Yes.	6 adults now, but 15 was a rough age with a girl.
7 Q. Was it a planned marriage?	7 A. Was it? Two, imagine two.
8 A. Yes.	8 Q. No. No thank you.
9 Q. Okay. And was the divorce here in	9 Is Mackenzie still in the home?
10 Oklahoma?	10 A. Yeah.
11 A. Yes.	11 Q. She's 19?
12 Q. Any other marriages?	12 A. Yes, ma'am. Yeah, yeah.
13 A. Ashley Brown was before her. We were	13 Q. Okay. And do Peyton and Breanna go to
14 married a year.	14 the same school?
15 Q. Any children with Ashley?	15 A. They do, Choctaw.
16 A. No, ma'am.	16 Q. What grade are they in?
17 Q. Okay. Do you have any biological	17 A. They are in -- well, Peyton is a
18 children with Misty?	18 sophomore. Breanna's a freshman.
19 A. No.	19 Q. Has Breanna been held back at all?
20 Q. And you have one child -- one biological	20 A. She got held back in kindergarten.
21 child?	21 Q. Her birthday being in August, that's --
22 A. Yes, ma'am.	22 that's tough.
23 Q. And who is that?	23 A. Yeah. It's kind of one of those "on the
24 A. Breanna.	24 bubble" ages, so.
25 Q. Can you spell that, please?	25 Q. Do y'all still live at 2300 Moran Road?
Page 10	Page 12
1 A. B-r-e-a-n-n-a.	1 A. No.
2 Q. And her middle name?	2 Q. Okay. Where do you live now?
3 A. Dayanara, D-a-y-a-n-a-r-a.	3 A. At 3900 -- 3900 -- Newburg,
4 Q. And last name Spence?	4 N-e-w-b-u-r-g, Drive. That's off -- that's still
5 A. Spence, yes.	5 Choctaw.
6 Q. How old is she?	6 Q. And how long have you lived there?
7 A. She is 15 and a half.	7 A. About three years.
8 Q. What's her date of birth?	8 Q. And is that -- do you own the home?
9 A. 8-21-07.	9 A. Yes.
10 Q. And do you have any other children in the	10 Q. Okay. Does Breanna have her own room?
11 home with Misty?	11 A. Yes.
12 A. Yes.	12 Q. And what do you do for a living, sir?
13 Q. Who is that?	13 A. I'm a police officer.
14 A. Peyton Leitch, L-e-i-t-c-h. And	14 Q. With which agency?
15 Mackenzie, M-a-c-k-e-n-z-i-e, Leitch.	15 A. Oklahoma City.
16 Q. How old is Peyton?	16 Q. How long have you been there?
17 A. Peyton is 15 and a half, also.	17 A. Twenty-one years.
18 Q. And Mackenzie?	18 Q. And what is your rank?
19 A. She's 19.	19 A. I'm a lieutenant.
20 Q. Fifteen's a tough age.	20 Q. How long have you been a lieutenant?
21 A. What's that? Yeah. Well, they just got	21 A. '13 -- I got promoted -- I got promoted
22 their permits. They just got their permits so	22 in '17, so six years.
23 they're driving cars.	23 Q. Were you a sergeant before then?
24 MS. WOODLAND: I'm not sure if that's	24 A. Yes.
25 better or worse.	25 Q. How long were you a sergeant?

WADE SPENCE
SPENCE vs HOWELL

April 18, 2023
17-20

Page 17 1 up from Dorian at a gas station somewhere. 2 Q. And so when you would pick Breanna up at 3 the OnCue or at Dorian's house, you would have 4 interaction with Dorian at the time? 5 A. Yes. Yeah. Yes, ma'am. Sometimes 6 Breanna would just come out the -- I would just 7 pull in the driveway, and Bre would just come out. 8 And that happened most the time. 9 Q. As a lieutenant and as a supervisor, did 10 you have to go through any special training? 11 A. To become a supervisor? 12 Q. Yes, sir. 13 A. We went to supervisor training. I mean, 14 it was pretty much teaching the paperwork. 15 Q. Any special training that you had to deal 16 with any of the different units? 17 A. Not really. 18 Q. Okay. And at some point, you were 19 assigned to admin? 20 A. I was, yes, ma'am. 21 Q. When was that time period? 22 A. I was a sergeant, so -- 23 Q. That was during the sergeant period? 24 A. Uh-huh, yeah. 25 Q. What --	Page 19 1 either come in at 7:00 or 8:00. So I would work 2 either 7:00 to 3:00 or 8:00 to 4:00. 3 Q. And was that Monday through Friday? 4 A. Yes, ma'am. 5 Q. Have you had any training in sex crimes 6 or sex investigation? 7 A. No, ma'am. 8 Q. Did you have any training as a supervisor 9 in dealing with those type of cases? 10 A. Oh, we would have in-service training and 11 just in-service training for the whole department. 12 Q. And as a supervisor of patrol, anything 13 can occur? 14 A. Oh, yes. Yes. That's true. 15 Q. And as a supervisor of patrol, you could 16 be first at a scene for any kind of crime. Would 17 you agree? 18 A. Yes, ma'am. 19 Q. And have you ever been called to a scene 20 where there was an allegation or an investigation 21 of a sex crime? 22 A. Yes, ma'am. 23 Q. How many times, if you know? 24 A. Oh, man, I don't know. 25 Q. Okay. I would assume after 21 years on
Page 18 1 A. I got -- 2 Q. I apologize. 3 A. I got promoted out of there to a patrol 4 division. 5 Q. And sometimes I interrupt you, and I 6 apologize. 7 A. That's okay. 8 Q. I'll try not to do that so the record's 9 clear. 10 So if you were a lieutenant in 2017, you 11 would have been a sergeant from? 12 A. '13 to '17. Oh, wait. I was a sergeant 13 from 2000- -- I got -- that's not really a 14 promotion, but I was -- became a sergeant in 2007. 15 Q. And what time period were you 16 administration, was it the chief's office? 17 A. It wasn't in his office. It was kind of 18 across the hall, but yeah. I was -- I think that 19 was 2013 to 2017. 20 Q. Did you have regular hours when you were 21 administration? 22 A. Yes, ma'am, I did. 23 Q. And what were your hours during that time 24 period? 25 A. It was either -- they allowed us to	Page 20 1 the force -- 2 A. Quite a bit. 3 Q. And your wife, Misty, is also in law 4 enforcement? 5 A. Yes. 6 Q. Where does she work? 7 A. Edmond Police Department. 8 Q. And has her whole career been in Edmond, 9 if you know? 10 A. No, no. She was capitol patrol before 11 that. 12 Q. And you'll have to explain to me what 13 that is. 14 A. It's just security for the Capitol. 15 You're -- you're a sworn law enforcement, but you 16 just secure the Capitol. 17 Q. Is that -- when did she do that, if you 18 know? 19 A. I don't. I don't know. It was before 20 she got on in Edmond. And I don't even know when 21 she got on in Edmond. I can't remember. She's 22 been there 22 -- 22, 23 years. 23 Q. So easy to say that the Capitol patrol 24 was before you? 25 A. Yes. Oh, yeah.

<p style="text-align: right;">Page 21</p> <p>1 Q. Has she -- what is her role with the 2 Edmond Police Department? 3 A. She is a detective. 4 Q. And where is she assigned? 5 A. Crimes Against Children. 6 Q. And if you know, how long has she been 7 with that unit? 8 A. Oh, I don't know. 9 Q. Was she with that unit when you got 10 married? 11 A. Yes, ma'am. 12 Q. So at least 10, 11 years? 13 A. Uh-huh. 14 Q. Is that a "yes"?</p> <p>15 A. Yes, ma'am, sorry. 16 Q. That's okay. Are you aware if she's had 17 any specialized training since you've been 18 married? 19 A. Oh, I don't know. I do not know. 20 Q. Has she ever had to leave to go to a 21 special schooling outside of Oklahoma? 22 A. Yes, yes. 23 Q. And was that during your marriage? 24 A. Yes. 25 Q. And was that for her job?</p>	<p style="text-align: right;">Page 23</p> <p>1 was between 10 and 12, what school was she 2 attending? 3 A. I believe it was -- oh, I can't remember 4 the name of it. She's -- she's been to three 5 different schools in Edmond. I know where it's 6 at. I can't remember the name of it right now. 7 She went to Heartland -- it's on the tip 8 of my tongue. I'll have to get back with you on 9 that. I can't remember off the top of my head. 10 Q. That's okay. And if there's ever a 11 question I've asked you and later on -- 12 A. Yeah. 13 Q. -- you remember -- 14 A. It'll -- it'll -- it'll hit me, the one. 15 Q. What grades was she in Heartland 16 elementary? 17 A. Heartland? Like I say, she went to three 18 different ones. I don't remember which -- which 19 grade she was in at Heartland because she went to 20 an elementary school prior to that, too. I can't 21 remember which ones. 22 Q. Was the elementary school before 23 Heartland also in Edmond? 24 A. Yes. 25 Q. Okay. And then there was a school after</p>
<p style="text-align: right;">Page 22</p> <p>1 A. It was, yes. 2 Q. It's specifically the Crimes Against 3 Children unit? 4 A. Yes, ma'am. 5 Q. So you're at least aware that she's gone 6 to some training? 7 A. Gone to some conferences. 8 Q. Does she have a supervisory role in the 9 Edmond Police Department in that unit? 10 A. No, no, ma'am. 11 Q. Has she ever had a supervisory role that 12 you're aware of? 13 A. No, not that I'm aware of. 14 Q. What is -- during the time period when 15 Breanna was 10 to 12, do you remember what her 16 work schedule was? 17 A. Monday through Friday, 8:00 -- 8:00 to 18 4:00. 19 Q. And has that been pretty consistent? 20 A. Yes, ma'am. 21 Q. And would that be consistent with a 22 normal detective -- 23 A. Yes, ma'am. 24 Q. -- in a unit? 25 During the time period of when Breanna</p>	<p style="text-align: right;">Page 24</p> <p>1 Heartland also in Edmond? 2 A. Yeah. Yes, ma'am. 3 Q. How were her grades when she was in 4 elementary school? 5 A. Well, they held her back. 6 Q. But that was just kindergarten? 7 A. Yeah, kindergarten. I don't remember her 8 grades. I don't know. 9 Q. Did she have any disciplinary problems? 10 A. No, no, ma'am. None that I can remember. 11 Q. Did you ever get called to the school 12 about any problems with her? 13 A. No, ma'am. 14 Q. Did you get a call from Heartland 15 elementary about her cutting herself? 16 A. No, not from -- not from -- I didn't get 17 a call from the school. 18 Q. Did you learn about her cutting herself 19 while she was in Heartland elementary? 20 A. Dorian called me about the cutting. I 21 don't remember where she found out about it from. 22 Q. And that was actually part of y'all's 23 nature of y'all's parenting, was if something 24 occurred that you would call each other and let 25 each other know --</p>

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<p>1 A. Yes, ma'am.</p> <p>2 Q. -- if it was not your week?</p> <p>3 A. Uh-huh. Yes, ma'am, yes.</p> <p>4 Q. What did you learn about her cutting herself?</p> <p>5 A. From Dorian or from Breanna?</p> <p>6 Q. Let's start with Dorian first.</p> <p>7 A. It happened a long time ago. It's vague.</p> <p>8 But I just remember Dorian crying, telling me that</p> <p>9 Breanna had been cutting herself. As far as</p> <p>10 specifics, I don't remember specifics from Dorian.</p> <p>11 Q. What did you learn from Breanna?</p> <p>12 A. Well, after -- because it was -- I picked</p> <p>13 Breanna up after Dorian told me about it. And so</p> <p>14 I took her to dinner. And I asked Breanna about</p> <p>15 the cutting. And she was just telling me she</p> <p>16 wasn't -- when she was at her mom's house, she</p> <p>17 didn't feel like she was getting attention from</p> <p>18 anybody there. And she's been having a hard time</p> <p>19 with her mom at her mom's house.</p> <p>20 She -- Breanna didn't completely open up</p> <p>21 to me and didn't tell me everything. But that was</p> <p>22 the gist of what she told me.</p> <p>23 Q. Did you see scars on her?</p> <p>24 A. Yeah. Yes, ma'am.</p>	<p>Page 25</p> <p>1 Dorian has called and she had not.</p> <p>2 Q. So you did nothing to follow up with</p> <p>3 counselor?</p> <p>4 A. I did not.</p> <p>5 Q. Did you do anything else to get your</p> <p>6 daughter any counseling at that time?</p> <p>7 A. No.</p> <p>8 Q. Did Misty, to the best your knowledge, do</p> <p>9 anything to put your daughter in counseling?</p> <p>10 A. She did all the research in trying to</p> <p>11 find a counselor and -- that deals with, you know,</p> <p>12 children.</p> <p>13 Q. But neither one of you followed up with</p> <p>14 it?</p> <p>15 A. No, other than calling the counselor to</p> <p>16 see if Dorian called them.</p> <p>17 Q. Whose medical insurance was she on at</p> <p>18 that time?</p> <p>19 A. She's on mine.</p> <p>20 Q. And with your joint custody, you could</p> <p>21 have put her in counseling?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. Were there any other physical signs that</p> <p>24 you noticed before Breanna talked to her friend at</p> <p>25 school?</p>
<p>1 Q. And where were they?</p> <p>2 A. They were su- -- you say where were they?</p> <p>3 Q. Yes, sir.</p> <p>4 A. They were on her forearm (indicating).</p> <p>5 Q. In reaction to finding out that your</p> <p>6 daughter was cutting herself, what did you do?</p> <p>7 A. Well, after I tried to get as much</p> <p>8 information as I could from Breanna, I called her</p> <p>9 mom and told her what Breanna told me.</p> <p>10 Q. And then what?</p> <p>11 A. I took her back to her mom's house, and</p> <p>12 Dorian told me that she would talk to Bre and take</p> <p>13 care of it, you know.</p> <p>14 Q. Did you take her to the doctor?</p> <p>15 A. No, no. They were superficial. No, we</p> <p>16 did not.</p> <p>17 Q. Did you take her to see a counselor --</p> <p>18 A. We --</p> <p>19 Q. -- psychologist or psychiatrist?</p> <p>20 A. My wife, Misty, called a -- called a</p> <p>21 counselor and gave that information to Dorian.</p> <p>22 Q. And what did you do to follow up on that?</p> <p>23 A. Well, Misty -- Misty's the one that</p> <p>24 called Dorian, told her about it. And I know</p> <p>25 Misty called the counselor later to find out if</p>	<p>Page 26</p> <p>1 A. Nothing physical, no.</p> <p>2 Q. Anything else that you noticed</p> <p>3 emotionally?</p> <p>4 A. Well, with her being 12 years old, she</p> <p>5 was -- she was real -- of course, that's with all</p> <p>6 the -- all of our girls, they're all kind of</p> <p>7 teenagers at the same time. But she was in her</p> <p>8 room a lot, not talking a lot. So we kind of</p> <p>9 chalked it up with to, you know, hormonal. You</p> <p>10 know, not wanting to be around parents. So she</p> <p>11 was in her room a lot.</p> <p>12 Q. Was her behavior -- and, obviously, you</p> <p>13 have a very unique situation where you have a</p> <p>14 stepdaughter who's -- sounds like the exact same</p> <p>15 age or close to it?</p> <p>16 A. Yes. Yes, ma'am.</p> <p>17 Q. Was her behavior any different than her</p> <p>18 siblings, her sister siblings?</p> <p>19 A. They -- they both spent large amounts of</p> <p>20 time just in their room, not really wanting to</p> <p>21 come out and watch TV with us, be around us. And</p> <p>22 I felt it was the same as both, honestly.</p> <p>23 Q. If you know, what is the nature of the</p> <p>24 relationship between Breanna and her sister --</p> <p>25 stepsisters?</p>

<p style="text-align: right;">Page 29</p> <p>1 A. They get along good. 2 Q. And does Breanna have any other siblings? 3 A. Yes, with Dorian. 4 Q. And who are they, if you know? 5 A. Ones name's Hayden. I can't remember the 6 other name. She had a brother and a sister. 7 Q. And is Hayden the sister? 8 A. Yes, yes. 9 Q. Or the -- 10 A. Honestly, I've only met them maybe twice, 11 a handful of times. 12 Q. Does Breanna have a relationship with 13 them at this time? 14 A. At this time, no. No, ma'am. 15 Q. Is that court order or her choice, your 16 choice? 17 A. That's pretty much her mom's choice. 18 Q. Does she have a relationship with her mom 19 at this point? 20 A. Hasn't been, no. No, ma'am. 21 Q. And at least my quick review, there -- 22 y'all came to an agreed order, again, in the 23 custody arrangement between Dorian and yourself. 24 Is that correct? 25 A. We have full custody right now, yes.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Were you held in contempt for keeping 2 Breanna from her mom? 3 A. Yes -- well, we went to court on that -- 4 we went to court on that, too. And there was a -- 5 we -- we were in contempt. Yes, ma'am, in Logan 6 County. 7 Q. You were personally found in contempt for 8 keeping Breanna from her mom? 9 A. We didn't even go to court on that. It 10 was just through the -- through the attorneys 11 because there were some issues at the time of the 12 ex still being -- still living at the house. And 13 so we didn't allow Bre to go back. And so they -- 14 her attorney tried to hold me in contempt. 15 Q. Well, the Judge found you in contempt. 16 A. Did they find me -- okay. Yeah. I never 17 went to court on it, and I was told not to worry 18 about it. 19 Q. Okay. 20 MR. SULLIVAN: And, Wade, she just 21 wants to know what you know. 22 THE WITNESS: Yeah. 23 MR. SULLIVAN: If you know what 24 happened in a specific court proceeding, you can 25 say so. And if you don't, you can say that, too.</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. And she has visitation? 2 A. No, no, ma'am. 3 Q. She has absolutely no visitation? 4 A. No. She hasn't seen Bre in a couple of 5 years. 6 Q. Let me ask it a different way. 7 A. Okay. 8 Q. Because I want to make sure I'm getting 9 the right answer to my question. 10 A. Okay. 11 Q. And it may be me not using the right 12 words. 13 Is Dorian allowed by the court to see her 14 daughter? 15 A. We have a GAL that -- as -- that we're 16 using that if Dorian wants to see her, when -- she 17 has to go through the GAL. Or if her siblings 18 want to see her, the GAL will help if that 19 happened. 20 But as far as the court order, we have 21 full custody and she doesn't have any -- I'm 22 trying to think of the wording. She doesn't have 23 any -- I can't think of the word. You know, she 24 doesn't -- she does haven't any visitation. 25 Sorry.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. (By Ms. Burgess) So Dorian can have 2 contact with her daughter, but the process is 3 going through the Guardian Ad Litem? 4 A. Going through Guardian Ad Litem or the 5 courts, yes. 6 Q. And if there is a court order saying 7 she's allowed to have visitation, you're not aware 8 of it? 9 A. No. 10 Q. Okay. And you wouldn't have signed off 11 on that? 12 A. No. 13 Q. During the years of 2017 to 2019, did 14 Breanna have a primary care physician? 15 A. From when to when? I'm sorry. 16 Q. 2017 to 2019? 17 A. No, we just took her to the Mercy up in 18 Edmond. 19 Q. And I -- can you say that one more time? 20 A. We went to the Mercy physicians' clinic 21 in Edmond, off of Memorial and Eastern. No -- no 22 specific doctor. 23 Q. Thank you. I thought you said the 24 emergency room. 25 A. Oh, no.</p>

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1 Q. That's why I had you repeat it. I was 2 like -- so same clinic, just the doctors would 3 rotate? 4 A. Yes, ma'am. 5 Q. And did she go in for regular 6 appointments during that time period? 7 A. Just when she needed to go. We -- they 8 were -- we would go at the beginning of school 9 year for -- to get all her shots for school. But 10 unless she was sick, we didn't take her. 11 Q. And this appointment, is this something 12 that you would normally do? 13 A. I would. Dorian would. My wife would. 14 Q. So it just depended on the year? 15 A. And who had Breanna at the time. 16 Q. But, generally, it sounds like she was 17 pretty healthy? 18 A. Yes, ma'am. 19 Q. No allergies, asthma, anything of normal 20 kid stuff? 21 A. No, no. 22 Q. Is she taking any medications now? 23 A. No, no, ma'am. 24 Q. Any physical health problems she's 25 having --	1 Q. Were you able to go to her games? 2 A. Yes, ma'am. 3 Q. How'd she do? 4 A. Good. Yeah. She got defensive player of 5 the year. 6 Q. That sounds a little bit better than 7 good. 8 A. Yeah, she did good. 9 Q. Any other activities that she's involved 10 in, in school? 11 A. No. 12 Q. Does she still play music? 13 A. No, she doesn't. 14 Q. Pardon me? 15 A. She does not, no. 16 Q. Okay. And she used to be in a symphony? 17 A. Yeah. She -- she -- what was it? Back 18 when she was 10 to 12, she would play random. 19 She'd play the -- I'm trying to think what it was. 20 The -- I remember she did flute for a little bit, 21 and then there was something else. I can't 22 remember what she was playing, but she did for a 23 little bit. 24 Q. And in Choctaw, what season is volleyball 25 season?
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1 A. No. 2 Q. -- currently? 3 A. Huh-uh. 4 Q. She's currently in 9th grade? 5 A. Uh-huh. Yes. Sorry. 6 Q. I'm a ma'am. 7 A. Yes, ma'am. Sorry. 8 Q. But I do get that occasionally. 9 Is she involved in any activities 10 currently? 11 A. Volleyball. 12 Q. Is she on a team? 13 A. Yes. Well, it's -- she was on the team. 14 She -- it's a break time right now. But she's got 15 to try out, again. 16 Q. And that's pretty normal that you have to 17 try out every year? 18 A. Yes, yes, ma'am. 19 Q. And was she on JV or varsity? 20 A. She was on the freshman team. 21 Q. What position does she play? 22 A. She plays the -- well, I mean, they -- 23 they rotate her. She's -- they'll put her in the 24 front, put her in the back. They just rotate them 25 all. There's no specific position.	1 A. Well, it's fixing to come up so I'm 2 guessing summer. 3 Q. So is this through the school, or is this 4 a club team? 5 A. It's the school. 6 Q. So would the season actually be in the 7 fall, in the first semester? 8 A. Yeah. She'll start -- she said they 9 start tryouts in a couple weeks, and so -- yeah. 10 It starts in the summertime. Practice starts in 11 the summertime. So it'd be -- just after summer. 12 Fall. So, yeah. Fall time -- summer and fall. 13 It blends in. 14 Q. So at least with Choctaw High School, 15 she'll be having practices during the summer? 16 A. Yes, ma'am. 17 Q. What are her current grades? 18 A. A's and B's. 19 Q. And has that been pretty consistent with 20 her -- throughout her school years? 21 A. Well, between -- she -- she'd been -- 22 she'd been -- over the last three years, yes, A's 23 and B's. 24 Q. And you said the last three years. What 25 were her grades before then?

