

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

REC'D
DEC 19 2022

In the office of the
Court Clerk MARILYN WILLIAMS

STATE OF OKLAHOMA,

)

Plaintiff,

)

vs.

)

DALLAS CHRISTOPHER NORTON,

)

Defendant.

)

COPY

Case No. CF-2019-1273

VOLUME III

TRANSCRIPT OF PROCEEDINGS

HAD ON JUNE 23, 2022

AT THE CLEVELAND COUNTY COURTHOUSE

BEFORE THE HONORABLE THAD BALKMAN

DISTRICT JUDGE

AND A JURY

RECEIVED

DEC 29 2022

APPELLATE DIVISION

REPORTED BY: ANGELA THAGARD, CSR, RPR, CRR

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1 **EXHIBITS**
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5 **STATE'S EXHIBITS:**
6
7

NO.	IDENTIFIED	OFFERED	ADMITTED
6	121	122	122

8 **COURT'S EXHIBITS:**
9
10

NO.	IDENTIFIED	OFFERED	ADMITTED
1	6	6	6

1 (For prior proceedings, see Volume II of this
2 transcript. Following the evening recess, proceedings
3 resumed as follows, outside the hearing of the jury:)

4 THE COURT: All right. Good morning, everybody.
5 Last night, I watched the forensic interview dated July 22,
6 2019, conducted at the Mary Abbott House by Ms. Cornett of
7 Brianna Jackson.

8 I have the -- my disk is labeled State's Exhibit 1.
9 I'm not sure if that -- I think that was from the preliminary
10 hearing or something.

11 MR. NEDWICK: Motion hearing.

12 MS. AUSTIN: The motion hearing.

13 THE COURT: Yeah, the motion hearing. So I don't
14 want to confuse the record. Sorry about that. But anyways, I
15 got the disk. I watched it last night. And I think we had
16 already had this hearing; I just needed to watch this.

17 But as we had discussed earlier and after listening to
18 arguments from counsel, I wanted to reserve final ruling on
19 this matter. But I believe that the interview was conducted in
20 such a way that comports with the statutory requirements that
21 it would be admissible and be able to be shown to the jury.

22 And I know that's over the defendant's objection, and
23 we can note the defendant's objection on the record of that.

24 MR. NEDWICK: And, of course, Judge, you know I'll
25 object when Ms. Williams starts testifying to the hearsay, and

1 then again, when they introduce it.

2 THE COURT: I understand.

3 MS. AUSTIN: Okay. And I think we could probably go
4 ahead and mark that Court's Exhibit 1, so I'll get a different
5 sticker for that, because we have agreed on some redactions to
6 the forensic interview.

7 There was a statement that was removed by agreement
8 about protective order and some statements that were made. We
9 have shown them the redacted copy. They've agreed to it.
10 That's the one that we intend upon admitting through
11 Ms. Cornett.

12 So for record purposes, that would be great to have
13 that as Court's 1. So we can also show the original unredacted
14 version and the version that the Court viewed.

15 THE COURT: Very good. If you'll take care of that,
16 I'll give you the DVD. I appreciate it.

17 All right. Let's go ahead and stand as we invite the
18 jurors to come in.

19 (Jurors enter.)

20 THE COURT: Please be seated.

21 State's recognized to call its next witness.

22 MS. WHATLEY: State calls Detective Sean Judy.

23 SEAN JUDY

24 was called as a witness, and after having been first duly
25 sworn, testifies as follows:

1 DIRECT EXAMINATION

2 BY MS. WHATLEY:

3 Q Detective Judy, would you please state your full name for
4 the record and then spell it for the court reporter.5 A Detective Sean Judy. First name S-E-A-N, last name is
6 J-U-D-Y.

7 Q And Detective Judy, how are you currently employed?

8 A With the city of Norman, Norman Police Department.

9 Q And how long have you been employed by the Norman Police
10 Department?

11 A Fourteen years.

12 Q And do you have any prior law enforcement experience
13 outside of your experience with the Norman Police Department?14 A Yes. I was with the Tulsa County Sheriff's Office for
15 approximately two years prior to that.16 Q And any prior law enforcement experience prior to the
17 Tulsa County Sheriff's Department?

18 A Military police going back to 2001.

19 Q Going back to 2001?

20 A Yes, ma'am.

21 Q And how long were you with the military police?

22 A Fifteen years.

23 Q Within the Norman Police Department, what were your --
24 some of your duties? Like what different divisions within the
25 Norman Police Department?

1 A So I was on patrol from 2008 until 2016. And then
2 investigations since 2017.

3 Q And since 2017, have you been a detective within the
4 investigations divisions?

5 A Yes, ma'am.

6 Q Within the investigations division, are there different
7 types of detectives assigned to different types of cases, or
8 are you all just assigned -- like is it just random?

9 A You will have certain types of crimes that will have
10 specific detectives assigned to those crimes.

11 Q And were you working as a detective in July of 2019?

12 A I was.

13 Q And were you assigned a case that involved Brianna Jackson
14 and involved her being the victim of sexual abuse at the hands
15 of Dallas Norton?

16 A Yes.

17 Q Now, were you assigned the case on the date that the
18 report was made with Officer Pierce on July 14, 2019?

19 A No.

20 Q When were you assigned the case as the detective?

21 A July 19th.

22 Q And is that common for a detective to be assigned a case
23 after the initial report?

24 A Yes.

25 Q In cases like this, is it common for you to be assigned

1 like days after the initial report?

2 A Correct.

3 Q And why would that be common in a case like this?

4 A In a case like this, because there was no exigency, no
5 immediate threat or danger to anybody involved in the case.

6 Q Child was in a safe place at that time?

7 A That's correct.

8 Q No crime scene that you needed to go to at that time to
9 secure or anything like that?

10 A No.

11 Q Okay. Now, after you are assigned a case, in a case like
12 this, what's the first thing that you would usually do once you
13 get assigned a case like this?

14 A So typically, there is a DHS referral that would accompany
15 a police report. One was made by Norman PD. So I would
16 contact DHS, find out who the caseworker was on that, and then
17 coordinate with them to set up a forensic interview.

18 Q In a usual case, would you prefer to set up the forensic
19 interview at the Mary Abbott Children's House?

20 A It can work either way, as long as there's that
21 coordination.

22 Q Were you the person who set up the interview for Brianna
23 Jackson?

24 A No, I was not.

25 Q Was an interview set up?

1 A There was.

2 Q Did you have any control over when it was set up?

3 A I did not.

4 Q But you know that one was set up?

5 A Correct.

6 Q And when did that interview take place?

7 A It was on the 22nd.

8 Q Okay. And that would have been the 22nd of July of 2019?

9 A Correct.

10 Q So a forensic interview takes place. Is that usually one
11 of the first things that happens after an initial report in a
12 case like this?

13 A For law enforcement, yes.

14 Q Okay. As a law enforcement officer investigating this
15 type of case, once a forensic interview has been set up, then
16 what do you do?

17 A Basically, show up early and staff the case based on what
18 patrol has said, figure out what DHS has discovered in their
19 initial steps, and then kind of form a game plan with the
20 forensic interviewer on specific things that we're looking for
21 for the investigation.

22 Q And does that -- when you say what you're looking for, is
23 that just kind of what you know based off the limited
24 information from an initial disclosure?

25 A Correct.

1 Q And that's just the information that you have to give an
2 interviewer, based on whatever information you've gathered from
3 an initial disclosure?

4 A Yes. Just trying to corroborate the information from the
5 initial report.

6 Q Now, you haven't done any sort of investigation -- in
7 other words, you haven't asked Brianna Jackson anything?

8 MR. NEDWICK: Objection as to leading, your Honor.

9 THE COURT: Sustained.

10 Q (By Ms. Whatley) Detective Judy, do you ask Brianna
11 Jackson any questions?

12 A No.

13 Q You're not trying to corroborate anything Brianna Jackson
14 has said?

15 A That is correct.

16 Q Now, when you're watching the forensic interview, what are
17 you listening for?

18 A You're listening to what the child has to say. They start
19 with just basic questions about the child and then start asking
20 them open-ended questions to see if they know why they're there
21 today, and then if they start making a disclosure, we'll ask
22 them additional questions to expand on that disclosure that
23 they've already made.

24 Q And just so we're clear, you're not in the room when a
25 forensic interview is conducted ever, correct?

1 A Correct. We're in a control room.

2 Q But were you in the control room for this interview?

3 A I was not.

4 Q Were you able to attend this particular interview?

5 A I was not.

6 Q Are you always able to attend every single forensic
7 interview --

8 A No.

9 Q -- for cases that you're assigned?

10 A No.

11 Q And why is that?

12 A If the day it's scheduled you already have something
13 scheduled. You could be on days off, you could be working on
14 another case.

15 Q And so how are you able to review an interview if it
16 occurs at a time where you can't attend the interview?

17 A We're provided with a copy of the interview on DVD and an
18 envelope along with any documentation that might have been
19 obtained during that interview.

20 Q And so once you obtain that interview, do you then review
21 it?

22 A I do.

23 Q And so if you're reviewing this interview, as a law
24 enforcement officer -- in addition to just watching the
25 interview, what are you, as a law enforcement officer, looking

1 for in that disclosure?

2 A So first and foremost, you're looking for information that
3 corroborate or support the allegations that have been made.
4 But you're also looking for other things that you may need to
5 collect. Anything of evidentiary value, DNA, things of that
6 nature.

7 Q As it relates to the disclosure that Brianna Jackson made,
8 based off you listening to that interview, did you believe that
9 there was any items of evidentiary value that needed to be
10 collected?

11 A I did not.

12 Q Did you believe that there was anything that you -- like
13 any forensic evidence that there would be available?

14 A No, ma'am.

15 Q Did you believe that there was anything that you needed to
16 try to go and collect?

17 A No.

18 Q And, again, these are all things that are based off of the
19 disclosure in the interview?

20 A That is correct.

21 Q Is that something that is common in a disclosure from a
22 child who's been a victim of sexual abuse?

23 A You're asking is it common to go and pursue evidence based
24 on the disclosure?

25 Q Is it common to not -- to have disclosures where you don't

1 need to go get those things?

2 A Yes, it is common.

3 Q And why is that?

4 A Usually, because of the length of time that has passed
5 from the incident to the time of disclosure, it's often days,
6 months, years. In this case, it was approximately over a year.

7 Q Now, after you listened to the -- well, at the time that
8 you're listening to this interview, do you have an idea about
9 where -- do you know where you believe the incident took place?

10 A I believe that it occurred at the residence she was living
11 at at the time.

12 Q And had you confirmed that? Have you had a chance to
13 confirm that with her mother, Tiffany?

14 A Indirectly, yes.

15 Q Now, did you have any knowledge about where the defendant
16 was living at the time you began your investigation?

17 A Did I know where the defendant was living at the time the
18 investigation started?

19 Q Yes.

20 A He was not living in that home anymore.

21 Q Now, after you watched the forensic interview -- so you've
22 been assigned the case. In addition to watching the forensic
23 interview, do you review any of those first reports from the
24 first, you know, kind of officers that give the initial
25 reports?

1 A Yes.

2 Q We've heard some testimony in this case about -- from
3 Officer Pierce who took kind of the first report. And then
4 we've heard some testimony from Jeffrey Jackson, Brianna's dad,
5 who said that he called in two times; once to Officer Pierce
6 and then to another officer to provide just a little bit of
7 updated information. Are you aware of that?

8 A Yes, I am.

9 Q Okay. And you reviewed all of that information. Is that
10 correct?

11 A Yes.

12 Q So after you reviewed the forensic report, do you then --
13 do you then have -- do you then confirm information with
14 Tiffany Norton?

15 A What specific information?

16 Q Well, do you confirm things like where Brianna Jackson was
17 living during specific times?

18 A Not that I recall.

19 Q Did you speak to Ms. Norton about whether Dallas Norton
20 had access to Brianna Jackson?

21 A I did.

22 Q Whether he was ever alone with her for periods of time
23 when Ms. Norton was not at home?

24 A I did.

25 Q Okay. Did you also confirm with Ms. Norton about whether

1 or not the information she originally gave officers in those
2 original reports was true and accurate? Just going over, Hey,
3 did the information you originally gave, was that true and
4 accurate?

5 A I don't recall specifically asking that question.

6 Q At the time that you had contact with Ms. Norton, in
7 regards to your interview with her, where was she living at
8 that time?

9 A When I spoke with Ms. Norton, where was she living?

10 Q Yes.

11 A In Yukon.

12 Q So she was no longer living in Norman?

13 A That is correct.

14 Q Did you ever have a conversation with Jeffrey Jackson?

15 A Yes.

16 Q What was the purpose of you reaching out to have a
17 conversation with Jeffrey Jackson?

18 A Just to provide updates on the investigation.

19 Q Is it typical as a law enforcement investigator to reach
20 out to some of the first disclosures -- when a child makes a
21 first disclosure just to get the -- just to confirm with them
22 --

23 A Yes.

24 Q -- details? And to the best of your recollection in this
25 case, was he one of the first disclosures? Was Jeffrey Jackson

1 --

2 A Yes.

3 Q He was one of the first disclosures?

4 A That is correct.

5 Q And this is, again, Jeffrey Jackson, Brianna Jackson's,
6 biological father?

7 A Correct.

8 Q The father that lives in Arizona?

9 A Correct.

10 Q And then did you also speak with Caitlin Jackson, her
11 stepmother?

12 A I did.

13 Q Now, in speaking with them, did you -- what was the main
14 purpose? What was the main reason that you were wanting to
15 speak with them?

16 A To speak with Caitlin was to confirm the information that
17 I had received from Jeffrey.

18 Q Okay. And did that -- did that have to do with whether or
19 not they gave a specific name regarding the disclosure?

20 A That is correct.

21 Q Tell me about that.

22 A So typically, we want to make sure that no one's coaching
23 a victim prior to the report being made. And so we want to
24 kind of ask the parents, how did this -- how did this occur,
25 what was specifically said.

1 And the answer was that basically it was, Has anybody
2 done anything to you, and they -- I specifically asked, Did you
3 mention the suspect's name. And they said, No, we did not.

4 Q And were they adamant about that?

5 A They were.

6 Q And you just wanted to confirm that?

7 A Correct.

8 Q Now, whenever you -- they obviously live in Arizona. Is
9 that correct?

10 A Yes.

11 Q And Norman Police Department isn't going to pay for you to
12 go out to Arizona to speak with them. Is that correct?

13 A Correct.

14 Q So did you conduct those interviews via the phone?

15 A I did.

16 Q Now, typically, would you try to record most of your phone
17 calls via the telephone?

18 A Typically.

19 Q Okay. Best practice to record most of them?

20 A It is.

21 Q Okay. Do you -- are you aware if you recorded all of your
22 telephone conversations with Caitlin and Jeffrey Jackson?

23 A No, I did not.

24 Q Okay. And how do you know you didn't record all of them?

25 A Because I know that I talked to Jeffrey more than one

1 time. I only had one recording with him. I don't have a
2 recording with Caitlin.

3 Q Did you do anything to document your conversations with
4 Caitlin and Jeffrey Jackson outside of recording?

5 A I made note of it in my report.

6 Q So any -- if it's not in a recording, you would have
7 documented that in a police report?

8 A Yes.

9 MS. WHATLEY: Can I have a moment?

10 THE COURT: You may.

11 Q (By Ms. Whatley) Detective Judy, I want to talk to you for
12 a second about the specific disclosure that Ms. Jackson made.

13 We talked a little bit about not expecting there to be
14 evidence from the disclosure that Ms. Jackson made, but let's
15 talk for a second specifically about that specific disclosure
16 about the defendant's hand touching her vagina.

17 What -- would you expect there to be -- what kind of
18 evidence would you expect there to be from his hand touching
19 her vagina?

20 MR. NEDWICK: Objection. They -- which disclosure
21 are we talking about?

22 MS. WHATLEY: Your Honor, I literally asked him just
23 now, the defendant's hand touching Ms. Jackson's vagina.

24 THE COURT: I think that's specifically descriptive.
25 You may answer the question.

1 Objection overruled.

2 THE WITNESS: Are you talking about initially or at
3 the time of the report?

4 Q (By Ms. Whatley) In the disclosure. Like what kind of
5 evidence would you expect there to be from that?

6 A Right.

7 Q What kind of evidence could you collect from that?

8 A At the time of the report, nothing.

9 Q And why is that?

10 A Because possibly 12 or 13 months had passed since the
11 reported incident.

12 Q And then let's talk about the -- Brianna Jackson's hand on
13 the defendant's penis.

14 What kind of evidence would you expect to be able to
15 collect from that at the time of the disclosure?

16 A None.

17 Q Okay. And why is that?

18 A Again, because of the time that had elapsed.

19 Q And even if the disclosure had been closer in time, would
20 you expect there to be evidence left behind?

21 A No, I would not.

22 Q And why is that?

23 A Clothes are washed. Hands are washed. Evidence is easily
24 destroyed.

25 Q Does that type of touching usually leave behind evidence?

1 A It can.

2 Q Does it usually?

3 A No.

4 Q And why is that?

5 A Again, it can be cleaned, discarded. We're not going to
6 find it.

7 Q And that specifically -- is that specifically to my
8 question? I should have been a little bit more clear with you.

9 Is that specifically to my question to the hand on the
10 penis?

11 A Correct.

12 Q And same question as it relates to the hand and fingers on
13 the vagina.

14 A That is correct.

15 Q And that would have been closer in time, correct? Like
16 even if that was closer in time, it's still going to be
17 difficult to find that evidence?

18 A Yes, that is correct.

19 Q Okay.

20 MS. WHATLEY: Can I have a moment, your Honor?

21 THE COURT: You may.

22 Q (By Ms. Whatley) Detective Judy, you had said that Tiffany
23 Norton, by the time that you had talked to her, she had moved.
24 Did you tell me where she had moved to?

25 A To an address in Yukon.

1 Q And so were you able to take pictures at the address here
2 in Norman where Brianna Jackson said that these events had
3 occurred to her?

4 A No, I was not.

5 Q And do you believe that it would have been good to have
6 made that happen?

7 A It's always better to have something on the off chance
8 that you do need it. I didn't know that we needed it in this
9 case based on the exact details of this case.

10 Q It would have been better to have had them taken?

11 A It always would be.

12 Q But at the time you talked to Tiffany, she was no longer
13 living at that address?

14 A That is correct.

15 Q Are crime scenes in child sex crimes different than like a
16 crime scene in a homicide?

17 A It depends.

18 Q Okay. And what does it depend on?

19 A In a murder investigation, the type of murder it was.
20 Whether it was a shooting, a stabbing, something to that
21 effect, there's going to be considerably more evidence at the
22 scene than in a sexual crime.

23 Q Okay. More forensic-type evidence?

24 A Correct.

25 Q Do you -- are you usually -- trying to figure out how to

1 ask this. Is the forensic interview usually leading you to a
2 conclusion?

3 A Could you repeat the question?

4 Q Are you usually collecting forensic evidence to try to
5 figure out what happened?

6 A In a --

7 Q In a homicide?

8 A Sometimes, yes.

9 Q Are you usually at the scene of those crimes close in time
10 to them occurring?

11 A Yes, we are.

12 Q Or closer in time to them occurring?

13 A Yes.

14 Q And closer in time to any scenes being disturbed?

15 A That is correct.

16 MS. WHATLEY: Pass the witness.

17 THE COURT: Mr. Nedwick?

18 MR. NEDWICK: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. NEDWICK:

21 Q Good morning, Detective Judy.

22 A Good morning, sir.

23 Q How are you?

24 A Doing all right. Yourself?

25 Q Doing well.

1 Would you further elaborate on your role in this
2 particular investigation? You were what's called the lead
3 investigator/case agent on this case. Is that right?

4 A Yes, sir.

5 Q And as the case agent/lead investigator, everything -- all
6 the information, all parts of the investigation get funneled to
7 you and you're overseeing globally the entire investigation
8 from the police standpoint, for sure?

9 A Yes, sir.

10 Q And that normally involves other officers contributing in
11 the investigation, correct?

12 A Yes.

13 Q And in this particular case, that happened, correct?

14 A Yes.

15 Q There was an Officer Pierce, correct?

16 A Yes, sir.

17 Q And there was also another officer. What's his name?

18 A Caspers.

19 Q Caspers. Both of those officers played a role in this
20 investigation?

21 A They did.

22 Q Both of them made reports in this investigation?

23 A They did.

24 Q And those reports were funneled to you?

25 A Yes.

1 Q And I believe you said you were assigned this case on the
2 19th. Is that right?

3 A Correct.

4 Q And you also said that you initially get information from
5 the investigating officers that have already done some
6 investigating on the case. And then you decide to contact and
7 set up a forensic interview, although you didn't do it this
8 time. But you get a little background from the officers about
9 what the allegations are, right?