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<p>1 A. Last three years. Well, when was -- it 2 was -- she was getting some D's and C's, a little 3 bit lesser grades before that.</p> <p>4 Q. And in what grades were those?</p> <p>5 A. It would have been in -- so the last 6 three years, you're getting me on grades. It was 7 when she was still in Edmond. Once she started 8 going to -- well, Edmond and then the last couple 9 years in Choctaw.</p> <p>10 And once she started high school, she's 11 got A's and B's. And so she's 15, so, I guess -- 12 yeah. She was 10 to 12 when she -- when me and 13 Dorian were still doing joint custody, grades were 14 slipping a little.</p> <p>15 Q. And did you talk to Breanna about that?</p> <p>16 A. Yes. We all have. Me and Dorian and 17 Misty, we all talked about her getting her grades 18 up and tried helping her with homework. And we 19 tried getting them up.</p> <p>20 Q. What did you personally do?</p> <p>21 A. What I personally did?</p> <p>22 Q. Uh-huh.</p> <p>23 A. Talked to her about her grades, helped 24 her with her homework.</p> <p>25 Q. Was she just not getting it?</p>	<p>1 A. At school?</p> <p>2 Q. Uh-huh.</p> <p>3 A. I do not remember.</p> <p>4 Q. Do you know if Misty ever met with --</p> <p>5 A. Counselor?</p> <p>6 Q. -- her counselor at school?</p> <p>7 A. I do not remember that.</p> <p>8 Q. Was Dorian's address her primary address 9 for school when she was in Edmond?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. The criminal trial that occurred, what 12 parts of the trial were you able to see?</p> <p>13 A. Just -- just Dorian and Randy, her dad -- 14 well, no. And I think her brother, yeah. And I 15 think her brother Allen. And so those three I saw 16 testify.</p> <p>17 Q. Are -- do you know what the rule of 18 sequestration is?</p> <p>19 A. The rules of what?</p> <p>20 Q. Sequestration?</p> <p>21 A. No, ma'am.</p> <p>22 Q. It's a rule where you're not allowed to 23 see other people testify in a trial.</p> <p>24 A. Okay.</p> <p>25 Q. Were you ever advised that you weren't</p>
<p>1 A. Well, she wasn't doing good in school. I 2 don't know. She was turning in homework, maybe 3 not good on tests.</p> <p>4 Q. Did you ever get her a tutor or anything 5 of that sort?</p> <p>6 A. We have a -- our -- Misty's oldest 7 daughter is really smart. So she helped her with 8 a lot of her homework.</p> <p>9 Q. Did you ever have any teacher or parent 10 conferences during that time period?</p> <p>11 A. Yes. Yeah, we did. We did. So --</p> <p>12 Q. And who did you have that with?</p> <p>13 A. The teacher's name?</p> <p>14 Q. (Nodding head.)</p> <p>15 A. No clue, no clue. I can't remember her 16 name.</p> <p>17 Q. Do you remember --</p> <p>18 A. I can't remember the teacher's name.</p> <p>19 Q. -- what subject that person taught?</p> <p>20 A. I do not. No, ma'am.</p> <p>21 Q. Do you remember what year that would have 22 been?</p> <p>23 A. That would have been probably 2018, 2019.</p> <p>24 Q. Did you ever meet with her counselor 25 during that time period?</p>	<p>1 allowed to go in the court room? Or yes, you're 2 allowed to go in the court room now? Anything of 3 that sort?</p> <p>4 A. No, ma'am. They said after I testified, 5 I was ~ I was free.</p> <p>6 Q. So after you testified, you were free if 7 you wanted to go into the court room?</p> <p>8 A. That's how I felt. Nobody told me 9 differently that I could not or could have.</p> <p>10 Q. So no one advised you that you could go 11 in the court room?</p> <p>12 A. No.</p> <p>13 Q. Since before the trial, were you given 14 access to any of the police reports?</p> <p>15 A. No.</p> <p>16 Q. After the trial, have you been given 17 access to the police reports?</p> <p>18 A. I have not.</p> <p>19 Q. The reason why I ask is in your discovery 20 responses, in the interrogatories that I sent you 21 through your lawyer, you referenced when -- let me 22 get to the right spot -- and I'll hand this to you 23 so you can see it so you know what the heck I'm 24 talking about.</p> <p>25 And I'm referring to page 5. Here you</p>

<p>1 go, sir. That's just for reference.</p> <p>2 MR. SULLIVAN: Hang on just a second.</p> <p>3 All -- all of page 5?</p> <p>4 MS. BURGESS: No. Just I was letting</p> <p>5 him get there.</p> <p>6 MR. SULLIVAN: He's got page 5 in</p> <p>7 front of him now.</p> <p>8 Q. (By Ms. Burgess) I believe it's Number 9.</p> <p>9 If you'll just take a moment to review both the</p> <p>10 question and the answer and let me know when</p> <p>11 you're ready.</p> <p>12 A. Number 9?</p> <p>13 MR. SULLIVAN: Do you mind if I point</p> <p>14 to Number 9?</p> <p>15 MS. BURGESS: Yeah, go for it.</p> <p>16 MR. SULLIVAN: You and I have never</p> <p>17 worked together before, and some lawyers would</p> <p>18 come over the table at me if I did that. You</p> <p>19 don't seem like one of those but --</p> <p>20 MS. BURGESS: Nope.</p> <p>21 MR. SULLIVAN: Okay,</p> <p>22 MS. BURGESS: Not my personality.</p> <p>23 MR. SULLIVAN: Mine either.</p> <p>24 So apparently she's about to ask you</p> <p>25 some questions about Number 9, and that's where</p>	<p>Page 41</p> <p>1 Department's reports. (As read) "Everyone</p> <p>2 associated with the OCPD investigation, please see</p> <p>3 the reports."</p> <p>4 I have not reviewed the DH- -- I have not</p> <p>5 seen the DHS report or the middle school reports.</p> <p>6 The only -- I remember -- I remember now. I</p> <p>7 remember now when I first -- when it first</p> <p>8 happened, I went and paid my \$2.00 at the records</p> <p>9 clerk. But -- for the initial report but it was</p> <p>10 all redacted. And that's the only thing I've ever</p> <p>11 seen involved in any of these, this investigation,</p> <p>12 honestly.</p> <p>13 Q. And just to make sure I'm understanding</p> <p>14 you and following you, at some point you went to</p> <p>15 the records of the Oklahoma City Police</p> <p>16 Department --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- and tried to get copies of the</p> <p>19 reports?</p> <p>20 A. And they -- and they just gave me an</p> <p>21 original redacted report with everything blacked</p> <p>22 out pretty much.</p> <p>23 Q. And how many pages was that, if you</p> <p>24 remember?</p> <p>25 A. Not very many. Not very many at all.</p>
<p>1 Number 9 is.</p> <p>2 THE WITNESS: Oh, okay. Okay. Okay.</p> <p>3 Just names and addresses.</p> <p>4 Q. (By Ms. Burgess) Can I see it real quick?</p> <p>5 To make sure I'm referring to the right thing.</p> <p>6 In your response to Number 9 -- and I can</p> <p>7 hand this back to you if you like -- specifically</p> <p>8 in Answer 1, 3, and 4 -- and I'll hand that back</p> <p>9 to you so I'm being fair to you.</p> <p>10 A. To see these police reports.</p> <p>11 Q. And you refer to (as read) "to see these</p> <p>12 police reports."</p> <p>13 A. Okay.</p> <p>14 Q. Which led me to believe that you had</p> <p>15 reviewed those reports, and that's where the</p> <p>16 answers would be.</p> <p>17 So have you reviewed those reports?</p> <p>18 MR. SULLIVAN: Object to the form of</p> <p>19 the question.</p> <p>20 THE WITNESS: Have I reviewed the DHS</p> <p>21 reports and stuff -- those reports?</p> <p>22 Q. (By Ms. Burgess) Well, the reports that</p> <p>23 you referred to, the Oklahoma City Police</p> <p>24 Department reports?</p> <p>25 A. I have not read the Oklahoma City Police</p>	<p>Page 42</p> <p>1 Maybe -- maybe two, three.</p> <p>2 Q. In preparation for this deposition, did</p> <p>3 you review any police reports or any records from</p> <p>4 DHS or anything of that sort?</p> <p>5 A. No, ma'am. They didn't give me -- they</p> <p>6 never gave me any reports to look at or read over.</p> <p>7 Q. And so you were not -- as you sit here</p> <p>8 today, you have no idea what those reports say or</p> <p>9 who's listed as witnesses in them?</p> <p>10 A. I mean, I know who's listed as witnesses</p> <p>11 because my sister and some of my family members I</p> <p>12 know were subpoenaed for court. I know who was</p> <p>13 subpoenaed to go to court just from the -- just</p> <p>14 from the district attorney's office telling us.</p> <p>15 But other than that, nobody ever handed over the</p> <p>16 police reports or detectives' reports or DHS</p> <p>17 reports. I've not read any of those.</p> <p>18 Q. Thank you.</p> <p>19 A. Okay.</p> <p>20 Q. Thank you very much. Now during the</p> <p>21 course of the investigation before the criminal</p> <p>22 trial, did you have any contact with any of the</p> <p>23 investigating officers?</p> <p>24 A. Briefly.</p> <p>25 Q. And who would that be?</p>

<p style="text-align: right;">Page 45</p> <p>1 A. The detective, I know him. I can't 2 remember his name. He -- I don't remember the 3 detective's name. Sorry.</p> <p>4 Q. Was it the lead detective on the case?</p> <p>5 A. There's only one detective that I knew of 6 that was on the case, and I cannot remember his 7 name.</p> <p>8 Q. And you had contact with him?</p> <p>9 A. Over the -- over the phone, yes.</p> <p>10 Q. And was this contact one that he called 11 you as part of his investigation or that you 12 contacted him?</p> <p>13 A. He called -- he called me, and he had 14 questions in reference to the case.</p> <p>15 Q. And did he interview you?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. And was that over the phone or in person?</p> <p>18 A. Over the phone is what I remember.</p> <p>19 Q. At any point did you ever contact him 20 about his investigation?</p> <p>21 A. I did contact him once because he called 22 and left me a voicemail. So I called him back, 23 and that was just a brief interview.</p> <p>24 Q. Now, sir, didn't you also contact him on 25 your own to inquire why he hadn't interviewed</p>	<p style="text-align: right;">Page 47</p> <p>1 if she did or not.</p> <p>2 Q. And at the time that this all went down, 3 the allegations, during the investigation was that 4 the events happened in Edmond?</p> <p>5 A. Oklahoma City limits, Edmond Schools is 6 where she went.</p> <p>7 Q. So Oklahoma City limits and it just 8 happens to be Edmond School District?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. And that's why Oklahoma City was called 11 in as the investigating body?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Now on the day that you received a call 14 from the school, do you remember who you talked 15 to?</p> <p>16 A. I do not, no. I think -- I think it was 17 my wife that called me. It was my -- yeah. It 18 was Misty that called me.</p> <p>19 Q. And what did she say?</p> <p>20 A. She told me that Breanna made some 21 allegations against her stepdad.</p> <p>22 Q. So did the school call her before you?</p> <p>23 A. Yes. They -- they called her first. I 24 mean, they actually called Dorian first. She 25 didn't answer.</p>
<p style="text-align: right;">Page 46</p> <p>1 certain witnesses?</p> <p>2 A. My wife -- Misty may have. My wife may 3 have called him, but I never did.</p> <p>4 Q. So as you sit here today, you never made 5 any contact with him to ask him why he didn't 6 interview --</p> <p>7 A. Certain witnesses?</p> <p>8 Q. Yes, sir.</p> <p>9 A. I don't personally remember calling him 10 about that. I remember the -- I remember one 11 conversation with him over the phone. And he 12 called me. He left me a voicemail. I called him 13 back, and it was a brief interview about the case. 14 I don't remember talking to him much at all.</p> <p>15 Q. Are you aware of any conversations that 16 he would have had with Misty that you have 17 personal knowledge of?</p> <p>18 A. I know he interviewed Misty. I do not 19 recall what they -- what he asked her or what they 20 talked about.</p> <p>21 Q. Were you present during that interview?</p> <p>22 A. I don't remember if I was or not.</p> <p>23 Q. Are you aware if Misty on her own ever 24 contacted him about the investigation?</p> <p>25 A. I -- I don't know. I don't remember that</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And how do you know that?</p> <p>2 A. They told us that they called her.</p> <p>3 Q. Okay. So the school never called you?</p> <p>4 A. No, my wife -- Misty called me.</p> <p>5 Q. And if they had called you, at that point 6 you weren't at work yet?</p> <p>7 A. No, I was not.</p> <p>8 Q. So when you got the call from Misty, what 9 did you do?</p> <p>10 A. Drove to the school.</p> <p>11 Q. Who did you call on the drive to school?</p> <p>12 A. I called the -- the Crimes Against 13 Children lieutenant because we -- we have the 14 call-out criteria on, you know, something 15 involving an officer or an officer's family, 16 investigations needs to know. So I called her, 17 said, FYI, my daughter was involved in something, 18 and I'm heading there now.</p> <p>19 Q. So you're saying that the Oklahoma City 20 Police Department has a protocol that if you or 21 your family is involved with an alleged crime or a 22 crime, that you're supposed to call the direct 23 supervisor who will be investigating?</p> <p>24 A. Well, we have a call-out procedure. And 25 being that I was a lieutenant at the time, I just</p>

<p>1 called the lieutenant at Crimes Against Children.</p> <p>2 Q. And this is an actual written procedure?</p> <p>3 A. Yeah, it is. It is. It's a call-out</p> <p>4 criteria is what it is. And then there's dozens</p> <p>5 of criterias on there. But one -- one is involved</p> <p>6 in officers or, you know, could be high -- we've</p> <p>7 got a high profile on there and several -- a bunch</p> <p>8 of different criterias for call-out.</p> <p>9 Q. Who else did you call?</p> <p>10 A. And then I called a lieutenant at Hefner</p> <p>11 division and just advised him I was headed to the</p> <p>12 school and for him to be aware of it.</p> <p>13 Q. Why -- why did you have to call the</p> <p>14 lieutenant at Hefner division?</p> <p>15 A. Well, as I said, I was a lieutenant for a</p> <p>16 while at the time, and I knew that a lieutenant</p> <p>17 would be called on it. So I just called the</p> <p>18 Hefner -- I just called the Hefner division and</p> <p>19 asked for the first lieutenant that answers and --</p> <p>20 Q. Did you think that lieutenant would be</p> <p>21 the one assigned?</p> <p>22 A. Whoever lieutenant I got a hold of. I</p> <p>23 just made them aware of the situation, told him I</p> <p>24 was on my way to the school.</p> <p>25 Q. Is that protocol?</p>	<p>Page 49</p> <p>1 A. Enid, probably about an hour, something.</p> <p>2 Q. Well, she was assigned Edmond. Why was</p> <p>3 she in Enid, if you know?</p> <p>4 A. She had -- she had an investigation where</p> <p>5 she had to go interview somebody in Enid.</p> <p>6 Q. Did you already know that she was in Enid</p> <p>7 that day?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Who arrived at the school first?</p> <p>10 A. I believe I did.</p> <p>11 Q. What was the first thing you did?</p> <p>12 A. Well, I mean, we -- I got there and I was</p> <p>13 just -- I was still on the phone with Misty. And</p> <p>14 so I waited on her. She was literally probably</p> <p>15 five minutes from me.</p> <p>16 Q. And so did you just sit in the parking</p> <p>17 lot?</p> <p>18 A. No, no. I waited on her, and we both</p> <p>19 went in to see the -- talk to the school</p> <p>20 counselor.</p> <p>21 Q. So you were already in the school?</p> <p>22 A. I was outside of my car. Like I said,</p> <p>23 she was literally just right down the road from</p> <p>24 me. So I waited for her to get there, and we both</p> <p>25 went in together.</p>
<p>1 A. Well, the -- I don't know if that's a</p> <p>2 protocol in our department. I just called him</p> <p>3 because he was going to be called anyway</p> <p>4 eventually.</p> <p>5 Q. Did you think that would skew the</p> <p>6 investigation?</p> <p>7 A. No, no, I did not.</p> <p>8 Q. Who next did you call?</p> <p>9 A. My wife -- or she called me earlier. She</p> <p>10 was on her way from Enid, and I was on my way from</p> <p>11 Choctaw and so I called her.</p> <p>12 Q. Anyone else connected with law</p> <p>13 enforcement that you called in that drive?</p> <p>14 A. That's it.</p> <p>15 Q. So only two?</p> <p>16 A. Just the two, yes, ma'am.</p> <p>17 Q. Not a third one?</p> <p>18 A. Huh-uh.</p> <p>19 Q. Is that a "no"?</p> <p>20 A. Yes -- oh, sorry. No, no.</p> <p>21 Q. Okay. How far away were you from the</p> <p>22 school?</p> <p>23 A. Oh, maybe 45 minutes.</p> <p>24 Q. And how far away was Misty from the</p> <p>25 school, if you know?</p>	<p>Page 50</p> <p>1 Q. So you waited in the parking lot?</p> <p>2 A. Yeah, in the parking lot. I wasn't in my</p> <p>3 car but out in the parking lot.</p> <p>4 Q. Okay. And then when your wife arrived,</p> <p>5 where'd y'all go?</p> <p>6 A. We went inside the school.</p> <p>7 Q. Where?</p> <p>8 A. To the counselor's office.</p> <p>9 Q. Who is that?</p> <p>10 A. I don't know her name or his name. I</p> <p>11 don't know her name.</p> <p>12 Q. Had you ever met her before?</p> <p>13 A. No, ma'am.</p> <p>14 Q. And when you arrived at the counselor's</p> <p>15 office, what occurred?</p> <p>16 A. Well, she told us that Bre was talking to</p> <p>17 a friend in the class and was talking about</p> <p>18 hurting herself, killing herself.</p> <p>19 Q. Which friend?</p> <p>20 A. Oh, I don't know. I can't remember the</p> <p>21 friend's name.</p> <p>22 Q. Is this a friend you'd ever met before?</p> <p>23 A. No, it was -- no. I have not.</p> <p>24 Q. Did Breanna have friends that came and</p> <p>25 stayed at your house from school?</p>

<p style="text-align: right;">Page 53</p> <p>1 A. Well, because we lived in Choctaw and her 2 friends were in Edmond, not -- not very often. 3 Q. So if she was having friends over, that 4 would have been more on Dorian's? 5 A. On Dorian's side, yes. 6 Q. Okay. Where was Breanna when you were 7 talking to the counselor? 8 A. She wasn't in the counselor's office. I 9 actually don't remember where she -- actually, 10 exactly where she was when we got there. 11 Q. Had you -- 12 A. She wasn't in the counselor's office. 13 Q. Had you seen her yet? 14 A. No, no, ma'am. 15 Q. So the counselor tells you, She's told a 16 friend she wants to hurt herself or kill herself. 17 Do you remember what she said? 18 That's a big difference. 19 A. Yeah. That was -- she was talking about 20 killing herself, yes. 21 Q. And what did you do? 22 A. Well, just -- I don't know. I mean, it's 23 kind of a -- kind of a blur honestly. I don't 24 remember exactly what all I did right after that. 25 I really don't.</p>	<p style="text-align: right;">Page 55</p> <p>1 interview her. 2 Q. Did you have any interactions with 3 Officer Schollenbarger? 4 A. Schollenbarger? No, not really. I -- 5 the only interaction I had with him was -- I can't 6 remember if he told us or if the lieutenant told 7 us that we needed to take her to get a SANE exam. 8 So we took her to the hospital. And he followed 9 us to the -- the officer followed us to the 10 hospital, but there wasn't much conversation. 11 Q. And what was your interaction with the 12 lieutenant? 13 A. It was brief. He just -- he just showed 14 up. And then once he showed up, he was maybe 15 there 10 minutes. 16 Q. Did you have any conversations with him? 17 A. No. I -- I mean, I'm sure I did. But as 18 far as I don't remember any specific conversation 19 with him. 20 Q. Did you go immediately to the hospital? 21 A. Yes, we did. 22 Q. Who did Breanna ride with? 23 A. I think she rode with Misty. 24 Q. Did you also ride with Misty? 25 A. No, I followed.</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Did you ask any questions? 2 A. Well, we -- we kind of just found out 3 where she heard it from. And then from there, we 4 saw Bre and then the Oklahoma City officers showed 5 up and then the lieutenant showed up. And we took 6 her to get a -- like an exam at Children's 7 Hospital. 8 Q. The lieutenant who showed up, was that 9 the lieutenant you had talked to? 10 A. It was, yes, ma'am. 11 Q. From Hefner? 12 A. Yes. 13 Q. Who is that? 14 A. It's Lieutenant Ruimveld. It's like R-u- 15 -- R-u-i-m-v-e-l-d. 16 Q. And the Oklahoma City police officer that 17 showed up, who was that? 18 A. What was his name? I think -- I think it 19 was Schollenbarger, Schollenbarger. I don't -- 20 your spelling's as good as mine. 21 Q. Did either one of the officer or 22 lieutenant, at least that you saw, interview 23 Breanna that day? 24 A. I don't -- I don't -- I don't think they 25 did. I don't -- I don't know. I didn't see him</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Was that Breanna's choice or one of 2 y'all? 3 A. I -- I don't know whose choice that was. 4 Q. In your drive over to the hospital, how 5 far was the hospital from where you were at? 6 A. Twenty miles, give or take. 7 Q. Which hospital did you go to? 8 A. Children's -- OU Children's. 9 Q. When you got to the hospital, where -- 10 where'd y'all go? 11 A. We -- we went to the hospital and waited 12 for a doctor to -- kind of just sit in the -- we 13 went through the -- the emergency room and waited 14 for a doctor, waited for a SANE nurse. 15 Q. Was the officer with you? 16 A. He was. 17 Q. Did he go -- 18 A. He showed up there after we did. 19 Q. Did he turn in any paperwork that you saw 20 to the hospital? 21 A. Oh, I don't remember. 22 Q. Did you have any interaction with the 23 officer while he was at the hospital? 24 A. Brief interaction, brief. I was mainly 25 talking to my wife.</p>

WADE SPENCE
SPENCE vs HOWELL

April 18, 2023
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<p style="text-align: right;">Page 57</p> <p>1 Q. Were you familiar with what a SANE exam 2 was?</p> <p>3 A. Yeah, yes.</p> <p>4 Q. Did you have any conversations with 5 Breanna about why she was at the hospital?</p> <p>6 A. I did not, no. She rode with Misty. 7 Misty may have.</p> <p>8 Q. And I'm just asking about what you know.</p> <p>9 A. I did not honestly, no. No, I didn't. I 10 mean, I know what a SANE exam entails. But I 11 didn't talk to Breanna about it. Misty was in the 12 room with her. I kind of stayed outside a little 13 bit.</p> <p>14 Q. Did you have any interaction with your 15 daughter when she arrived at the hospital?</p> <p>16 A. Not much, no, no.</p> <p>17 Q. Did you have any conversation with her at 18 all?</p> <p>19 A. I don't -- I do not remember if I did or 20 not.</p> <p>21 Q. So you stayed in the lobby --</p> <p>22 A. Yes, I --</p> <p>23 Q. -- for lack of a better word?</p> <p>24 A. No, I stayed outside in the hallway.</p> <p>25 Q. In the hallway of the hospital?</p>	<p style="text-align: right;">Page 59</p> <p>1 I'm not asking you exactly what was said. Do you 2 remember what topics you discussed with Dorian?</p> <p>3 A. Dorian, yes. Well, I was trying to 4 think. I really -- I really don't. I remember 5 both just crying and being upset about the 6 situation, and -- but it wasn't a long 7 conversation. I don't remember -- I don't 8 remember specifically what was said.</p> <p>9 Q. Do you -- if you know, did Breanna, was 10 she able to talk to her mom that night after the 11 SANE exam?</p> <p>12 A. I -- I don't remember.</p> <p>13 Q. I believe that occurred on a Wednesday, 14 and if I'm wrong feel free to correct me.</p> <p>15 A. You're probably right. I do not know.</p> <p>16 Q. The next day, did Breanna go to school?</p> <p>17 A. I don't remember.</p> <p>18 Q. Did you go to work?</p> <p>19 A. I don't remember that either. I don't 20 remember. I know I didn't go to work -- I was 21 supposed to work the night of, and I took off that 22 night. I don't remember if I went the next day or 23 not.</p> <p>24 Q. What was the next significant event 25 dealing with your daughter that you remember?</p>
<p style="text-align: right;">Page 58</p> <p>1 A. Yes, ma'am.</p> <p>2 Q. And Misty went in with your daughter to 3 the doctor -- or the SANE nurse?</p> <p>4 A. With the SANE nurse, doctor. Nurses, 5 yeah.</p> <p>6 Q. Did you talk to anyone after the 7 examination?</p> <p>8 A. After? I don't remember.</p> <p>9 Q. Did you talk to Breanna on the way -- did 10 Breanna ride with you on the way home?</p> <p>11 A. I -- I do not think she did. I -- I 12 don't think she did.</p> <p>13 Q. Did you have any other conversations with 14 your daughter that night?</p> <p>15 A. I don't remember. I do not remember.</p> <p>16 Q. Did you have any conversations with her 17 stepsisters that night about --</p> <p>18 A. I wouldn't -- I would not have, no.</p> <p>19 Q. Did you have any conversations with 20 Dorian that night?</p> <p>21 A. That night? You know, we did have a 22 phone call that night. And I can't -- I remember 23 having a conversation with Dorian, but I cannot -- 24 I can't honestly tell you what we talked about.</p> <p>25 Q. And I'm not -- that's been a minute, so</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Taking her to the care center in El Reno.</p> <p>2 Q. And can you explain to me what the care 3 center is?</p> <p>4 A. It's a place that they interview 5 children.</p> <p>6 Q. Who interviews children?</p> <p>7 A. DHS.</p> <p>8 Q. Who else is at the care center?</p> <p>9 A. Detective -- I think the detective showed 10 up.</p> <p>11 Q. Anyone else?</p> <p>12 A. Me and my wife. That's all I remember.</p> <p>13 MR. SULLIVAN: Are you at a decent 14 break point?</p> <p>15 MS. BURGESS: Again, we can take a 16 break, yes, at any time you want.</p> <p>17 MR. SULLIVAN: Okay. Can we take 18 one, please?</p> <p>19 MS. BURGESS: Absolutely.</p> <p>20 (A short break was taken.)</p> <p>21 Q. (By Ms. Burgess) All right. We're back 22 on the record. We took a quick comfort break for 23 everybody's benefit, so thank you for --</p> <p>24 MR. SULLIVAN: Thank you.</p> <p>25 Q. (By Ms. Burgess) -- letting us do that.</p>

<p>1 You are still under oath.</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. Is -- sometimes when we take breaks, 4 things will pop in our mind as we're no longer in 5 the room. Did anything -- any of answers change?</p> <p>6 A. You know, I was actually just trying to 7 the think of the detective's name. I'm sure it's 8 on every report, but -- but I didn't even know the 9 guy was an officer in our department until he 10 became a detective. So I never knew the guy. I 11 still can't think of his name.</p> <p>12 Q. That's okay. Did you remember any of the 13 other school names?</p> <p>14 A. So it was Heart -- it's Penn and Covell 15 is the one that we -- was -- it was off of Penn 16 towards Covell. It was the school -- my wife -- 17 my wife would know. She has a better memory than 18 I do but --</p> <p>19 Q. Okay. When we left off, we were talking 20 about the care center in El Reno.</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Do you know why you had to go to El Reno?</p> <p>23 A. So she could be interviewed.</p> <p>24 Q. Why that one specifically?</p> <p>25 A. Because the one -- because my wife knows</p>	<p>Page 61</p> <p>1 Q. In the drive to the care center, did you 2 have -- or even before, did you have any 3 conversation with Breanna about where you were 4 going and why?</p> <p>5 A. Yes. We told Bre. We told Breanna 6 that -- that she was going to be interviewed.</p> <p>7 Q. If you remember, when did that 8 conversation occur?</p> <p>9 A. I do not remember, but I do know we told 10 her before -- before we left.</p> <p>11 Q. Did she have any questions?</p> <p>12 A. I don't remember that. I'm sorry.</p> <p>13 Q. Did you have any conversation in the car 14 on the way to El Reno?</p> <p>15 A. We were told not to ask Bre any questions 16 about the case at all. The only thing I remember 17 that she voluntarily told us, you know, she wanted 18 to talk, we let her talk, but the only thing that 19 she told us was that she felt that her mom knew 20 about this because there was an incident in the 21 backyard of her house.</p> <p>22 That Chris was -- Chris put his hand 23 under her shirt and was rubbing her. And she said 24 her mom saw her -- or saw him do it and walked 25 outside and told him not to -- or -- or to stop</p>
<p>1 people at the one downtown.</p> <p>2 Q. Do you know who made the decision for you 3 all to go to the El Reno one?</p> <p>4 A. I do not know who makes that decision, 5 no.</p> <p>6 Q. How did you find out that you needed to 7 go to El Reno?</p> <p>8 A. A phone call, phone call from either -- 9 either the detective or DHS. I can't remember.</p> <p>10 Q. Did you actually receive that phone call?</p> <p>11 A. I don't -- I don't remember.</p> <p>12 Q. As you sit here today, you have no 13 independent memory --</p> <p>14 A. I can't remember --</p> <p>15 Q. -- if you received it?</p> <p>16 A. -- if I did or my wife did. I don't 17 remember.</p> <p>18 Q. Who went to El Reno that day?</p> <p>19 A. Me, Misty, and Breanna together.</p> <p>20 Q. In the same car?</p> <p>21 A. Yes, yes.</p> <p>22 Q. Do you remember what day you went?</p> <p>23 A. I do not, no.</p> <p>24 Q. Was it a weekday or a weekend?</p> <p>25 A. It was a weekday.</p>	<p>Page 62</p> <p>1 doing that. And that was the only thing that she 2 voluntarily told us, that I remember.</p> <p>3 Q. And this was on the drive to the care 4 center?</p> <p>5 A. That was on the drive there is what I 6 remember.</p> <p>7 Q. And you and Misty had been told by the 8 detective -- told by who not to have any 9 conversations before the --</p> <p>10 A. I couldn't remember if it was DHS or 11 detectives. We were just told not to talk to her 12 about the case.</p> <p>13 Q. And why is that? Do you know the reason 14 why?</p> <p>15 A. I mean, honestly, I personally didn't 16 want to know details so I didn't ask her anything. 17 But, honestly, I do not know why they told us not 18 to. But I -- I didn't want to know anyway. I 19 didn't want to know details.</p> <p>20 Q. Have you ever received any training on 21 why you don't have multiple people ask a child 22 about an event?</p> <p>23 A. Nothing formally, nothing formally. But, 24 I mean, I know we have. I know there's law on not 25 interviewing kids certain ages. And so we went</p>

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1 don't interview kids certain ages.	1 care center and how it worked?
2 I can just speculate on why because you	2 A. No, no.
3 don't want three different stories or, you know,	3 Q. I'm assuming you were there about an
4 you don't want to revictimize the child or	4 hour. Does that sound right?
5 anything. So -- and we're not trained in that.	5 A. That's about right.
6 You know, that's what DHS does.	6 Q. Generally, how long that takes. Where
7 Q. Do you believe that DHS -- DHS is the one	7 did y'all go after there?
8 that actually interviewed her that day?	8 A. I think we went to go eat, maybe. And we
9 A. In my mind, yes. I assumed it was -- I	9 took her -- I remember we took her to Five Below,
10 assumed it was somebody with DHS.	10 there to buy some stuff.
11 Q. Did you meet the person that interviewed	11 Q. If you remember, how many days after the
12 her that day?	12 SANE exam did the care center do the interview?
13 A. Yes. She came and introduced herself and	13 A. Oh, it wasn't long. I don't -- I can't
14 grabbed Bre and left.	14 tell you a day, but it wasn't long.
15 Q. Did she tell you she was from DHS?	15 Q. Day or two?
16 A. I did not remember. And I mean, you're	16 A. Yeah. It wasn't long at all, yes, ma'am.
17 asking me -- I am not familiar with the care	17 Q. Do you -- and only if you remember -- do
18 center. I'm not familiar with any of that stuff.	18 you remember if it was the same week?
19 I know DHS was involved so I assumed it was part	19 A. I don't. So if it happened -- you say it
20 of it but I may be wrong.	20 happened on a Wednesday, so I don't remember if it
21 Q. Did anyone explain to you the process of	21 was by Friday or not.
22 the care center?	22 Q. Did you have to take Breanna anywhere
23 A. Other than my wife telling me she's going	23 else during the investigation?
24 to be forensically interviewed.	24 A. I don't remember. I don't think so.
25 Q. What did that mean to you?	25 Can't remember.
Page 66	Page 68
1 A. It means she was just going to be	1 Q. Do you -- if you know, did Misty have to
2 interviewed by a specialist that specializes in	2 take Breanna anywhere else during the
3 children interviews.	3 investigation?
4 Q. Were you aware that a detective would be	4 A. I do not remember if she did or not. I
5 feeding questions to the interviewer?	5 don't think so.
6 A. I know that -- like I said, I've never	6 Q. Besides the trial, did Breanna have to do
7 been a detective. I've never wanted to be a	7 anything else with the investigation that you're
8 detective. And so in patrol, we do our report, we	8 aware of?
9 forward it on. We don't see the aftereffects of	9 A. Not that I'm aware of, no, ma'am. Other
10 anything in the interview.	10 than give up her phone.
11 So, I know my wife goes to the care	11 Q. Pardon?
12 center and interviews -- and is with the advocate	12 A. Other than give up her phone. I do
13 or DHS person and interviews kids. That's all I	13 remember she had to give up her phone.
14 know from it.	14 Q. When was that?
15 Q. Let me ask my question again --	15 A. Before the trial. Yeah, I don't
16 A. Okay.	16 remember. It was shortly after. I just remember
17 Q. -- just so you can answer.	17 we have to -- having to give up her phone to
18 A. Okay.	18 investigations.
19 Q. And I do appreciate the explanation.	19 Q. Was this in the very beginning or later
20 Were you aware that the detective would	20 on?
21 be feeding questions to the interviewer?	21 A. It was in the earlier stages.
22 A. No. I didn't even know he was supposed	22 Q. Did you know why law enforcement wanted
23 to be there, honestly. I didn't know he was going	23 her phone?
24 to be there.	24 A. Look at text messages and stuff.
25 Q. Did you ask Misty any questions about the	25 Q. Did she receive her phone back?

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<p>1 A. Yes.</p> <p>2 Q. How long did it take?</p> <p>3 A. I don't know. I can't remember. I can't</p> <p>4 remember.</p> <p>5 Q. Did you replace the phone while her phone</p> <p>6 was gone?</p> <p>7 A. No, I don't think so. No, ma'am.</p> <p>8 Q. Did she use anyone else's phone while her</p> <p>9 phone was missing?</p> <p>10 A. No.</p> <p>11 Q. Not missing, but with law enforcement?</p> <p>12 A. No.</p> <p>13 Q. Did she have an iPad or anything of that</p> <p>14 sort?</p> <p>15 A. Yeah. She has -- has or had an iPad. I</p> <p>16 don't know if she still has it or not.</p> <p>17 Q. During that time period, would she have</p> <p>18 had access to --</p> <p>19 A. Yeah. I think she had -- she had an</p> <p>20 iPad, yes, ma'am.</p> <p>21 Q. Did she have a laptop?</p> <p>22 A. I don't think so.</p> <p>23 Q. The iPad that she had, would she have</p> <p>24 taken that between the two homes, her mom's home</p> <p>25 and your home?</p>	<p>Page 69</p> <p>1 Q. Were you with her?</p> <p>2 A. Yeah, I was with her. I mean, me and</p> <p>3 Misty were both with her.</p> <p>4 Q. Were you in the actual room when they</p> <p>5 were prepping her for trial?</p> <p>6 A. No, no.</p> <p>7 Q. Was she assigned a victim advocate?</p> <p>8 A. I don't know if she was or not. I can't</p> <p>9 remember.</p> <p>10 Q. Was there anyone from the DA's office</p> <p>11 that was assigned to her since she was a witness?</p> <p>12 A. I don't remember from the DAs being</p> <p>13 there.</p> <p>14 Q. No one that stands out in your mind?</p> <p>15 A. No, ma'am. Yeah, anybody.</p> <p>16 Q. Okay. In your discovery that you gave to</p> <p>17 us, you listed several people that would be</p> <p>18 potential witnesses?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. And I'm going to go through each person</p> <p>21 in turn, and that way if you'd be so kind just to</p> <p>22 let us know what they know about this civil case.</p> <p>23 A. Okay.</p> <p>24 Q. Rick and Terri Spence. I'm putting them</p> <p>25 together since you put them together.</p>
<p>1 A. No, I don't think so. I don't think she</p> <p>2 did.</p> <p>3 Q. Was that just --</p> <p>4 A. I can't remember.</p> <p>5 Q. Was that just at your house?</p> <p>6 A. It was ours, so yeah. But I don't know</p> <p>7 if she took it to her mom's or not.</p> <p>8 Q. When you say it's yours, was it a gift to</p> <p>9 her?</p> <p>10 A. It was --</p> <p>11 Q. Let me rephrase that.</p> <p>12 A. Yeah, I don't know if we bought it for</p> <p>13 her.</p> <p>14 Q. Was it her iPad or was this a family iPad</p> <p>15 that everybody used?</p> <p>16 A. It was hers.</p> <p>17 Q. Okay. Did law enforcement take the iPad?</p> <p>18 A. No.</p> <p>19 Q. Was her phone an iPhone?</p> <p>20 A. Yes.</p> <p>21 Q. In preparation for the trial, did Breanna</p> <p>22 have to meet with prosecutors?</p> <p>23 A. Yes, yes.</p> <p>24 Q. How many times, if you know?</p> <p>25 A. At least once, at least once.</p>	<p>Page 70</p> <p>1 A. They are my parents.</p> <p>2 Q. Okay. Where do they live?</p> <p>3 A. They live in Guthrie.</p> <p>4 Q. And what do they know about -- let's</p> <p>5 start with the criminal case -- what do they know</p> <p>6 about that?</p> <p>7 A. Just kind of what -- they know just as</p> <p>8 much as we know about it.</p> <p>9 Q. Has Breanna ever discussed -- and I'll</p> <p>10 start with your dad, Rick -- anything that</p> <p>11 occurred to her that you're aware of?</p> <p>12 A. Not that I am aware, no.</p> <p>13 Q. Are you aware whether Breanna ever</p> <p>14 discussed with Terri, your mom, anything that</p> <p>15 occurred while she was in Christopher Howell and</p> <p>16 Dorian's house?</p> <p>17 A. I do not know. I do not know if my mom</p> <p>18 would know.</p> <p>19 Q. Would it be accurate to state, then,</p> <p>20 anything that your mom and dad know about the</p> <p>21 evidence of the criminal case came from being told</p> <p>22 from others?</p> <p>23 A. Yes. That would be possible from my</p> <p>24 nieces that are on there, you know. And my sister</p> <p>25 that's on there, from talking to them.</p>

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1 Q. Is there anything that they will testify 2 that they personally saw or know?	1 Q. (By Ms. Burgess) So about the same age as 2 your daughter?
3 A. I wouldn't -- no. I wouldn't think so.	3 A. Addison's older.
4 Q. Okay. Addison Hallmark?	4 Q. She's three years older?
5 A. That's my niece.	5 A. Yeah, three years older.
6 Q. You told us earlier that your sister's 7 last name is Hallmark?	6 Q. Okay. And what will -- so Addison would 7 go along with two other sisters --
8 A. Hallmark, yes, yes.	8 A. And they would --
9 Q. So how -- how old is Addison?	9 Q. -- to babysit?
10 A. Oh, she is currently -- I think she's 18.	10 A. -- they would babysit weekly for Dorian.
11 Q. Is she still at home?	11 Q. What days?
12 A. Yes, ma'am.	12 A. Oh, I don't know what days. I don't 13 know.
13 Q. Where does she go to school?	14 Q. Did you know they were babysitting?
14 A. They're homeschooled.	15 A. They -- no. No. Dorian would contact 16 them directly.
15 Q. And where do they live?	17 Q. Okay. So what do you expect Addison 18 would testify about?
16 A. Guthrie.	19 A. You know -- well, what Addison's told us 20 is when they would babysit, Dorian would spend 21 hours and hours and hours in a closed room, an 22 office, and she would video-game all day and with 23 headphones on and just leave them with her kids.
17 Q. And what would Addison know about the 18 criminal matter?	24 And she would tell -- and Addison, she 25 would say that they would tell -- tell -- Dorian
19 A. So Addison, Avery, and Abby, all three --	
20 Q. Let's just go with Addison.	
21 A. Just one at a time? Okay. It's the same 22 for all three. They would -- they would 23 babysit -- babysit for Dorian.	
24 Q. So Addison would go and babysit at 25 Dorian's house?	
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1 A. All three of them would.	1 would tell -- tell them not to let the kids sleep
2 Q. Okay. Were they being paid?	2 until -- until she got home, which I don't know
3 A. Yes, yes.	3 why. I couldn't tell you why but --
4 Q. All three of them would be paid?	4 Q. Okay. I'm a little confused.
5 A. All three of them, yeah.	5 A. Yeah.
6 Q. So this is Addison?	6 Q. So let me unconfuse myself.
7 A. Avery and Abby.	7 So Dorian hired your nieces to come 8 babysit?
8 Q. Avery?	9 A. Uh-huh.
9 A. Avery.	10 Q. And she'd be in a closed room in the 11 house, but she'd be gone?
10 Q. Is that Avery. Hallmark?	12 A. She'd be -- she'd be -- so they -- it was
11 A. Yeah, yeah. Hallmark, they are all 12 sisters.	13 almost weekly when she'd babysit. So sometimes 14 she would go to work at a golf course and 15 sometimes she would go out with Chris and then 16 sometimes she would be in the room playing video 17 games.
13 Q. And the third one?	18 Q. Okay. But she had your nieces coming to 19 babysit if she was gone or --
14 A. Abby, A-b-b-y.	20 A. Babysit the brother and sister.
15 Q. Okay. I'm doing math in my head. You 16 have to give me a minute.	21 Q. Okay. Or playing video games?
17 So Addison would have been 12 to 14 at 18 the time, and please correct me if my math's 19 wrong?	22 A. Uh-huh, yeah.
20 A. Yeah. I'm -- I'm --	23 Q. Is there anything else that Addison has 24 personal knowledge of that you're aware of?
21 MR. SULLIVAN: If you know.	25 A. Not -- not that I am aware of.
22 THE WITNESS: Yeah. I'm not good at 23 math. I mean, I -- so what was that? Fifteen --	
24 she would have been 14, 15, yeah. I guess around 25 there. Right.	

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1	Q. Okay. And then the next person is Avery Hallmark?	1	Q. Any reason?
3	A. Yes.	2	A. No. Like I said, I -- during the investigation and all that stuff, I didn't want to know. I didn't want to know anything. So I didn't ask anybody anything about the investigation or what they know. I figured that was up to the detectives and the DAs and stuff.
4	Q. How old is Avery at that time?	8	Q. Have you asked them any questions since the criminal investigation ended?
5	A. As of right now, I think she is 16 or 17.	10	A. I have not seen them much since it all -- my daughter goes over there quite a bit. But I work quite a bit, so I haven't really seen them just a bunch. And when I do see them, it's family gatherings and not really appropriate.
6	Q. And I'm assuming she's also homeschooled?	15	Q. You actually just sparked a question from me.
7	A. Yes. Yeah, they all are. Yes, ma'am.	17	A. Oh, awesome.
8	Q. In Guthrie?	18	Q. I love when that happens.
9	A. Uh-huh, yes.	19	In my experience, and it could be different from yours, a lot of law enforcement officers have side gigs?
10	Q. And would her knowledge be the same as her older sister?	22	A. Uh-huh, yes, ma'am, I do.
12	A. Yes, ma'am.	23	Q. Security work, festivals, just numerous different things.
13	Q. Anything else special that Avery would -- would know differently?	25	A. Yeah.
15	A. No, not that I know of.		Page 80
16	Q. And the last one I think you said Abby?	1	Q. If you get paid for it, law enforcement officers will be there, which is a bonus for the organization.
17	A. Abby, yes, ma'am.	4	Do you do any of those side gigs?
18	Q. How old is Abby right now?	5	A. I do, yes, ma'am.
19	A. Maybe 14.	6	Q. And have you always done those side gigs through your career?
20	Q. So she's younger --	8	A. I have, yes. Yes, ma'am.
21	A. She's the youngest.	9	Q. And during the time period when -- as a lieutenant, even if you're a supervisor -- officers still do the odd jobs and side jobs.
22	Q. -- than Breanna.	12	A. Yes.
23	A. Yes.	13	Q. Is that correct?
24	Q. And she was also being paid to babysit?	14	A. Yes, ma'am.
25	A. They were all together babysitting, yes,	15	Q. And would it be accurate to say that through -- is it 21 or 23?
	Page 78	17	A. Twenty-one.
1	ma'am. Or she might have gave them a lump sum, but I don't know what she paid them.	18	Q. Twenty-one. Misty's 23?
3	Q. When Addison, Avery, and Abby would be at Dorian's house, would Breanna be there or would she be in school, if you know?	19	A. Yes, yes.
6	A. I don't. I know there were times that Breanna was not there, but I don't know every time.	20	Q. Your 21 years, you've done side jobs and odd jobs the whole way through?
9	Q. And it's -- and if I'm assuming, correct me -- they would be there during the day?	22	A. Yes, I have.
11	A. Yes, and sometimes at night. They were there quite a bit.	23	Q. And those would be hours outside of your normal working?
13	Q. Is there anything that Abby would know differently than her older two sisters?	25	A. It would, yes.
15	A. No, ma'am, I don't think so.		
16	Q. And Audrey Hallmark is your sister?		
17	A. Yes, that's their mother.		
18	Q. And what would -- what does Audrey know?		
19	A. Just what her daughters have told her about being over there. And, honestly, they --		
21	Audrey and the girls have talked more to Misty than they have me about things that they've seen over there and not all have been relayed to me.		
24	Q. Have you ever asked them any questions?		
25	A. No, I never have. No, I --		