10 A For the reports, yes.

11 Q And that is what you did in this case?

12 A Yes.

13 Q And so by the time -- and you didn't attend the forensic
14 interview on the 22nd of July. But as I understood it,
15 sometime thereafter, you reviewed a DVD of the interview. Is
16 that right?

17 A Yes.

18 Q Certainly, before you reviewed that forensic interview,
19 you had already compiled the preliminary information from
20 Pierce and Caspers?

21 A Definitely Officer Pierce. And I'm trying to recall the
22 date of Officer Caspers' report.

23 Q If I'm not mistaken, it was the 15th.

24 A Okay.

25 Q He got a call the 15th. Is that the one you're referring

1 to?

2 A Yes.

3 Q So both of those, the 14th on Pierce, 15th on Caspers,
4 does that coincide with your recollection of things?

5 A As far as the date of the reports, yes.

6 Q Okay. So you had that information from them prior to
7 reviewing the forensic interview?

8 A Again, I can't speak to having Officer Caspers' report
9 when I reviewed the forensic, but I did have Officer Pierce's.

10 Q Okay. And if I understood it correctly, that's part of
11 your role, whether you attend the forensic interview or not, is
12 to relay preliminary information to the forensic interviewers
13 or DHS, whichever, so that they have an idea of what the
14 allegations are, a little background?

15 A Yes. We would typically share information with DHS.

16 Q Did you do that in this case prior to the forensic
17 interview?

18 A I believe that I did.

19 Q Okay. And that would have come from Pierce.
20 We don't know about Caspers, but certainly from Pierce?

21 A Correct.

22 Q And I think you testified that the purpose was -- of
23 reviewing the forensic interview or attending, whichever --
24 preferably both, right?

25 A Yes, sir.

1 Q -- was to review it to see if there's support of the
2 initial information that you received? In other words, if it's
3 consistent with that?

4 A Yes, sir.

5 Q And also, identifying where the investigation needs to go
6 from here. In other words, stuff that comes up in the forensic
7 interview tells you, I think in this case, what you were
8 testifying about, is whether it's necessary to gather this or
9 that, that kind of thing?

10 A Correct.

11 Q And so in this case, the -- when you watched the forensic
12 interview, it wasn't -- it was drastically different than what
13 you were told, or at least your initial understanding of the
14 allegations, wasn't it?

15 A I wouldn't say so.

16 Q You wouldn't say so. Okay. Well, in the initial reports
17 that you reviewed prior to the forensic interview, it was
18 alleged that this occurred in the living room, correct?

19 A I would have to look at my report.

20 Q You brought a copy, didn't you?

21 A Yes, sir.

22 Q Would you mind taking a look at that?

23 A In my summary of Officer Pierce's report, I don't see
24 anything regarding the incident occurring on the couch.

25 Q You don't see any -- did you review -- I'm sorry. Maybe

1 we should start there. What is it that you're reviewing there?

2 A My investigative summary.

3 Q Which is what? Is that the 30-page document?

4 A No. My report is approximately eight pages.

5 Q Eight pages. Well, as you testified to, all the reports
6 go up to you, correct?

7 A Correct.

8 Q Including Officer Pierce's report, correct?

9 A Correct.

10 Q And that is, in fact, what you reviewed in order to get an
11 initial understanding of the allegations, correct?

12 A Yes.

13 Q Did you bring that with you?

14 A I did not.

15 MR. NEDWICK: May I have a moment, Judge?

16 THE COURT: You may.

17 MR. NEDWICK: May I approach the witness, your Honor?

18 THE COURT: Yes, you may.

19 Q (By Mr. Nedwick) I'm going to give you what shows up as
20 page 9 of -- and 10 of 30 of your master report in this case.

21 Do you recognize that as being part of the report that
22 you compiled and documented in this case?

23 A It would be part of the case record that was presented to
24 the DA's office, yes.

25 Q And you presented it to the DA's office?

1 A That is correct.

2 Q As the case agent, that's your role, is to gather all the
3 evidence and forward it to the district attorney?

4 A Correct.

5 Q And that report there is the report from Officer Pierce.
6 Is that correct?

7 A Yes, sir.

8 Q Have you reviewed it? I know I've been talking since I
9 handed it to you so you may not have had an opportunity to take
10 a look at it.

11 Do you want to refresh your memory, take a moment to
12 refresh your memory?

13 A Yes, sir.

14 Okay.

15 Q And that was a report from the initial phone call that you
16 received on July 14th, correct?

17 A Yes, sir.

18 Q Having refreshed your memory on that, I want to ask you a
19 few questions about what you knew prior to reviewing that
20 forensic interview.

21 You knew at the time -- and the question I already
22 asked that led to this was that Brianna had said that it
23 happened in the living room, correct?

24 A In Officer Pierce's report, yes.

25 Q Well, that's what you were relying on. That's all we're

1 talking about here, is your knowledge and what led you to do
2 the next step and the next step, just like counsel was asking
3 you about on her questions. That's the same thing I'm doing
4 here.

5 You knew that -- from the initial reports, that the
6 allegation was not that this happened in a bedroom, but that it
7 happened in the living room, correct?

8 A Yes, sir.

9 Q And you knew that Brianna had said that Dallas had come
10 into the living room wearing nothing --

11 MS. WHATLEY: Objection.

12 Q (By Mr. Nedwick) -- but his underwear?

13 MS. AUSTIN: May we approach?

14 THE COURT: You may.

15 (The following discussion took place at the bench,
16 outside the hearing of the jury.)

17 MS. WHATLEY: Your Honor, we're now into multiple,
18 multiple layers of hearsay. I think the first couple of
19 questions about what you relied on as it relates to, Hey, you
20 got initial statements, you reviewed those, you relied on
21 those, are appropriate. But now he's asking questions like,
22 You knew that Jeffrey told Pierce and that Brianna told Jeffrey
23 and Jeffrey told Pierce.

24 These are all questions that should have been asked to
25 Jeffrey or should have been asked to Pierce or should have been

1 asked to Brianna. It's just -- I mean, it's hearsay. It's all
2 hearsay without an exception. If he wants to point out when
3 he's arguing something or he wants to point out later that an
4 initial statement was different than a different statement,
5 that's fine.

6 But I mean, I know he's the case agent and I know he
7 has knowledge. But, again, just because he's the case agent
8 doesn't mean that it's not hearsay just because he knows about
9 it. And I didn't elicit any of those statements. I just said
10 you were aware, you're a case agent, you reviewed a report. I
11 didn't elicit any of those hearsay statements. Just asked him,
12 Hey, you got those reports, you went to an interview, you
13 reviewed those, you listened to it. I didn't elicit any of
14 those statements.

15 He's also attempting to refresh his memory with someone
16 else's report, and that also is improper. I mean, he can't --
17 his memory can't be refreshed with reports that he didn't write
18 either. I let it happen for a little bit because he's the case
19 agent. I kind of understand what point he was trying to make
20 and he is the case agent, but this is just completely an
21 improper way to do it, and it's also hearsay.

22 MR. NEDWICK: Your Honor, by definition, it's not
23 hearsay because it's not being offered for the truth of the
24 matter. It's being offered to show that he had certain
25 knowledge that directed him to do or not do the next step.

1 And what he's -- what the detective has described has
2 been normal protocol in these type cases, which came out in
3 direct and also what he did in this particular case and why
4 this particular case might have been a little different than
5 some other cases.

6 So by definition, it's not hearsay because it's not
7 offered for the truth of the matter. I'm not offering that to
8 convince anybody that this happened. I'm offering it for the
9 same reason they would, to show why -- what kind of
10 investigation he did.

11 The critical part is a lack of criminal investigation
12 in this, that it was a very one-sided thing. Despite obvious
13 discrepancies, no investigation was done. Despite these
14 discrepancies, they simply proceeded along, including the fact
15 that he had an initial disclosure -- the only information he
16 had at the time, that was starkly different than what the child
17 said in the forensic interview. It's critical to our defense.

18 MS. WHATLEY: I think you can ask questions like, Was
19 the information different. It's incredibly improper to stand
20 and read a police report to him that's not even his police
21 report.

22 Like he's essentially trying to impeach him with a
23 police report that's not his and then using hearsay to do it.
24 If it's not offered for the truth of the matter asserted, then
25 what is it? He can say, Was the disclosure different. Was it

1 different. Or, Was what you heard in the forensic different
2 than the initial disclosure.

3 He's just -- he's trying to do things and he's doing
4 them improperly.

5 MR. NEDWICK: With all due respect, I differ in my
6 opinion on that. I've -- I know how to do this, and there is
7 nothing wrong in this circumstance of confronting him with
8 statements that he used to determine what he did next in the
9 investigation.

10 They brought it up. They already justified what -- why
11 he didn't do this and why he didn't do that. We're going to
12 get to the bottom of that. And whether they want to say, Well,
13 he can ask general questions -- it's not hearsay.

14 Once it's not hearsay -- and because by definition,
15 anything that's not offered for the truth of the matter is, by
16 definition, not hearsay, then that is exactly -- there's no
17 parameters on how much detail I can get into if that's what he
18 relied upon. He's already made it clear that he did this very
19 report.

20 THE COURT: I overrule the hearsay objection.
21 I think Mr. Nedwick is correct, that it's not being offered for
22 the truth of the matter asserted. So I overrule the objection.

23 MS. WHATLEY: What about the objection of
24 him -- what about the State's other objection of him impeaching
25 him with someone else's statement, with someone else's report?

1 He's literally impeaching him with someone else's statement.
2 It's not his report. He didn't write Officer Pierce's report.
3 Now, I'm not saying he doesn't have knowledge, like
4 basic knowledge, because I know he is the case agent. But he's
5 literally reading the police report and reading words that he
6 didn't write into the record and acting as if --

7 THE COURT: I don't think that's proper.

8 MR. NEDWICK: I'm sorry, Judge. Say it again?

9 THE COURT: I don't think that's a proper way to
10 handle the report.

11 MR. NEDWICK: Okay. I'll just say, You knew this,
12 you knew that.

13 MS. WHATLEY: Even if it's not -- even if it's not
14 his report?

15 THE COURT: Correct.

16 MS. WHATLEY: Okay.

17 (In open court.)

18 Q (By Mr. Nedwick) Okay. Thank you for your patience,
19 Detective.

20 A Yes, sir.

21 Q I believe my question was -- or I'll just ask it fresh so
22 strike whatever question that was, please.

23 You knew at the time you reviewed the forensic
24 interview that Brianna had reported that Mr. Norton walked into
25 the living room wearing nothing but his underwear and sat down

1 next to her on the couch and touched her vagina, correct?

2 A Correct.

3 Q And you knew, at the time of -- you reviewed the forensic
4 interview, that Brianna had said that this happened between
5 November and December of 2018, correct?

6 A Correct.

7 Q So -- and you would have relayed that information to DHS
8 and/or the forensic -- the Mary Abbott House, correct?

9 A I don't know that I would have directed that towards Mary
10 Abbott since I wasn't there for the staffing the day of the
11 forensic interview.

12 Q Okay. But it would have been to DHS. That would have
13 been to people -- as you testified earlier, as -- your role in
14 this is to make sure that whoever's doing the forensic
15 interview has at least enough information to know what's going
16 on?

17 A Correct.

18 Q And that's the only information you had at this point in
19 the investigation from your standpoint?

20 A Correct.

21 Q Okay. So after you reviewed the forensic interview, did
22 you note the discrepancies in what was initially disclosed
23 compared to what was said in the forensic interview?

24 A No.

25 Q And you didn't question any witnesses or anything else to

1 try to get to the bottom of those discrepancies, did you?

2 A The only witness who would have had any information would
3 have been Brianna, and I can't talk to her.

4 Q Okay. Well, there's certainly some things that you could
5 have asked witnesses about, like the timeframe, correct?

6 A I could have.

7 Q But you didn't do that?

8 A No.

9 Q Do you ask anybody about the layout of the house? You
10 said you couldn't go to the house, right?

11 A Could I have asked someone about the layout of the house?

12 Q Yes.

13 A I could have, yes.

14 Q You didn't do that, did you?

15 A I did not.

16 Q And did you -- did you ask Ms. Norton or anybody else if
17 it would be unusual for Mr. Norton to be in the living room in
18 his underwear?

19 A Not that I recall.

20 Q Were you aware who else was alleged to have been at
21 this incident?

22 A I believe it was two other people.

23 Q And you had not attempted to contact anybody else
24 regarding -- to substantiate any of those other details?

25 A I did not.

1 Q I know you said that Ms. Norton no longer lived at that
2 address, at 1500 Fawn Run Crossing. Somebody else lived there
3 by the time you started investigating this. Is that correct?

4 A By the time I talked to Tiffany, they had moved. I don't
5 know the exact date when they did move.

6 Q Okay. So there was a -- there's a possibility that there
7 was a period of time -- well, she was still living at the 1500
8 Fawn Run Crossing at the time of the forensic interview, right,
9 which was the 22nd?

10 A I don't know.

11 Q Fair enough. If you don't remember from the interview --

12 A I remember Brianna saying in her forensic that they were
13 about to move to Yukon.

14 Q Yeah. So we know they were there for at least a couple of
15 days after you got this, right?

16 A Yes, sir.

17 Q But you didn't contact Ms. Norton and try to get over
18 there between the 19th and whenever they moved, correct?

19 A I did not.

20 Q And actually, you never -- you never even talked to
21 Ms. Norton face-to-face, did you?

22 A I did not.

23 Q You didn't talk to Jeffrey Jackson face-to-face?

24 A No, I didn't.

25 Q You didn't talk to anybody, any witness in this case,

1 face-to-face, did you?

2 A I didn't.

3 Q Did you later contact the homeowner, whoever that might
4 have been, and ask them if they would mind if you could come in
5 and take some photos of the home?

6 A I did not.

7 Q And did you ever ask Tiffany Norton to sit down with you
8 and kind of sketch out the layout of the house?

9 A I did not.

10 Q To get a better understanding of where some of this may
11 have happened and where other people were and things like that?
12 You didn't do that?

13 A I don't know that Tiffany would have known where anybody
14 else was at, at the time.

15 Q Well, forgive me. That question was not prior to the
16 forensic interview or immediately after or anything else. At
17 any point -- you've been case agent now on this case for, what,
18 coming up on three years. You never sat down with Ms. Norton
19 or anybody else and tried to get an understanding of what is
20 alleged to be a crime scene, correct?

21 A Correct.

22 Q Now, Counsel asked you a lot of questions about why you
23 wouldn't do certain things as followup, because your
24 expectation, as I understood it, there might not be evidence of
25 that due to the passage of time?

1 A Correct.

2 Q Now, and at the time when you were testifying on direct,
3 you were referring to over a year being the passage of time,
4 correct?

5 A Correct.

6 Q But as we know now, at the time -- the information you had
7 at the time of the forensic interview was that it was more like
8 seven months prior to, right?

9 A Prior to the forensic, the information provided in Officer
10 Pierce's report would indicate a short amount of time, yes.

11 Q Which was your only understanding at the time?

12 A Prior to the forensic, yes.

13 Q Okay. Counsel was talking about what I would -- and
14 you'll probably know more about this than me -- what I would
15 describe as forensic evidence when she was asking you about,
16 you wouldn't expect to see forensic evidence of the touching of
17 a vagina or the placing of a hand on a penis. Is that correct?

18 A Could you repeat the question, please?

19 Q Yeah. So my understanding of what Counsel was asking --
20 and she actually used the term once -- you wouldn't necessarily
21 expect there to be any forensic evidence due to the passage of
22 time?

23 A Correct.

24 Q But the location of events is always useful in an
25 investigation, isn't it?

1 A It depends.

2 Q Okay. Well, let me ask you this. In this case in
3 particular, this exhibit that Mr. Norton produced has been used
4 repeatedly by both sides. The jury has heard all of us refer
5 to it repeatedly.

6 Don't you believe that -- like we do -- that it is
7 helpful to give a jury an understanding of where things took
8 place and have the opportunity to judge the credibility of a
9 statement and see if it matches up with the physical
10 environment? Don't you think that's useful?

11 A I could see the potential value in them seeing the outline
12 -- the layout of the house, yes.

13 Q Other than the report that you signed and then the others
14 that you compiled from the other officers, what else did you
15 produce in this case or preserve -- put together as part of the
16 case file?

17 A I believe there were three audio recordings, one interview
18 with Jeffrey, interview with Tiffany, and an interview with
19 Bailey, the former babysitter.

20 Q And to be clear, the interview with Mr. Jackson that was
21 recorded, that was the very short followup giving him an
22 update, correct?

23 A Correct.

24 Q You weren't getting information from him; you were
25 relaying information to him about where the investigation stood

1 and that kind of thing?

2 A The quality of the report is -- I believe that is correct.

3 Q It was a relatively short conversation, correct?

4 A It was.

5 Q And under three minutes to your recollection?

6 Short is good enough?

7 A That sounds accurate.

8 Q Gotcha. There was a -- there was testimony from Officer
9 Pierce about a recording he made of this conversation with
10 Jeffrey Jackson, the initial disclosure, the report to Norman
11 PD that started this investigation. He indicated that he
12 downloaded it to the case file, and as far as he knows, it's
13 part of the case file.

14 Did you ever see that recording?

15 A I believe you're probably referring to his body cam
16 footage.

17 Q That's correct.

18 A It would be typical to go and watch officer's body cam,
19 but I can't specifically say that I did in this case.

20 Q Did you make sure it was part of the case file, though,
21 preserved as part of the case file?

22 A Without accessing the system, I wouldn't be able to tell
23 you.

24 Q Okay. Now, I think there was something in your report
25 where you kind of summarized the evidence in this case and so

1 on and so forth. Isn't that typical where you just kind of put
2 bullet points of who you've talked to and what has been
3 recorded, what hasn't been recorded? Doesn't that normally go
4 in your report?

5 A Typically, yes, in the recording and evidence section at
6 the end of the report.

7 Q Okay. Would you review that section of your report and
8 see if you noted a recording of that Pierce phone call with
9 Mr. Jackson?

10 A I'm sorry. You said Mr. Jackson?

11 Q Yeah. Did I mess that up? Jeffrey Jackson, the
12 biological father, the person who made the report to Norman PD.

13 Did you find it?

14 A Where I had listed Jeffrey, yes.

15 Q Okay. That there was a recording of that?

16 A There was not.

17 Q There was not. According to your report, there was never
18 a recording preserved of that telephone conversation, whether
19 it was body cam or any other kind of recording?

20 A From my interview with Jeffrey?

21 Q No. Pierce interview on July 14th, the one where --

22 A I didn't make any note of Officer Pierce's -- of my
23 preserving Officer Pierce's file.

24 Q Did you note anywhere in your 30-page report that as part
25 of this report, there are the following reports and plus we

1 have recordings of this, this, and this? You did that in this
2 report, didn't you?

3 A I don't believe that I did.

4 Q When there was a recording, you didn't note it in your
5 report?

6 A I noted the recordings that I uploaded to our database.

7 Q I'm sorry. That last question, that's what that was
8 about, was in your report, you did note the recordings that you
9 knew of, correct?

10 A I documented the recordings that I personally uploaded to
11 the database. Nobody else.

12 Q Okay. Now, again, as the case agent, you're responsible
13 for the preservation of the entire investigation. The initial
14 officer, Pierce in this case, which he testified to, he's out
15 there getting an initial report, he preserves, and then he's
16 done with it unless asked to follow up after he makes his
17 report, right?

18 From that point, it's assigned to you and your
19 responsibility. Wouldn't you agree with that?

20 A In a sense, yes. He would not preserve it. He would
21 reconnect his camera to the system. It would upload the file
22 automatically into the database. It would be either my
23 responsibility or another detective's responsibility to
24 preserve that specific file so that it's not purged from the
25 system.

1 Q Did you preserve that recording of Jeffrey Jackson where
2 all this information of the initial disclosure that you relied
3 upon to contact DHS -- did you ever preserve that?