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<p style="text-align: right;">Page 81</p> <p>1 Q. When Breanna would be at your house on 2 your week on, would you do any side jobs? 3 A. Every now and then. I -- I tried not to 4 on my days off. I'd do a lot when I would get off 5 work or before work, try to schedule them around 6 Breanna. But I would from time to time, yes. 7 Q. Do you have any that are regular jobs? 8 A. No, no. They're -- they come and go. I 9 really don't. 10 Q. Okay. Is there anything -- going back to 11 Audrey -- is there anything that Audrey would be 12 able to testify about, anything in the criminal 13 investigation or Dorian, that she knows 14 personally? 15 A. Personally? 16 Q. -- that you're aware of? 17 A. No, not that I was aware of. 18 Q. Okay. Do you know who Sadie is? 19 A. I do. 20 Q. Sellers. 21 A. I do. I know who she is, yes. 22 Q. Who is that? 23 A. She's a friend of Breanna's. 24 Q. Have you ever met her? 25 A. Yes, maybe twice.</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. Would she be more likely to tell you or 2 Misty if she has a boyfriend? 3 A. She's pretty proud of it. I mean, a year 4 ago there was a boy she liked. She's all about 5 it. But, recently now, she hasn't said anything. 6 Q. Okay. What family activities do you, 7 Misty, and Breanna and the girls do? 8 A. We go out to eat a lot, go to movies. Go 9 on vacation at least once, twice a year. 10 Q. Anywhere good? 11 A. I'm sorry, what? 12 Q. Anywhere good lately? 13 A. Well, we're going in May. In May, we're 14 going to -- so all the girls love the Twilight 15 movies. And so we're flying into Washington and 16 driving to Forks and spending two days at Forks. 17 And then from Forks, we're going to 18 Oregon and doing the Goonies thing. And then from 19 there, we're going to San Francisco and I guess 20 they filmed The Lost Boys out there, and we're 21 doing Alcatraz and the mansion, that mansion that 22 -- Winchester mansion. 23 Q. Winchester Mystery House? 24 A. Yes. Breanna loves those scary movies 25 like that, and so she's pretty excited about that.</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. And this was her best friend in Edmond? 2 A. In Edmond, yes. 3 Q. Does Breanna get to see Sadie anymore? 4 A. No, they don't really talk anymore. 5 Q. Who is Zanta? 6 A. I don't know. Zanta? 7 Q. (Nodding head.) 8 A. I don't know who that is. No. 9 Q. Okay. Did Breanna ever talk to you about 10 her boyfriends? 11 A. Is that her boyfriend? Is who that is? 12 A boyfriend? 13 Q. It was a boyfriend. 14 A. Okay. 15 Q. I don't know if it's a current one or -- 16 A. I remember she had a boy she was talking 17 to back, but I couldn't remember his name. 18 Q. Did you ever meet him? 19 A. No, huh-uh. 20 Q. Were you aware that she had a boyfriend? 21 A. Yes, I was. A boy she talked to, yeah. 22 Q. Okay. Does she currently have a 23 boyfriend? 24 A. She says no. She says no. I've never 25 met one.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Have you ever been there? 2 A. No, no, ma'am. I haven't been -- 3 Q. It's creepy. 4 A. Is it? I've seen the movie. I've seen 5 the movie. So it's -- that's end of May that 6 we're going. 7 Q. I'll tell you about it off the record. I 8 used to live in California. 9 A. I did, too. I did, too. 10 Q. Did you grow up there? 11 A. Bakersfield, yeah. I grew up in 12 Bakersfield. My dad was a cop there. And then 13 once he retired and moved out here, I was a junior 14 in high school when we moved here. 15 Q. Okay. I'm assuming the Goonies is you? 16 A. Goonies is me. 17 Q. Okay. 18 A. Forks is the -- if we're going to get a 19 hotel room for two days because of Twilight, they 20 can at least let me stop and do Goonies. 21 Q. At what point did Breanna start seeing a 22 counselor? 23 A. It was December 2019. It was shortly 24 after we found out about the incident. It was 25 about a week later. And it was -- I remember it</p>

<p>Page 85</p> <p>1 was tough to get one at that time because it 2 was -- the holidays were coming up. 3 Q. Well, it sounds like y'all got one within 4 a week. 5 A. We did, yeah. So the lady that Misty 6 gave to Dorian, Misty called her. And she was -- 7 she was booked up so she recommended a lady named 8 Rebel. And so we took her to Rebel. 9 Q. And what is Rebel's last name, if you 10 know? 11 A. I knew you were going to ask me that. 12 It's very unusual. I -- we all just know her as 13 Rebel. 14 Q. Buersmeyer? 15 A. That's it, yeah. That's it, yeah. 16 Q. B-u-e-r-s-m-e-y-e-r. What was -- now 17 I'll refer to her as Rebel. What was her 18 specialty or training in? 19 A. We were told that she specializes in 20 interviewing -- or speaking with children in abuse 21 cases. 22 Q. Who told you that? 23 A. It -- well, it came from Misty told me, 24 but she got it from the initial lady she talked 25 to. So it -- to me, it was from Misty.</p>	<p>Page 87</p> <p>1 didn't feel -- she didn't feel comfortable with 2 Rebel. So we found somebody else. 3 Q. Did she ever express what her discomfort 4 was? 5 A. No, not to me. And I -- I never asked 6 her. If she didn't want to do it, we'll find 7 somebody else. 8 Q. So if I'm understanding you, she still 9 wanted counseling? 10 A. Uh-huh. 11 Q. Just not with this lady? 12 A. Just not with her, yes, ma'am. 13 Q. When she was in counseling with Rebel, 14 did you see any improvement with Breanna? 15 A. Yeah, a little -- a little bit. I mean, 16 not -- not enough to say -- to tell her, No, we 17 need to stay with Rebel. She was still kind of 18 secluded but nothing major, no. 19 Q. When she started counseling, you said she 20 was still a little secluded? 21 A. Yeah, it was -- 22 Q. What do you mean by that? 23 A. I'd say just a lot of time in her room, a 24 lot of time in her room. Spending all night in 25 her room.</p>
<p>Page 86</p> <p>1 Q. Did she, in fact, specialize in children 2 abuse cases? 3 A. Yes, yeah. 4 Q. Okay. It just sounded like that maybe 5 she wasn't, that's what you were told. 6 A. She was -- yeah. That's why we wanted 7 her to go there. 8 Q. How often you did your daughter see her? 9 A. Started off weekly, and then it would go 10 from biweekly to monthly to -- it would bounce 11 around regularly between, you know, schedules and 12 stuff. 13 Q. You said weekly, would it be once a week? 14 A. Once a week. And then we would, you 15 know, do -- we'd do it for a while, and then we'd 16 do every other week. And then monthly and -- it 17 really did bounce around. We took her 18 consistently. 19 Q. How long did Breanna see Rebel? 20 A. It's just about two years. 21 Q. From December 2019, two years after that? 22 A. After that, yeah. About a couple years, 23 yes, ma'am. 24 Q. And why did you switch? 25 A. It was Breanna's decision. She -- she</p>	<p>Page 88</p> <p>1 Q. That was the same as your other daughter 2 that was the same age? 3 A. Yeah, yeah. But -- yeah. So I didn't 4 really just -- I personally didn't see much 5 improvement. 6 Q. Who was the next counselor? 7 A. Sheila Sisemore. 8 Q. What is her -- what does she specialize 9 or what's her training in? 10 A. Children. Children -- the same as Rebel, 11 children in -- 12 Q. How did you find her? 13 A. -- in abuse -- 14 Q. How did you find her -- or who found her? 15 I'll ask that. That's a better question. 16 Who found her? 17 A. That was through my wife, yeah. She told 18 -- she found her. 19 Q. When did Breanna start with Ms. Sisemore? 20 A. I think she's been going -- she was 21 almost -- a while, too. I don't remember exact 22 dates. It was immediately after Rebel. There 23 wasn't really any gap between. And so we found 24 her pretty quickly. 25 Q. How often does Ms. Sisemore see your</p>

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<p>1 daughter?</p> <p>2 A. Every other week.</p> <p>3 Q. Is it a standing appointment, or is it flexible?</p> <p>4 A. It's flexible.</p> <p>5 Q. How does your daughter get there?</p> <p>6 A. We -- I take her. We take her. Yeah,</p> <p>7 one of us takes her.</p> <p>8 Q. How often do you take her?</p> <p>9 A. Me, personally?</p> <p>10 Q. Yes, sir.</p> <p>11 A. I'm sorry. I -- like if it lands on one of my days that I'm working, then it's --</p> <p>12 sometimes my wife will take off a little early and</p> <p>13 then pick her up. And so if it lands on my days</p> <p>14 off -- and I try to schedule it for my days off.</p> <p>15 So I probably take her at least once a month, at</p> <p>16 least.</p> <p>17 Q. And is this a counselor that goes to the</p> <p>18 school to do counseling session, or do you take</p> <p>19 her to the actual -- her office?</p> <p>20 A. Her office.</p> <p>21 Q. Okay. Have you had any family counseling</p> <p>22 sessions?</p> <p>23 A. Yes, yes.</p>	<p>Page 89</p> <p>1 A. Me, Misty, and Bre.</p> <p>2 Q. So you've had at least one with the whole</p> <p>3 parental unit and Breanna?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. And then at least one that you're aware</p> <p>6 of of Misty and Breanna together?</p> <p>7 A. Yes.</p> <p>8 Q. Any other family sessions with Breanna of</p> <p>9 either one of you or both of you?</p> <p>10 A. I went -- I went once with Bre because</p> <p>11 Misty had to work late. So it was a family</p> <p>12 session set up, and I happened to be there so I</p> <p>13 just went. It was just me and her. And the topic</p> <p>14 of that conversation was how things were going,</p> <p>15 and it was, again, nothing -- nothing real</p> <p>16 specific.</p> <p>17 Q. Do you get any reports from Ms. Sisemore</p> <p>18 about how Breanna's doing?</p> <p>19 A. No, ma'am.</p> <p>20 Q. How is Ms. Sisemore paid?</p> <p>21 A. My insurance. And then when we go</p> <p>22 over -- when we go over however many we can have,</p> <p>23 she sends us a bill.</p> <p>24 Q. And you personally pay that?</p> <p>25 A. Yes.</p>
<p>1 Q. With Ms. Sisemore?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. And what about Rebel?</p> <p>4 A. No, no, ma'am.</p> <p>5 Q. How many family sessions do you normally</p> <p>6 do?</p> <p>7 A. Just whenever Bre recommends one. I</p> <p>8 think we've done two so far. Two -- yeah, about</p> <p>9 two.</p> <p>10 Q. So the family sessions were actually at</p> <p>11 the urging of your daughter?</p> <p>12 A. Yes, yes, whatever she wants.</p> <p>13 Q. Okay. What were the topics of the family</p> <p>14 sessions?</p> <p>15 A. I'm trying to remember. It wasn't</p> <p>16 anything pressing. But, I mean, the one -- and</p> <p>17 it's been a while since we've had one. Breanna</p> <p>18 and Misty had one, just them two, a couple weeks</p> <p>19 ago. And the last one I went to was a few months</p> <p>20 ago. And it was mainly just talking about how</p> <p>21 things are going, and there was nothing really</p> <p>22 specific.</p> <p>23 Q. When you had yours a couple of months</p> <p>24 ago, was it you, Misty, and Breanna, or just you</p> <p>25 and Breanna?</p>	<p>Page 90</p> <p>1 Q. How much have you had to pay for</p> <p>2 counseling out of pocket?</p> <p>3 A. You'd have to ask Misty. She pays all</p> <p>4 the bills.</p> <p>5 Q. Do you know what Ms. Sisemore charges per</p> <p>6 hour?</p> <p>7 A. I do not, no, ma'am.</p> <p>8 Q. Do you know -- if you know -- how many</p> <p>9 sessions are approved through your insurance per</p> <p>10 year?</p> <p>11 A. I tried to think about that the other day</p> <p>12 because I thought you might be asking. But I</p> <p>13 don't -- I do not know. I'd probably have to call</p> <p>14 my insurance and ask them. I don't know a</p> <p>15 specific number.</p> <p>16 Q. Do you know the last time you received a</p> <p>17 bill?</p> <p>18 A. Yeah. It was -- I think it was -- it was</p> <p>19 at the end of the year, I think, is when we did</p> <p>20 it. And for whatever -- whatever -- however many</p> <p>21 we went over is the bill. But I don't remember</p> <p>22 how much it was.</p> <p>23 Q. Do you remember what month you received</p> <p>24 it?</p> <p>25 A. I don't -- I don't -- I don't know. It</p>

<p style="text-align: right;">Page 93</p> <p>1 didn't seem like it was that long ago. But I do 2 not remember what month it was. 3 Q. But your memory as you sit here today is 4 that it was toward the end of the year? 5 A. That's what I was thinking because I 6 think we're -- I think we're allotted per year a 7 certain amount. 8 Q. Okay. Is your insurance still Blue Cross 9 Blue Shield? 10 A. Yes, ma'am. 11 Q. And has that been consistent the entire 12 time that she's been in counseling? 13 A. There was a year my wife's insurance was 14 cheaper. I just can't remember. We've bounced 15 around a few times, so I don't remember if it's 16 been Blue Cross the whole time. I can't remember. 17 Q. Has it been Blue Cross Blue Shield since 18 2020, if you know? 19 A. I had United -- I think I had 20 United Healthcare back then. So I couldn't tell 21 you if it's been the same. 22 Q. Who are you currently under? 23 A. Blue Cross Blue Shield's. 24 Q. Has Breanna seen any other kind of 25 doctor, counselor, any -- anyone in the medical</p>	<p style="text-align: right;">Page 95</p> <p>1 Anything of that sort? 2 A. I have not, no, ma'am. 3 Q. Has Misty had that conversation if you're 4 aware? 5 A. Misty has not told me anything so -- 6 about that, so. 7 Q. Okay. And I don't want to assume, so 8 please correct me if I'm wrong. It sounds like 9 your position throughout the investigation and the 10 criminal trial was, you really didn't want to know 11 any of the details? 12 A. I didn't. I didn't -- I didn't ask her 13 questions. I didn't ask Bre any questions or 14 anybody else for that matter. 15 Q. And is that still your position of "I 16 just really don't want to know"?</p> <p>17 A. I really don't want to know. Just 18 being -- being a dad, you know, and knowing the 19 details and I -- I don't want to know the details 20 of what really happened, you know. And it's 21 upsetting enough to me as it is knowing it did 22 happen. I don't know want to know specifics. 23 Q. You mentioned earlier that on the way to 24 the care center, that Breanna did tell y'all about 25 an event on the porch.</p>
<p style="text-align: right;">Page 94</p> <p>1 profession for anything related to this incident? 2 A. No, ma'am. 3 Q. Does -- are there any plans for her to 4 see anyone besides Ms. Sisemore in the near 5 future? 6 A. There's no plans, no plans. Unless -- we 7 leave it up to Breanna. 8 Q. A lot of times when you're dealing with 9 -- with counselors dealing with children, there 10 are plans put in place of "We're going to do this 11 for another six months." 12 Are you aware if there's any plans that 13 are put in place between Breanna and -- Is it 14 Dr. Sisemore or Ms. Sisemore? I certainly don't 15 want to take anything away if she's a doctor. 16 A. I don't know what she is either. 17 Sheila Sisemore has not said anything to 18 us about a plan or when to stop or when -- or to 19 keep going. Every time I take her to counseling, 20 she comes out with a calendar book, and we 21 schedule the next appointment. So nothing's ever 22 been said. 23 Q. And have you ever had any discussions 24 with Ms. Sisemore as to what does the future look 25 like? Is she -- how long is this going to go?</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Uh-huh. 2 Q. Has she ever had any other discussions 3 with you about any -- and I know that you don't 4 want to know. 5 A. I know, yeah. 6 Q. But has she had any other discussions 7 with you that she told you about anything that 8 occurred? 9 A. That's -- that's the only incident I 10 remember her ever telling me about. And just 11 because it was -- because she brought it up and 12 started talking about it. But she has not talked 13 about any other incident that I can recall that 14 happened. 15 Q. If you're aware, has she had any other 16 conversations with Misty about anything that 17 occurred? 18 A. I'm not aware of that. She talks to 19 Misty more than she talks to me sometimes. 20 Because she is a female and they -- they're pretty 21 close. You know, they talk female stuff and so 22 they -- so she may have, you know. 23 Q. But as you sit here today, are you 24 actually aware of any -- 25 A. I'm not aware of anything.</p>

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<p>1 Q. -- discussions about it?</p> <p>2 A. No, ma'am.</p> <p>3 Q. Okay. Have you had any other</p> <p>4 out-of-pocket expenses other than what we've</p> <p>5 discussed with Ms. Sisemore's bills if you're over</p> <p>6 your insurance?</p> <p>7 A. Are you talking about only insurance?</p> <p>8 Q. Anything that you've personally paid?</p> <p>9 A. I mean, I've got braces for her.</p> <p>10 Q. That wasn't related to this, I'm</p> <p>11 assuming.</p> <p>12 A. Those are expenses.</p> <p>13 Q. That's genetic.</p> <p>14 A. Yeah. No, Sheila's the -- Sheila's, as</p> <p>15 far as the --</p> <p>16 MR. SULLIVAN: She just meant related</p> <p>17 to these events.</p> <p>18 THE WITNESS: Yeah, no. Sheila's the</p> <p>19 only -- Sheila and Rebel.</p> <p>20 MR. SULLIVAN: But, I can concur.</p> <p>21 Braces are expensive.</p> <p>22 MS. BURGESS: They are. I'm on my</p> <p>23 last page.</p> <p>24 MR. SULLIVAN: Okay. Can we go off</p> <p>25 the record for just a second?</p>	<p>1 A. Okay.</p> <p>2 Q. And you're familiar with that?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. All right. I just want to ask you a few</p> <p>5 questions about that to make sure that we're on</p> <p>6 the same page.</p> <p>7 A. Okay.</p> <p>8 Q. In there you ask for reasonable,</p> <p>9 necessary, medical, psychiatric, psychological</p> <p>10 expenses occurred in the past.</p> <p>11 Based on your previous answer where you</p> <p>12 told me that Misty pays all the bills, do you know</p> <p>13 how much you've paid out of pocket as we sit here</p> <p>14 today?</p> <p>15 A. I do not, no, ma'am.</p> <p>16 Q. Okay. And based on your answers as we</p> <p>17 sit here today, you have no idea how much more</p> <p>18 counseling Breanna would need in the future?</p> <p>19 A. No, no clue, no, ma'am.</p> <p>20 Q. Different departments have different</p> <p>21 timelines for retirement and benefits if they</p> <p>22 retire at a certain year.</p> <p>23 Do you have any intent on retiring at the</p> <p>24 25-year mark?</p> <p>25 A. That's my plan.</p>
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<p>1 MS. BURGESS: We can.</p> <p>2 (An off-the-record discussion.)</p> <p>3 Q. (By Ms. Burgess) Okay. We're back on the</p> <p>4 record. We had a quick aside that we don't need</p> <p>5 to discuss.</p> <p>6 And part of a deposition, we -- did you</p> <p>7 review any of your answers to the interrogatories,</p> <p>8 the petition, anything of that sort?</p> <p>9 A. Are you talking about the ones -- the</p> <p>10 questions you guys asked and we answered?</p> <p>11 Q. (Nodding head.)</p> <p>12 A. Yes. Yes, ma'am. I did a little bit.</p> <p>13 Q. Okay. And did you review your petition</p> <p>14 which is that first document you filed to start a</p> <p>15 lawsuit?</p> <p>16 A. I don't remember that.</p> <p>17 Q. Okay.</p> <p>18 A. Sorry.</p> <p>19 Q. That's all right. In your petition, that</p> <p>20 your attorney filed on your behalf --</p> <p>21 A. Okay.</p> <p>22 Q. -- it goes through allegations of why</p> <p>23 you're bringing the lawsuit and what kind of</p> <p>24 damages you want either a judge or a jury to award</p> <p>25 you. Okay?</p>	<p>1 Q. That's usually the plan.</p> <p>2 A. That's my plan. Plans change but</p> <p>3 hopefully -- hopefully I can.</p> <p>4 Q. And you stated earlier that Misty's at</p> <p>5 her 23rd year?</p> <p>6 A. Uh-huh. Yes, ma'am.</p> <p>7 Q. Does she also have that 25-year mark?</p> <p>8 A. That is her plan. That is her plan, yes,</p> <p>9 ma'am.</p> <p>10 Q. Okay. Also based on my previous</p> <p>11 experience, there's always a second career usually</p> <p>12 for those officers once they finish their first</p> <p>13 career. Is that also a plan?</p> <p>14 A. Oh, I hope not. But I -- I assume so. I</p> <p>15 just -- I assume so, maybe. I don't know. I'd</p> <p>16 like to be -- I'd like to be financially stable</p> <p>17 and not have to. But, I mean, I'd still be</p> <p>18 somewhat young. So maybe Home Depot? I don't</p> <p>19 know.</p> <p>20 Q. Daughters will still be in college?</p> <p>21 A. Yeah. And that's another thing that I've</p> <p>22 talked to Misty about is I might have to at least</p> <p>23 stick around a little longer. Or we both might</p> <p>24 have to stick around a little longer to -- they're</p> <p>25 still going to be on our insurance. And so 25 was</p>

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<p>1 a grand idea 10 years ago, but the closer we 2 get -- I don't know. We'll see -- see where we're 3 at in 25, at 25.</p> <p>4 Q. And you still got four more years?</p> <p>5 A. Yeah, yeah. Four more, yes, ma'am.</p> <p>6 Q. And then get to the 25-year mark on 7 Insurance?</p> <p>8 A. Twenty-five and just see where I'm at. 9 See where we are financially and --</p> <p>10 Q. Fair. You put in here lost earning 11 capacity in the future for Breanna.</p> <p>12 As we sit here today, do you have any 13 reason to believe that she will not be successful 14 in the future?</p> <p>15 A. No. I -- I really hope. I mean, I hope 16 to God she does well in the future and meets a guy 17 and has a family of her own, you know. I think 18 she will. I really do.</p> <p>19 Q. You said her grades were doing really 20 well in high school.</p> <p>21 A. Yes. She's doing really well right now 22 and she does her homework and she's doing a whole 23 lot better, for sure.</p> <p>24 Q. Does she have any specific interest?</p> <p>25 A. Oh, we've talked to her about -- you</p>	<p>Page 101</p> <p>1 well. I'm hoping she's doing well.</p> <p>2 You know, we try to talk to her, and she 3 doesn't want to hurt anybody's feelings. You 4 know, so I'm hoping she tells us the truth when we 5 talk to her, but I don't know. I don't know how 6 the future's going to hold -- going -- going to 7 be. I really don't, you know.</p> <p>8 Q. But she's at least engaging in school and 9 sports.</p> <p>10 A. Yes. She's doing good in school, playing 11 in sports. She'll come out and watch a movie with 12 us and eat dinner with us. And so she's -- in my 13 mind, I feel she's doing better.</p> <p>14 Q. Have you met any of her friends?</p> <p>15 A. Yeah, yeah. I've met a couple of them.</p> <p>16 Q. Who are her friends?</p> <p>17 A. Oh, there's a girl named Callie. 18 Callie -- I do not her last name. She played 19 volleyball with her. Oh, I can't remember her 20 other friends. She hadn't had a whole lot of 21 people just staying the night. So she'll just 22 kind of bring up people.</p> <p>23 There's a girl named Katherine. 24 Katherine, that's her most recent friend that she 25 went to a hockey game with last week with her</p>
<p>1 know, she's still so young. I mean, hopefully, 2 I'd like for her to go to college, you know. And 3 get a degree, and I don't know. Yeah.</p> <p>4 I mean, we've talked to her a little bit. 5 She talked about the fire side of things. She's 6 talked about vet stuff. It changes. It changes 7 all the time.</p> <p>8 Q. Sounds like all good plans.</p> <p>9 A. Yeah, yeah.</p> <p>10 Q. You have mental anguish in the past, 11 mental anguish in the future.</p> <p>12 As you sit here today, how's she doing?</p> <p>13 A. She's doing better. Yeah, she's doing 14 better. You know, I can't sit there and tell you 15 what she's -- you know, how -- what she truly 16 thinks or how she truly feels. And if things are 17 getting better for her.</p> <p>18 She's really well at hiding things.</p> <p>19 She's always been really well at hiding things. 20 Like I said, we -- we never knew, you know, 21 the abuse. I mean, I never -- I never saw it. I 22 just -- she -- she hid that very well.</p> <p>23 And so it's kind of hard to tell if she's 24 just an act or if she's really hurting inside. I 25 don't know. I'm hoping -- I'm hoping she's doing</p>	<p>Page 102</p> <p>1 family.</p> <p>2 Q. Did you meet her, Katherine's family?</p> <p>3 A. I did, yes, ma'am.</p> <p>4 Q. Do you know their names?</p> <p>5 A. I do not. I -- I know for a fact they 6 gave them, too. I just -- I don't remember them.</p> <p>7 Q. Okay. You have listed physical and 8 mental impairment disfigurement in the past.</p> <p>9 Do you know of any physical dis- --</p> <p>10 A. Are you talking about, like, the cutting?</p> <p>11 Q. -- Impairment?</p> <p>12 A. Cutting?</p> <p>13 Q. Is that what you're referring to?</p> <p>14 A. She was having really huge issues. I 15 mean, like her -- she would question her sexuality 16 for the longest time. And I don't know if she 17 still is or not, honestly. She -- she was having 18 a huge issue with that.</p> <p>19 Now as -- you know, and me and Misty are 20 like kind of support her in whatever she wants. 21 Whatever she wants, if she wants to -- you know, I 22 know she talked about maybe she's pansexual? I 23 don't even know what that is. I've never even 24 looked it up. But so that was -- I mean, she just 25 didn't know like her sexuality, that was kind of a</p>

<p style="text-align: right;">Page 105</p> <p>1 big issue with her and she was really upset about 2 that. 3 And then, you know, the cutting -- and 4 the cutting -- I think, stopped. I think it's 5 stopped. You know, I've -- I won't ask her to 6 raise her arms, you know, but I'll look at her 7 with short sleeves. I don't see any physical dis- 8 -- you know, injuries on her recently anyway. 9 And -- 10 Q. Now am I -- 11 A. I don't know if I'm answering the right 12 question but -- 13 Q. You're fine. Now my understanding -- and 14 correct me if I'm wrong -- was that the cutting 15 only occurred that one time when she was in 16 Heartland Middle School? 17 A. I think it happened more than that. 18 Because we -- we talked to her about the cutting, 19 when it happened, and she was crying. And I think 20 it -- I think it -- because there were several -- 21 It wasn't just like one line, one line. I think 22 it looked like there was maybe several over maybe 23 a little period of time. 24 I haven't seen it happen. I haven't seen 25 any marks or anything, you know, recently or in --</p>	<p style="text-align: right;">Page 107</p> <p>1 MS. BURGESS: Okay. Can I have one 2 moment? And I am perfectly fine, and this is up 3 to you, if you want me to pass so we can keep on 4 the questions while I look at my notes. That way 5 we're not wasting any time? 6 MR. SULLIVAN: I'm the least formal 7 you're going to meet. Back and forth all you 8 want. 9 MS. BURGESS: Ma'am. 10 I'm passing you to Ms. Millicent 11 while I look at my notes because I hate wasting 12 time. 13 MR. SULLIVAN: It's all good. 14 MS. BURGESS: Before I do that, do 15 you need a break or anything? 16 THE WITNESS: I'm -- I'm okay. 17 MS. BURGESS: Okay. 18 EXAMINATION 19 BY MS. WOODLAND: 20 Q. Okay. My name's Millicent Woodland. I 21 represent Dorian in this case. 22 A. Okay. 23 Q. Along with Mr. Goodwin. 24 So we were just talking about the cutting 25 incident. What year did that occur, or what grade</p>
<p style="text-align: right;">Page 106</p> <p>1 you know, at least a couple of years. So 2 hopefully that's done. 3 Q. Since the time that you and Dorian talked 4 about the cutting, has she cut since then? 5 A. I don't -- I don't think so. I don't 6 think so. I don't know. I hope not. 7 Q. Let me ask it a different way. 8 Have you seen your daughter have any 9 scars on her arm since that first time that you -- 10 A. Since the first time? 11 Q. -- took her to dinner? 12 A. No, I haven't. I haven't seen any scars 13 since that -- since then so -- I just think that. 14 It was -- before that time, I think she was -- I 15 think it might have been on a -- doing it 16 several -- several times, not just once. I think 17 she did it several times before then. 18 Q. But you're not sure as you sit here? 19 A. But I'm not sure. No, I'm not sure. 20 Yeah. I just remember looking at it, and it 21 looked like there was several scratch-type 22 superficial cuts on her. 23 Q. And that could have happened all at once? 24 A. It -- it could have. It could have, 25 yeah.</p>	<p style="text-align: right;">Page 108</p> <p>1 was she -- is there some sort of time frame -- 2 A. I think it was 2018-ish -- yeah. It was 3 around -- around there. 4 Q. Okay. At that time, what was your 5 custody arrangement with Dorian? 6 A. It was 50/50 joint custody. 7 Q. What does "joint custody" mean to you? 8 A. It means I get her half the time, she 9 gets her half. 10 Q. Who is allowed to make medical decisions 11 for your daughter when you had joint custody with 12 Dorian? 13 A. It was a equal decision. We'd talk to 14 each other. 15 Q. You had the authority at that time as a 16 joint custodial parent to take her to medical and 17 counseling appointments -- 18 A. Yes. 19 Q. -- yourself? 20 A. Yes, ma'am. 21 Q. Okay. Is it Breanna or Breanna 22 (pronouncing)? 23 A. Breanna. 24 Q. Breanna. 25 A. Or you can just call her Bre.</p>

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<p style="text-align: right;">Page 109</p> <p>1 Q. Bre. I'll call her Breanna. Unless I 2 say Breanna (pronouncing), then I'm sorry. 3 A. She gets called that, too, though. 4 Q. So tell me -- going back to that incident 5 and there was some questioning earlier, and I 6 will -- let me back up and just tell you, for the 7 attorney who goes second, I tend to jump around 8 because Shena's already covered a lot of ground. 9 And so if I'm jumping to a different topic and you 10 don't follow me on where we're going or if I ask a 11 bad question -- because that will happen -- you 12 don't understand, just let me know. 13 A. Okay. 14 Q. I also -- and I tend to get bad about 15 letting us talk at the same time. The court 16 reporter, it's a lot easier for her if only one of 17 us is talking. So if you'll let me finish my 18 question before you answer, and then same thing. 19 I'll try really hard to let you finish or when I 20 think you're finished before -- 21 A. Okay. 22 Q. -- I start talking again. Okay? 23 A. Yes, ma'am. 24 Q. That just helps us have a little bit more 25 clear record when we go back and look at this</p>	<p style="text-align: right;">Page 111</p> <p>1 Dorian did the talking amongst themselves for the 2 counselor part of it. And I know Misty called 3 Dorian, and Dorian talked to Misty. And they -- 4 they talked amongst themselves as far as finding a 5 counselor. And then I know Misty gave Dorian a 6 phone number of a lady, and -- and Dorian told her 7 she would -- she'd call. 8 Q. Okay. So it sounds these are mostly 9 conversations between -- 10 A. Misty and Dorian, yes, ma'am. 11 Q. Yes. And I assume that you know what 12 those -- those conversations entail because Misty 13 told you: "Hey, I talked to Dorian today" -- 14 A. Yeah, yes, ma'am. 15 Q. -- "and I told her"? 16 A. Yeah. She did tell me that she'd let 17 Dorian know about the counselor. 18 Q. Okay. Did you ever talk to Dorian 19 directly yourself about taking Breanna to 20 counseling after this cutting was discovered? 21 A. I do not remember talking to Dorian. I 22 -- I felt like they -- them two were kind of 23 spearheading it. And so I didn't do much talking 24 to Dorian about it. Once Misty told me, Hey, she 25 let Dorian know, I kind of -- I just stayed out of</p>
<p style="text-align: right;">Page 110</p> <p>1 later. 2 Okay. So with regard to this 2018 3 incident, it seems like there was just the one 4 time that it came to your attention that 5 Breanna -- 6 A. Breanna (pronouncing). 7 Q. Breanna had been -- had been cutting. Is 8 that right, that it was just brought to your -- 9 A. To my attention, yes, ma'am. 10 Q. Okay. I just typed at the top of my 11 notes B-r-e, capital A, n-n-a. Breanna. Having 12 an unusual name, I appreciate my name being 13 pronounced correctly. So even, though, she's not 14 here and will probably never hear this or see it. 15 So with -- you said that Misty found a 16 counselor for Breanna to see after that occurred. 17 Correct? 18 A. Yes, ma'am. 19 Q. Okay. And Misty provided that 20 information to Dorian. Correct? 21 A. Yes, ma'am. 22 Q. Okay. Was there a conversation between 23 you and Dorian where one of you took 24 responsibility for taking her to counseling? 25 A. I don't remember. I know that Misty and</p>	<p style="text-align: right;">Page 112</p> <p>1 it. 2 Q. Okay. Other than that conversation you 3 had with Breanna when you took her to dinner, 4 after you picked her up from school that day, have 5 you ever talked to her about cutting since then? 6 A. I'm sure I have. You know, not recently, 7 not recently at all. But I remember -- obviously, 8 you know, the first, maybe, few months after that 9 kind of asking her if she's still cutting or -- 10 and looking at her arms. And but I can't remember 11 the -- what she said. 12 Q. After Breanna disclosed that she was 13 being sexually abused, did you ever talk to her 14 about whether the cutting was related to the abuse 15 that now she says it was going on at the time? 16 A. I -- I think you might have to ask Misty. 17 I -- I think Misty might have had that 18 conversation with her. I vaguely remember the 19 cutting being directly a result from the abuse, I 20 remember -- 21 Q. But that would be a Misty conversation? 22 A. It -- it would be, yes, ma'am. 23 Q. How is Misty -- how is Misty's 24 relationship with Dorian, to the best of your 25 knowledge?</p>

<p style="text-align: right;">Page 113</p> <p>1 A. Oh, they -- they just -- they don't talk. 2 Honestly, that was the first time she's ever 3 talked to her was during the -- was the counseling 4 thing. Other than that, it was just cordial, 5 picking -- you know, meeting Dorian from school or 6 Dorian was meeting Misty after school picking up 7 Breanna. It was just a drop off/pick up 8 relationship, really.</p> <p>9 Q. Okay. When did you find out that Breanna 10 had not gone to counseling after that cutting 11 incident was disclosed?</p> <p>12 A. I don't -- I don't know an exact 13 timeline. I just remember Misty calling that -- 14 that counselor lady and asking if Dorian has 15 reached out to her yet. And she told Misty that 16 she hadn't heard from her. And that's -- that's 17 the only thing I remember.</p> <p>18 Q. Okay. Did you ever call the counselor?</p> <p>19 A. I did not, no, ma'am.</p> <p>20 Q. Did you ever call Dorian and say, Why 21 aren't you taking her to counseling?</p> <p>22 A. I do not remember. I don't -- I don't 23 remember if I did or not.</p> <p>24 Q. You don't have a specific memory that you 25 did?</p>	<p style="text-align: right;">Page 115</p> <p>1 A. Well, I -- I guess I shouldn't assume -- 2 but I assumed that Dorian was going to do it 3 because she said she would.</p> <p>4 Q. But didn't you already know that she 5 didn't do it?</p> <p>6 A. Well, Misty told me that she didn't do it 7 but -- at that time anyway. But still didn't mean 8 that Dorian wasn't going to call at a later time 9 or get it done, but no. I didn't call the 10 counselor.</p> <p>11 Q. Did you ever learn that Dorian did or 12 didn't ever call the counselor?</p> <p>13 A. Well, it wasn't -- It wasn't much longer 14 after we found out Breanna was getting abused, and 15 then we ended up getting her into a counselor.</p> <p>16 Q. Well, if the cutting was in 2018 and --</p> <p>17 A. I couldn't tell you what month of 2018. 18 I know 2019 is --</p> <p>19 Q. Right. But even if it was in December of 20 2018 --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- the sexual abuse wasn't disclosed 23 until December of 2019. Right? So that was a 24 whole year.</p> <p>25 A. Yes, ma'am.</p>
<p style="text-align: right;">Page 114</p> <p>1 A. Yeah. I -- I don't remember if I talked 2 to her or text her, since -- since her -- Misty 3 and Dorian talked.</p> <p>4 Q. Did Misty ever call Dorian and say, Hey, 5 why haven't you taken her to the counselor that I 6 referred you to?</p> <p>7 A. I just remember Misty telling me that 8 Dorian told her that she'd contacted her. And 9 then Misty telling me she contacted the counselor 10 lady, and she said, No, I have not heard from 11 Dorian.</p> <p>12 Q. Okay. And after that was learned, did 13 anyone talk to Dorian and say, Why aren't you 14 taking her to counseling? The counselor said you 15 didn't call.</p> <p>16 A. I do not remember if -- if Misty called 17 her, I don't remember if she did. And -- and I 18 cannot remember if I texted her or called her or 19 not in reference to that.</p> <p>20 Q. Was it important to you at that time that 21 Breanna be in counseling?</p> <p>22 A. Yes.</p> <p>23 Q. Why didn't you call the counselor and 24 make an appointment for Breanna during your 25 custody time with her?</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Okay. Did you ever ask Breanna if she 2 was in counseling during that year, or longer?</p> <p>3 A. Well, we -- I kind of knew she wasn't 4 because I'm sure that Dorian would have reached 5 out to me and say, Hey, you need to take her on 6 these days, or I took her on these days. And so I 7 -- I assumed she was not.</p> <p>8 Q. And it wasn't important enough to you 9 that she be in counseling for you to take the 10 initiative to call a counselor or call Dorian --</p> <p>11 A. I probably could have.</p> <p>12 Q. -- yourself?</p> <p>13 A. I probably could have called.</p> <p>14 Q. But you didn't?</p> <p>15 A. I didn't call, no.</p> <p>16 Q. Do you think that if Breanna had been in 17 counseling for the year leading up to her 18 disclosure in December of 2019, that might have 19 been an opportunity to prevent some of the abuse 20 that allegedly happened?</p> <p>21 A. It could have been, could have been.</p> <p>22 Q. Okay. All right. My notes, goodness. 23 Okay. Let's go back and talk about Breanna's 24 other -- Breanna's siblings.</p> <p>25 A. Okay.</p>

<p style="text-align: right;">Page 117</p> <p>1 Q. I guess Hayden, and I think it's Corbin. 2 Does that sound right? 3 A. Yeah, you're right. Yes, ma'am. 4 Q. Does that refresh your memory? 5 A. Yes, it does now. Yeah. 6 Q. Those are Breanna's half siblings. 7 Right? 8 A. Yes, ma'am. 9 Q. She has not seen them since December of 10 2019. Is that correct? 11 A. It has been -- yeah. It's been a while, 12 yes. 13 Q. Since the disclosure and then when she 14 came -- 15 A. Oh, no. There was a time where Dorian's 16 dad invited Breanna to a birthday party at Main 17 Event, and we took Breanna to the birthday party 18 and Dorian wasn't there. 19 Q. Okay. So Dorian's dad invited Breanna to 20 a birthday party? 21 A. Yes. 22 Q. Hayden and Corbin were there? 23 A. Yes, they were there. 24 Q. But Dorian was not? 25 A. But Dorian wasn't there.</p>	<p style="text-align: right;">Page 119</p> <p>1 A. We talked to the GAL about getting 2 with -- getting with Dorian and setting a place or 3 date and time or something somewhere we could -- 4 she could meet them. 5 Q. When was the last time you talked to the 6 GAL about that? 7 A. About -- oh, about two weeks ago, I 8 guess. 9 Q. Who's the GAL? 10 A. Kelli Corso? Kelli -- 11 MS. BURGESS: Kelso. 12 THE WITNESS: Kelso, yes. 13 Q. (By Ms. Woodland) Kelso. Is she the GAL 14 in the -- in which case? 15 A. She's been the GAL the whole entire time, 16 so she has been the whole entire time. 17 Q. Okay. What are -- what is Kelli's 18 recommendation about Breanna seeing Corbin and 19 Hayden? 20 A. She thinks it's a good idea. 21 Q. I guess I'm trying to get at, like, why 22 it hasn't happened. 23 A. Well, my understanding is because Dorian 24 wouldn't let it happen or doesn't want it to or 25 just won't -- because Kelli's even offered to --</p>
<p style="text-align: right;">Page 118</p> <p>1 Q. Okay. Was that before or after the 2 trial? 3 A. That was before the trial. 4 Q. Any other times that Breanna has seen 5 Hayden and Corbin since December of 2019? 6 A. I thought there was another time. I 7 know we -- on a Christmas, we met -- we met them 8 on a Christmas and they -- they did a gift 9 exchange. I don't remember which -- which 10 Christmas it was. 11 Q. Do you remember if that was before or 12 after the trial? 13 A. It was before the trial. 14 Q. Does Breanna communicate with them? Does 15 she talk to them on the phone or FaceTime with 16 them? 17 A. No, no. 18 Q. Does she want to? 19 A. Yes. Yes, she does. 20 Q. Do you think it would be good for her if 21 she was allowed to have contact with those little 22 kids? 23 A. We do, yes. 24 Q. And what steps have you taken to make 25 that happen?</p>	<p style="text-align: right;">Page 120</p> <p>1 she's even offered to, you know, pick up Breanna 2 to take them to her and to kind of stand by or go 3 to a park. And so Kelli's offered to be there 4 with the visitation. 5 And we -- I mean, we want Breanna to see 6 her siblings. 7 Q. And how do you know that it's Dorian who 8 is -- it sounds like -- kind of the roadblock 9 here? 10 A. Well, because -- because we've told Kelly 11 we'll do whatever. We'll do whatever. If you 12 want to pick up Breanna, or if you want to pick up 13 her brother and sister. If you want to have us 14 meet somewhere. 15 I mean, we've told Kelli since Day 1 that 16 -- I mean, Breanna's biggest -- I mean, she's 17 upset all the time about not seeing her brother 18 and sister. And that's been her biggest, biggest 19 thing through this whole thing is not seeing them. 20 So we've told Kelli dozens of times, said 21 Hey, we'll do whatever. We'll take off work. 22 I'll bring her, meet her, whatever -- whatever it 23 takes. 24 Q. So the information that you've gotten 25 about Dorian not being cooperative, I guess, in</p>

<p style="text-align: right;">Page 121</p> <p>1 this process is from Kelli?</p> <p>2 A. Well, I'm assuming it's because we've --</p> <p>3 I know Kelli has reached out to Dorian, too, about</p> <p>4 -- about trying to get the kids together. And</p> <p>5 we're available any time. We've told Kelli that,</p> <p>6 And it's not happened. So it's -- I don't feel</p> <p>7 it's from us not being open and letting it happen.</p> <p>8 Q. Has Kelli specifically said, Dorian said</p> <p>9 no; Dorian's stalling?</p> <p>10 A. No. She won't -- she wouldn't tell us</p> <p>11 probably specifics but --</p> <p>12 Q. And Kelli was the GAL -- or, is I</p> <p>13 guess -- the GAL in the -- your divorce from</p> <p>14 Dorian, which more recently has just been the</p> <p>15 custody modification. Right?</p> <p>16 A. Yeah. She -- we didn't have a GAL in our</p> <p>17 "divorce" divorce but just -- just for the custody</p> <p>18 part of it.</p> <p>19 Q. And that was when you filed a motion to</p> <p>20 modify after the abuse was disclosed?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Okay. That's when Kelli got involved?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. And is she involved in the adoption case?</p> <p>25 A. She is, yes.</p>	<p style="text-align: right;">Page 123</p> <p>1 a boy she was talking to at school about killing</p> <p>2 herself. And that's when the counselor got -- or</p> <p>3 the school counselor got involved. But I cannot</p> <p>4 remember the name of the kid.</p> <p>5 I just remember the name of the girl she</p> <p>6 was staying the night with when she talked about</p> <p>7 the abuse.</p> <p>8 Q. I just want to make sure that I</p> <p>9 understand. You were asked a lot of questions</p> <p>10 about conversations that you had with Breanna</p> <p>11 about the abuse that occurred. And it seems like</p> <p>12 you haven't and don't really want to have a</p> <p>13 conversation with her where you sit down and she</p> <p>14 like tells you exactly what happened.</p> <p>15 A. As far as details, yes, ma'am.</p> <p>16 Q. Right.</p> <p>17 A. I really don't want to.</p> <p>18 Q. Have you had any conversations with her</p> <p>19 about -- I don't even know how to ask this -- not</p> <p>20 about the details of what happened, but anything</p> <p>21 about how she's feeling from December 9th, 2019 to</p> <p>22 present? How she's feeling about all of this?</p> <p>23 A. Yeah, I've -- and I do -- we do ask her</p> <p>24 all the time actually.</p> <p>25 Q. I want to stop you for a second. I want</p>
<p style="text-align: right;">Page 122</p> <p>1 Q. So she's the GAL for both?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. I guess the custody case probably isn't</p> <p>4 like a pending matter anymore. Right? Like you</p> <p>5 have an order that says --</p> <p>6 A. Yeah, we're done with that part of it.</p> <p>7 Q. Okay. That was my understanding. I just</p> <p>8 want to make sure that was correct.</p> <p>9 When was it that Breanna was playing in</p> <p>10 music or in a symphony or something?</p> <p>11 A. Yeah. It was 2018ish, 2000 -- maybe</p> <p>12 early 2019.</p> <p>13 Q. You said that you couldn't recall the</p> <p>14 name of the friend that Breanna was talking to</p> <p>15 about killing herself.</p> <p>16 A. Yeah. I know that Sadie was involved.</p> <p>17 She was staying the night at Sadie's house. The</p> <p>18 killing -- sorry -- Sadie was -- I think she told</p> <p>19 Sadie about the abuse. The friend at school, I</p> <p>20 don't think -- it wasn't Sadie. I don't know who</p> <p>21 that was. But I thought it was a boy. I don't</p> <p>22 remember the name, though.</p> <p>23 Q. It was a boy at school?</p> <p>24 A. It was -- it was a kid at school, yeah.</p> <p>25 For some reason in my mind, I was thinking it was</p>	<p style="text-align: right;">Page 124</p> <p>1 to know what you have asked her. When you say --</p> <p>2 A. I have personally asked her how she's</p> <p>3 doing, and her go-to response is "good" every</p> <p>4 time. "I'm good, I'm good."</p> <p>5 I mean, it's -- she doesn't delve into</p> <p>6 anything. She doesn't talk to me about, you know,</p> <p>7 Well, I'm feeling down. She's always telling me</p> <p>8 she's good, and that's just coming from me.</p> <p>9 Q. It's hard to be a teenage girl. I'll</p> <p>10 just leave it at that on the record, but --</p> <p>11 A. Yeah.</p> <p>12 MR. SULLIVAN: And some things make</p> <p>13 it harder.</p> <p>14 MS. WOODLAND: The two --</p> <p>15 MR. SULLIVAN: As it turns out.</p> <p>16 MS. WOODLAND: -- the two-word</p> <p>17 answers are common.</p> <p>18 THE WITNESS: Yeah.</p> <p>19 Q. (By Ms. Woodland) So what conversations</p> <p>20 are you aware of that, if any, that Misty has had</p> <p>21 with her where she's asking her, How are you</p> <p>22 doing? And --</p> <p>23 A. I -- I really feel that Breanna's answer</p> <p>24 90 percent of the time is probably "good" even</p> <p>25 with Misty. Even though she may not be good, I</p>