4 A Without logging into the system and checking, I wouldn't
5 be able to tell you.

6 Q Okay. Did you turn over a recording of that to the DA or
7 anybody else?

8 A No.

9 Q I want to go back to a quick subject I almost forgot
10 about. When we're talking about interviewing witnesses to see
11 if there was the possibility for corroborating the allegations,
12 we talked about visiting the home. Wouldn't it be useful to
13 know if there were cameras set up in the house where this is
14 alleged to have happened?

15 A Would it have been useful to know if there were cameras
16 set up? Is that -- do I understand the question?

17 Q Wouldn't it be useful, in any investigation, to know if
18 there is footage of the alleged event?

19 A Yes, it would be useful.

20 Q And Ms. Norton nor anybody else ever told you that there
21 were cameras placed inside the dining room and living room of
22 this alleged crime scene, did she?

23 A I was not told that.

24 Q And you never asked, in fairness, correct?

25 A Correct.

1 Q More and more, that's something that's kind of a checklist
2 thing with you guys, isn't it, where you -- they knock on my
3 door more than once and say, Hey, we noticed you have video
4 cameras on the exterior of your house, any chance we could take
5 a look at that, there was a burglary up the street?

6 A That happens, yes.

7 Q Pretty common now, right?

8 A Yes.

9 Q You mentioned that you had a conversation with Bailey
10 Ferguson as part of your investigation?

11 A Yes, sir.

12 Q And that also was done over the phone, correct?

13 A Correct.

14 Q And during that conversation, you asked her if there were
15 any messages that went along with the pictures that she said
16 she had that were sent to her, correct?

17 A Maybe a text to go along with the photos that -- if I
18 understand you correctly?

19 Q Yes, that's right.

20 A I can't recall.

21 Q Let me ask you this. If she would have told you -- now,
22 my understanding from earlier testimony in your investigation,
23 the pictures -- the photos were not preserved, correct? The
24 Snapchat photos?

25 A I didn't previously testify to that.

1 Q I understand.

2 A But yes, in the interview I asked if she had preserved
3 that, and she said no.

4 Q And she talked about how you have to intentionally
5 preserve them, correct?

6 A I don't recall what she said.

7 Q At any rate, she told you in response to your question
8 that there was no -- there were no messages that went along
9 with these photos that might still be on there, not like a
10 picture, but might still be on there, right?

11 A Could you repeat the question, please?

12 Q So she told you -- you asked her if there were messages
13 that went along with these photos that were allegedly sent to
14 her on Snapchat. And she told you no, correct?

15 A Again, I don't recall.

16 Q Okay. If you don't recall, that's fine.

17 Officer -- or excuse me, Detective -- sorry about
18 that -- did you receive the subpoena duces tecum that we served
19 you with to have you come and testify?

20 A I did.

21 Q And what was your understanding of what you were required
22 to bring with you to your testimony today?

23 A My understanding was to bring anything that I had not
24 already provided.

25 Q And where did you get that understanding?

1 A I guess I kind of paraphrased what was in there. You need
2 to bring all these things on the off chance that there was
3 something you did not already provide.

4 Q So the thing that you did bring, you had already provided
5 that. That document that you did bring, that part of your
6 report, that's something you -- you know you provided that
7 previously, right?

8 A Correct.

9 Q So you didn't bring that because you were complying with
10 what your understanding of the subpoena was, right?

11 MS. WHATLEY: Your Honor, may we approach?

12 THE COURT: You may.

13 (The following discussion took place at the bench,
14 outside the hearing of the jury:)

15 MS. WHATLEY: Your Honor, at this time, I don't
16 believe these types of questions are appropriate things to be
17 discussed in front of the jury. These are questions that
18 Mr. Nedwick can ask outside the presence of the jury, to ask
19 the -- Detective Judy if he complied with Mr. Nedwick's
20 subpoena duces tecum.

21 I don't -- I'm not sure I understand what he's trying
22 to do other than perhaps inflame the jury about the State's
23 witnesses or something. Honestly, I'm not sure. But questions
24 as it relates to subpoenas, and if somebody's complied with a
25 subpoena, I have never in my career seen an attorney try to ask

1 questions about complying with a subpoena in front of the jury
2 without first handling those things outside the presence of the
3 jury first.

4 MR. NEDWICK: One, I asked him what his understanding
5 was. But secondly, I specifically requested that he bring
6 certain things so that during his testimony, we wouldn't have
7 situations like we had a moment ago where we have to interrupt
8 court and go make a copy of a report that he's already been
9 told to bring, he knows to bring, even without a subpoena duces
10 tecum, by the way.

11 But at any rate, I specifically put it in the subpoena
12 duces tecum to remind him, bring everything including all
13 narratives. And that's what I intend to go over with him, is
14 all the stuff that he was supposed to bring.

15 MS. WHATLEY: Was there -- I feel like it's
16 professional courtesy to ask those types of questions of the
17 witness outside the presence of the jury. You can say, Hey, do
18 you have everything that you need before we begin this
19 questioning.

20 Like Mr. Nedwick knows what he's doing. And he's doing
21 it on purpose in front of the jury. These are things that
22 don't need to happen in front of the jury. I don't --
23 Mr. Nedwick is allowed to, you know, do his job however he
24 wants to do his job. But, again, these aren't questions that
25 need to be asked in front of the jury about, did you comply

1 with the subpoena duces tecum in what you brought.

2 Again, usually -- usually, witnesses are not refreshing
3 their memory with other people's reports. Most of the time,
4 officers bring their own reports because that is the common
5 practice where they refresh their own memory with their own
6 report. They're normally not allowed to refresh their memory
7 with someone else's report.

8 So it's common practice to know to bring their own
9 reports. I'm sure he's doing what he's always done. These are
10 things that Mr. Nedwick could have had a phone call with him,
11 could have talked to him about. These are not things that need
12 to be done wasting the jurors' time, talking about a subpoena
13 duces tecum and what he brought with him.

14 MR. NEDWICK: That is expressly why I do this, is to
15 not waste the jury's time because it happens all the time in
16 cases. Well, I didn't bring that with me. I don't know. And
17 then we're stuck with, Well, okay, you have to go back to the
18 office and download this or whatever.

19 THE COURT: At this rate, I don't think that
20 Mr. Nedwick's questions have prejudiced the jury. I would ask
21 you how much more of this line of questioning do you have, and
22 if so, maybe we do need to take a break to make sure that
23 Detective Judy has everything he needs.

24 MS. AUSTIN: And also, the subpoena duces tecum that
25 he served on all these police officers and on Detective Judy,

1 we weren't allowed yesterday to -- they were going to tell them
2 that at 1:00 today was appropriate, for them to be here with
3 everything today because they served them for their case.

4 And so if there's things he needs to be bringing every
5 single thing, he can bring it at 1:00 today when he was told to
6 be here in response to that subpoena duces tecum.

7 MR. NEDWICK: That's true. That's absolutely true.

8 MS. AUSTIN: We're not late for that yet. I mean,
9 he's not.

10 THE COURT: Okay. Again, I don't think it prejudices
11 the jury, so I think we need to plow ahead.

12 MR. NEDWICK: Okay.

13 THE COURT: Okay.

14 (In open court.)

15 MR. NEDWICK: May I approach the witness, your Honor?

16 THE COURT: You may.

17 Q (By Mr. Nedwick) I'm going to give Detective Judy a copy
18 of the subpoena duces tecum that we sent to you. Would you
19 review that, and then I have a couple of questions for you,
20 particularly with the numbered paragraphs there.

21 A Okay.

22 Q Would you agree with me that there are four numbered
23 paragraphs where we specifically identified things for you to
24 bring into court with you today?

25 A Yes, sir.

1 Q And if I could direct you to Paragraph 1, the last part of
2 the sentence there, we asked you to not only bring your own
3 reports, but and/or reports you relied upon by you to conduct
4 your investigation in the above referenced case, right?

5 A Yes, sir.

6 Q Okay. When you talked to Jeffrey Jackson, even though
7 we've got the one short, bad recording for the update, and then
8 no recording of any other conversation, do you know what other
9 day you talked to Jeffrey Jackson other than that short one?

10 A I don't.

11 Q Do you -- maybe refer to your report to refresh your
12 memory if there was another conversation with Jeffrey Jackson.

13 I might be able to help you, Detective. Do you have
14 page 28 of 30? If you'll review that and see if that refreshes
15 your memory on whether there was two conversations with
16 Jeffrey.

17 A Yes. There was more than one conversation.

18 Q Okay. And based upon your review of the report that I
19 brought you, it looks like there was a more in-depth
20 conversation with Jeffrey, correct?

21 A Yes.

22 Q And the purpose of that was to confirm the things you --
23 he had relayed to Officer Pierce according to the report,
24 correct?

25 A Correct.

1 Q And did -- was there any time during that conversation
2 where you specifically contacted Jeffrey to confirm what he had
3 told Pierce that he said, No, I -- that's not what happened, I
4 got it wrong?

5 A No.

6 Q Obviously, had he told you that he got it wrong, you would
7 have documented that, correct?

8 A Yes, sir.

9 Q Did you note the date of that conversation, by the way?

10 A I did not.

11 Q So we don't know the date of that one.

12 I'm going to need to get that back from you because
13 that's my only copy.

14 MR. NEDWICK: May I have just a moment, your Honor?

15 THE COURT: You may.

16 Q (By Mr. Nedwick) Detective, if you'll bear with me a
17 moment?

18 A Sure.

19 Q You earlier testified that you didn't remember something
20 from the conversation with Bailey. So if Mr. Douglas is true
21 to his word, he's going to let you listen -- would it refresh
22 your memory if you heard the portion of that conversation that
23 you recorded?

24 A It would.

25 Q With Bailey Ferguson?

1 A Yes.

2 (Witness listens to recorded conversation.)

3 THE WITNESS: Thank you.

4 Q (By Mr. Nedwick) After having listened to that portion of
5 your conversation with Ms. Ferguson, does that refresh your
6 memory?

7 A Yes, sir.

8 Q And isn't it true that she did, in fact -- you
9 specifically asked her if any messages were associated with
10 these photos and she said no?

11 A That's correct.

12 MR. NEDWICK: Nothing further, your Honor.

13 Pass the witness.

14 Thank you, Detective.

15 MS. WHATLEY: Judge, may we approach?

16 THE COURT: Yes.

17 (The following discussion took place at the bench,
18 outside the hearing of the jury:)

19 MS. WHATLEY: Your Honor, at this time, the State of
20 Oklahoma believes that Mr. Nedwick and the defense has opened
21 the door to specific lines of questioning.

22 Mr. Nedwick asked specifically that -- he asked a
23 couple of different lines of questioning. He told him that he
24 asked Mr. -- he asked Detective Judy, You never tried to sit
25 down with anyone else to try to get any understanding from

1 anyone else about what went on in that house to confirm these
2 allegations that Brianna Jackson made in that forensic
3 interview. And that is not true.

4 He tried to interview his client and their office
5 declined to be interviewed. You can't ask that question when
6 you know that you declined an interview. You cannot do that,
7 and the case law is absolutely clear, because he knows that
8 they declined that interview. So we should be able to ask a
9 question that that's not true, tried to interview him, and he
10 declined an interview.

11 The other thing I think that we get to ask based on
12 that specific line of questioning, because he asked over and
13 over and over, You didn't do anything else, you didn't do
14 anything else. It's not true.

15 He ran his background. He looked up his background, he
16 researched his background, and he found a 2005 masturbation
17 case for indecent exposure where he was masturbating in public.
18 He researched that, and he looked that up. So there were
19 several other things that he did in this case.

20 And he made a big, big deal about how inept he is and
21 how terrible of a job he did, all the while knowing that he did
22 all of these other things because they're in the police report.
23 You cannot do that when you know that he's done all those other
24 things. You can't hide behind that and act like he didn't do
25 anything.

1 MS. AUSTIN: And he asked him specifically, What else
2 is included in your file, in your case file. And one of the
3 things included in his case file was an Information filed in
4 Oklahoma County and a PC affidavit from that case. That was
5 included in his case file.

6 I was kind of afraid that Detective Judy was going to
7 answer that and say that that was included in his case file,
8 but we had specifically told him not to talk about that,
9 because it is something that was included in his case file, was
10 that other case with a PC affidavit.

11 MR. NEDWICK: One, I would like to see that case law.
12 It's easy to say the case law is clear. What the case law is
13 clear on is that there's no comment whatsoever on a defendant's
14 right to remain silent. That's what the case law's clear on.

15 So if they have case law that says that when an officer
16 -- an officer is questioned every time about what he did in a
17 case. Every time. They never include that. That's in every
18 case. Because they know that that's -- so it's inherent that
19 when you talk about what is -- what you did, who you tried to
20 contact in this case, that you tried to contact a defendant,
21 you don't get to testify to it.

22 If the question were limited to, Other than the
23 defendant, who did you contact in this case -- that's not the
24 way it has ever been. That is, again, getting into the
25 defendant's constitutional right, (undistinguishable) the Fifth

1 Amendment, which has never been proper. And that's why he
2 doesn't testify -- he or any other seasoned officer -- testify
3 to that without me having to tell them that that doesn't
4 include that.

5 Obviously, that would already tell the jury if I had to
6 do that or any defendant had to.

7 MS. WHATLEY: The problem is -- and I've got to find
8 the specific case. The problem is he can't argue that nothing
9 was done. That's the problem. If he hadn't argued that -- you
10 don't get to argue that way when you know that that's not what
11 happened.

12 MR. NEDWICK: I haven't argued.

13 MS. WHATLEY: It's -- you can't ask questions and you
14 can't say, You didn't do anything else, you didn't do that,
15 isn't that true, this is the only thing you did, when you know
16 from the report that that's not true.

17 That's like -- that's the point and that's the problem.
18 And that's what the case law says. It's not that we get to
19 make comments about a defendant's right to remain silent,
20 because obviously I didn't elicit any of that. I would never
21 elicit any of those statements because I know that I can't do
22 that.

23 But when a defense attorney stands up and they start
24 acting like that law enforcement didn't do anything and their
25 investigation stinks and they didn't try to do anything and

1 they didn't do a full and complete investigation and they
2 didn't try to ask anybody and they didn't try to confirm any
3 details, then it starts to become a problem because they know
4 that that's contrary to what the investigation showed.

5 Then that's what the problem is. It's because of the
6 questions that Mr. Nedwick asked. And I know that there is a
7 case. I just have to find it.

8 MR. NEDWICK: And, Judge, name one criminal trial
9 where a defendant doesn't question the investigation, the
10 sufficiency of the investigation that was done. It's at issue
11 in every case. That doesn't open the door for them to talk
12 about that. That's --

13 MS. AUSTIN: And I don't disagree. The
14 investigation's always at issue. However, when you ask
15 questions and specifically, You didn't sit down -- You didn't
16 try to sit down with anybody else to ask them the details of
17 this, it makes it sound like he didn't try to sit down with the
18 defendant. He's hiding behind that.

19 He asked the question. All he had to say was, You
20 didn't do anything additional. But when you say, You didn't
21 try to sit down with anybody else and get information, that is
22 hiding behind that. And it insinuates to this jury that he did
23 not try to contact the defendant. And if he hadn't asked that
24 question, we wouldn't be up here talking about it

25 He opened the door to it when he said, You didn't try

1 to talk to anybody else to get the details of this case. He
2 did. His answer to that question is not, No. His answer to
3 that question should have been, Yes. But he knew better than
4 to do that because we told him not to.

5 But the answer is, Yes, I tried to sit down with the
6 defendant, and he declined. You can't hide behind that and ask
7 that kind of question and make them elicit an answer that's not
8 relevant. But he has to do it because of the law.

9 And now we're stuck with them thinking that didn't
10 happen. But it did. He asked the question. He shouldn't have
11 asked it if he didn't want the answer to be, Tried to contact
12 the defendant. You don't get to hide behind the Fifth
13 Amendment when you open the door like they did.

14 MR. NEDWICK: To the extent that it matters, which I
15 don't think it does, Judge, I think that's mischaracterizing
16 the question.

17 What I asked -- when I asked, You didn't -- one, I
18 didn't say try -- I said, You didn't sit down with anybody
19 face-to-face in this case, all of them were done over the
20 phone. That was that question about the face-to-face.

21 The only other time I talked about in person, sitting
22 down with somebody in person, was to get a better understanding
23 of the layout of the house. You didn't -- the only other time
24 that I asked a specific question about sitting down with
25 somebody face-to-face was in reference to getting a better

1 understanding of the layout of the house and diagramming it
2 out.

3 Those -- when she talked -- when she talks about me
4 asking a question, You didn't try to contact anybody else,
5 that's not what my question was as it relates to what -- the
6 part that she's talking about, face-to-face.

7 MS. WHATLEY: The question wasn't that, You never
8 tried to sit down with anyone else to try to get an
9 understanding from anyone else about what went on inside that
10 house and inside that room?

11 MR. NEDWICK: Huh-uh.

12 MS. WHATLEY: I wrote it down.

13 MR. NEDWICK: But, again, that question -- it's
14 inherent. Can you imagine the hopscotching that we're all on
15 if you couldn't question about an investigation? It's inherent
16 that they know that when you're questioning about an
17 investigation, that part of it doesn't come in, anything you
18 did in relation to the Fifth Amendment. That's inherent in
19 every single trial. This is nothing new.

20 They don't like -- well, I'm not going to make any
21 commentary.

22 THE COURT: So there will be an instruction given, if
23 the defendant chooses not to testify, that you can't hold that
24 against the defendant. Can there not also be an instruction,
25 if he does testify, that he, you know, that he can assert his

1 Fifth Amendment rights throughout this process and you can't
2 hold that against him?

3 MS. AUSTIN: We've never instructed on that before.
4 But the main premises is that we can't ask if someone has
5 lawyered up. We can't ask about it. We can't talk about it
6 whatsoever unless the door is opened.

7 It's just like if evidence had been suppressed, if it
8 had been suppressed here and like there had been something
9 found in the house and weapons suppressed, we can't get up and
10 say, You didn't find anything in the house, did you. It opens
11 the door that evidence has been suppressed.

12 Regardless of the Court's previous ruling, you can't
13 argue something that you can't -- sorry -- you can't ask
14 questions of things you know not to be true. In this
15 particular case, he opened the door when he said, You never
16 tried to sit down with anyone else. He, in fact, did try to
17 sit down with somebody else.

18 Now, We would never get into the fact that he said, I
19 want a lawyer. He just declined the interview, is all we
20 would -- we would never say that he lawyered up. But we have
21 cases all the time where defense attorneys say that, you know,
22 I went out to the house, I knocked on the door, he didn't call
23 me back, those types of things. Same type of thing here.

24 But you can't get up and say he never tried to do it,
25 because he just said, No, which he had to say no because of the

1 way we instructed him. But that was not truthful. And it
2 makes it sound like he did not. He did. And they made a
3 choice when they asked that question when he says, You never
4 tried to sit down with anyone else.

5 He could have said other people who lived in that home
6 or other witnesses other than defendant. He didn't do that.
7 He said, Anyone else. And it makes it sound disingenuous, that
8 he did not do his job. But he did do his job. He tried to
9 contact the defendant, and the defendant said no.

10 MR. NEDWICK: So couple of things there. Again, when
11 she says I can say it this way but not that way, she says it's
12 okay -- and for the record, Ms. Austin, I'm referring to. She
13 says it's okay to ask, What did you do as part of your
14 investigation. That doesn't open a door when he leaves out
15 those things. It's not until follow-up questions.

16 It's just as untrue in that question, which is asked in
17 every single trial, what did you do as part of your
18 investigation in this case. On direct and cross it's done.
19 There's no difference. It's the way you ask the question. The
20 principle's the same. They know that when that question's
21 asked, you leave that part out. That's inherent.

22 THE COURT: Well, the way I stand right now is I'm --
23 I'm not going to go along with the State that I believe
24 Mr. Nedwick's opened the door. I think that it would be
25 prejudicial to the defendant to allow for the State to elicit

1 that testimony from Detective Judy.

2 MR. NEDWICK: Thank you, your Honor.

3 MS. AUSTIN: What about the other issue with the
4 other police reports in his file that he -- that when he asked
5 him was there anything else you included in your case file.
6 There was. It was an another investigation on this, the other
7 charge this defendant had.