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<p style="text-align: right;">Page 125</p> <p>1 think it's "good." But Misty has never come to me 2 and told me and said, Hey, Breanna is feeling this 3 way, so I don't know if there's been any 4 conversation between them two that Misty may not 5 have told me about.</p> <p>6 Q. Do you feel like Misty would tell you if 7 she had a conversation --</p> <p>8 A. I would like to think so.</p> <p>9 Q. Let me finish my question.</p> <p>10 A. Sorry.</p> <p>11 Q. I'm not trying to --</p> <p>12 A. Yeah, sorry.</p> <p>13 Q. I'm not trying to be mean.</p> <p>14 A. Okay.</p> <p>15 Q. I just want the record to be clear.</p> <p>16 Do you think Misty would -- if she had a 17 conversation with Breanna where Breanna said she 18 wasn't doing well or disclosed something negative, 19 do you think Misty would tell you?</p> <p>20 A. I would like to think she would.</p> <p>21 Q. So, again, I'm trying to kind of get at 22 what conversations have happened with you and 23 Breanna, you know, again, not about the details of 24 what happened but kind of the aftermath and how 25 she's --</p>	<p style="text-align: right;">Page 127</p> <p>1 A. Resolve?</p> <p>2 Q. Yeah. How does that end?</p> <p>3 A. Well, it ends with normally, you know, 4 calming her down, getting her to stop crying. 5 Telling her how much we support her and how much 6 we love her.</p> <p>7 And, you know, I know it was really tough 8 on her. Like I said, when she was questioning her 9 sexuality, you know, she felt like we wouldn't 10 understand. And like -- so we would pretty 11 much -- we'd have to reiterate that, you know, We 12 understand -- or, We don't understand but we're 13 here for you. And just try to calm her down and 14 make her feel relaxed and know that we support 15 her, you know, In whatever she decides to do.</p> <p>16 And then she normally will start 17 breathing and, you know, start feeling better.</p> <p>18 Q. Do you know if she's learned like any 19 grounding techniques or breathing techniques from 20 her counselor?</p> <p>21 A. She did. There was one day she talked 22 about Sheila talking about some sort of breathing 23 deal. She didn't really get into detail on it, 24 though.</p> <p>25 Q. On the Breanna questioning her sexuality,</p>
<p style="text-align: right;">Page 126</p> <p>1 A. Yeah.</p> <p>2 Q. -- handling that.</p> <p>3 Anything else besides you saying, How are 4 you? And I don't want to oversimplify that. If I 5 am, tell me.</p> <p>6 A. I've had conversations with Breanna. Me 7 and Misty both, where Breanna, you know, she'll 8 start crying and we try and try and try to get -- 9 get what -- get stuff out of her. It's just so, 10 so difficult with her telling us her emotions.</p> <p>11 And, I mean -- and Breanna's even told us 12 that. She'll be sitting on the couch just 13 bawling. And, you know -- and I'm sitting there 14 trying, Tell me what's wrong. Tell me what's 15 wrong. And she says -- she's like -- she won't 16 talk. She just won't talk so, I mean -- you know, 17 and I think the counselor's good for that because 18 she can get whatever's -- whatever she doesn't 19 want to tell us to the counselor, hopefully, you 20 know.</p> <p>21 But there's been several occasions where 22 she is just bawling, you know, and try our best to 23 get what we can out of her.</p> <p>24 Q. When that's happened, how does -- how 25 does that --</p>	<p style="text-align: right;">Page 128</p> <p>1 when was that kind of going on?</p> <p>2 A. Oh, it was really very shortly after we 3 found out about the abuse.</p> <p>4 Q. Before the trial?</p> <p>5 A. Before the trial, yes, ma'am.</p> <p>6 Q. And how is -- how is she doing with that 7 now?</p> <p>8 A. That's a good question. I don't ask her 9 that question. I don't ask her that question. I 10 mean, there's times where she's talked about 11 having a boyfriend. Like, honestly, she hasn't 12 brought that up in a while. I -- I don't think 13 it's my place to ask her. I think, How do you 14 feel about your sexuality? You know, I -- I just 15 haven't brought that up.</p> <p>16 Q. What were you -- when -- when -- during 17 the time period, I guess, that we would say she 18 was questioning her sexuality, was she just 19 talking about it openly? Was there behavior? 20 Like, what did you observe that led you to --</p> <p>21 A. Well --</p> <p>22 Q. -- led you to think that she was 23 questioning her sexuality?</p> <p>24 A. Well, she brought a friend over and she 25 was -- and they were kissing. You know, they</p>

<p style="text-align: right;">Page 129</p> <p>1 kissed. And so there was that. And then she 2 would talk about boys and just -- just -- yeah. 3 Not knowing if she -- which gender she likes. 4 She just was very confused and still 5 might be. I just haven't heard anything about it 6 or seen anything but -- recently, but -- 7 Q. The friend that she brought over and 8 kissed, was that a -- 9 A. It was a girl. 10 Q. -- a girl? 11 A. Uh-huh. 12 Q. So, I guess, that behavior you have not 13 observed in a while. 14 A. No. 15 Q. Is that right? 16 A. No. But she's no longer friends with 17 that person. Her choice, she's no longer friends 18 with that person. And I asked her -- I asked her 19 a couple days ago if she's got a boyfriend, and 20 she said no, you know. 21 Q. Did you ask her if she has a girlfriend? 22 A. I did not ask her that, no. 23 Q. What would you say that you've done as 24 her father to support her through this kind of 25 journey she's been on questioning her sexuality?</p>	<p style="text-align: right;">Page 131</p> <p>1 didn't know a whole lot about it. But I didn't 2 look it up. I think my wife knows a little bit 3 more about that stuff than I do. 4 Q. (By Ms. Woodland) What did your friends 5 at work tell you? 6 A. I think it's like, something like, where 7 you like both sexes, whichever, you know, as long 8 as they're cute. Something like that. I don't 9 remember. It's been a couple years since they 10 told me that. 11 Q. So I just want to make sure that I'm 12 clear on your answer and, frankly, that you were 13 clear on my question since we got a little talking 14 at the same time during that. 15 It sounded like as far as like looking up 16 what pansexual means, you think Misty did that? 17 A. Uh-huh, yes, ma'am. 18 Q. You didn't look it up, I guess, and I'm 19 thinking like, you know, Google it or something? 20 A. Yeah. 21 Q. But you asked some friends at work what 22 that meant? 23 A. Yes. And I can't even remember what the 24 definition really is now. 25 Q. Again, just jumping around so stick with</p>
<p style="text-align: right;">Page 130</p> <p>1 A. I let her know -- I let her know that -- 2 that I support her. And, you know, I don't get 3 mad at whatever she decides to do in life or 4 whoever she wants to be. You know, we just -- we 5 just show her our support really. We don't get 6 mad at her for nothing. And, I mean, she's -- and 7 I really feel that she feels that we do support 8 her. 9 Q. Okay. Do you think that it would be 10 important to be able to support her by knowing 11 what "pansexual" means? 12 A. I'm sure my wife -- my wife looked it up. 13 Q. I'm asking about you. 14 A. And for me, I don't know -- I didn't look 15 it up. 16 MR. SULLIVAN: Just for the record, 17 you're interrupting him before he finished his 18 answer. 19 MS. WOODLAND: And I told you I 20 would. 21 MR. SULLIVAN: Since you just scolded 22 him for doing that, I thought I would. 23 THE WITNESS: Yeah. I didn't 24 understand it. I asked friends at work what it 25 was. And I'm still kind of confused on it. I just</p>	<p style="text-align: right;">Page 132</p> <p>1 me here. You were asked some questions about side 2 work, your law enforcement -- 3 A. Uh-huh. 4 Q. -- like side gigs. Are you contracted 5 with any agencies that provide those jobs for you? 6 A. No. 7 Q. How do you find out about those gigs? 8 A. We got an email, there's an email that 9 comes out. 10 Q. And you said none of those were like 11 consistent? 12 A. No, they bounce around so much. 13 Q. Where you're showing up at the same -- 14 A. Yeah, yes, ma'am. 15 Q. Okay. There were some questions about 16 Addison, Avery, and Abby babysitting Hayden and 17 Corbin at Dorian's house. Correct? 18 A. Yes. 19 Q. They were babysitting Hayden and Corbin, 20 not Breanna. Correct? 21 A. Yes. I mean, Breanna was a little older 22 anyway. 23 Q. Okay. That -- 24 A. Yeah. 25 Q. Yeah. that's what I thought. I just</p>

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<p>1 wanted to make sure that was my correct 2 understanding.</p> <p>3 And I -- so if Addison is 18 now, in 2017 4 that was six years ago, she would have been 12. 5 And then the other two nieces were younger than 6 her. Right? Was -- does that sound right to you 7 that Addison was over there babysitting when she 8 was 12?</p> <p>9 A. Yeah. I know she was babysitting. I 10 know for a fact she was babysitting. I'm 11 guessing -- I mean, if your math is right, then 12 that's probably right.</p> <p>13 Q. And then you said that Addison said that 14 Dorian would spend hours in her office with the 15 door closed while she was gaming. Is that 16 accurate?</p> <p>17 A. Yes.</p> <p>18 Q. That's what you were told, I guess.</p> <p>19 A. Yes, I was told that.</p> <p>20 Q. Were you aware that Dorian was doing 21 something that was earning her money while she was 22 doing that?</p> <p>23 A. I found out later on she was trying to 24 make money.</p> <p>25 Q. Well, are you aware that she actually did</p>	<p>Page 133</p> <p>1 messages produced in your discovery that were, I 2 believe, between Breanna and the name at the top 3 of the contact is Xander?</p> <p>4 A. Okay.</p> <p>5 Q. Is that the same person?</p> <p>6 A. That name sounds really familiar, yeah.</p> <p>7 He had to have been involved or a boy she was 8 talking to back in those days.</p> <p>9 Q. But do you know if Zanta and Xander are 10 the same person?</p> <p>11 A. Oh, I don't. No, ma'am.</p> <p>12 Q. When you went -- okay. So it sounds like 13 with Ms. Sisemore there's been three sessions -- 14 and I'm asking you to tell me if this is 15 correct -- three sessions where either you or 16 Misty or both of you have been in a session with 17 Breanna.</p> <p>18 There was one with Breanna and Misty, one 19 with you and Breanna, and one with all three of 20 you. Does that sound right?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. How long were those sessions?</p> <p>23 A. An hour.</p> <p>24 Q. And do you recall anything more from what 25 was talked about during those hour-long sessions</p>
<p>1 make money?</p> <p>2 A. Yes.</p> <p>3 Q. And if she had been in her office with 4 the door closed performing an office job instead 5 of gaming, would you still be critical of her for 6 doing that?</p> <p>7 MR. SULLIVAN: Object to the form.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: I mean, most people 10 don't go to their office and talk to 12-year-old 11 boys, talking about their vagina, and drinking 12 alcohol and smoking weed.</p> <p>13 MS. WOODLAND: Okay. I'll object and 14 move to strike as nonresponsive.</p> <p>15 Would you please read my question 16 back?</p> <p>17 (Record read as requested.)</p> <p>18 THE WITNESS: If she was doing an 19 office job, no.</p> <p>20 Q. (By Ms. Woodland) Okay. There were some 21 questions about a boy that Breanna was talking to 22 named Zanta.</p> <p>23 A. Yes, she jogged my memory on that. I 24 faintly remember.</p> <p>25 Q. There -- okay. There were some text</p>	<p>Page 134</p> <p>1 other than how things are going?</p> <p>2 A. I really don't. It wasn't a -- it wasn't 3 a deal where it was like a deal where we had a 4 specific topic we were talking about. We were, 5 just as a family, kind of just talking about hey, 6 how are things going? Yeah. There wasn't any -- 7 there was no specific topic.</p> <p>8 Q. Okay. Did Ms. Sisemore, in those 9 sessions, give you any pointers on things you 10 should do or shouldn't do to be supportive for 11 Breanna?</p> <p>12 A. No, no. They -- when we talked to 13 Sheila, we kind of told her things we're doing 14 to -- that we're doing that's supportive like 15 talking to her. And she just says continue the -- 16 continue the communication with is her biggest -- 17 biggest thing was the, you know, to continue the 18 communication with Bre and --</p> <p>19 Q. Other than those sessions with 20 Ms. Sisemore, have you -- have you been in any 21 other counseling sessions since December of 2019 22 related to Breanna's abuse?</p> <p>23 A. Other than Sheila's. Right?</p> <p>24 Q. Uh-huh.</p> <p>25 A. Okay. No, I have not.</p>

<p style="text-align: right;">Page 137</p> <p>1 Q. Have you done anything to educate 2 yourself on how to best support your daughter 3 after she disclosed sexual assault? 4 A. Just going -- taking her to a counselor, 5 no. I haven't -- I have not gone to any classes 6 or schools or anything to educate myself. 7 Q. Read any books? 8 A. No, I have not. Misty has. She's read a 9 couple. 10 Q. Do you know what books she's read? 11 A. Yeah. There is a book that is very 12 similar to Breanna's case that she read, and she 13 was telling Breanna about it the other day. I 14 can't remember the name of it. 15 Q. Was it fiction or nonfiction? 16 A. It was a true story. She actually loaned 17 it to Bre to see if she'd be interested in reading 18 it. 19 Q. How long ago was that? 20 A. Misty read it -- she's probably read it 21 six months ago, if not longer. But she was 22 talking to Bre about it just -- just a couple 23 weeks ago. 24 Q. Does Breanna have sleepovers anywhere 25 besides your house?</p>	<p style="text-align: right;">Page 139</p> <p>1 A. Yeah, she's -- yes. 2 Q. And had you had a chance to meet this 3 friend's parents? 4 A. Just mom. She's a teacher at Choctaw. 5 Q. And do you know -- strike that. 6 What did you ask this friend's mom about 7 how Breanna would be safe while she was staying 8 the night with this friend? 9 A. I would just be the pickup guy. Misty 10 would -- because normally I'm working, you know, 11 on the weekends when -- every other weekend, so I 12 would normally just kind of be the pickup guy to 13 pick her up from. 14 So Misty and her mom have a pretty good 15 relationship. They've talked a bunch on the 16 phone, and so Misty would -- Misty felt she was 17 safe there. 18 Q. Okay. So it sounds like Misty would have 19 had more conversations with this friend's mom than 20 you did? 21 A. Yes, ma'am. 22 Q. And if a conversation was had about how 23 is Breanna going to be safe in this other home, 24 Misty would have had that conversation with the 25 mom?</p>
<p style="text-align: right;">Page 138</p> <p>1 A. There is a friend of hers that she's 2 stayed over, I think, twice since -- since then -- 3 since then. That's the only one I can think of 4 just because she was the most recent. And she's 5 had a sleepover a time or two at our house. 6 Q. This is all the same friend? 7 A. Yeah. I cannot remember her name. She 8 hasn't talked to this friend in a while. 9 Q. It wasn't -- I think you mentioned Callie 10 and Katherine on the volleyball -- 11 A. It wasn't them two. She went out with 12 Katherine like a week ago. They went to a hockey 13 game with her family. I think she didn't stay the 14 night because it was -- Easter was the next day 15 but -- 16 Q. Okay. We don't -- I mean, that's fine if 17 you don't remember her name. But it's not 18 Katherine or Callie? 19 A. No, ma'am. 20 Q. Okay. This friend you said that the 21 friend has stayed at your house with Breanna a 22 couple times and then Breanna's stayed at her 23 house a couple of times. Is that -- I know -- 24 I'm not saying like -- but approximately that's 25 correct?</p>	<p style="text-align: right;">Page 140</p> <p>1 A. She would have, yes. 2 Q. Okay. Do you know for sure that she did 3 have -- did or did not have that conversation? 4 A. I do not know, no. 5 Q. Okay. Jumping back just a minute with 6 the -- Breanna's questioning her sexuality, is 7 that something that you are saying is related to 8 the sexual assault? 9 A. I don't know if it is or not. I can't 10 say it is. I don't remember -- before -- before 11 all that, her sexuality was never brought up by 12 her, by us. It was never brought up. And then it 13 became an issue after we found out, after we found 14 out about what he was doing. 15 Q. During the time that Breanna's been 16 living with you full-time, which has been since 17 December of 2019. Correct? 18 A. Yes. 19 Q. Has -- have your stepdaughters been also 20 living in the house that whole time as well? 21 A. Yes, ma'am. 22 Q. Do you know whether they might have 23 influenced -- strike that. That's not the right 24 word. 25 MR. SULLIVAN: Huh-uh. It's not.</p>

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<p>1 Q. (By Ms. Woodland) Do you know if they had 2 any conversations with her about -- about that?</p> <p>3 A. I don't know. They might have. They 4 might have had some conversations. I just 5 wouldn't know about it. When they are all a bunch 6 of girls, they are not going to come to me.</p> <p>7 Q. Do you know if Misty would know?</p> <p>8 A. Misty probably would if -- if there were 9 conversations with her daughters and Breanna.</p> <p>10 Q. Do -- tell me the stepdaughters' names, 11 again, please?</p> <p>12 A. Peyton and Mackenzie.</p> <p>13 Q. We can use their names.</p> <p>14 What is the custody situation with Peyton 15 and Mackenzie and Misty and their dad?</p> <p>16 A. So Peyton, she's with us. So -- so dad 17 gets Peyton like two days of the week. We get her 18 the rest. And then MacKenzie's 19. She comes and 19 goes.</p> <p>20 Q. Do they have the same dad?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. So when Mackenzie was under 18, was it 23 the same?</p> <p>24 A. The same, yes, ma'am.</p> <p>25 Q. Two days a week?</p>	<p>Page 141</p> <p>1 there," "There's weird stuff," "Something happened 2 that I don't like."</p> <p>3 Did they ever say that to you?</p> <p>4 A. There's -- yeah. They would say that 5 they thought it was weird that she would have them 6 babysit while she was in her office with her 7 headphones on playing her games and stuff. They 8 thought that was kind of unusual while they were 9 there watching her kids while she was doing that. 10 But other than that, nothing really to me.</p> <p>11 Q. And I'll ask you about what they may have 12 said to other people, but right now just to you.</p> <p>13 Did they ever say to you that, like, 14 "Christopher is weird," or "Christopher is 15 creepy," or they didn't like him or they didn't 16 want to be around him?</p> <p>17 A. This is to me, correct?</p> <p>18 Q. Uh-huh.</p> <p>19 A. Not to me, no.</p> <p>20 Q. And then same question to anyone else 21 that you're aware of?</p> <p>22 A. I remember them telling -- telling me or 23 Misty or Audrey, my sister, about how he would get 24 drunk and pass out on the floor while they were 25 there babysitting. And how he would always want</p>
<p>1 A. Two days a week.</p> <p>2 Q. Gotcha. And they have lived with you, 3 then, five days a week since you and Misty got 4 married?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did either of them ever go through 7 a situation where they were questioning their 8 sexuality?</p> <p>9 A. Not that I know of.</p> <p>10 MS. WOODLAND: Okay. Why don't we 11 take a break. I'm kind of at a stopping point in 12 between topics here.</p> <p>13 (A short break was taken.)</p> <p>14 Q. (By Ms. Woodland) Okay. We're back on 15 the record after a little break.</p> <p>16 Mr. Spence, did your nieces ever tell you 17 like there's -- they were uncomfortable at 18 Dorian's house?</p> <p>19 A. Not -- they never told me that, no. They 20 never told me that.</p> <p>21 Q. Okay. Did they ever say anything 22 about -- I'm just trying to be really broad 23 here --</p> <p>24 A. Yeah.</p> <p>25 Q. -- like, "There's bad stuff going on over</p>	<p>Page 142</p> <p>1 to buy them things and do things for them. They 2 thought that was a little creepy.</p> <p>3 I guess, there was a few -- there was a 4 few things they had issues with him.</p> <p>5 Q. Okay. Other than that specifically 6 pertaining to Christopher, did they tell anyone 7 else, to your knowledge, like, "I'm 8 uncomfortable" -- and -- and just generally in the 9 house -- "Uncomfortable." "There's bad stuff 10 going on." "It's weird over there."</p> <p>11 Anything like that that you're aware of?</p> <p>12 A. They -- just the weirdness of him, I 13 guess, is they felt a little uncomfortable around 14 him because they just didn't know him very well.</p> <p>15 Q. Okay. Do you know these times that they 16 said that he would get drunk and pass out, was 17 that like daytime, nighttime? Do you know?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you think that it's in Breanna's best 20 interest to have a relationship with her mom?</p> <p>21 A. Yes, if she wants to.</p> <p>22 Q. Are you leaving it 100 percent up to 23 Breanna if she has a relationship with her mom?</p> <p>24 A. I am, yes.</p> <p>25 Q. Have you had any conversations with</p>

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<p>1 Ms. Sisemore about that?</p> <p>2 A. No, no. I don't think we've ever talked</p> <p>3 about -- me being there anyway. I've never talked</p> <p>4 with Ms. Sisemore about them having a</p> <p>5 relationship.</p> <p>6 Q. Do you know if Misty has?</p> <p>7 A. I don't know if she has. And I don't</p> <p>8 know if Breanna has.</p> <p>9 Q. You've caught on to the questioning which</p> <p>10 is asking you and then asking about other people.</p> <p>11 Okay.</p> <p>12 You testified earlier that Breanna told</p> <p>13 you and -- you and Misty in the car on the way to</p> <p>14 the care center in El Reno about this incident on</p> <p>15 the back porch where her mom observed Christopher</p> <p>16 touching her --</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. -- inappropriately.</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. Other than that incident, are there any</p> <p>21 other incidents that you're aware of and -- from</p> <p>22 your personal knowledge or from things you've</p> <p>23 learned from someone else -- any other incidents</p> <p>24 where Dorian observed any abuse? Other than the</p> <p>25 back porch?</p>	<p>1 So I just want, to the best of your</p> <p>2 knowledge as you sit here today, other than that</p> <p>3 back porch incident, was there any other incident</p> <p>4 or any other reason that you think kind of should</p> <p>5 have put Dorian on alert that something --</p> <p>6 A. Yeah.</p> <p>7 Q. -- was going on?</p> <p>8 A. I wish I had a better memory. I'm --</p> <p>9 it's been going on so long, and there's been other</p> <p>10 things that have been brought to my attention.</p> <p>11 I'm just trying to remember them now.</p> <p>12 Probably -- probably, as far as going to</p> <p>13 Dorian's attention, like I said, that's really the</p> <p>14 biggest one that just sticks in my mind that's</p> <p>15 just really bothered me over the years and has</p> <p>16 always stuck with me.</p> <p>17 Q. Okay. Well, if you think of another</p> <p>18 incident --</p> <p>19 A. Okay.</p> <p>20 Q. -- or reason that you think Dorian should</p> <p>21 have known the abuse was going on, you can always</p> <p>22 let your attorney know.</p> <p>23 A. There was a time -- and that one just</p> <p>24 popped up in my head. I'm sorry.</p> <p>25 Q. No, you're fine.</p>
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<p>1 A. Other than the back porch?</p> <p>2 Q. Uh-huh.</p> <p>3 A. That's the main one I remember. That's</p> <p>4 the main one I remember.</p> <p>5 Q. Okay. Any other reasons Dorian should</p> <p>6 have known that Christopher was abusing her</p> <p>7 daughter?</p> <p>8 A. That -- that incident, to me, alone is</p> <p>9 kind of big deal, having your husband feel up your</p> <p>10 daughter. I -- I think that's enough for concern</p> <p>11 there.</p> <p>12 What was the question, again? I mean, I</p> <p>13 think I got the question. I'm trying to think if</p> <p>14 there's more of an answer to it.</p> <p>15 Q. Sure. Are there any other reasons that</p> <p>16 you think Dorian should have known that</p> <p>17 Christopher was abusing Breanna?</p> <p>18 A. Yeah. That incident's the biggest one</p> <p>19 for me.</p> <p>20 Q. Okay.</p> <p>21 A. That I recall.</p> <p>22 Q. And I just -- this is the only time I get</p> <p>23 to talk to you during this case absent</p> <p>24 extraordinary circumstances that rarely, rarely</p> <p>25 happen.</p>	<p>1 A. There were -- there were many in -- or,</p> <p>2 sorry -- incidents that I became aware of that he</p> <p>3 would sleep in the bed with -- with Breanna. He'd</p> <p>4 sleep upstairs with her. That alone may be</p> <p>5 nothing for concern, but I -- as a stepdad, I</p> <p>6 wouldn't do that with my stepdaughters. And I</p> <p>7 thought that was a little weird.</p> <p>8 Q. Okay. Let me ask some follow-up</p> <p>9 questions --</p> <p>10 A. Okay.</p> <p>11 Q. -- just to clarify that you found out</p> <p>12 about these incidents after December of 2019?</p> <p>13 A. Yes.</p> <p>14 Q. And the -- the incident was Christopher</p> <p>15 sleeping in Breanna's bedroom?</p> <p>16 A. Yes, in the room with her.</p> <p>17 Q. Was that like he slept in there all</p> <p>18 night?</p> <p>19 A. That I can't remember. I remember during</p> <p>20 the investigation that came up that he was</p> <p>21 sleeping up in the bed with her. I couldn't tell</p> <p>22 you if he was passed out drunk on the bed with</p> <p>23 her, or if he just was there just for a few hours.</p> <p>24 I can't remember that part of it.</p> <p>25 Q. Do you know if Dorian was aware that that</p>