8 MS. WHATLEY: It just makes it sound like --

9 MR. NEDWICK: Every other case. Just like every
10 other case.

11 MS. WHATLEY: No, it doesn't. It makes it sound -- I
12 understand the Court's ruling; I'm not trying to argue with the
13 Court. But it's disingenuous because it makes it sound like he
14 did nothing else, and he did do lots of other things that they
15 can't hear about. And it's not truthful. And it's the
16 defendant hiding behind the law. And it -- he just -- he did
17 do other things.

18 MR. NEDWICK: He did the two things that are done in
19 every single criminal investigation and which are excluded in
20 every single criminal trial. That's it. There's not lots of
21 other things. There's two things. Did a background check and
22 he tried to get an interview. That's every case.

23 MS. AUSTIN: That's why you don't ask the specific
24 question. As a defense attorney, you don't say --

25 MR. NEDWICK: We're still waiting on the case law

1 that draws that distinction.

2 MS. AUSTIN: -- Did you -- What else was in your case
3 file. When you turned over your case file, what else was in
4 it. He shouldn't have asked that because there was something
5 else in it, and he knows there was something else in it.

6 THE COURT: Well, that's my ruling. If there's a
7 specific case, you can bring it back up to me.

8 MS. WHATLEY: Okay.

9 (In open court.)

10 | REDIRECT EXAMINATION

11 BY MS. WHATLEY:

12 Q Detective Judy, Mr. Nedwick asked you questions as it
13 related to interviewing other kids. Do you recall that
14 question?

15 A Yes

16 Q Those other kids were interviewed by DHS, and disclosures
17 weren't made. Isn't that correct?

18 A I don't recall.

19 Q You don't recall if they were a part of another DHS
20 investigation?

21 A I do not. Yeah, I don't recall.

22 Q Okay. Were there other case assignments that you had at
23 the same time that you had this case assignment?

24 A Yes, ma'am.

25 Q What were -- what else was kind of going on at the same

1 time that you had this case assignment?

2 A We were finishing a homicide, stabbing homicide that
3 occurred on July 1st. I was also working on another child
4 investigation where a child -- this was a five-year period
5 before disclosure.

6 MR. NEDWICK: Objection, your Honor.

7 THE COURT: Want to come up?

8 MR. NEDWICK: May we approach?

9 THE COURT: Yep.

10 (The following discussion took place at the bench,
11 outside the hearing of the jury:)

12 MR. NEDWICK: I move to strike, your Honor. Getting
13 into details of another investigation, that has nothing to do
14 with this case, except for apparently trying to bolster the
15 delayed disclosure by Brianna.

16 He doesn't get to talk about the other cases that he's
17 investigating. He can certainly in response say that he had
18 other cases, but getting into the details of those cases is
19 clearly improper and irrelevant.

20 MS. WHATLEY: Well, I don't think that his answer
21 about what other cases that he was working bolsters the
22 disclosure of Brianna. That has nothing to do with her
23 disclosure. I do think it helps answer some of the attacks by
24 Mr. Nedwick as it relates to the timing of some of the things
25 that he did or he didn't do.

1 Because obviously, there are -- there has to be an
2 order in which things are done when you are assigned to
3 multiple cases at a time.

4 MR. NEDWICK: Which is why I didn't object to the
5 question. I objected when he answered using details, saying,
6 which was a five-year disclosure, delayed disclosure. That has
7 nothing to do with it.

8 THE COURT: I'm not going to strike the answer. I do
9 want to know from Ms. Whatley what your next question's going
10 to be.

11 MS. WHATLEY: My next question was just going to be,
12 based on what kind of cases -- like what kind of cases you have
13 at a time, is there a specific like -- I won't say order of
14 importance -- but do you have to do things in a specific order
15 like if there's an active homicide or something like that,
16 based on the safety, based on active crime scenes, things like
17 that -- order that you have to work cases.

18 MR. NEDWICK: I have no objection to any of that.

19 THE COURT: You may proceed.

20 MS. WHATLEY: Thank you.

21 MR. NEDWICK: Judge, should probably instruct him
22 because, again, her question wasn't faulty. It was just the
23 answer. So maybe she should --

24 MS. WHATLEY: Did you rule that the answer was --

25 THE COURT: I ruled that I'm not going to strike the

1 answer.

2 MR. NEDWICK: No, I know. I'm not saying that.

3 I'm saying to avoid -- so he understands that we're not --

4 MS. WHATLEY: My next question doesn't have anything
5 to do with that.

6 THE COURT: Okay.

7 (In open court.)

8 Q (By Ms. Whatley) Detective Judy, I'm sure you don't know
9 the exact answer, but at any given time, do you have several
10 case assignments at once?

11 A Yes. Approximately 12 to 15 at any one time.

12 Q And do those range in all different kinds of cases?

13 A At that period, it would have been predominantly crimes
14 against children.

15 Q And all different kinds of priority?

16 A Correct.

17 Q And in the Norman Police Department, do detectives -- the
18 way that detectives in CID work homicides, do you all work them
19 together?

20 A In the initial --

21 Q That might have been a bad question. You don't work them
22 as partners?

23 A Homicides?

24 Q Yes, homicides.

25 A They work in teams of two typically.

1 Q But like if a homicide happens, does the whole CID unit
2 work on a homicide?

3 A Yes.

4 Q Okay. And again, these might be bad questions, but when a
5 homicide happens, does that mean kind of all of CID is working
6 on that at a time?

7 A That's correct.

8 Q Maybe not in big roles, but everybody's trying to do as
9 much as they can at any given time?

10 A Correct.

11 Q Is that -- and same question on like big cases.

12 A Correct.

13 Q And what I mean by big cases is cases in which there's
14 active crime scenes?

15 A Correct.

16 Q Cases in which there's multiple victims?

17 A Correct.

18 Q Cases in which victims are unsafe?

19 A Correct.

20 Q Cases in which there's multiple crime scenes?

21 A Correct.

22 Q Because of that, do certain cases have to take priority
23 over other cases?

24 A Unfortunately, they do.

25 Q And do those cases have to take priority when other cases

1 -- you know those victims are safe?

2 A Yes.

3 Q Okay. Now, you -- there was a lot of questions as it
4 related to the body cam. And I got a little confused, and
5 maybe I'm the only one. But I just wanted to clear up the body
6 cam as it related to Officer Pierce.

7 So you know that body cam existed for Officer Pierce
8 when he went to Tiffany Norton's home in Norman on Fawn Run
9 Crossing. There's at least one body cam, correct?

10 A Correct.

11 Q There was one body cam, though, that was not preserved,
12 correct?

13 MR. NEDWICK: Objection as to leading, your Honor.

14 THE COURT: Sustained.

15 Q (By Ms. Whatley) Did you ever review a body cam footage of
16 him speaking with Jeffrey Jackson?

17 A I don't believe so.

18 Q So do you believe that that body camera was purged?

19 A If the camera was on at the time that he contacted him and
20 it was in the system, then, yes, it was purged.

21 Q What does purged mean in terms of body cameras?

22 A So due to storage limitations, storage in the cloud, we
23 can only -- it can only hold so much footage at any one time.
24 If it's not attached to a case, if it's not -- further steps
25 aren't taken to preserve it, then it is eliminated from the

1 system to make space for newer videos.

2 Q Do those types of things sometimes happen for phone
3 reports?

4 A Are they purged or --

5 Q Yes. Is that --

6 A -- are the cameras used at all?

7 Q Okay. Well, I'll ask it both ways. Can it be purged --
8 are body cameras purged for phone reports sometimes?

9 A Yes.

10 Q Sometimes are body cameras just not turned on for phone
11 records?

12 A Correct.

13 Q Did you look for body camera footage for that specific
14 incident from Officer Pierce for that time period?

15 Let me ask it this way. Did the State of Oklahoma --
16 did the DA's office ask you to go look for all the body camera
17 for Officer Pierce?

18 A No, it did not.

19 Q The district attorney's office didn't ask you to go look
20 for Officer Pierce's body camera?

21 A I don't believe you personally asked me.

22 Q Okay. Did the State of Oklahoma ask someone in your
23 department who handles digital evidence to look for the body
24 camera footage?

25 A Yes.

1 Q Okay. Was that body camera footage found for this
2 conversation with Jeffrey Jackson?

3 A I do not believe so.

4 Q Okay. Do you believe everything that was found for
5 Officer Pierce was turned over to the DA's office?

6 A Yes.

7 Q You did not delete anything as it relates to Officer
8 Pierce purposefully?

9 A No.

10 Q You did not delete any of your recordings purposefully?

11 A No.

12 Q Everything that you had that you recorded was turned over
13 to the DA's office, correct?

14 A Correct.

15 Q Mr. Nedwick asked you questions as it related to -- he
16 asked you a lot of questions about the subpoena and all these
17 things that you were supposed to bring with you today. And I
18 don't think that he was really clear.

19 He was talking about a subpoena that he sent you,
20 correct?

21 A Yes, ma'am.

22 Q His subpoena for you?

23 A Yes.

24 Q Not your subpoena to be here to testify as our witness
25 today. Is that correct?

1 A Correct.

2 Q Some other subpoena that he sent you to come in and
3 testify for him?

4 A Yes.

5 Q Okay. I just wanted to make sure I'm clear -- clear that
6 up for a second.

7 He had also asked you several questions, actually a lot
8 of questions as it relates to Officer Pierce's report. Now,
9 you did not write Officer Pierce's report. Is that correct?

10 A Correct.

11 Q And when you are a case agent in a case -- just so we can
12 make it clear for the jury, because I know you and I are used
13 to these things, but they are not -- when you're the case agent
14 and you submit charges to the DA's office and you bring over a
15 packet, what does that mean?

16 A What that means is that we are responsible -- everything
17 -- when Officer Pierce or Officer Caspers or I submit a report,
18 it is approved by a supervisor, and it is uploaded into our
19 system.

20 After that, when I staffed it with the DA's office,
21 they agreed to file charges. I write the affidavit. I'll go
22 and have additional supplements for the arrest, which will
23 include testimony as to what we can all testify to, the charges
24 that are actually being submitted, and then once it's on the
25 system, an administrative technician goes into the system and

1 prints a case record, which will have everything compiled
2 together, which is why the defendant has a 30-page report,
3 because that is what is compiled by our administrative section.

4 Q So whenever you bring that over, it's like a whole -- the
5 whole case record, all the reports, all together. Is that
6 correct?

7 A Correct.

8 Q And you, you know, print off everything from your internal
9 system. Is that correct?

10 A Our administrative technician does, yes.

11 Q But you don't personally -- like you don't write Officer
12 Pierce's report?

13 A No, ma'am.

14 Q It's included in the whole case record, but he writes his
15 own report?

16 A Correct.

17 Q And you write your own report?

18 A Yes, ma'am.

19 Q Okay. I just wanted to make sure that that was clear.

20 You obviously can review those reports though. Is that
21 correct?

22 A Yes.

23 Q Okay. Now, Mr. Nedwick also asked you questions about,
24 you know, things that were in Officer Pierce's report as it
25 related to, you know, things that he -- information he got from

1 Jeffrey Jackson, that Jeffrey Jackson got from Brianna Jackson,
2 and, you know -- and maybe some information from Caitlin
3 Jackson and how that differed from the forensic interview.

4 Do you remember those questions?

5 A Yes, ma'am.

6 Q And he had said something about -- he asked you -- he
7 said, Well, that was -- I think his question was -- I want to
8 make sure I get this right. I don't want to get it wrong.

9 He said that that was drastically different from the
10 forensic interview. And you said -- I think your words were
11 that you wouldn't say that it was drastically different. Do
12 you recall that?

13 A Yes, ma'am.

14 Q And why would you say that you don't think that's
15 drastically different? Can you explain that for me?

16 A Yes, ma'am. The allegation of what happened, the actual
17 offense, is exactly the same. The room of the house in which
18 it occurred and the date -- the dates that were reported, first
19 to family, then secondly to the forensic interviewer, were
20 different.

21 MS. WHATLEY: I have no further questions for this
22 witness.

23 THE COURT: All right.

24 MR. NEDWICK: Just one question.

25 THE COURT: Yeah, go ahead.

1 RECROSS-EXAMINATION

2 BY MR. NEDWICK:

3 Q Detective, just to be clear, that's all that was
4 different, the room and a date. There was a detailed account
5 of Mr. Norton, in the initial disclosure, walking in to the
6 living room, wearing nothing but his underwear and sitting down
7 next to Brianna, rather than the two of them -- her coming into
8 a bedroom and laying down next to Mr. Norton. Isn't that true?

9 A That is true.

10 Q That's a significant difference, wouldn't you say?

11 A No, sir, I wouldn't.

12 Q Okay.

13 THE COURT: Detective Judy, thank you. You may be
14 excused.

15 THE WITNESS: Yes, sir.

16 THE COURT: Let's go ahead and take a 10-minute
17 break. Be back at 10:30.

18 (Recess was had.)

19

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25

1 MS. AUSTIN: State calls Christi Cornett.

2 CHRISTI CORNETT

3 was called as a witness, and after having been first duly
4 sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MS. AUSTIN:

7 Q Would you please introduce yourself to the jury.

8 A Yes. My name is Christi Cornett.

9 Q And Ms. Cornett, how are you employed?

10 A I am employed as the program director at the Mary Abbott
11 Children's House.

12 Q What is the Mary Abbott Children's House?

13 A The Mary Abbott Children's House or Abbott House for short
14 is a child advocacy center.

15 Q What is a child advocacy center?

16 A A child advocacy center is a nonprofit organization that
17 when there are allegations of abuse or neglect towards a child,
18 we provide services during the course of an investigation.

19 Q And here in Norman -- is the Mary Abbott House here in
20 Norman?

21 A Yes.

22 Q Where is it located?

23 A It is located at 231 East Symmes. So less than a few
24 blocks away.

25 Q Okay. Is it a building, like a workplace building, or

1 what is it?

2 A Yeah. It is -- it's got two parts. So the primary part
3 is an old Victorian house. It's part of the historical
4 society. And then we've added on towards the back of it. That
5 does house like our offices and things like that.

6 Q You said a child advocacy center is there for children who
7 have been victims of abuse or neglect. Is it a place where
8 just -- people just walk in off the street, or what is it?

9 A No. It's a place only people that are referred either
10 through law enforcement or the Department of Human Services
11 with child welfare are able to receive services with us.

12 Q And what type of services do you provide?

13 A At the Mary Abbott House, we provide forensic interviewing
14 services, we provide advocacy, we provide medical services, and
15 we also do educational outreach.

16 Q And you said that one of the things you provide is
17 forensic interviewing. Can you tell us, what is forensic
18 interviewing?

19 A Forensic interviewing is an interview that is fact finding
20 in nature. It is done in a way that is neutral, legally sound,
21 and developmentally appropriate towards the child that's being
22 interviewed.

23 Q And why do we have forensic interviews? What is that?

24 A A forensic interview was designed to provide a space for a
25 child that needs to communicate with somebody that is not a

1 part of the investigation, but they're able to communicate and
2 share their experiences. And as an interviewer, we are there
3 to gather as much information from that child in a way that
4 they're able to narrate their experiences.

5 Q And so you said that you are currently a director of
6 advocacy?

7 A The program director.

8 Q Program director, sorry. It's a new role for me hearing
9 that from you, because have you recently received a promotion?

10 A Yes.

11 Q What was your role prior to that?

12 A Prior to that, I was just a forensic interviewer.

13 Q And so as a forensic interviewer, do you have to go
14 through certain training to be qualified for that?

15 A Yes.

16 Q Can you tell us about that?

17 A Yes. As a forensic interviewer at the Abbott House, we
18 have to begin with doing a basic protocol training. And the
19 protocol training is through a nationally recognized protocol
20 that is recognized through the National Children's Alliance,
21 which is the governing body for the child advocacy centers in
22 the United States.

23 And so that basic training is 40 hours where you do a
24 pre and a post test, as well as do a mock interview. And at
25 the end of that, as long as you've successfully passed all of

1 that, you're able to conduct interviews. At that point, you
2 are also supposed to continue having ongoing trainings and
3 keeping up with research as well as participating in peer
4 review.

5 Q And do you do that, the ongoing trainings and the peer
6 review?

7 A Yes.

8 Q How long have you been doing that job, forensic
9 interviewing?

10 A I've been doing forensic interviewing for over six years.

11 Q And all at the Abbott House?

12 A Yes.

13 Q Do you keep track of how many forensic interviews you have
14 conducted?

15 A Yes.

16 Q How many interviews have you conducted to date?

17 A I have conducted over 1,631 interviews.

18 Q And those interviews, you said, come to you through law
19 enforcement or DHS. Is that right?

20 A Yes.

21 Q Now, you said that for kids that have been victims of
22 either abuse or neglect. What do you mean by neglect?

23 A Yes. As far as at the Abbott House, our criteria to meet
24 services with us is when they have had allegations as to sexual
25 abuse, physical abuse, severe neglect, as far as like lack of

1 supervision or failure to thrive or inadequate or dangerous
2 shelter or home.

3 We also conduct interviews when there's drug
4 endangerment in the home, as well as interviews when a child
5 has been witness to a crime.

6 Q And so when you interview children, are you always there
7 to get disclosures from them about things that happened, or
8 what are you doing for an interview?

9 A As a forensic interviewer, we're not there to get a
10 disclosure or not get a disclosure. Our job is just to provide
11 a space that a child can communicate their experiences in a way
12 that is developmentally appropriate.

13 Q And so when you have these trainings for forensic
14 interviews, and you're trained to do that, you said you do peer
15 reviews. So you do training, education, and peer reviews.
16 What is a peer review?

17 A A peer review is when you are either reviewing another
18 interviewer's interview or your own is being reviewed. And
19 part of -- at the Abbott House, we have to participate not only
20 in our in-house peer review, we participate in state -- several
21 state peer reviews and at times have participated in a national
22 peer review.

23 And so that's when multiple forensic interviewers get
24 together and peer review each other, talk about things that an
25 interviewer has done well, things that could be improved upon,

1 as well as making sure we are up to date on research and best
2 practices.

3 Q So somebody else actually watches your interviews and
4 discusses it with you?

5 A Yes.

6 Q And does that happen at the Abbott House?

7 A Yes.

8 Q Now, you said that the Abbott House is a child advocacy
9 center. Are there multiple child advocacy centers in Oklahoma?

10 A Yes.

11 Q What area does the Mary Abbott Children's house serve?

12 A The Mary Abbott Children's house, we serve District 21,
13 which comprises of Cleveland County, McClain County, and Garvin
14 County. We also conduct interviews for counties that surround
15 us that don't have access to a child advocacy center in their
16 jurisdiction.

17 Q There are some rural areas of Oklahoma -- there are some
18 areas that don't have child advocacy centers?

19 A Correct.

20 Q The metro area -- obviously, Oklahoma City has one too.
21 Is that right?

22 A Yes.

23 Q Do you work with them sometimes because you're close?

24 A Yes.

25 Q There also is a mobile forensic interviewing unit also, is

1 there not, that has an RV to go to small districts for them to
2 have forensic interviewing?

3 A Yes.

4 Q We're fortunate to have the Abbott House here.

5 A Correct.

6 Q The forensic interviewing you said that you have done, a
7 40-hour training in the beginning, but then you keep up with
8 training, are those new and emerging things, or why do you
9 continue to do those trainings?

10 A There's a plethora of reasons why you do those trainings.
11 For me, I've been trained in several different protocols as
12 well as doing advanced trainings where it's not protocol
13 specific but it's interviewing children specific.

14 I've done -- conducted or been a part of trainings
15 where it's geared towards children with developmental
16 disabilities. So there's lots of different avenues you can
17 take. But that helps you continue to advance your skills in
18 talking with a child, as well as making sure that, you know,
19 you are still up to date with what is best practice in a
20 forensic interviewing world.

21 Q And why would we want to talk to a child in a forensic
22 interview setting instead of just having a police officer ask a
23 child something that happened.

24 A Well, one of the reasons is we are specifically trained to
25 conduct an interview with a child at their developmental level.

1 And it's in a place that's supposed to be child friendly and
2 neutral and welcoming, and it's done with somebody that doesn't
3 have any stakes in an investigation. And the other side of it
4 is, at the Mary Abbott Children's House, we also audio and
5 video record our interviews.

6 Q And is there a danger sometimes of police officers or
7 civilians asking a child a question out in the field or at the
8 crime scene or something of that nature?