<p>1 was going on?</p> <p>2 A. I'm not sure. I can't tell you a yes-or-no answer.</p> <p>4 Q. Are you aware of any time when Breanna said to Dorian, Christopher is sexually abusing me? Just came right out and said it?</p> <p>7 A. I don't think that ever happened.</p> <p>8 Q. Did Breanna ever complain to you about Christopher, say she didn't like him or --</p> <p>10 A. No. She -- she actually told me she did like him. You know, she actually really liked him.</p> <p>13 Q. Visitation prior to December of 2019 was week on/week off?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Did Breanna ever say that she didn't want to do that week on/week off schedule anymore?</p> <p>18 A. No. She actually liked -- she liked the setup we had.</p> <p>20 Q. What are Breanna's social media accounts?</p> <p>21 A. She don't have any. She had Pinterest.</p> <p>22 Pinterest. With my wife and what she does, she wouldn't allow her to have Snapchat or Instagram or Facebook. She's -- yeah. I think Pinterest was the only one I was aware of.</p>	<p>Page 149</p> <p>1 Q. Any other ways that you monitor Breanna's activity on her phone?</p> <p>3 A. No. Every -- every now and then we just ask her, say, Hey, can we look at your phone? Make sure she didn't have some sort of secret Snapchat and -- or Facebook because there's certain ones we don't want her to have.</p> <p>8 Q. What are -- I don't know if people still call it these days -- like, you have like house rules, like just kind of like the general rules under your roof?</p> <p>12 A. We do. I mean, there's -- we -- they take turn doing dishes, taking out the trash. I wish I could get them to mow the yard. Just inside stuff, inside stuff, really. Clean their room.</p> <p>17 Q. Do they have -- and I'll say "they" as pertaining to all three girls but if the rules are different based on age or whatever tell me -- do they have a curfew?</p> <p>21 A. Right now our 19-year-old, no. Yeah.</p> <p>22 They -- we -- they have to be in bed by 10:00.</p> <p>23 Q. Is that different on the weekend?</p> <p>24 A. Yes. Yeah. They can stay up a little later.</p>
<p>1 Q. Does Breanna have an account on Twitch?</p> <p>2 A. No.</p> <p>3 Q. What about TikTok?</p> <p>4 A. No. We don't -- I don't think we let them have TikTok.</p> <p>6 Q. So how do you -- how do you and Misty monitor Breanna's phone use?</p> <p>8 A. Well, after -- after the cutting -- the cutting, we would -- she downloaded an app on Misty's -- on her laptop to where we can kind of monitor her text messages. Make sure she's not talking about cutting or hurting herself.</p> <p>13 Q. So that is an app on your laptop?</p> <p>14 A. On our laptop, yes, ma'am.</p> <p>15 Q. "Your" meaning yours and Misty's?</p> <p>16 A. Yes, yes.</p> <p>17 Q. That monitors Breanna's text messages?</p> <p>18 A. Uh-huh, yes.</p> <p>19 Q. Are you still use that software?</p> <p>20 A. We still have it, yes.</p> <p>21 Q. How often do you check it?</p> <p>22 A. I don't. I'm not a computer -- I've never been a computer guy. My wife checks it. She checks it from time to time. And she doesn't check it very often, I don't think.</p>	<p>Page 150</p> <p>1 Q. What if they're out with friends?</p> <p>2 A. I mean, if they are out -- I mean, we take her to -- we would take Breanna -- and sometimes Peyton, her same-age sister -- to the roller rink just down the road. And on weekends, you know, I think it closes at like, you know, 11:00, 11:30ish, so we'd pick them up and bring them back home.</p> <p>9 But on weekdays, they usually don't want to go out with friends as much on weekdays.</p> <p>11 Q. And what about your hobbies and things that you do in your free time?</p> <p>13 A. We go out to eat a lot. We go out to eat a lot. And then we go to movies. And, you know, on my days off, I do a lot of yard work, you know. It's not a fun hobby, but it's a hobby. But we do -- we do go eat out a lot, and we take all the kids with us.</p> <p>19 Q. Is there -- like, do you play golf?</p> <p>20 A. No.</p> <p>21 Q. Are you involved in any sports or anything like that?</p> <p>23 A. Not anymore, no. I mean, Breanna plays volleyball. We go watch her play.</p> <p>25 Q. Do the other girls play sports?</p>

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1 A. Sports? No, no. The same-age 2 stepsister, she sings. And so she'll -- she's in 3 choir -- or she was in choir. 4 Q. Is that Peyton? 5 A. Yeah, Peyton. Sorry. 6 Q. Do you play video games? 7 A. Not very often, not very often. 8 Q. How often? 9 A. Maybe once a month, maybe. 10 Q. What do you play? 11 A. What I do play? So I bought this VR 12 system, and we got these, like, VR games. And so 13 when I do play, it's only for like an hour at a 14 time because it's kind of -- you can kind of get 15 motion sickness with this. 16 But I played for a little bit. And then, 17 you know, Breanna will play it. And then we'll 18 all kind of play it as a family. But I couldn't 19 tell you the last time I just sat there and played 20 a video game by myself.	1 think Frontier was the one we picked her up from 2 that -- the day of the incident. 3 Q. (Shaking head.) 4 A. Am I wrong? Okay. I get a little 5 confused. 6 Q. Okay. But those are the three other 7 elementary schools that she was at? 8 A. She's been to two -- three others since 9 those four. 10 Q. My understanding is that pursuant to our 11 request for discovery that you -- you did attempt 12 to try to get records for us, and you weren't able 13 to. Is that correct? 14 A. I went to -- I went to the records, gave 15 my two dollars to pay for the initial report. And 16 they redacted the whole -- I mean -- 17 Q. I -- 18 A. Is that what you're talking about? 19 Q. No, ma'am -- no, sir. I was talking 20 about Breanna's counseling records. 21 A. Yes. Yeah. Misty actually called down 22 there and tried to talk to Sheila to try to get 23 them. And she either didn't have them or wouldn't 24 give them. 25 Q. Okay. Did you ever have any contact with
21 MS. BURGESS: I maxed out at Atari. 22 MR. SULLIVAN: Yeah. Pong. 23 THE WITNESS: With those games, like 24 -- like Mario Bros. was different, you know. 25 MR. SULLIVAN: Frogger.	
1 MS. WOODLAND: I didn't have the 2 attention for even like the original Super Mario 3 Bros. Like I don't have the attention span for 4 that. 5 MS. BURGESS: No, no. That's past 6 me. 7 MS. WOODLAND: I feel like I'm at the 8 same point we were before. If you want to switch 9 back, I may have some follow-up questions, but I 10 don't want you to sit here and watch me read. 11 FURTHER EXAMINATION 12 BY MS. BURGESS: 13 Q. Did you ever read the trial transcript? 14 A. No, no, ma'am. 15 Q. West Field Elementary? 16 A. West Field, yeah -- yeah. 17 MR. SULLIVAN: That's the one. 18 THE WITNESS: But there -- there was 19 -- was it Front Line. 20 Q. (By Ms. Burgess) Frontier? 21 A. Frontier. Frontier, there's that one, 22 too. 23 Q. Charles Haskell? 24 A. Charles -- Charles Haskell was the first 25 one she went to. It was Haskell. I get them -- I	1 Christopher Howell during the time period where he 2 lived with Dorian? 3 A. I'd say maybe -- maybe three times. 4 There was only one time that I actually had an 5 extended amount of time with him, and that was at 6 Breanna's concert deal. I think it was violin she 7 was playing at that time. 8 That was the only time that I remember 9 having any time -- any thing more than five 10 minutes with him. 11 Q. And maybe two other times? 12 A. Yeah. Yeah. Just dropping off. I 13 remember Breanna went with me to the 14 daddy/daughter dance, and I dropped her off and he 15 was there. And I talked to him for a couple 16 minutes. And dropped her off at her mom's. 17 Like, I've never really had much with 18 him. 19 Q. Is Breanna still journaling? 20 A. Yeah, she is. She is, yes. 21 Q. And did you ever get her journal back 22 that she had before the trial? 23 A. Oh, yeah. I forgot that they -- I don't 24 know if they gave that back or not. I know she -- 25 I bought her a new journal since then.

<p>1 Q. Have you ever looked at her journal 2 since -- 3 A. No. 4 Q. -- she's lived with you? 5 A. No, ma'am. 6 Q. Do you know if Misty has? 7 A. I don't -- I don't know, I couldn't tell 8 you. 9 Q. Fair enough. Has Dorian done any of the 10 family counseling with Ms. Sisemore -- or Breanna? 11 A. Has Dorian, you say? 12 Q. Yes. 13 A. No, not that I am aware -- no, I don't 14 think so. 15 Q. Are you aware if Dorian has done any 16 counseling since this event? 17 A. I'm not aware, no. 18 Q. Did you ever look up any of the videos of 19 Dorian, either during the investigation or 20 post-trial? 21 A. I never looked -- I never looked any of 22 them up. First of all, I probably wouldn't even 23 know how. But I've seen the videos that Misty has 24 had saved and from the DA's office. 25 Q. When you said "Misty has saved," what do</p>	<p>Page 157</p> <p>1 record. Anybody and everybody could look at it. 2 Breanna had showed videos of her mom on Twitch, 3 and Breanna doesn't have Twitch or anything. 4 So she looked up Twitch and then -- was 5 -- was it Instagram, maybe? I don't know. There 6 was another one that Dorian had wide open for 7 everybody to see. 8 Q. Was there anything else that Misty did in 9 investigation and saved and showed you? 10 A. It was just those -- just her -- Dorian's 11 social media videos. 12 Q. Are you involved in any other lawsuits 13 right now? 14 A. Well, there's this guy named Michael 15 Washington that's suing me. But I -- I think that 16 might be over. He's suing me, the police chief, 17 the city, the school board. He's suing a bunch of 18 people. 19 Q. You were dismissed out in '22. 20 A. Huh? 21 Q. You were dismissed out in '22. 22 A. I was? Okay. Yeah. I get emails from 23 time to time from them, and -- and but they pretty 24 much said, Hey, don't worry about this. 25 Q. Besides Mr. Washington --</p>
<p>1 you mean? 2 A. All the videos were open records so she 3 would -- she would just get on her Twitch at the 4 house. And she would save -- save videos, you 5 know. Because, I guess, In Twitch, all your 6 videos are saved somehow and you can pull up old 7 videos. And so she was looking them up and saving 8 some. 9 Q. Was this part of the criminal 10 investigation? 11 A. It was during the criminal investigation. 12 Q. And why was Misty doing that? 13 A. She was just looking them up and if we 14 found anything that, I don't know, could help the 15 case or to -- looked out of the ordinary. 16 You know, because on her Twitch, you 17 know, there was some very inappropriate things she 18 was doing, you know, while Breanna was getting 19 sexually abused. And so Misty would try to find 20 that time frame of, you know, when say Breanna was 21 by herself and Dorian was playing on Twitch for 12 22 hours straight, you know. 23 Q. What other things are you aware of that 24 Misty was actively investigating? 25 A. She was -- I've said, Twitch is open</p>	<p>Page 158</p> <p>Page 160</p> <p>1 A. Besides that -- no. No -- other than 2 that, I don't know of any. 3 Q. Okay. I know once you become a 4 supervisor, you're -- you don't testify as much -- 5 A. It's been a long time. 6 Q. -- anymore. When you were a patrol 7 officer, did you have an occasion to testify? 8 A. Yes, yes, I did. 9 Q. Do you have any clue how many times? 10 A. I really haven't testified a whole lot. 11 Maybe 10 times total. 12 Q. Okay. And when was the last time you had 13 to testify? 14 A. Oh, gosh. 15 Q. If you know. 16 A. I was -- oh, I had -- I mean -- yeah. I 17 was -- my first 10 years on was when I was in 18 patrol as a officer. So It had to have been at 19 least 12 years ago. 20 Q. You did -- you had two different 21 protective orders on behalf of Breanna against 22 Christopher Howell. The first one was dismissed 23 when y'all didn't show up. And it looks like then 24 you went back into court and got a second one. 25 A. Yeah.</p>

<p style="text-align: right;">Page 161</p> <p>1 Q. Is that correct? 2 A. I think our attorney didn't show -- Is 3 that what it was? Because there was a -- he 4 didn't show and forgot about it. And so we went 5 back. 6 Q. What was -- and the second one -- and I 7 may be off on timing and please feel free to 8 correct me -- was Mr. Howell already in custody 9 when you got the second one? 10 A. Yes, ma'am. 11 Q. What was the reason that you put down 12 for -- to get the protective order? 13 A. Well, the attorney did that stuff but -- 14 Q. If you know? 15 A. I don't know what he all put on there as 16 far as the reasoning. I mean our biggest concern 17 was him trying to reach out to her somehow or 18 trying -- I know they have access to computers and 19 stuff. Just, that was our biggest concern was him 20 trying to reach out to her. So I don't know 21 exactly what he put on the VPO. 22 Q. Harassment. 23 A. Okay. From harassment? 24 Q. Yes. 25 A. Okay.</p>	<p style="text-align: right;">Page 163</p> <p>1 Q. Did you ever talk to Dorian about the 2 back porch issue? 3 A. I -- 4 Q. -- that Breanna shared with you? 5 A. I have -- I don't think I ever did, no. 6 Q. Do you have any other family in Oklahoma 7 County? 8 A. Yeah, yeah. I've got some aunts and 9 uncles and cousins and -- 10 Q. Are you close with any of those 11 relatives? 12 A. Not really, no. I mean, I just see -- 13 Christmas and that's it. 14 Q. Does Misty have any other family in 15 Oklahoma County? 16 A. Yes, she does. 17 Q. Who is that? 18 A. Her mother and grandma. She's got some 19 aunts and uncles and stuff, too. 20 Q. What was her maiden name? 21 A. McClain, M-c-C-I-a-i-n. 22 Q. And is that the same name as her mom? 23 A. Yes, yes. 24 Q. And what about her grandma? 25 A. I don't know. I can't remember what her</p>
<p style="text-align: right;">Page 162</p> <p>1 Q. Has Mr. Howell tried to reach out to 2 Breanna since the criminal -- criminal 3 investigation started? 4 A. He has not, no. 5 Q. Has Mr. Howell tried to reach out to you 6 or anyone else in your family? 7 A. No, ma'am. 8 Q. Okay. So there's been no violations or 9 anything that causes you concern? 10 A. No. 11 Q. At one -- earlier when you were talking 12 to Counsel, you said that Peyton and Mackenzie 13 would live with y'all and then be two days at 14 their dads. 15 Was there ever a time where it was one 16 week on/one week off? 17 A. No, no. It's always been that way. 18 Q. Okay. When is the last time you actually 19 talked to Dorian? 20 A. On the phone or text? 21 Q. Either. 22 A. Either. It had been a few months. It's 23 -- for a text and I can't remember what the text 24 was about. She had a question about something. 25 It's been a few months.</p>	<p style="text-align: right;">Page 164</p> <p>1 grandma's last name -- I don't -- her mom's name 2 is McClain. 3 Q. And you -- not to put words in your 4 mouth -- but would it be accurate to say you 5 believe that Christopher Howell meant to touch 6 your daughter? 7 A. I do, yes. 8 Q. And that he did with intention to touch 9 her in a sexual way? 10 A. I do, yes. 11 MS. BURGESS: Pass the witness. 12 FURTHER EXAMINATION 13 BY MS. WOODLAND: 14 Q. Do you know -- are you aware of the 15 findings of DHS with regard to the referral in 16 December of 2019? 17 A. I can't -- the final -- final? I've -- I 18 don't think I've -- I can't remember if I've ever 19 read the DHS referral. 20 Q. And I'm just asking to the -- 21 A. Findings. 22 Q. I don't -- 23 A. I think they closed their case, didn't 24 they? I don't -- I don't -- I can't remember what 25 all --</p>

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<p>1 Q. Yeah. So it looks -- 2 A. -- it said. 3 Q. -- like DHS Investigated with regard to 4 Breanna and Corbin and Hayden. And, specifically, 5 with regard to Dorian, they Investigated a failure 6 to protect Breanna and that was unsubstantiated. 7 Were you aware of that? 8 A. For DHS, yeah. 9 Q. Okay. I don't know if -- I assume that 10 you would have gotten copies of their final 11 report. 12 A. Yeah. I don't -- yeah. If we, I don't 13 have them but maybe we did. 14 Q. I -- did you have any conversations with 15 anyone from DHS about that finding? 16 A. There was a guy -- was it McAlester? 17 Q. Randy McAlester? 18 A. Yeah. He came to our house and 19 interviewed us. And I know he -- he told us the 20 best thing to do at the time would be to have 21 Breanna stay with us. And he kind of -- he kind 22 of -- you know, did his investigation, talked to 23 us. 24 And, I mean, I didn't have just a whole 25 lot of conversation with him. I know he testified</p>	<p>Page 165</p> <p>1 Q. Following up about the Twitch videos, in 2 one of your discovery responses it says (as read): 3 "We found hundreds of videos of Dorian playing 4 games on her Twitch channel." 5 For one thing since it says "we," but 6 also because of your testimony that you're not a 7 very, like, social media or tech-savvy guy -- 8 A. I'm not, I'm not. 9 Q. I'm guessing that someone else found 10 those videos, not you personally? 11 A. Not me personally. And I don't know if 12 there's other people that helped Misty find them 13 or what, but it was all -- 14 Q. It would have primarily been Misty then? 15 A. Misty. 16 Q. Is that right? 17 A. Yeah. She spent a lot of time on her 18 phone finding the videos. 19 Q. And these hundreds of videos, are they 20 all saved somewhere? 21 A. They are, yeah. The DA's office got 22 them. Mr. Sullivan may have them. I don't know, 23 but -- 24 Q. I kind of touched on this earlier, and I 25 just want to understand your -- I just want to</p>
<p>1 in court, but -- 2 Q. Did he ever talk to you about what the 3 final findings in the case were? 4 A. I remember him saying something along the 5 lines of, you know, "Chris just sometimes" -- or 6 "One of them" -- that they both admitted to smoke 7 -- that they smoke weed, and sometimes Chris just 8 blacks out when he gets drunk. And that's really 9 the only thing I remember him kind of saying at 10 our house was that's kind of their excuse for 11 anything that may have happened. 12 Q. Okay. Did Randy McAlester or anyone else 13 talk to you about what why they -- 14 A. They closed it? Sorry. 15 Q. Did they talk to you about why they found 16 that the investigation of Dorian's failure to 17 protect Breanna was unsubstantiated? 18 A. He did -- he did not. No. Not about 19 hers, no. 20 Q. Do you know if you had the opportunity to 21 appeal that finding? 22 A. Do I have an opportunity to appeal that? 23 I don't know. I don't know. I'm not really 24 familiar with a whole lot of what DHS does other 25 than come to our calls and help us with kids.</p>	<p>Page 166</p> <p>1 make sure that I understand your answer. 2 If -- we talked about, you know, if 3 Dorian had been in her office, you know, doing an 4 office job rather than gaming, would you still 5 characterize that as extreme neglect? 6 A. I mean, if she -- I still feel that even 7 if she's working from home from an office job, I 8 still think she needs to keep an eye on the kids, 9 office job or not. Especially, you know, kids 10 that age and then two little bitty babies, you 11 know. I still think she should check on them. 12 You know, make sure they're okay. 13 So, I mean, that's kind of -- for me, it 14 kind of could go both ways. You know, with the 15 kids -- the kids not there, you know, she could 16 have an office job. It'd be fine. I think she 17 should check on the kids. 18 Q. Do you know for a fact that she didn't 19 check on them? 20 A. I do not. 21 MS. WOODLAND: Do you have anything 22 else? 23 MS. BURGESS: No. 24 MS. WOODLAND: Let's take a quick 25 break. Let me confer, and then we may come back</p>

<p>1 for a couple of minutes.</p> <p>2 (A short break was taken.)</p> <p>3 Q. (By Ms. Woodland) Okay. I just have a few questions to wrap up, and then really I think 5 really we are done.</p> <p>6 Do you know if -- I know you testified -- 7 and, again, I'm just kind of jumping around giving 8 you a little context here -- you testified about 9 trying to get a police report from OCPD on your 10 own.</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. Did -- do you know if Misty ever got the 13 police reports -- report or reports -- from this 14 investigation?</p> <p>15 A. No, I don't think she did. Like I said, 16 the only one we were able to get was -- just the 17 one that we go pay for.</p> <p>18 Q. Yeah.</p> <p>19 A. And like I said, it was so redacted. I 20 mean it said nothing -- nothing on it at all.</p> <p>21 Q. Do you know if Misty would have access to 22 OCPD police reports?</p> <p>23 A. She would not, no. We have totally 24 different reporting system.</p> <p>25 Q. Do you have access to the reports?</p>	<p>Page 169</p> <p>1 tell your nieces, like, Don't go over there 2 anymore?</p> <p>3 A. No.</p> <p>4 Q. Did you give them any, like, cautionary?</p> <p>5 A. All of this -- all of this came out -- 6 what -- what the nieces -- the weirdness and 7 creepiness that they felt with Chris all came out 8 after Breanna disclosed. And so after that 9 happened, they no longer took them over there.</p> <p>10 Q. Okay. Do you know if they ever told 11 their mom any of that before Breanna disclosed?</p> <p>12 A. I don't know. I -- I don't know.</p> <p>13 Q. Okay. About how many hours a week do you 14 work?</p> <p>15 A. Eight on, six off. So I work 80 hours 16 straight and 60 hours off. So -- and I work 17 10-hour days for eight days straight. It's very 18 confusing but I work 8 -- a week, I work.</p> <p>19 Q. Ten hours a day for eight days and then 20 six days off?</p> <p>21 A. Yes, yes, ma'am.</p> <p>22 Q. That doesn't lend itself to the quick 23 question I asked you, so thank you for explaining 24 that.</p> <p>25 What do you do when you're working a</p>
<p>1 A. Oh, I could but I wouldn't. That's a big 2 no no.</p> <p>3 Q. In a situation like this where an 4 investigation involves an officer's family --</p> <p>5 A. Yeah.</p> <p>6 Q. -- Is there a mechanism in place at OCPD 7 to password-protect the -- a file or keep you out 8 of it?</p> <p>9 A. Honestly, I think there probably is, 10 especially the detectives' reports. I mean, 11 there's got to be something on our system to where 12 they can hide that. I assume there is.</p> <p>13 Q. Okay.</p> <p>14 A. There's some sort of --</p> <p>15 Q. As far as like a specific thing, like 16 you're not -- you don't know for sure?</p> <p>17 A. I don't. But I -- I bet you -- because, 18 you know, there's officers getting -- you know, 19 things happen all the time and -- you know, 20 there's got to be some encrypted way to hide 21 reports. I -- I don't know for a fact. I'm not 22 in there because I've never been in investigation, 23 but I bet there is.</p> <p>24 Q. Okay. Jumping back, again, to your 25 nieces babysitting at Dorian's house, did you ever</p>	<p>Page 170</p> <p>1 10-hour shift and Breanna and Peyton and Mackenzie 2 are home by themselves? What do you do to make 3 sure they're safe?</p> <p>4 A. Well, they've all got phones. We have a 5 home phone, also. They've got the numbers to our 6 neighbors. And, honestly, it really wouldn't take 7 me long to get home if I had to.</p> <p>8 Q. Do you rely on your neighbors potentially 9 to be there for the girls if they needed something 10 when you or Misty weren't home?</p> <p>11 A. Yeah, yes. Our neighbors are -- he's a 12 retired Midwest City cop and works out at Tinker 13 now. He's a good person.</p> <p>14 Q. You trust them?</p> <p>15 A. I do.</p> <p>16 Q. What about when Breanna was littler -- 17 or, like not old enough to stay at home by herself 18 when she was with -- on your custody time, who did 19 she stay with?</p> <p>20 A. My wife was always home. Misty was 21 always home.</p> <p>22 Q. What about when Misty was working?</p> <p>23 A. Then Breanna was at school.</p> <p>24 Q. Okay. So when -- am I correct to say 25 that when Breanna was too young to stay at home by</p>

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1 herself, you and Misty had worked out your work 2 schedules so that either Breanna was in school or 3 one of you was home with her? 4 A. Yes, ma'am, yes. 5 Q. You didn't ever have babysitters or -- 6 A. No. Breanna -- towards the -- towards 7 the end there, Breanna would actually walk from 8 the school to Dorian's house and we'd pick her up 9 at Dorian's house or meet her at OnCue. 10 Q. How old was she when she was walking from 11 school to Dorian's house? 12 A. That was -- that was 2018, '19. 11, 12. 13 Q. Yeah. We could do the math later. 14 How far was that walk? 15 A. Oh, there was a path. So it was from -- 16 It was -- I believe it was Heartland and there was 17 a path from Heartland that went through the 18 neighborhood, and she would always walk with a 19 friend to Dorian's house. 20 Q. And then you would pick her up at 21 Dorian's house? 22 A. Yes, ma'am. 23 Q. Either you or Misty, I guess? 24 Was anyone -- were any adults at home at 25 Dorian's house at that time, if you know?	Page 173 1 A. Correct. 2 Q. Okay. With that predicate, so did you 3 have some conversations with Mr. McAlester, at any 4 time, where he told you that things that he 5 learned in the investigation by speaking maybe 6 with Mr. Howell -- did he tell you that he spoke 7 with Mr. Howell? 8 A. He said he spoke with both of them. 9 Q. Okay. And did he, Mr. McAlester, tell 10 you anything about what Mr. Howell may have said 11 relative to drinking and blacking out and these 12 instances of sexual abuse? 13 MS. WOODLAND: Objection to form. 14 MR. SULLIVAN: Hang on a second, 15 Which part? I'll fix it? 16 MS. WOODLAND: I would have to hear 17 the whole thing again. 18 MR. SULLIVAN: Let's just start 19 over -- 20 MS. WOODLAND: It was leading at a 21 minimum. 22 MR. SULLIVAN: Oh, well, if that's 23 your objection. 24 Q. (By Mr. Sullivan) Go ahead and answer 25 then.
Page 174 1 A. I assume Dorian was there most the time. 2 MS. WOODLAND: Okay. Okay. I don't 3 have anything else? 4 MR. SULLIVAN: Just a couple. 5 EXAMINATION 6 BY MR. SULLIVAN: 7 Q. So I only absorbed the guy's first name 8 when you talked about him from DHS because he had 9 the same first name as me, Randy. 10 What's Randy's last name? 11 A. McAlester. 12 Q. Okay. So you -- I think I'm right about 13 this. First of all, you told Ms. Burgess here at 14 the end that you believe that Mr. Howell did these 15 things that he did to your daughter, like, 16 knowingly and intentionally and on purpose. 17 That's what you told her just now. 18 Right? 19 A. Yes. 20 Q. You also told both of these lawyers -- 21 you made reference several times in the 22 questioning by each of them to instances of 23 drinking and blacking out on Mr. Howell's part 24 at -- when he was home and when your daughter was 25 there. Right?	Page 174 Page 176 1 A. When Randy came to our house to talk to 2 us about -- about the case, he did -- he did, he 3 said he spoke -- first, when he went to their 4 house like the day after, he spoke with Dorian and 5 Chris about the allegations. And he said that 6 Chris said that he sometimes blacks out drunk, and 7 he may have accidentally touched her when he was 8 blacked out. 9 And then, I know there was one of them 10 said that sometimes they smoke marijuana, you 11 know, at the house. 12 Q. Your understanding from Mr. -- 13 MR. SULLIVAN: I'll give you the 14 leading objection at the front end of this 15 question. 16 Q. (By Mr. Sullivan) Your understanding from 17 Mr. McAlester was, in that conversation, that in 18 his initial conversation with Mr. Howell, that he 19 -- that he said, Well, I black out and may have 20 touched her then and, if so, that was accidental. 21 That's what he told you? 22 A. Yeah. That was -- that was what -- it 23 sounded like to me, when Randy McAlester was 24 talking to us, that it was accidental because he 25 was drunk and don't remember anything.

WADE SPENCE
SPENCE vs HOWELL

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	Page 177		Page 179
1	Q. Yep, I got it.	1	smoking weed.
2	MR. SULLIVAN: That's all.	2	Q. In relation to being touched?
3	MS. BURGESS: I've got a follow-up.	3	A. She's never talked to me about -- about
4	You knew that was going to happen.	4	him being drunk and touching her. She just said
5	MR. SULLIVAN: It's all right.	5	they'd drink a lot and come home drunk, both of
6	MS. BURGESS: I was out the door.	6	them.
7	MR. SULLIVAN: You could do -- yeah.	7	Q. What create -- what started that
8	FURTHER EXAMINATION	8	conversation when she told you that?
9	BY MS. BURGESS:	9	A. Oh, man. That's a long time ago. I
10	Q. When did Mr. McAlester tell you that?	10	don't know. I couldn't remember if it was
11	A. It was after -- after they interviewed	11	something I asked or if it was something that she
12	Dorian and Chris, they came -- he came to our	12	just spontaneously said to us. Yeah. I can't
13	house for an in-house interview. I couldn't tell	13	remember what the beginning of the conversation
14	you if it was a day or a week. It was shortly	14	was.
15	after, after the whole incidence began.	15	But she -- she's told us that they drink,
16	Q. Did he actually say Mr. Howell told him	16	you know. They get drunk from time to time, and
17	that --	17	but -- yeah. I remember her saying when they
18	A. He probably didn't say Mr. Howell.	18	smoke weed, they go to the backyard to smoke weed,
19	Q. -- he touched her?	19	you know.
20	A. He just told me about him being blackout	20	Q. So when they smoked weed, they were away
21	drunk. And what his -- what Chris Howell's	21	from --
22	comment was, or his excuse was, was that he	22	A. Weed smoking?
23	blacked -- blacks out drunk and may have	23	Q. -- from the kids?
24	accidentally touched her.	24	A. According to Breanna, that's what I
25	Q. Did he actually say he accidentally touched	25	remember. I remember that. Yeah.
	Page 178		Page 180
1	her, based on your memory?	1	Q. Did she actually see them drink or just
2	A. According to my memory, when he told us	2	the aftereffects, if you know?
3	that, that was my thing. And, of course, you	3	A. I don't know. Sorry.
4	know, I didn't believe him. I assumed -- nobody	4	Q. Do you drink?
5	gets blackout drunk and does that, you know. So	5	A. Yeah.
6	it was kind of -- for me, it was just an excuse on	6	Q. Does your wife drink?
7	Chris's part, but that was what they told him.	7	A. Not very often.
8	Q. Do you believe that?	8	Q. Do you ever do it at home?
9	MR. SULLIVAN: Believe what?	9	A. Yes.
10	MS. BURGESS: Oh, I can --	10	Q. Okay.
11	THE WITNESS: I --	11	MS. BURGESS: Pass the witness.
12	Q. (By Ms. Burgess) Do you believe that	12	MS. WOODLAND: I don't have anything.
13	Mr. Howell got drunk and doesn't realize that he	13	MR. SULLIVAN: Me either. He'll read
14	touched your daughter?	14	and sign.
15	A. I -- I -- honestly, I don't think that	15	(Deposition concluded.)
16	somebody can do what he did and not know. But I	16	
17	don't know Chris, and -- I don't know him one bit,	17	
18	and I don't know how drunk he gets or how he gets	18	
19	when he's drunk. I don't know anything about the	19	
20	guy.	20	
21	Like I said, in my mind, I don't believe	21	
22	it, but I can't say it's not true either.	22	
23	Q. Has Breanna ever told you about	23	
24	Mr. Howell being drunk?	24	
25	A. She's talked about them drinking, yeah,	25	

WADE SPENCE
SPENCE vs HOWELL

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1		J U R A T	Page 181	1	C E R T I F I C A T E	Page 183
2		STATE OF _____		2	STATE OF OKLAHOMA)	
3		COUNTY OF _____		3) SS:	
4				4	COUNTY OF OKLAHOMA)	
5		I, WADE SPENCE, do hereby state under		5		
6		oath that I have read the above and foregoing		6	I, Shelley A. Marburger, a certified	
7		deposition in its entirety and that the same is a		7	shorthand reporter within and for the State of	
8		full, true and correct transcription of my		8	Oklahoma, certify that WADE SPENCE was sworn to	
9		testimony so given at said time and place, except		9	testify the truth; that the deposition was taken	
10		for the corrections noted.		10	by me in stenotype and thereafter transcribed by	
11				11	computer and is a true and correct transcript of	
12				12	the testimony of the witness; that the deposition	
13		WADE SPENCE		13	was taken on April 18, 2023, at 10:07 a.m., at 914	
14				14	North Broadway Avenue, Suite 210, Oklahoma City,	
15		Subscribed and sworn before me, a Notary		15	Oklahoma; that I am not an attorney for or a	
16		Public in and for the State of Oklahoma by said		16	relative of either party, or otherwise interested	
17		witness, WADE SPENCE, on this the _____ day of		17	in this action.	
18		2023.		18	Witness my hand and seal of office on	
19				19	April 28, 2023.	
20		Notary Public in and for the		20	<u>Shelley Marburger</u>	
21		State of _____		21		
22		My Commission Expires: _____		22	Shelley A. Marburger, CSR	
23		My Commission Number: _____		23	For the State of Oklahoma	
24				24	CSR #1904	
25				25		
		Page 182				
		C O R R E C T I O N S H E E T				
3		NAME: WADE SPENCE				
4		CASE: SPENCE VS. HOWELL, ET AL				
5		DATE: APRIL 18, 2023				
6		REPORTER: SHELLY MARBURGER				
7						
8		PG/LN	CORRECTION	REASON FOR CORRECTION		
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EXHIBIT

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Histrionic Personality Disorder: What Is It?

Medically Reviewed by Jabeen Begum, MD on December 05, 2023 | Written by Shawna Seed

Symptoms of Histrionic Personality Disorder Causes of Histrionic Personality Disorder

Histrionic Personality Disorder Diagnosis Histrionic Personality Disorder Treatment

6 min read

Histrionic personality disorder is one of a group of conditions called "cluster B" or "dramatic" personality disorders. People with these disorders have intense, unstable emotions and distorted self-images. For people with histrionic personality disorder, or HPD, their self-esteem depends on the approval of others and does not arise from a true feeling of self-worth. They have an overwhelming desire to be noticed, and often behave dramatically or inappropriately to get attention. The word histrionic means "dramatic or theatrical."

This disorder is more common in women and people assigned female at birth, but researchers think that might reflect bias in how the condition is diagnosed. It's usually evident by adolescence or early adulthood.

Histrionic vs. borderline personality disorder

Borderline personality disorder (BPD) is another "cluster B" condition. Like people with histrionic personality disorder, people with BPD have strong emotions that change rapidly. If you have BPD, you're very worried about people abandoning you.

A major difference between these two personality disorders is that people with BPD feel more despair and show more suicidal behaviors.

Histrionic vs. narcissistic personality disorder

Narcissistic personality disorder (NPD) is also a "cluster B" condition. If you have NPD, you feel superior to other people and think you're entitled to praise and special treatment. A major difference between the histrionic and narcissistic disorders is that someone with NPD is very focused on how special they are, something experts call "grandiosity."

Symptoms of Histrionic Personality Disorder

In many cases, people with histrionic personality disorder have good social skills; but they tend to use these skills to manipulate others so that they can be the center of attention.

If you have this condition, you might:

Skip to main content ↗ unless you're the center of attention

- Act seductively or dress provocatively – or both

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- Act very dramatically, as though performing before an audience, with exaggerated emotions and expressions, yet appear to lack sincerity
- Be overly concerned with physical appearance
- Constantly seek reassurance or approval
- Be gullible and easily influenced by others
- Be excessively sensitive to criticism or disapproval
- Have a low tolerance for frustration and be easily bored by routine, often beginning projects without finishing them or skipping from one event to another
- Not think before acting
- Make rash decisions
- Be self-centered and rarely show concern for others
- Have a hard time maintaining relationships, often seeming fake or shallow in dealings with others
- Threaten or attempt suicide to get attention

Causes of Histrionic Personality Disorder

The exact cause of histrionic personality disorder is not known, but many mental health professionals believe that both learned and inherited things play a role.

For example, the tendency for histrionic personality disorder to run in families suggests that a genetic cause might exist. But the child of a parent with this disorder might simply be repeating behavior they learned at home.

Other things that experts think might play a role:

- Not being criticized or punished as a child
- Getting positive feedback from parents only when you show certain behaviors that they approve of
- Inconsistent, unpredictable attention from parents
- Confusion about what behaviors will get approval from parents

Your temperament, psychological style, and the way you learn to cope with stress while growing up all can play a role in the development of a personality disorder.

Histrionic Personality Disorder Diagnosis

Your personality continues to change and develop as you grow up, so it's unusual for a doctor to diagnose histrionic personality disorder before you're 18 years old.

Skip to main content ↵ are tough to recognize, and if you have one, you may not think there's anything wrong with you. Often, someone with histrionic personality disorder seeks

If you show signs of HPD, your doctor may do a complete medical and psychiatric history. The doctor might do a physical exam and laboratory tests (such as neuroimaging studies or blood tests) to make sure a physical illness is not causing your symptoms.

If the doctor finds no physical ailment, they might refer the person to a psychiatrist, psychologist, or other licensed behavioral health professional who may use specially designed interview and assessment tools to evaluate a person for a personality disorder.

A mental health professional will ask questions about your:

- Work history
- Relationships
- Impulse control

If you have HPD, you might not be aware of your behaviors, so family members or others close to you could be asked for their input.

You may find quizzes and self-assessments online, but there's no exact histrionic personality disorder test. Only a mental health professional can make a diagnosis. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* spells out the criteria for an HPD diagnosis. The most recent version of this handbook, published in 2013, is called DSM-5.

If you have HPD, you'll show five or more of these behaviors on a regular basis:

- You're uncomfortable unless you're the center of attention
- You behave seductively or provocatively
- Your emotions are shallow and shift easily
- You use your appearance to draw attention
- Your speech is vague
- You think your relationships are closer than they really are
- You're easily influenced by others
- Your emotions are dramatic or exaggerated

Histrionic Personality Disorder Treatment

If you have histrionic personality disorder, you might not think you need therapy. Your dislike of routine might make following a treatment plan difficult.

Psychotherapy (a type of counseling) is generally the treatment of choice for histrionic personality disorder. Skip to main content The goal of treatment is to help you uncover the motivations and fears linked to your thoughts and behavior, and to help you learn to relate to others in a more positive way.

- Group therapy, which involves meeting with people who have the same diagnosis, supervised by a mental health professional. If you have HPD, it can give you a window into what your own behavior looks like to other people.
- Psychodynamic psychotherapy tries to get at the root of your emotions and behaviors.
- Supportive psychotherapy focuses on improving your symptoms and developing coping skills.
- Cognitive behavioral therapy is a goal-oriented approach that helps you unlearn negative patterns and substitute healthier ones.

You might take medication to treat other conditions, such as depression and anxiety.

Complications of Histrionic Personality Disorder

Histrionic personality disorder can affect your social, professional, or romantic relationships and how you react to losses or failures. You're also at higher risk than the general population for depression and substance abuse.

Extreme attention-seeking can include threats of suicide.

If you have HPD, you're more likely to have certain other psychological conditions. They include:

- **Somatic symptom disorder.** When you have this, you get very focused on a physical symptom you have and overly upset about it. You may not realize that the symptom itself is not serious, and you might have unnecessary medical tests and procedures trying to treat it.
- **Panic attacks** are brief, strong feelings of fear and a physical reaction to an ordinary situation that isn't threatening.
- **Conversion disorders** are also called functional neurological symptom disorder. When you have this, your mental health condition causes physical symptoms such as seizures, paralysis, loss of sight, or loss of hearing. The symptoms are real, but they are caused by your mental health disorder disrupting your brain and central nervous system.

What Is the Outlook for People With Histrionic Personality Disorder?

Many people with this disorder are able to function well socially and at work. But if your case is severe, you might have significant problems in your daily life without treatment.

Can Histrionic Personality Disorder Be Prevented?

HPD can't be prevented. But treatment can help you manage your condition and learn healthier ways to deal with your emotions and relationships.

[Skip to main content](#)

Takeaways

dramatic or inappropriate behavior. Researchers aren't exactly sure what causes it, but they think it may result both from genetic factors and patterns in your childhood. There's no specific drug for HPD, but several types of therapy are available. You might take medication to treat anxiety or depression, which can also affect people with HPD. In fact, depression or anxiety may be the trigger for your seeking help. People with this condition often don't believe their behaviors are a problem.

Histrionic Personality Disorder FAQs

Is histrionic personality disorder a form of narcissism?

HPD and narcissistic personality disorder are closely related, but they aren't the same. Both are "cluster B" personality disorders, which involve dramatic and impulsive behaviors. If you have narcissistic personality disorder, you have a sense that you're superior to other people and deserve special treatment.

How common is histrionic personality disorder?

Experts believe about 1% of people have HPD.

What happens if you ignore someone with histrionic personality disorder?

It's important to keep your emotions level when dealing with someone who has HPD. Don't match the intensity of their emotions. But if you ignore them, they might escalate their behavior to get your attention.

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EXHIBIT

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COMPASSION BEHAVIORAL HEALTH / RESOURCES / ARTICLES / WHAT IS FALSE MEMORY OCD? – COMMON SYMPTOMS & TREATMENT

01/09/24

CBH Staff

Author



WHAT IS FALSE MEMORY OCD? – COMMON SYMPTOMS & TREATMENT



EXHIBIT

5



Obsessive-compulsive disorder (OCD) can impact a person's trust in their own memories.

Recent statistics on Obsessive-Compulsive Disorder (OCD) shed light on its prevalence and impact. Globally, OCD affects approximately 2-3% of the population, with onset typically occurring in late adolescence or early adulthood. Interestingly, the condition is evenly distributed among men and women. Studies also reveal that about 50% of OCD cases are classified as severe, significantly impacting daily functioning and quality of life.

The human mind has an amazing ability to store information, but memory is tricky.

Obsessive tendencies typical of OCD can lead to a fixation on the recollection of certain events. A person may cast doubt on their own memories, leading to an obsessive spiral that's tough to break out of. In this article, we'll be reviewing some essential information about false memory OCD.

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Show

FALSE MEMORY OCD SYMPTOMS

Obsessive-compulsive disorder involves these two primary symptom groups:

Obsessions

Compulsions

Obsessions are unwanted thoughts that can't be turned off. Obsessions may create urges to repeat certain behaviors—compulsions—over and over again.

False memories can be a form of obsessive thinking.

- Someone experiencing false memory OCD may suffer from doubts about their ability to accurately recall events. They may wonder if they did something wrong, even when there's no evidence of that being the case. The doubts grow and grow until it's difficult to separate fact from fiction.

False memory OCD may involve these symptoms:

- Intolerance for uncertainty
- Constant doubts about memories
- Impulsive, intrusive thoughts
- Avoidance of specific places or people
- Distress about certain topics
- Following strict routines
- Attempting to garner reassurance from others
- Engaging in ritualistic behavior
- Self-harming or self-punishing actions

Need help managing OCD symptoms?

→ WE CAN HELP

Someone who is struggling with false memory OCD might deal with intense anxiety around certain people, places, or things that trigger obsessive remembering. Or, they may experience a steady current of worry about their general ability to process memories normally.

Symptoms of false memory OCD often involve maladaptive attempts to control memories and influence the events that trigger false memories. This may include seeking constant reassurance from other people about whether or not certain events occurred. Or, the false memory struggle may be intensely embarrassing, shameful, and private.

WHERE DO FALSE MEMORIES COME FROM?

How can a person seem to remember something that never actually happened?

Memories are often less precise than we imagine them to be. We all misremember events to an extent. In false memory OCD, misremembering takes on an obsessive quality.

These factors may lead to obsessive false memories:

Extended time between a past event and the present

Underlying mental health conditions that affect the quality or intensity of a memory (e.g. (PTSD)

Hallucinations or episodes of psychosis *

Being under the influence of alcohol or drugs when a memory was formed *

Cognitive impairment due to age

Suggestions of details from others

While it's normal to have some doubts about memories, false memories are a concern if they cause distress and interrupt one's ability to maintain a normal quality of life.

WHAT MAKES FALSE MEMORY OCD WORSE?

Factors That Worsen False Memory OCD

Several factors can exacerbate the severity of False Memory OCD. By identifying and addressing these factors, individuals can better manage their symptoms and improve their overall well-being.

Stress and False Memory OCD

Stress is a significant contributing factor that can escalate False Memory OCD symptoms. High levels of stress can heighten anxiety and trigger obsessive thoughts. In turn, these thoughts may further strengthen the false memories, reinforcing the distressing cycle.

Therefore, developing stress-management techniques, such as regular exercise, deep breathing exercises, and engaging in relaxation activities, can help individuals with False Memory OCD manage their condition more effectively.

Lack of Sleep and Its Effects on False Memories

Sleep deprivation can exacerbate False Memory OCD symptoms. Studies have shown that the brain's ability to differentiate between real and imagined events diminishes when sleep-deprived. This can make individuals with False Memory OCD more prone to believing and obsessing over false memories.

Establishing healthy sleep habits, such as maintaining a consistent sleep schedule and creating a sleep-friendly environment, can contribute to better management of False Memory OCD symptoms.

TREATMENT FOR FALSE MEMORY OCD

Struggles with false memories can be addressed as part of OCD treatment using one of these approaches.

Cognitive Behavioral Therapy

Cognitive-behavioral therapy (CBT) is based on the premise that psychological problems are rooted in:

Unhelpful ways of thinking

Learned patterns of harmful behavior

CBT involves working to improve thinking patterns. This includes gaining a better understanding of where negative thoughts come from, learning to react calmly to triggers, and learning coping skills.

CBT is effective for OCD. A person with OCD has developed a series of complex, unhelpful thought patterns. Some of these patterns may lead to compulsive behaviors. During one-on-one sessions with a therapist, CBT helps a patient break the bonds between obsessions and compulsions.

Group Therapy

For many people who deal with a mental health challenge, it's helpful to spend time in a supportive environment with others who manage their own versions of the same condition.

In a group therapy setting, you can share your experience with OCD false memory symptoms. Listening to peers share their own stories may help you feel less alone and introduce you to new coping strategies.

Exposure and Response Prevention Therapy

Exposure and Response Prevention (ERP) therapy involves exposure to obsession-inducing triggers. A therapist helps a patient experience a trigger without activating an obsessive response.

For example, an individual with a doorknob germ obsession may be asked to repeatedly touch a doorknob without an obsessive hand-washing response.

With the help of a therapist, anxiety levels gradually drop during exposure to triggers, and the links between obsessions and compulsions can be broken.

For someone who experiences false memories, ERP therapy may involve exposure to ideas and settings that trigger memory obsessions. A therapist assists a patient in learning to experience triggers without moving into a false memory spiral.

GET HELP FOR OCD TODAY

If you're struggling with false memories or other OCD symptoms, reach out to Compassion Behavioral Health for help. Learn which inpatient or outpatient program is the best fit for your unique needs and challenges.

Our admissions counselors are available 24 hours/day, 7 days/week. Call us or contact us online for more information.

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