9 A There can be.

10 Q What can some of those dangers be?

11 A Some of those dangers is that they've asked a question
12 that it could potentially be leading or closed ended, or asked
13 -- asking children questions like where -- if it's at the scene
14 of something that's happened that's been a traumatic experience
15 for them. So there's a danger in asking them in that place and
16 in that environment. And asking questions where that -- the
17 child doesn't understand and so they're trying to provide an
18 answer could present a problem out in the field.

19 Q And what is the danger sometimes of asking leading
20 questions?

21 A A leading question is a question that is asked with the
22 assumption of an answer already in place or that you're leading
23 them towards an answer that you already are asking for. And so
24 the problem with that is that doesn't allow the child to answer
25 in -- with their own information, with what is accurate.

1 Q Like a police officer at a scene asking a child, Somebody
2 touched you, didn't they?

3 A Correct.

4 Q Would make them think they have to answer yes to that?

5 A Correct.

6 Q Or could give them an idea of what to say?

7 A Correct.

8 Q Is there also -- when you're asking questions in a
9 forensic interview, do you give them positive affirmation or
10 try to tell them they're doing a good job or any of those
11 things?

12 A No.

13 Q Why not?

14 A Because in the interview, my role is just to allow that
15 child to share their experiences, and the questions I ask just
16 helps navigate that for them.

17 So I -- oftentimes, when I explain this, I explain it
18 where -- we're there to be -- I don't want to say as a -- as a
19 robot, but in essence, we're not there to give affirmations or
20 to tell somebody that they're not doing a good job or I want a
21 certain answer. We're there to just provide a space for the
22 child to narrate their experience in a way that they're able
23 to.

24 Q Okay. And you said that you're trained on certain
25 protocols. What are protocols?

1 A Protocols are -- there are multiple protocols within the
2 United States that -- a protocol that it's basically how you
3 conduct an interview. Most protocols have stages or points
4 that they have to follow or that they should follow.

5 And all of the protocols that I've been trained in are
6 all recognized through that National Children's Alliance that I
7 told you about.

8 Q So kind of a -- protocols are kind of formats for how to
9 do interviews and how to conduct them, questions to ask, things
10 to follow. Is that right?

11 A Yes.

12 Q And what protocol do you follow at the Mary Abbott
13 Children's house?

14 A We follow the ChildFirst Protocol.

15 Q And is that a nationally recognized protocol?

16 A Yes.

17 Q How long have been following that specific protocol?

18 A We've followed that protocol all the years that I've been
19 at the Abbott House.

20 Q And you said that it's a nationally recognized protocol.
21 Does it include those types of questions that we were talking
22 about a minute ago that you would ask?

23 A Yes.

24 Q And can you tell us, what is a little bit -- can you tell
25 us what -- the ChildFirst protocol, what is that?

1 A The ChildFirst protocol is a semistructured protocol that
2 has four different stages for -- that you can go through within
3 the interview. And it's semistructured. And it's kind of what
4 I would call a guide for a child and the interviewer, in that
5 the interview should still be child led, and it doesn't have to
6 go through every single stage.

7 However, it allows for you to navigate based on what a
8 child has said. So like those four stages, the first one is
9 rapport, and that's where you are getting to know the child,
10 orienting them to the room, letting them know about how you
11 talk in the room. We go over some guidelines. And I let them
12 know about the camera and that there are people watching and
13 just getting to know that child.

14 We do what we call a narrative event practice where we
15 help -- we practice narrating from start to finish a neutral
16 topic. And then at that point, we transition to what is called
17 the topic -- transition to the topic of concern. It's where
18 you do an open invitation and ask why a child had come.

19 And then we start exploring whether it's, you know,
20 their family dynamics or if they make a disclosure at that
21 point, then you can transition to that, explore details where
22 you go back and explore every detail about those disclosures
23 that the child had made.

24 And then the final stage is closure, which you bring
25 the child back to a neutral topic. You thank them and just

1 assess that they have a safe person that they can go to and
2 answer any questions or concerns that a child may have.

3 Q So that's this protocol, the structure of the interview.
4 But like you said, it's child led. So if they jump ahead or to
5 one topic or the other, you can follow their lead?

6 A Yes.

7 Q Do you ever -- when questioning a child, do you ever
8 introduce information to them?

9 A No.

10 Q And why not?

11 A Because my job is not to introduce information. My job is
12 to gather information from that child. And so I ask open-ended
13 questions or -- to allow that child to provide information to
14 me that I can further explore, if there is something to
15 provide.

16 Q So can you tell us what -- or how do kids get to the Mary
17 Abbott House for an interview?

18 A For -- I think I said earlier that children get referred
19 to us through either law enforcement or the Department of Human
20 Services. When there are -- is a police report or a referral
21 that abuse or neglect is alleged to have happened, those
22 investigative agencies will contact us to schedule a forensic
23 interview and any of our other services. And then we schedule
24 it.

25 And then at the day of the interview, then we come in,

1 and I think 30 minutes prior, we'll do a brief staffing just to
2 let me as an interviewer know, you know, what's happened, like
3 what has the child disclosed and who they've disclosed to. And
4 then I meet the child once they get there, and then we start
5 the interview.

6 Q If a child is interviewed out at a scene or by another
7 agency, will you generally interview them after that?

8 A It depends.

9 Q And what does it depend on?

10 A It depends on what all was talked about, what all
11 information was gathered, and how detailed they got. Because a
12 forensic interview is not meant to be a duplicative interview,
13 and it's not meant to re-ask all of the same questions.

14 However, there are circumstances where minimal
15 information may have been gathered. And then at that point, if
16 it's minimal information and it hasn't gone beyond what I can
17 defend, then we can conduct an interview at that point.

18 Q So sometimes you said children are referred to you because
19 they're coming in to talk about something that's happened.
20 Sometimes are they just witnesses to something or maybe present
21 when something else happens?

22 A Yes.

23 Q So not always the child's been a victim of something?

24 A Correct.

25 Q And when you're interviewing a child, do you always get

1 disclosures from children?

2 A No.

3 Q And is that something you continue doing until -- keep
4 talking to them until they say something?

5 A No.

6 Q Why not?

7 A Because that's not the role as a forensic interviewer. My
8 job is not to get a disclosure or even not to get a disclosure.
9 It's just to provide a space for the child to talk about any
10 and everything that they want to talk about.

11 Q And sometimes do children not make a disclosure when
12 there's even been an eyewitness to something happening?

13 A Yes.

14 Q Why would that be?

15 A Because in my training and experience, I've learned that
16 disclosure is a process, and I mean, that disclosure doesn't
17 happen all in one setting. It takes time and it happens over
18 time.

19 And so it really depends on where that child's at in
20 that -- in their disclosure process. If -- for a child to come
21 in, meet with me, who I meet them for the very first time that
22 day, and then open up and make a disclosure to me, it really
23 depends on where they're at in that disclosure process.

24 Q And you don't confront them and say, Well, so and so said
25 they saw this happen?

1 A Correct.

2 Q And why not?

3 A Because that's not my job to confront a child. I'm there
4 to gather the information. And I do -- in the interview, if a
5 child says something that I'm not sure about or doesn't make
6 sense to me, I will ask questions to clarify things. But I'm
7 never going to confront a child.

8 Q And is it your job when doing these interviews before or
9 after to determine whether or not a child is telling the truth?

10 A No.

11 Q Why not?

12 A My job is not to determine if a child's telling the truth
13 or not. I'm there just to gather information and to gather it
14 in a way that is the most reliable possible.

15 Q But do you do things to help get details or other things
16 that might be helpful to an investigation or to follow up on?

17 A Yes.

18 Q And why do you do that?

19 A Because that's part of what my forensic interview process
20 is, is have the child disclose to me, but then also gather as
21 many details surrounding the event, the event that they're
22 disclosing about, and getting not only those concrete -- the
23 who, the what, and the where, but also attempting to get like
24 sensory details. How did something feel, what could you hear,
25 what could you see.

1 So you try to gather every type of detail that you can
2 so that way, if there's something within those things that an
3 investigative agent can go and corroborate or look into, that's
4 something that they're able to do at that point.

5 Q Now, we talked a little bit about how cases come to you.
6 Kind of tell us or walk us through what happens when a child
7 arrives at the Mary Abbott Children's House for an interview.

8 A Once the child arrives, our family advocate will meet with
9 the child and the person that brought them. It can be lots of
10 different people that have brought the child.

11 They'll meet them up at the front of the house, which
12 is the Victorian side of the house. They get them settled.
13 They have a waiting room that has toys and just things to make
14 kids feel comfortable. They often will ask them, you know, if
15 they would like a drink or a snack, and then at that point,
16 just get the family settled.

17 And then the advocate will come back and let me know
18 that the family's here. And during that time, I'm getting my
19 room set up, ready to go, make sure everything I need is in
20 place.

21 And then once I'm aware that the family has arrived, I
22 go and introduce myself to the child, let them know that I'm
23 the one that's going to speak to them. And then I tell them a
24 few things about the room.

25 One of the things I say is that the room will have

1 markers and paper and have Play-Doh in the room in case you
2 just want to do something with your hands while we're talking.
3 It's all there for you.

4 And then I ask the child if they have any questions.
5 And if they do, I try to answer it the best that I can. And
6 then I always introduce myself to the person that brought them
7 just to let them know that, Hey, my name's Christi, and I will
8 be the one talking with the child. And I ask if they have
9 questions and if there's anything that I can answer prior to us
10 getting started.

11 And then at that point, then I step away and go start
12 my recording and make sure I'm ready to go. And then I get the
13 child to do the interview.

14 Q Are parents allowed to come into the interview with you?

15 A No.

16 Q Who is in the interview room?

17 A It's myself and the child.

18 Q And you said that you go start the recording. So are
19 these audio or video recorded?

20 A Yes.

21 Q And are other people able to watch that interview while
22 you're conducting it?

23 A Yeah. The Abbott House policy is only the investigative
24 team is able to watch the interview. And so they are watching
25 the interview in a separate room through a closed circuit TV.

1 Q And what else is in that interview room? What's it like?

2 A Our interview rooms, they've gone through some changes
3 throughout the years. But for the most part, our rooms have
4 just a seating space, whatever that seating space looks like,
5 and a table. And then the things I had told you about; the
6 markers, the paper, and the Play-Doh that a child's able to
7 use.

8 Q And you said that it's recording. Do you tell the
9 children that it's recording?

10 A Yes.

11 Q Why do you do that?

12 A Because for a forensic interview, as an interviewer, I
13 want to make sure the child is aware of everything that's
14 happening in the room because the child is the authority in the
15 room. So I want them to be aware that it's all taking place.

16 So I let them know that there is a camera in the room
17 and it's recording us. And I also let them know that there are
18 people that I work with that watch us talk.

19 Q Okay. At times during the interview, do you ever -- do
20 you step out to see if anyone has another question or anything
21 like that?

22 A Yes.

23 Q Tell us about that.

24 A Yes. Towards the end of an interview, I do step out and
25 check in with the investigative team. At that point, they're

1 able to ask if there's something that's not clear, if I could
2 clarify that, or if there's a question I had forgot.

3 However, at the end of the day, the questions that I
4 ask are my own. And so there are times when they ask me a
5 question that I'll tell them, I can't ask that question or I'm
6 not going to ask that question because it's not developmentally
7 appropriate or it's not an open-ended question for that child.

8 Q And would you ever ask a question, even if someone else
9 wanted you to, that violates the protocols that you are working
10 under?

11 A No.

12 Q Do you take notes during an interview while you're talking
13 to a child?

14 A Yes.

15 Q How do you do that?

16 A Yeah. I take notes with the same markers. And I -- if
17 you see my notes, they're very messy because I'm just jotting
18 things down as the child's talking. So that way if I need to
19 go back and touch base on a part that we had talked about
20 previously, I have that note to help guide me and make sure I'm
21 not forgetting anything that we're talking about.

22 Q And when you're taking those notes, are you taking them on
23 a note pad and holding them back so the child can't see them?

24 A No. It's sitting on the table right in front of the
25 child. And I often tell children that they're able to look at

1 all the notes that I'm taking, and if there's something I'm
2 getting wrong, to tell me about it.

3 And oftentimes, they'll have me correct -- most of the
4 times it's when a name is spelled wrong or things like that.
5 But they'll have me correct my own notes.

6 Q What type of information or how much information do you
7 generally have before you start a forensic interview?

8 A Most of the time, the information I have is what's being
9 alleged or what's being said to have occurred. And then
10 oftentimes, I have if the child's been spoken to previous or
11 before I talk with the child. There are times where I don't
12 have that information and I may have a little bit more as far
13 as like how the disclosure had come about. But at the very
14 minimum, I always have like what the allegations are.

15 Q We talked about that the interviews come to you through
16 DHS or law enforcement. Are you at the Abbott House, or you,
17 yourself, involved with law enforcement in any way?

18 A Outside of what my role entails?

19 Q Yes.

20 A No.

21 Q I mean, like do you work for the police department?

22 A No.

23 Q And you said that sometimes investigators will want you to
24 ask a question that you can't ask. Is that always law
25 enforcement, or is it sometimes DHS?

1 A It's both.

2 Q Sometimes do cases come to you where law enforcement is
3 not involved, it's just child protective services that's
4 involved?

5 A Yes.

6 Q Okay. Now, you said that when you take the child in the
7 room, you sit down and you talk to them. Have you ever had a
8 child refuse to talk to you?

9 A Yes.

10 Q Have you ever had a child get up and leave?

11 A Yes.

12 Q Are they allowed to do so?

13 A Yes.

14 Q What about taking breaks during an interview? Do you do
15 that?

16 A We do, yes.

17 Q And why would that be?

18 A Oftentimes, it's -- if it's -- if it's a longer interview
19 and we've been talking for a while, I often at times have the
20 child leave the room so that way we just take a -- like what I
21 would consider a mental break.

22 And sometimes it's because I need to step out of the
23 room. And sometimes it's because the kid's asking for a break.
24 So there's lots of different factors that go into why we take a
25 break. But those are just some of the most common ones I see.

1 Q While you're taking a break, do you stop the recording, or
2 does the recording continue going?

3 A It continues.

4 Q And where does the child go?

5 A So if the child takes a break outside of the room, I take
6 the child back to the waiting room where the person that
7 they're with is there. Our family advocate is also present in
8 that area to help with the family and whatever needs they have
9 once the child has stepped out of the room.

10 Q Are they allowed to talk to their parents about what has
11 been talked about in the room?

12 A As our family advocate, policy is they advise them -- the
13 caretaker who brought the child -- not to talk about what was
14 happening in the room.

15 Q And if that happens in a particular case, are you notified
16 of that happening?

17 A Most of the time, yes. There are times where it may slip
18 coming to me. But for the most part, I am notified about that.

19 Q And sometimes if it does happen, you may not be notified
20 during the interview but after the interview?

21 A Correct.

22 Q Okay. Do you go and take the break with them? Do you go
23 and hang out with the child outside of the room?

24 A No.

25 Q What do you do?

1 A When a child takes a break, I will take a break as well.
2 Because myself, I collect my thoughts, use the restroom, get a
3 drink, those types of things. And I also check in with the
4 investigators just to make sure that there aren't any questions
5 or clarifying things that they have at that point.

6 Q Are any questions asked of the child by you outside of
7 that room?

8 A No.

9 Q Once the interview is over, what happens?

10 A Once the interview is over, I take the child back to the
11 waiting room, thank them for talking, and excuse myself.

12 For me, at that point, I go and gather all of the
13 papers and things that were used in the room so I can put it in
14 a packet as well as a recording of the interview, and I give it
15 to the investigators.

16 Q Do you keep any of those -- do you keep those things?

17 A No.

18 Q Why not?

19 A Because at that point, we consider that evidence, and then
20 that goes with the lead investigator. And so then we transfer
21 that evidence to them.

22 Q Do you prepare a report after that?

23 A No.

24 Q And so you give the DVD or -- to the investigator?

25 A Yes.

1 Q What if there's DHS and law enforcement there?

2 A They both receive a copy of the DVD.

3 Q Now, we talked about the information that you have prior
4 to beginning. Is it important to know what type of disclosure
5 has been made?

6 A It is helpful, yes.

7 Q Are there different types of disclosures?

8 A Yes.

9 Q And what are the different types of disclosures?

10 A The different types of disclosures that I often see is
11 when it's an accidental disclosure or a purposeful disclosure.

12 Q And what is -- what do those mean?

13 A An accidental disclosure is a disclosure where the child
14 didn't intend to say anything or that someone else is asking
15 them about something. Or I've seen where they are trying to
16 test the water. So they disclose a little bit just to see what
17 the response is. And so those are often when you see those
18 accidental -- where there's not a purposeful intent to make a
19 statement.

20 And then purposeful disclosure is where there's a
21 conscious decision to disclose something to another person.

22 Q And how does that affect how your interview is conducted?

23 A Oftentimes, in my experience, I see when I have a child
24 that is more in a -- is in a purposeful disclosure, they come
25 in and are ready to disclose all of the information that they

1 have.

2 And then with a tentative disclosure, children are
3 often more hesitant, at times will often say, I don't know, or,
4 I don't remember, and don't disclose all of the information all
5 in that setting.

6 Q In an accidental disclosure or tentative, are they ready
7 to talk about it yet?

8 A Not oftentimes.

9 Q Can be, but not often?

10 A Yes.

11 Q And do some of your -- some of the disclosures that are
12 made by children in an interview, does that depend on the
13 questions that you ask?

14 A Absolutely.

15 Q Have you ever watched an interview after you have
16 conducted it and thought, Well, I wish I would have followed up
17 on that, or, I should have asked more questions on that?

18 A Probably on every single interview.

19 Q Always can think of a different thing that you needed to
20 add or ask. Is that right?

21 A Correct.

22 Q If a child says -- well, do children always give you every
23 bit of information in your interview, or sometimes do you find
24 that through the process of disclosure, they might disclose
25 more later?

1 A There are times where they will disclose more later.

2 Q Is that the part of disclosure process, or why is that?

3 A Yeah. That is the part of disclosure process.

4 I think I had said earlier that in my experience, disclosure is
5 a process, and it's not all happening in one setting and in one
6 situation.

7 So it's not uncommon for me to hear that a child may
8 disclose this to me, but then later on, whether through
9 counseling or just time, they've disclosed more or further
10 details about what they had told me.

11 Q And you talked just a second ago about kids saying they
12 don't remember stuff. I mean, in your experience, can kids say
13 they don't remember stuff when they actually do?

14 A It happens, yes.

15 Q And so if they say they don't remember, do you just leave
16 it at that, or do you try to ask the question a different way
17 sometimes?

18 A Sometimes I will ask the question in a different way. And
19 I do that, one, to make sure that it is something they truly
20 don't know, and/or just to make sure that the question I had
21 previously asked is something that they understood.

22 Because throughout my interview, I am always assessing
23 where they're at developmentally and trying to adjust my
24 questions to meet what need they have. And so it's always a
25 thing that I'm working on throughout the interview. So if I

1 ask a question and they say, I don't know, I just want to make
2 sure that they understood the question I had asked.

3 Q And are there factors that can affect or events that can
4 affect their disclosure?

5 A Yes.

6 Q What do you mean by that?

7 A There are lots of things that can affect a child's
8 disclosure. Some of the things -- the most common that I see
9 is the safety of the child. If a child is still in the home or
10 having contact with who they're alleging the abuse had occurred
11 with, that affects them, a child's ability to disclose; if a
12 child feels supported or like -- or where they're at in that
13 disclosure. So those are the most common ones that I see. But
14 there's so many factors that can affect a child's disclosure.

15 Q And while you're talking with a child during the forensic
16 interview, are you not necessarily testing, but are you
17 checking their memory too and trying to get those details
18 during your questioning without actually telling them that's
19 what you're doing?

20 A Yeah. Throughout the interview, I am exploring all
21 possible avenues as far as what they disclose. So I want to
22 know from the beginning, like, even what was happening before
23 the alleged event, what happened after, and all of the
24 surrounding details.

25 And oftentimes, I do go back and ask clarifying

1 questions just to make sure I get a clear picture of that
2 event.

3 Q And are you sometimes trying to get information for
4 investigators to be able to follow up?

5 A Yes.

6 Q Like what type of questions would you ask?

7 A A lot of the questions I would ask for possible
8 corroboration is, Who all was present. Like was there somebody
9 else there that could have seen that, like what timing, did you
10 go somewhere beforehand or after the event, and just different
11 questions like that that can be -- an investigator can go out
12 and further investigate if they needed to.

13 Q Are you sometimes trying to figure out where something
14 happened to figure out where the jurisdiction of that is?

15 A Yes.

16 Q And sometimes are you trying to ask questions to get just
17 a better understanding of what they're explaining to you?

18 A Yes.

19 Q Okay. Now, are there rules that are explained to a child
20 at the beginning of an interview?

21 A Yes.

22 Q And what are those rules?

23 A Yeah. The rules or guidelines that I often say in the
24 interview -- there's four of them that I generally say, which
25 is if there's -- anything that I ask that you don't know, let

1 me know that you don't know it. If you can't remember
2 something, let me know that as well. And if -- I also say if I
3 ask a question that doesn't make sense or you're not sure what
4 I mean, let me know that as well.

5 And then I always tell a child that it's important that
6 we talk about things that are real and things that really
7 happened. So I have them promise to tell the truth as they're
8 talking that day.

9 Q And during this forensic interview, is there a certain --
10 like are you worried about a timeframe? Is there a length?
11 How is it?

12 A It really is based on the child and their particular
13 needs. So there's no set limit, but it's just whatever length
14 of time that child is needing.

15 Q And does their age play into that?

16 A It can.

17 Q Okay. And how does their age affect interviews as a
18 whole?

19 A Yeah. Their ages really can affect it. I haven't
20 mentioned this before, but at the Abbott House, we interview
21 children from the age of 3 all the way up to the age of 18.
22 And so our younger kiddos, their ability to answer like
23 external contextual things are harder because in my training
24 and experience, the younger the child is, the more concrete of
25 answers that they give.

1 So you often see with your young kids, giving the who,
2 the what, and the where. Whereas as they get older, they're
3 able to give more information, like possibly some more
4 sequential things and some more of the abstract stuff, the
5 sensory things we talked about. But it really depends on the
6 child's age and their development.

7 Q And one of the things that -- are you trying to get is
8 kind of a date or timeframe for when some of these things might
9 have happened?

10 A We can, yes.

11 Q And how do you go about doing that?

12 A There's lots of different ways you can do that. You ask,
13 you know, what was surrounding that day. Like what was
14 happening before, what was happening after.

15 You can ask the child how old they are and, you know,
16 what time of the year was it. What's the outside look like.
17 Is it near like a holiday or different things like that. So
18 those are questions that we can ask.

19 In my career and experience, and as forensic
20 interviewing has evolved a little, we've started backing away
21 from that time question, just because it's hard for anyone to
22 remember something and a specific time, much less a younger
23 child.

24 So we've started stepping back from asking more of that
25 time-type question just to prevent a child from feeling like

1 they have to guess about something.

2 Q Is it something you still explore if they offer it?

3 A Yes.

4 Q Okay. And will follow up with that just like you would
5 any other detail?

6 A Yes.

7 Q We talked a little bit about the leading questions versus
8 non-leading questions. What is the type of questions you try
9 to ask?

10 A Yeah. The best type of question are open-ended questions.
11 And an open-ended question is where it's a question that's
12 asked that would elicit or have a narrative involved in it.
13 And so you want to start broad in those open-ended, like tell
14 me about this or tell me more about that and allow the child to
15 narrate.

16 And then there are -- between that open-ended down to
17 leading, there are other types of questions. So you have like
18 what we call WH questions, which is what happened or who --
19 this -- or where. Those types of questions are more direct,
20 but they still allow for a narrative.

21 And then you can have some of those option posing,
22 where it's either a yes or no, or it's a multiple choice
23 question. And then any time you ask those more focused type
24 questions, you always want to open it back up and then ask the
25 child to tell you more about that previous statement if

1 possible.

2 Q In your interviews, do you feel like you're saying a lot
3 of, Tell me more about that?

4 A Yes.

5 Q And so that is an appropriate question to ask to get them
6 to talk to not -- so it's not you talking?

7 A Yes.

8 Q Do you -- what kind of words do you use in the forensic
9 interview?

10 A Yeah. The words that I use are supposed to be
11 developmentally appropriate and appropriate towards that age of
12 the child.

13 So a lot of the things that I say and how I say it will
14 be based on what I've learned of that child as I'm
15 communicating with them in the interview.

16 Q And if they use certain words, do you tell them that's not
17 the right word or do you correct them in any way?

18 A Yeah. We will use the child's language, especially like
19 if they're talking about body parts or different names of
20 people. Like if -- instead of their grandma, they call her
21 Nana, or something like that, we will always use the phrase
22 that they use.

23 Q And so if they have a specific name for a body part, you
24 use that word instead of, you know, the proper word for it?

25 A Correct.

1 Q Do you also look for, while you are interviewing or trying
2 to explore, things that may have happened to a child that they
3 disclosed that might be part of a grooming process?

4 A Yes.

5 Q And what is a grooming process?

6 A The grooming process is where there's intentional
7 behaviors or actions to have a child be desensitized to a
8 further plan.

9 So an example of that would be where you have someone
10 that's coming in, just -- and spending time with a child,
11 building a relationship with them, and then it gradually
12 progresses to like hugs and back rubbing to progressing to more
13 sexually overt attention.

14 So it's just that process of getting that child
15 desensitized and okay with further behavior.

16 Q Do you explore that some in your interviews if it's
17 apparent, the child talks about it?

18 A Yes.

19 Q After you have interviewed a child and you have closed out
20 the interview, they've gone back to their parent, do you have
21 any further contact with that child?

22 A No.

23 Q Do you have further services that are offered at the
24 Abbott House? Are you involved in that?

25 A No.

1 Q Okay. What kind of services are offered through the
2 Abbott House?

3 A Yeah. After the forensic interview is conducted, we do
4 have the advocacy services. And so what our advocates do is
5 they meet with the caregiver or whoever brought them, talk
6 about our processes, as well as see what that family may need
7 or the child needs.

8 So there's resources we need to connect them with in
9 the community, whether it be counseling services, or, you know,
10 food or shelter needs. We try to connect them with any of
11 those things. So the advocacy portion happens during the
12 interview and after the interview. So they try to stay
13 connected with the family for as long as that family needs.

14 And we also have the medical services that will
15 happen after a forensic interview. And our medical providers
16 are able to do well child checks to just make sure the child's
17 okay. And if there's anything just in the medical realm that
18 they needed to refer out to, they can.

19 And they're also able to do -- those more acute or time
20 sensitive cases where evidence could potentially be collected,
21 they're able to do that as well.

22 Q So if someone discloses a sexual assault has occurred
23 within the last 48 to 72 hours, they can have a sexual assault
24 kit done there?

25 A Correct.

1 Q And you said that they -- advocacy stays in touch with the
2 family. Do they directly contact the child, or is it with the
3 parents or caregivers?

4 A It's with the parents or caregivers.

5 Q So after this interview is over, no one has any further
6 contact with the child directly from the Abbott House?

7 A Outside of the medical service, no.

8 Q Okay. I want to talk to you now about the case we're here
9 on today. Did you happen to be working on July 22, 2019 at the
10 Mary Abbott House as a forensic interviewer?

11 A Yes.

12 Q Now, I know you said you have a new role now. Are you
13 still doing forensic interviewing?

14 A Yes.

15 Q Just added more onto that?

16 A Correct.

17 Q Okay. Did you have a chance to conduct an interview with
18 Brianna Jackson?

19 A Yes.

20 Q And it was on July 22, 2019. Do you know if it was in the
21 morning or in the afternoon?

22 A It was set to start around 3:00 in the afternoon.

23 Q And do you know who brought Brianna there?

24 A I believe it was her mom that brought her.

25 Q And we talked a little bit about that the family stays in

1 the waiting room. Is the waiting room a distance from the
2 forensic interview rooms?

3 A Yes.

4 Q Are they able in any way to hear anything that's going on
5 even though they're not inside the room?

6 A No.

7 Q Does someone stay with that family member where they are
8 during the interview and they're doing these advocacy things
9 that we talked about?

10 A Yes.

11 Q So you believe her mother brought her. Do you know, was
12 this an interview that came to you through law enforcement or
13 through DHS or both?

14 A It was referred to us through DHS.

15 Q And who was present at this interview?

16 A Present at the interview was three DHS workers.

17 Q Is that common?

18 A Yes.

19 Q Are they always workers assigned to that particular case
20 or are they different types of workers in different roles
21 within that case?

22 A Oftentimes, when we see more than one DHS worker, it's
23 often the worker that's assigned to the case, and then often,
24 they have new workers that are shadowing them.

25 Q Training?

1 A Correct.

2 Q And in this particular case, there was not a law
3 enforcement agency there, but do you know if this was referred
4 to law enforcement at some point?

5 A Yes.

6 Q What information did you have prior to beginning your
7 interview?

8 A The only information that I recall having was that there
9 was a disclosure that Brianna had made about her stepdad having
10 touched her.

11 Q And do you know -- from that, do you know whether or not
12 she's still living in the home with him or anything of that
13 nature?

14 A At that point, no.

15 Q And you said you know that her mom brought her. Do you
16 know, what was Brianna's age at the time of the forensic
17 interview?

18 A Yeah. Brianna was 11 years old.

19 Q Okay. And because she was 11, do you do anything
20 differently?

21 A No.

22 Q What does the literature say about 11-year-olds?

23 A 11-year-olds, for the most part, are able to communicate
24 normally. They're able to communicate with words we would
25 expect like as an adult. However, they're still a child and a

1 young teen or even preteen. So they still have those
2 developmental markers versus what you would see as an adult.

3 Q Okay. And how long was this forensic interview with
4 Brianna?

5 A The interview recording time was 59 minutes.

6 Q You say recording time. Was there a break?

7 A Yes.

8 Q How long was the break?

9 A The break was just under 10 minutes.

10 Q And again, does that interview -- or the tape keep going
11 even though while you're not in the room?

12 A Yes.

13 Q And you said earlier that you start the audio-video before
14 you go in the room. Is that right?

15 A Yes.

16 Q So do you start it and then go get Brianna and then come
17 into the room?

18 A Yes.

19 Q Okay. During the process, did you have the ability to
20 assess Brianna and her understanding of the rules of what's
21 going on in the interview room and kind of her education level?

22 A Yes.

23 Q And why do you do that?

24 A For multiple reasons. I want to make sure that a child is
25 able to participate in a forensic interview, and also, that

1 helps me navigate the rest of the interview and the question --
2 the way I ask questions.

3 Q Okay. Did you explain the rules to Brianna of the
4 forensic interview?

5 A Yes.

6 Q Did she appear to understand those and agree to follow
7 them?

8 A Yes.

9 Q And is that all done on the video?

10 A Yes.

11 Q Is there any conversation that you had with Brianna
12 Jackson outside of what is contained on the DVD?

13 A The only communication I would have had with Brianna is as
14 we're walking back to the room. I often just ask them how
15 they're doing and just, you know, starting that rapport phase
16 where I'm just getting to know them a little bit. Or if the
17 child says something to me, I will probably ask about it.

18 Q Okay. During this interview about -- you said about 59
19 minutes and a 10-minute break, so about 49 minutes -- did
20 Brianna Jackson make any disclosures of physical or sexual
21 abuse to you?

22 MR. NEDWICK: Objection, your Honor.

23 May we approach?

24 THE COURT: Yes.

25 (The following discussion took place at the bench,

1 outside the hearing of the jury:)

2 MR. NEDWICK: Your Honor, we would object to this
3 witness talking or testifying in front of the jury about what
4 Brianna told her. It's clearly hearsay and it violates my
5 client's rights to confrontation. In addition -- so it's a
6 violation of the hearsay rule as well as the Sixth Amendment.

7 And in addition, I believe even under the child hearsay
8 statute, which is 12 OS 2803.1, that it doesn't meet the
9 criteria required under the statute, specifically on the
10 reliability issue. One of the -- one of the factors for the
11 Court to consider is consistent repetition of the statement.

12 This Court has heard evidence from another child
13 hearsay witness and determined that that was a reliable
14 statement, that -- so reliable that he was allowed to testify
15 to it. It is in stark contrast to the video that the Court
16 watched that she's going to -- that this witness is going to
17 testify to. So it's not consistent repetition; it's very, very
18 different.

19 Again, the Court had already found that the
20 circumstances around that statement, previous statement by
21 Jeffrey Jackson, were reliable.

22 So given the fact that that was reliable and this is
23 highly inconsistent with it, we think that even under 2803.1,
24 it should be excluded.

25 MS. AUSTIN: And Judge, 2803.1 is the child hearsay

1 statute, which makes this statement appropriate. This Court
2 has heard -- or actually viewed the video prior to making a
3 ruling of it being admissible.

4 The consistency of the statement is very clear
5 throughout the entire testimony of this trial. This child has
6 testified and you've heard child hearsay statements and you've
7 witnessed the video that this child said this defendant touched
8 her on the vagina under her underwear.

9 She has also testified consistent with what she told --
10 what her dad testified too, also, that he touched her on the
11 couch, or touched her -- tried to touch her vagina on the
12 couch. You have heard that also.

13 So I believe the testimony that this Court has heard is
14 sufficient for the indicia of reliability for this information
15 to come in, this testimony to come in, under 2803.1
16 inconsistent with -- well, consistently with the Court's
17 previous ruling that you made earlier this morning.

18 Also, I do not believe it violates the
19 confrontation clause because the witness who has made these
20 statements has testified in court and been subject to
21 cross-examination.

22 So he has not been violated -- his confrontation rights
23 have not been violated, as he has been able to cross-examine
24 the maker of these statements.

25 THE COURT: I overrule the defendant's objection, and

1 I believe, as I found earlier, that there is sufficient indicia
2 of reliability pursuant to 2803.1 and the witness should be
3 able to testify.

4 And you may proceed.

5 MS. AUSTIN: Thank you.

6 (In open court.)

7 Q (By Ms. Austin) Okay. Ms. Cornett, I believe my question
8 was: Did Brianna Jackson make disclosures to you of physical
9 or sexual abuse?

10 A Yes.

11 Q And when she makes these statements, are these all
12 contained within the video of the interview?

13 A Yes.

14 Q Okay. And what statements did Brianna make to you? Just
15 a summary of what she made to you of what had occurred with
16 her.

17 A Brianna disclosed that mom's boyfriend at the time,
18 because they weren't married yet -- she said his name was
19 Dallas Norton -- had touched her at her vagina or between the
20 skin of her vagina with his finger.

21 And she also talked about how he made her hand touch
22 his penis when he grabbed it and pulled it towards it.

23 Q Okay. Did she also talk about other types of attempted --
24 attempted contacts or some grooming behavior?

25 A Yes.

1 Q And she made statements about those during the interview?

2 A Yes.

3 Q Okay. And during this forensic interview, did you follow
4 the protocol that you have been trained on?

5 A Yes.

6 Q Did you -- when you talk about it being child led, was
7 this one of those that you were able to follow the protocol, or
8 did you have to vary from it? How was it?

9 A This is an interview where I was able to follow the
10 protocol and normally.

11 Q Okay. And sometimes when you interview children, does it
12 -- is it quite a long time of rapport building and then getting
13 to the abuse scenario where you're talking about the topic of
14 concern?

15 A It can be.

16 Q How was this interview?

17 A This interview didn't take as much time building a
18 rapport, and then -- because I was able to get to open
19 invitation asking, you know, how come she came that day, within
20 10 minutes of us talking.

21 Q And did she talk about what had gone on with her stepdad?

22 A Yes.

23 Q And were the statements that were made by her, were they
24 spontaneous, or did you have to do a lot of questioning to try
25 to get her to talk about those issues?

1 A They were spontaneous.

2 Q Was she consistent throughout the interview when you were
3 asking her questions?

4 A Yes.

5 Q Were you able to ask her questions about details and have
6 her provide those?

7 A Yes.

8 Q Was she able to provide those sensory details that you
9 talked about earlier?

10 A Yes.

11 Q The words that she used -- you said she was 11 years old.
12 Did she appear 11 years old?

13 A She actually appeared a little bit older than what I see
14 typically for an 11-year-old. She was taller and just a little
15 bit bigger than what I see as an 11-year-old.

16 Q But when she used her words, did she sound like an
17 11-year-old?

18 A Yes.

19 Q And the scenarios that she was talking about in talking
20 about the sexual abuse, are those terms that are typical of a
21 child that age?

22 A The terms, no.

23 Q I'm sorry. The scenario that she's talking about, do you
24 often hear about 11-year-olds talking about being touched on
25 the vagina?

1 A No.

2 Q Did you have any concerns throughout this interview about
3 her mental state or how she was behaving?

4 A No.

5 Q Okay. The attempt to obtain details, what type of details
6 did you try to obtain from her?

7 A Some of the details I tried to obtain is when she's
8 talking about being touched, like what she was being touched
9 with, like how did the touching happen, what did it feel like
10 on her body, and like what position her body was and what
11 position his body was and like where they were at when this was
12 all happening.

13 Q And she was able to provide those details to you?

14 A Yes.

15 Q Did she also demonstrate sometimes on herself or to you
16 some of these things as they were happening?

17 A Yes.

18 Q Do children do that sometimes?

19 A Yes.

20 Q Okay. And was she consistent throughout the interview, or
21 did she contradict herself?

22 A I don't recall any contradictions.

23 Q Do you look for, while you're interviewing a child, to see
24 whether or not they have been told what to say or coached in
25 any way?

1 A We do, yes.

2 Q And did you -- do you specifically even ask those
3 questions?

4 A At times, yes.

5 Q Okay. And did you have any information in this case that
6 you thought that someone had told Brianna what to say?

7 A No.

8 Q Do you look for those motives to fabricate?

9 A Yes.

10 Q What does that mean, motive to fabricate?

11 A That would be motives to be making something up or follow
12 not telling the truth. So it would be like are there reasons
13 behind that. Do they not like someone or they want --
14 sometimes I see kids where they want their parent to get back
15 together, and just different things like that. Reasons that
16 would make them want to make statements.

17 Q And did you -- did she make any of those types of
18 statements to you?

19 A No.

20 Q At any time during this interview, did any of the
21 questions that you asked violate your protocol?

22 A No.

23 Q Did she -- you said it was 49 minutes about, the time.
24 During that time, were you able to follow the entire protocol
25 where after the topic of concern and detail information

1 gathering, were you able to close it out and talk about safe
2 people and things of that nature?

3 A Yes.

4 Q Okay. Have you had an opportunity to watch this interview
5 that you conducted with Brianna Jackson?

6 A Yes.

7 Q Okay. And I'm sure, just like you said in the beginning
8 when we first started talking, that you probably watched this
9 and seen things that you probably wish you would have done
10 differently?

11 A Correct.

12 Q And it's probably hard to watch yourself on video.

13 Sometimes you think, I should have done that?

14 A Yes.

15 Q Did you have that feeling in this particular case that
16 there might have been things you asked -- could have asked?

17 A Correct. Yes.

18 Q But overall, do you still stand by the validity and the
19 following protocol of this interview?

20 A Yes.

21 MS. AUSTIN: May I approach the witness, your Honor?

22 THE COURT: You may.

23 Q (By Ms. Austin) I'm going to show you what's been marked
24 as State's Exhibit No. 6. Do you recognize this?

25 A Yes.

1 Q What is this?

2 A This is a copy of the forensic interview I conducted with
3 Brianna.

4 Q Okay. And on July 22, 2019?

5 A Yes.

6 Q Okay. And it says on there, Redacted. You've had a
7 chance to watch it. Is there a snippet of something that was
8 taken out because the Court has told us to take something out?

9 A Yes. There's like 12 seconds.

10 Q Okay. And so other than that, is this accurate as to the
11 interview you conducted with Brianna Jackson?

12 A Yes.

13 MS. AUSTIN: Your Honor, at this time the State moves
14 for admission of State's Exhibit No. 6.

15 MR. NEDWICK: Same objections, your Honor, and plus
16 repetitious at this point.

17 THE COURT: Objection will be overruled. State's
18 Exhibit 6 will be admitted into evidence.

19 You may publish.

20 MS. AUSTIN: Thank you, your Honor.

21 (State's Exhibit No. 6 was played for the jury.)

22 THE COURT: All right. We're going to go ahead and
23 take our lunch break at this time. I would like you back here
24 at 1:55. All right. We will see you then. Thank you.

25 (After a recess was had, the following discussion took

1 place outside the presence of the jury:)

2 THE COURT: I understand we need to make a record
3 before the jury comes back.

4 MS. WHATLEY: Yes, that's correct.

5 THE COURT: Okay.

6 MS. WHATLEY: I don't think that will impact -- it
7 doesn't have anything to do with Ms. Cornett. Okay.

8 This is just in relation to the record that we made
9 earlier as it related to Detective Judy and the State wanting
10 to ask Detective Judy a couple of questions relating to other
11 steps that he took in his investigation.

12 I wanted to bring a case to the Court's attention,
13 that's *Bosse v. State*, 2015 OK CR 14. I only brought one copy
14 with me. But in that case, that was a death penalty case that
15 was decided. It was a McClain County case.

16 Obviously, there were many issues in that case. But
17 one of the issues in that case was statements related to a
18 search issue where Defendant Bosse had first given consent to
19 one of the law enforcement agencies to search his vehicle and
20 then he had revoked that consent.

21 And so there was an issue of whether or not the DA's
22 office and the State of Oklahoma could comment on statements
23 that he had made surrounding that issue.

24 Now, obviously, that's a Fourth Amendment issue related
25 to the search, and in this case, we are talking about the

1 defendant in this case silenced, and that's a Fifth Amendment
2 issue. So I understand that those two things are analogous and
3 we're talking about a Fourth Amendment issue versus a Fifth
4 Amendment. But they're both constitutional protection. So I
5 believe that they're analogous for our purposes.

6 And what the Court of Criminal Appeals -- what the
7 Oklahoma Court of Criminal Appeals decided was that -- and they
8 are basing that off of a Tenth Circuit Court of Appeals
9 decision. And a Tenth Circuit Court of Appeals decision that
10 they based their decision off of was *United States vs. Dozal*,
11 which is 173 F.3d 787, which is out of the Tenth Circuit in
12 1999.

13 And what they based it on was that the failure to
14 consent to the search may be permissible if the testimony is
15 not admitted if it's admitted as a fair response to a claim by
16 the defendant for some proper purpose. So it depends on what
17 it's being admitted for.

18 And then it goes on to say, and it cites other cases,
19 where it talks about in *United States vs. Robinson*, 485 U.S.
20 25, a case decided in 1988, where it said that a prosecutor's
21 fair response to argument of the defendant where -- it said
22 that there may be some cost to a defendant, but a prosecutor's
23 comments concerning criminal defendant's refusal to consent to
24 a search are permissible if the testimony is admitted as a fair
25 response to a claim made by the defendant or for some other

1 proper purpose.

2 So basically saying that it's not permissible for the
3 State of Oklahoma to be proffering this themselves, but this is
4 permissible if it's made in response to a claim by a defendant.

5 And so there's other examples that they go on to state
6 in -- that that Court of Crims -- the Oklahoma Court of
7 Criminal Appeals goes on to state in this opinion that they
8 give where they give several different examples about when it's
9 proper, when the State of Oklahoma -- it would be proper for
10 them to elicit such testimony, that, again, I believe they're
11 analogous to this situation, that the State of Oklahoma was
12 trying to elicit the testimony in this case.

13 Again, I don't believe that that's something that would
14 be proper for the State of Oklahoma to have went in on direct
15 examination. But I do believe it would have been proper -- it
16 is proper for the State of Oklahoma to ask those questions of
17 Detective Judy because of the numerous questions that
18 Mr. Nedwick asked as it related to the investigation.

19 Specifically, the questions about, You didn't ask any
20 other person in that room or that was in there, never tried to
21 sit down with anyone else to get an understanding of what had
22 happened in that room or in that house surrounding these
23 events, which is just not true.

24 And so the State of Oklahoma would like to recall
25 Detective Judy to ask him a specific question of, Did you, in

1 fact, try or attempt to interview the defendant, and he could
2 say something like, Yes, I did attempt to interview the
3 defendant. Were your attempts successful? No, they were not.
4 And leave it at that, or -- and I think that that's proper.

5 Because I think any other -- any other way to handle
6 it, in the State's opinion, is a miscarriage of justice because
7 what had to happen then is Detective Judy had to perjure
8 himself on the stand because, basically, he had to answer a
9 question untruthfully because that wasn't all he did. He did
10 do other things.

11 And so it just -- it puts him in a difficult situation
12 of answering a question that he knows to be not truthful
13 because he knows he did other things.

14 And so I think, you know, the Court asked the State
15 to provide case law. This is the case law that I've provided.
16 I've read that into the record. I should have brought an
17 additional copy. I didn't. I'm happy to provide this copy to
18 the Court. If the Court wants me to, I can make a copy for the
19 Court and for Mr. Nedwick.

20 But that is my request at this time. I know it's kind
21 of a weird request since Detective Judy's no longer on the
22 stand, but that would be the State of Oklahoma's request.

23 THE COURT: Mr. Nedwick, would you like to reply?

24 MR. NEDWICK: Just briefly, Judge. Obviously, we
25 object to the request. I obviously haven't seen -- read the

1 case. There's nothing about what Ms. Whatley relayed that
2 makes me think it's analogous, but looking at the facts would
3 tell us a little bit more about that.

4 More importantly, though, the fact that she's having to
5 make this argument by analogy is strong support for my
6 position. As we talked about when this first came up, this
7 issue, the right to remain silent, and especially -- and the
8 inadequacy of a police investigation is present in every single
9 defense.

10 So the fact that there's not a case dealing with the
11 Fifth Amendment and the insufficiency of the police
12 investigation opening the door for them to get into his right
13 to remain silent is -- tells us all we need to know about this
14 issue.

15 If I were to do an exhaustive search, I'm sure we
16 wouldn't find one. Otherwise, Ms. Whatley wouldn't be having
17 to use a Fourth Amendment case by analogy, which again, I'm not
18 conceding at all. We were provided no facts about what -- the
19 context in that of what was going on there that would coincide
20 with ours.

21 But at any rate, the fact that -- that she's having to
22 do it by analogy tells us all we need to know. That there are
23 no Fifth -- the Court's never said that as it relates to the
24 Fifth Amendment, because, again, every single case -- it's not
25 a novel issue. So they would have come down on that by now.

1 THE COURT: Okay. Well, I'm not persuaded by the
2 authority that's been cited by the State. And I am going to
3 stand on my previous ruling and not allow for Mr. -- or
4 Detective Judy to be recalled.

5 All right. If there's nothing further, let's go ahead
6 and have the jury come in.

7 THE BAILIFF: I've been asked to move the poster
8 board. The jurors say that they would like it to be out of
9 their way to see the defense table. I don't know what you guys
10 think about that.

11 MR. NEDWICK: Sure.

12 MR. DOUGLAS: I could lean in.

13 THE COURT: I think that's fine. It's an exhibit.
14 We can just park it somewhere else.

15 (In open court.)

16 Q (By Ms. Austin) Good afternoon.

17 A Good afternoon.

18 Q Little bit of a break after watching the video. When
19 you're watching this video and you did this interview, did you
20 determine, based on your questions and Brianna Jackson's
21 answers, whether this was a purposeful or accidental disclosure
22 by Brianna?

23 A Through the interview, it leaned towards more of an
24 accidental disclosure because she talks about in the interview
25 that her mom had told her dad to ask her about it. And then

1 that's when she made the disclosure.

2 Q So it wasn't something she decided to do on her own.

3 Someone came to her?

4 A Correct.

5 Q And do you think that that affected her interview or her
6 disclosure to you in any way?

7 A It could have, yes.

8 Q And how could that have affected it?

9 A In the sense that as -- like we talked about earlier,
10 disclosure is a process, and unless a child's ready to disclose
11 fully or all the information, that doesn't mean that they are
12 going to in that setting.

13 So like with Brianna, there could have been things that
14 she didn't fully disclose at that time. But given the
15 opportunity, maybe afterward, there could have been other
16 things she disclosed. But in the interview, all that she
17 disclosed is what she had told me at that moment.

18 Q And what she talked to you about, you were able to get
19 some details about some instances. Is that correct?

20 A Correct.

21 Q You were able to get details on an instance in the bedroom
22 where he -- Dallas Norton touched her vagina?

23 A Correct.

24 Q And then there was another instance that she was able to
25 give you details on with almost touching, I think she said, her

1 boobs, I think is how she worded it, or unhooking her bra?

2 A Correct.

3 Q And that was the part that she had a lot of details about,
4 telling you how it made her feel?

5 A Yes.

6 Q I think there was another time that she said there were
7 other times he almost touched her, but she couldn't remember
8 those right now?

9 A Correct.

10 Q So she gave you two instances and said there were more?

11 A Correct.

12 Q So would it surprise you if when she came in here to
13 testify, she testified about those two instances and another
14 time when he almost touched her?

15 A No.

16 Q In fact, she told you there was another time, just didn't
17 give you any details of it?

18 A Correct.

19 Q And is that common, in your training and experience, that
20 children tell you something in a forensic interview, disclose
21 numerous incidents, and then later can disclose more incidents?

22 A What was the first part of your question?

23 Q That they disclose numerous incidents to you and then
24 later disclose even more?

25 A Yes, that does happen.

1 Q Does that mean that they weren't telling you everything or
2 why is that?

3 A That is -- goes back to that process of disclosure where
4 it's not -- a disclosure is not a single incident, and it can
5 happen over time based on circumstances or who they're talking
6 to, just different factors. So it's not a single linear
7 experience.

8 Q Does the process of disclosure affect sequencing at all?

9 A It can.

10 Q What does that mean? What is sequencing?

11 A Sequencing is just a timeline of events. And like in
12 interviews, we ask them to tell us from the start to the finish
13 and then sequence it from where it started and then what
14 happened and then what happened.

15 So if a child is in a tentative disclosure or not
16 active disclosure, it could possibly keep them from disclosing
17 certain parts of a sequence or really being ready to talk about
18 the full sequence because of them not being ready to disclose.

19 Q So they could get things out of order?

20 A Correct.

21 Q And can they also mix up times and dates and things like
22 that?

23 A Yes.

24 Q Now, I know you asked Brianna Jackson about a time when
25 this happened. And I think you asked some pretty specific

1 questions about, you know, how was the weather, do you remember
2 if you were in school or not in school, trying to get to it.
3 And she wasn't able to give you a specific time of year or
4 date, was she?

5 MR. NEDWICK: Objection as to leading.

6 THE COURT: Sustained.

7 Q (By Ms. Austin) Was she able to give you a specific time
8 or date?

9 A No.

10 Q And based on your training and experience, is that common
11 and why?

12 A It is common. And that's because -- we talked earlier
13 that time is an abstract thing, and unless it's surrounded by
14 something very specific or like a birthday or a holiday or an
15 event, it's just hard to remember something that had previously
16 happened unless we're talking about something that happened
17 just recently.

18 Q Okay. Now, in the interview, we see you writing down
19 quite a bit. Is that right?

20 A Yes.

21 Q What were you writing?

22 A I was writing notes based off of the things that Brianna
23 was saying. So like I would jot down reminders for myself
24 about the things she was saying, so that way -- if I needed to
25 go back and look.

1 And there are times in there where I go back and make
2 sure I'm, one, saying the phrases that she had said and making
3 sure I know that I can point us back to a certain part to
4 clarify.

5 Q And what was she doing? We can see her doing a lot of
6 stuff. What is she doing?

7 A Throughout the interview, she did have a color sheet in
8 there that she was able just to use. She played -- she used
9 the Play-doh. And those are all the things that we allow a kid
10 to do just while they're talking, just to give them something
11 to do in the room.

12 Q Now, we talked earlier before we watched the interview
13 about being able to assess her mental health while she's in
14 there, her mental state.

15 We don't see on the video -- correct me if I'm wrong,
16 because you were there sitting across from her -- that she gets
17 upset or cries during any of this. Is that right?

18 A Correct.

19 Q Is that common or uncommon, based on your training and
20 experience, and the over 1,600 interviews that you've done?

21 A It's common.

22 Q Does that happen quite a bit?

23 A Yes.

24 Q Okay. And based on your training and experience, why?

25 A Because people and kids respond to situations differently,

1 and their emotions can be different. So I, in my experience,
2 have seen kids where it's -- they're crying and very distraught
3 in an interview all the way up to they're just matter of fact
4 about what has happened.

5 And it's just a matter of where that kid's at and how
6 they're feeling in the moment. It doesn't mean one thing or
7 another in the interview room.

8 Q And there were several times it appears that you went back
9 and asked for clarification on when her vagina was touched and
10 how it was touched. Why do you go back and do that?

11 A Yeah. I go back and clarify things if there's questions
12 that I still have or if I'm not understanding. I want to go
13 back and clarify so I don't assume anything in the room.

14 Because the child in the room is the -- it's their
15 experience and their life. And so I just want to clarify to
16 make sure that I'm fully understanding what that experience
17 was.

18 Q And there's also a couple of times that you're talking to
19 Brianna Jackson about her body positioning. And she gives you
20 puzzled looks. Can you tell us about that?

21 A Yeah. Throughout -- there are several times in the
22 interview where I ask a question and she does give like a look,
23 a furled brow. And she also says, What do you mean, or, I
24 don't understand that.

25 And so for me, that indicates that, one, that probably

1 wasn't a good question for her where she's at developmentally;
2 and so what is another way I can ask it or can I pair it with a
3 certain part so that way, it's more understandable.

4 So in the room, that just shows that I need to ask a
5 better question.

6 Q And sometimes, do you -- in your experience, are you just
7 not able to get down to what you need to get down to because
8 you can't introduce information?

9 A Correct.

10 Q But you do your best to try to understand what they're
11 talking about?

12 A Yes.

13 Q Is that why you kind of went over it and kept re-asking
14 the question different ways, to try to get there to understand?

15 A Yes.

16 Q Okay. Now, there were times that you were asking about
17 other people touching her. Why do you do that?

18 A Yeah. Part of my protocol as a forensic interviewer is
19 not only to explore a single individual and the alleged abuse
20 or neglect that has occurred there, but also to make sure that
21 a child hasn't been a victim from someone else or due to
22 something else.

23 So the other side of it is to ask about anyone else.
24 And if a child says that they have, then I have to -- I explore
25 that in its entirety as well.

1 Q So if she had said someone else had touched her, you
2 wouldn't have said, No, that's okay, we're only talking about
3 Dallas Norton?

4 A No, I would not have said that.

5 Q You would have asked all those questions that you asked
6 for Dallas Norton scenarios for another person also if she had
7 disclosed that?

8 A Yes.

9 Q And then you also asked her, Have you ever heard of anyone
10 else touching him. Why do you do that?

11 A I do that just so that way, one, that gives the
12 investigation -- if there's other victims out there or if she's
13 heard of that, that way, they can go and do an investigation or
14 look into that if that's something they choose.

15 And the other side is to -- I ask that because
16 sometimes kids say, Well, I heard that this had happened. So
17 then I can explore like what they've heard and how they heard
18 that and the conversation that happened around that.

19 Q To see if they have heard something else and are maybe
20 adopting that as something that's happened to them?

21 A It could, yes.

22 Q Or if there's another person that needs to be interviewed?

23 A Correct.

24 Q Now, you asked a lot about her house in Arizona and asked
25 kind of how things were there. Why do you do that?

1 A The same reason that I explore other possible people that
2 have done something to her. I want to explore not only where
3 she lives at now and how she feels there, but also when she's
4 visiting dad's house, explore safety there and how she's
5 feeling there.

6 Q And was she able to tell you a safe person in her life or
7 be able to do those things you need to do when closing out the
8 interview to see if they have a person in their life they feel
9 safe talking to?

10 A Yes.

11 Q Okay. Now, you went back for a few minutes and asked her
12 about the snuggling after you came back from the break. That
13 snuggling that she and the defendant were doing, she indicated
14 to you, did she not, that that was something she was fine
15 doing, was the snuggling?

16 MR. NEDWICK: Objection as to leading, Judge.

17 MS. AUSTIN: Okay.

18 THE COURT: Sustained.

19 Q (By Ms. Austin) How did she indicate she felt about the
20 snuggling?

21 A She didn't say that it was a negative. She talked about
22 how she had snuggled before with him, but this is the first
23 time that he had done the things he had done.

24 Q And did you ask for details about the snuggling, and could
25 she provide them?

1 A Yes. I asked details and she was able to provide some
2 detail.

3 Q We also see a few times that she demonstrates things. Can
4 you tell us what that tells you?

5 A Yeah. Oftentimes, I see kids demonstrate in the interview
6 not only like with their words but with their bodies. And in
7 my experience, what that shows is that, one, that the child is
8 trying to articulate it, and they use their bodies to
9 demonstrate that.

10 And the other side is that a lot of the times, I see
11 that is -- those are things that you -- that a kid's pulling
12 back from their memory. And so as they're looking through
13 their memory, they're also using their body to relay that
14 information.

15 Q They're recreating or demonstrating what happened to them?

16 A Correct.

17 Q Okay.

18 MS. AUSTIN: If I can have just one second?

19 THE COURT: You may.

20 MS. AUSTIN: Thank you, Ms. Cornett.

21 Pass the witness.

22 THE WITNESS: Thank you.

23 THE COURT: Mr. Nedwick?

24 MR. NEDWICK: Thank you, your Honor.

25 CROSS-EXAMINATION

1 BY MR. NEDWICK:

2 Q Good afternoon, Ms. Cornett.

3 A Good afternoon.

4 Q Before we watched the video, Ms. Austin was asking you
5 about your role in this whole system, as you called it, an
6 investigative team. Do you remember those questions?

7 A Yes, I do.

8 Q Okay. And you're part of an investigative team, if I
9 understood your testimony?

10 A I'm not a part of the investigative team. I am a part of
11 our multidisciplinary team, and our services are just used
12 during the course of an investigation. But I'm not a part of
13 that investigative team.

14 Q Okay. Your role is a child advocate, correct?

15 A My role is a forensic interviewer.

16 Q Oh, I thought that you had indicated on more than one
17 occasion during your testimony that you were a child advocate.

18 A No. I'm a forensic interviewer who works at a child
19 advocacy center.

20 Q Okay. There was even some testimony about how you're not
21 only an advocate during the interview, but also after the
22 interview. Do you not recall that?

23 A I do not.

24 Q Okay. So it's your testimony that as a forensic
25 interviewer, you're -- that's not a child advocate?

1 A I am not a child advocate.

2 Q In any of your roles?

3 A In any of my roles, no.

4 Q Okay. Didn't you describe how you guys provide -- not
5 only do forensic interviews, but provide medical service and
6 some other stuff?

7 A At the Mary Abbott Children's House, we do provide those
8 services, but I do not.

9 Q Okay. And you also said it's not your role to determine
10 the truth, whether a child's telling the truth. It's just to
11 give the child an opportunity to disclose in a proper -- if
12 they want to disclose, in a proper setting. Is that right?

13 A Yeah. My job is not to determine if a child is telling
14 the truth or not. It's just to provide that space for the
15 child to share their experiences.

16 Q Okay. And so a lot of the testimony after the video
17 played seemed to be you giving kind of an opinion on Brianna's
18 interview and her disclosure. Just to be clear, your role in
19 this case and what you're here to relay to the jury is just
20 that you interviewed her, and according to your training and
21 experience, the interview that you conducted and then watched,
22 was properly conducted. Correct?

23 A Correct.

24 Q As far as the other part of your role, I think you said
25 that you don't have any stake in an investigation as opposed to

1 cops. Is that correct?

2 A Correct.

3 Q Is it your understanding that the police are supposed to
4 have a stake in an investigation into allegations like this?

5 A My understanding is the police have a job to determine if
6 a crime has occurred. And so part of that -- they do have a
7 stake in the investigation because they're conducting that
8 investigation.

9 Q Uh-huh. But you're not conducting any part of an
10 investigation. In other words, no matter how outlandish a
11 claim is in an interview, you're not following up, and I think
12 you said confronting the child with obvious discrepancies?

13 A I don't confront the child through my interview, no.

14 Q Okay. And so if the police aren't doing that -- if you're
15 not doing it and the police aren't doing it, is there another
16 leg to this investigative team that -- before it gets to a
17 jury, somebody actually sits down and digs in to some of the
18 discrepancies in a child's story?

19 A Outside of what I do, I can't answer for what anyone else
20 would do.

21 Q Counsel asked you some questions before we watched the
22 video about grooming. You look for grooming behavior?

23 A I do ask about grooming behavior if a child brought
24 something up that would lead me down that line of questions.

25 Q Okay. And I noticed you asked a number of those kind of

1 questions of Brianna, about does Mr. Norton buy you candy or
2 snacks. Do you remember those questions?

3 A I did ask questions like that, correct.

4 Q Okay. And she made it clear in her interview that he
5 bought snacks for everybody. Isn't that correct?

6 A She did say there are times where he'll buy snacks or
7 drinks for everyone.

8 Q Well, she said she -- she said specifically on the day
9 after this wrestling event, that he -- they then went and
10 bought drinks for all the kids?

11 A I believe after the wrestling event, they did go to
12 Wal-Mart and buy snacks. I can't recall if she said for
13 everyone. But there was another time where she talked about
14 they would go to 7-Eleven and he would buy drinks for everyone,
15 like the other kids, like his kids.

16 Q Right.

17 A Yeah.

18 Q And maybe my recollection is not correct, but my
19 understanding was that's where they went after leaving Wal-Mart
20 was to 7-Eleven, and they got drinks for everybody -- for all
21 the other kids.

22 A Did you ask a question? I wasn't sure I answered the
23 right question.

24 Q Is that not your understanding of it, what she said?

25 A I don't recall if the 7-Eleven trip had happened that same

1 day or not.

2 Q Okay. When she was describing that trip to Wal-Mart, she
3 also told you that Mr. Austin [sic] went there and bought -- in
4 addition to buying snacks for everybody, bought a speaker for
5 her brother's truck, correct?

6 A She said that Mr. Norton had bought a speaker.

7 I think she said for his truck and her brother's truck, if I
8 recall.

9 Q Right. Her truck -- his truck and her brother's truck?

10 A Correct.

11 Q You talked about some factors in delayed disclosure. And
12 if I understood it correctly, you were saying that one thing
13 that can make a child delayed in disclosing any kind of abuse
14 is if the perpetrator has any access to them or continued
15 access to them. Was that --

16 A Yeah. That is a factor, yes.

17 Q Okay. Now, you're aware that Mr. Norton was not in the
18 house for a significant amount of time after Brianna says that
19 these things happened and before she disclosed. Are you aware
20 of that?

21 A I'm not aware of any length of time. All I know is
22 Brianna said who she lived with at the time, which was mom, her
23 two brothers, and then her stepsister, or her mom's boyfriend's
24 daughter.

25 Q And that -- yeah. Lived with this boyfriend, and that was

1 on the 22nd of July?

2 A She said they were moving in with him in Yukon.

3 Q Later, right?

4 A She said they were in the process of moving in, if I
5 remember correctly.

6 Q But at the time you were interviewing her, that's where
7 she lived and that's who she lived with?

8 A That's who she said, yes.

9 Q Okay. I want to ask you about some of the details that
10 you had going into this. My understanding is that when you
11 conducted the forensic interview, the only thing you knew was
12 that she had said that she was inappropriately touched on the
13 vagina by a stepdad or a boyfriend. Is that right?

14 A The only thing that I can recall knowing at the time were
15 the allegations, which is that mom's -- I think the way it was
16 phrased for me was that Dallas, which is mom's husband or
17 stepdad, had touched her inappropriately or touched her in a
18 wrong way.

19 Q That's before the interview started?

20 A Yes. I've -- yes.

21 Q And you said that that's not uncommon for you to just have
22 the very basics, right?

23 A Correct.

24 Q And then you said that really the only other important
25 thing that you know is whether they've talked to somebody

1 before coming to you?

2 A We do try to get that, yes.

3 Q And you know that she talked to her father and her
4 stepmother before coming to the forensic interview?

5 A I found that -- I'm sorry.

6 Q Go ahead.

7 A I found that out during the interview.

8 Q Okay. You didn't know that? They didn't tell you that
9 before?

10 A Not that I can remember.

11 Q Okay. And they certainly didn't tell you before the
12 forensic interview -- well, let me ask you this.

13 You talked about this disclosure process, it being a
14 process. As I understood that, as a -- some children -- would
15 you agree that some children disclose immediately, and that's
16 the end of it? Correct?

17 A Absolutely.

18 Q And you're talking about some that do a process, correct?

19 A Yes.

20 Q When you talk about that process, you're talking about
21 them adding more, remembering more and more events or details.
22 It's not they're getting everything wrong the first time and
23 now they're telling something entirely different, right? That
24 would still -- that's not part of the disclosure process, is
25 it?

1 A I want to make sure that I understand your question,
2 because you were asking me -- the part of the disclosure
3 process is where they're adding like detail that they remember
4 or something that they didn't talk about, not that they got
5 anything wrong in the interview?

6 Q Right. There's a difference between remembering more
7 stuff later and changing a story entirely. Wouldn't you agree?

8 A Yes.

9 Q And while remembering more and adding more later may be
10 part of the normal, according to your training and experience,
11 disclosure process, that's not the same as a child that comes
12 in and changes the details -- the significant details of her
13 allegations, is it?

14 A Right. Yeah. Through the process of disclosure,
15 significant or those core details will remain the same. It may
16 be those external or outside details that could change over
17 time or based on questioning.

18 Q There's also the possibility that a child is not telling
19 the truth, correct?

20 A Correct.

21 Q And for all of your training and experience, you don't
22 expect the jurors in this courtroom to ignore what they've --
23 their own senses on how they determine whether somebody's
24 telling the truth or not, correct?

25 A No.

1 Q Okay. You don't have any kind of specialized expertise to
2 -- that tells them that when somebody says one thing one time
3 and then something entirely different another time, that that's
4 okay because they're a child?

5 A That would be out of the scope of what my role is.

6 Q Thank you. That's what I want to get at, is that that's
7 not your role. The jurors ultimately use their own
8 experiences, their own knowledge, the judge's instructions to
9 determine whether somebody is telling the truth or not.

10 A Yes.

11 Q Correct? In the interview here with Brianna that we all
12 watched, she was pretty clear that she was -- Ms. Austin asked
13 you about the details of the touching, how it took place. And
14 she was pretty clear, Brianna was, in this interview that we
15 all watched, that she was laying on her stomach when he was
16 touching her vagina, correct?

17 A Yes.

18 Q And she went into detail about how it was that he got his
19 hand to her vagina, correct?

20 A She does talk about that, yes.

21 Q And that it was very slow, correct?

22 A He moved his hand slowly, yes.

23 Q And that he came up the bottom of her shorts in the back
24 first, correct?

25 A Correct.

1 Q So up like this (indicating) while she's laying on her
2 stomach. That's hard. So she's laying on her stomach, and
3 according to her, this is her leg (indicating). He put his
4 hand up the leg of her shorts to her bottom, her butt, correct?

5 A Correct.

6 Q And then moved it around, while she's still laying on her
7 stomach, to her vagina?

8 A She does talk about that. She also talks during that,
9 that he had took her leg and spread them apart as this was
10 happening.

11 Q Moved them apart like that?

12 A Correct.

13 Q What she doesn't say in that interview is that she was
14 lying on her back when this happened, does she?

15 A Not that I recall.

16 Q And coming up the back of the leg to the butt and then
17 around to the vagina, wouldn't make as much sense if she were
18 lying on her back, like she's testified to, compared to lying
19 on her stomach, would it?

20 A Honestly, I wouldn't know, because I could only go off of
21 what she had told me.

22 Q She certainly never told you that she was laying on her
23 back when he's touching her vagina?

24 MS. AUSTIN: I'm going to object. Asked and
25 answered.

1 THE COURT: Sustained.

2 Q (By Mr. Nedwick) You mentioned that this was a pretty
3 short interview, relatively speaking. There are longer ones,
4 depending on how quickly they disclose and things of that
5 nature, how comfortable they are, correct?

6 A Yeah. Interviews vary based on the child and what's going
7 on with that child.

8 Q Okay. In this case, as soon as you asked her why she was
9 there at the Mary Abbott House, she told you immediately why
10 she was there, didn't she?

11 A Correct.

12 Q She said she was there because her mom used to have a
13 boyfriend and he touched her inappropriately?

14 A Correct.

15 Q That is -- if that's different than her testimony where
16 she said she didn't have any idea why she was there until she
17 got there in the interview with you, that would be
18 significantly different than what you recall and what's
19 depicted in the video, correct?

20 A I don't know anything about her testimony, so it could be.
21 But I don't know anything about it.

22 Q Right. And that was a hypothetical. I said, if that's --
23 those two things are very different, right? I had no idea why
24 I was going there versus your experience with her, which was as
25 soon as you asked her, she told you exactly why she was there?

1 A It could be different, yes.

2 Q Ms. Austin asked you after the video played about some
3 cuddling where -- that Brianna described where there was no
4 touching, inappropriate touching. Do you remember those
5 questions?

6 A Yes. We talked about the snuggling, yes.

7 Q And actually, Brianna, in that video depicts -- your
8 interview with her -- told you that actually, she not only
9 cuddled with Mr. Norton alone, but had fallen asleep with him
10 in the bed alone. Isn't that correct?

11 A I remember her talking about them snuggling and arms
12 around each other to fall asleep. I don't recall if she said
13 she did fall asleep or not. But we talked about that.

14 Q And one thing's for sure, she's only described one time
15 where anything inappropriate happened in the bed?

16 A During my interview, yes.

17 Q Correct. And again, you don't know what she told other
18 people before coming in to the interview?

19 A Not that I recall knowing any of the specifics about what
20 she talked about. All that I recall is what I told you and
21 then the things that she told me during the interview.

22 Q You said that some of your interviews, there are no
23 disclosures and you don't keep pressing the person, the child,
24 for a disclosure, if I understood it correctly. Is that --

25 A Yeah. If a child doesn't make a disclosure and we've

1 explored just the things going on in their life and their
2 family dynamic, I won't continue asking the same questions
3 again to press to get a different answer than what a child had
4 already given me.

5 Q Okay. What if -- so if a child -- if you asked that
6 question and they say, no, nothing's happened, I'm fine, and --
7 will you just continue for three or four or five minutes asking
8 them if they're sure or anything like that?

9 A That wouldn't be how I would go about the rest of my
10 interview, no.

11 Q That would be contrary to your training and the protocols,
12 wouldn't it?

13 A It would -- let me answer it this way. It would be
14 contrary in the sense that I wouldn't just keep repeating a
15 question that she's already answered.

16 What I would do is move on and follow up, maybe talk
17 about family dynamics and different things like that. I
18 wouldn't keep asking her if she's sure about a previous answer
19 that she had asked.

20 Q Okay. What was it that you were talking about when you
21 said the child advocacy center?

22 A That is what the Mary Abbott Children's House is, is a
23 child advocacy center.

24 Q Where you conducted this interview?

25 A Correct.

1 Q And did you say it was the Mary Abbott House that does
2 forensic interviews, advocacy, and medical services?

3 A Yes.

4 Q And you're not employed by the Mary Abbott House?

5 A I am.

6 Q Okay. But you just -- you don't define yourself as an
7 advocate?

8 A I define myself as the forensic interviewer. We have
9 other employees that are advocates.

10 Q Okay. And these protocols that you use as a forensic
11 interviewer, did you testify that those are called the National
12 -- or those come from the National Children's Alliance
13 protocols?

14 A They don't come from the National Children's Alliance.
15 The National Children's Alliance is a governing body for child
16 advocacy centers. And the protocols that I talked about are
17 all approved through the National Children's Alliance. But
18 each one is their own protocol and have their own stages in the
19 way that they work.

20 Q And you said that anybody involved in the investigative
21 team is welcome at those forensic interviews, correct?

22 A Yes.

23 Q But nobody else. There's not anybody that -- for
24 instance, myself, I couldn't go attend -- as a defense
25 attorney, I couldn't attend those -- that interview, could I?

1 A Correct.

2 Q You guys would not allow me to do that?

3 A Correct.

4 Q Okay. And nobody gives -- nobody gave you any feedback in
5 this case, whether it was from DHS -- were they the only ones
6 there from the investigative team?

7 A Yes.

8 Q So did any of them give you any direction or feedback as
9 they were hearing her tell a very different story than what had
10 been reported to them? Did they make you aware of that?

11 A Not that I recall. But the interview did happen in 2019.
12 So if it is, it's not something I had documented.

13 Q Before the video played, when Ms. Austin was questioning
14 you, you indicated that Brianna used language that you wouldn't
15 necessarily typically expect from an 11-year-old. Is that
16 right?

17 A Yes.

18 Q And specifically, that would be her referring to her
19 private parts as vagina, correct?

20 A No.

21 Q Okay. What about using the term penis to describe the
22 male genitalia? Is that what you would expect from an
23 11-year-old?

24 A Yes.

25 Q Okay. So it was other stuff that she was saying --

1 terminology that she was using that you thought was, what, less
2 advanced? Like was typical of a younger child or an older
3 child?

4 A What I was meaning during that questioning was that the
5 acts or what was being described were the things I would not
6 see typical for an 11-year-old.

7 Q Having those experiences?

8 A Correct.

9 Q This was talking about terminology.

10 A Yeah. The terminology was typical for what I would see in
11 an 11-year-old.

12 Q Okay. Now, when I asked you a moment ago about advocacy,
13 your testimony on direct about advocacy happens during the
14 interview and after the interview. Is that not correct?

15 A That is correct. But that's done with the advocate and
16 the person that brought the child to the interview. So while I
17 interview the child, they're talking with the person that
18 brought the child.

19 Q Brianna didn't tell you at any point in that interview
20 that this event where her vagina was touched happened when
21 Mr. Norton walked into the living room wearing nothing but his
22 underwear, sat down next to her on the sofa, put his hand on
23 her leg, and then began rubbing her vagina. She didn't
24 describe that to you, did she?

25 A No.

1 MR. NEDWICK: May I have just a moment, Judge?

2 THE COURT: Yes.

3 Q (By Mr. Nedwick) Ma'am, when you were testifying earlier
4 that not every child that has been abused is affected, crying,
5 emotional in their interviews, isn't it also true that a child
6 who's making up a story or not describing something that really
7 happened to them, that would also explain why they're not
8 emotional?

9 A It could.

10 | o It would also --

11 MR. NEDWICK: Well, that's fine, Judge.

12 Thank you, Ms. Cornett.

13 THE WITNESS: Thank you.

14 | REDIRECT EXAMINATION

15 BY MS. AUSTIN:

16 Q Would that be, Ms. Cornett, because there's a wide range
17 of emotions that children experience?

18 A Yes.

19 Q I want to clear up this advocacy issue. Do you have
20 specific child advocates at Mary Abbott Children's House?

21 A Yes

22 Q And then you also have just advocates, or are they all
23 child advocates?

24 A We kind of use those terms synonymously. Our advocates or
25 child advocates is what we typically call our family advocates.

1 They're there to make sure the kid's comfortable until they go
2 into the room and once they leave the room and then also
3 provide the services and the connection with the caregiver that
4 brings them and connects them to resources outside of Abbott
5 House.

6 Q Do they provide any counseling or therapy to children
7 there at the Abbott House?

8 A No.

9 Q So the Abbott House, you said, was a child advocacy
10 center. Is it because that everyone who is housed there, the
11 goal is to help children?

12 A Correct.

13 Q And -- but you are not in the advocacy role at all; solely
14 a forensic interviewer?

15 A Correct.

16 Q Anybody who would have done that with the family was a
17 different person, not you?

18 A Correct.

19 Q You were asked questions about disclosures and whether or
20 not kids make disclosures. I mean, tell me about -- you keep
21 track of interviews. You said 1,600. Does that affect whether
22 or not they're disclosures, not disclosures? How is that? I
23 mean, does it matter if you get one or not?

24 A No.

25 Q And how does that affect your numbers?

1 A It doesn't.

2 Q You don't get a bonus or anything bigger if you get a
3 disclosure, do you?

4 A No.

5 Q Okay. In fact, sometimes are you very happy that a
6 child's not disclosing sexual abuse to you?

7 A Honestly, I prefer that they not make a disclosure because
8 I don't want things to be happening to a child.

9 Q You were asked some questions by Mr. Nedwick about, you
10 know, if an interview -- sounds like he's talking about an
11 interview being fantastical or something, who's going to stop
12 that. Is that your role at all, if an interview is fantastical
13 or something that is not -- maybe not believable at all, to do
14 anything about that?

15 A Other than explore to see if we can determine if there's
16 more fantastical elements. But outside of that, I'm not going
17 to stop a child from any statements that they make.

18 Q And is that your role to do anything with it after you
19 walk out of that interview room?

20 A No.

21 Q That's the investigative team's role?

22 A Correct.

23 Q You were asked some questions about grooming and talking
24 to Brianna Norton about -- I'm sorry, Brianna Jackson about
25 grooming. Did you have answers to questions from her that

1 appeared to be some possible grooming?

2 A Possibly, yes.

3 Q And what types of things were those?

4 A Some of the things she did say in there that could
5 potentially have been grooming is the snuggling, because she
6 talked about how they had snuggled before and nothing had
7 happened until this time.

8 She did talk about getting snacks and things like that,
9 that they would get it for everyone else, but she also talked
10 about times where she would be the one that just got snacks as
11 well.

12 Q Did she also talk about this wrestling that she was
13 obviously comfortable doing with the defendant?

14 A She talked about the wrestling, yes.

15 Q And when you asked her about the snuggling, she was able
16 to describe the snuggling. Is that right?

17 A Yes.

18 Q How did she describe that?

19 A I can't remember the exact words that she used, but she
20 talked about, I believe, arms around each other, if I remember
21 correctly.

22 Q You were also asked questions about -- of a child changing
23 their story, I think is how it was worded by Mr. Nedwick. So
24 if a child tells something in their initial disclosure and then
25 says something that is not word for word in the forensic

1 interview, does that concern you?

2 A No.

3 Q Would it, in fact, concern you if they were only using the
4 same words every time and wouldn't change all those words or
5 provide details?

6 A It could.

7 Q And why is that?

8 A Because that would be something I would look at to see if
9 potentially there's some coaching going on. So I would want to
10 explore that further if I was -- if I had known word for word
11 what she had told someone else, then went in and it was the
12 exact same phrasing based on all the questions I asked, then I
13 would probably explore that further and figure out if there was
14 some coaching or if those dynamics were there.

15 Q And so on the flip side, if a child has said something
16 about a scenario, about being touched in their initial
17 disclosure, and then they tell you about different times of
18 being touched, does that concern you?

19 A No.

20 Q Why not?

21 A Because kids will disclose at different times and based on
22 different settings and also based on the different types of
23 questions that are being asked.

24 So if I ask a child a question and get information,
25 somebody else could come in and ask a totally different

1 question that's trying to get to the same thing and the answer
2 would be a little different based on that question that's being
3 asked.

4 Q And you were asked, I mean, about this child advocacy and
5 what your role is. And I think you have been very clear that
6 your role is not to come in here and say Brianna Jackson is
7 telling the truth or not telling the truth. It's just this is
8 your interview, and this is your training and experience. Is
9 that right?

10 A Correct.

11 Q But based on your training and experience, does that tell
12 you that memory is a complex thing?

13 A Yes.

14 Q And does that affect disclosures?

15 A It can, yes.

16 Q And how is that?

17 A Memory can affect disclosure just by -- based on certain
18 things that someone remembers. Even as an adult, I may not
19 remember every single detail about something, but I can give
20 you the details I do remember.

21 And there may be something later on that -- that
22 triggers another part of it that I wasn't thinking of in that
23 moment. And so memory, it's evolving, and it evolves as you
24 get older. And so all of those things factor in to how a kid
25 would disclose or relay information.

1 Q And you were asked some questions about interviews where
2 kids do not make a disclosure and you asked them if something
3 happened, they say no, they're fine. Do you -- you said you
4 don't continue asking questions, but do you do more followups
5 and then talk to them about safe people in their life?

6 A Yes.

7 Q Do you also talk to them about making sure their home is
8 safe?

9 A Yes.

10 Q Do you do things to help assure them that if they wanted
11 to talk, they could?

12 A Yes.

13 Q So although they don't make a disclosure, you don't just
14 get up and walk out of the room. You talk to them about safety
15 for a period of time?

16 A Correct.

17 Q Is that wrong to do that?

18 A No.

19 Q In fact, is that what the protocols talk about, is making
20 sure -- before you finish talking to a child, to make sure that
21 they have a safe person to talk to?

22 A Yes.

23 Q Okay. And that they can feel comfortable talking to
24 someone?

25 A Yes.

1 Q You were asked about the investigative team and watching
2 the interviews. And I think Mr. Nedwick said as a defense
3 attorney, he could not come watch an interview. Is that right?

4 A Correct.

5 Q Assistant district attorneys, we don't come watch them
6 either, do we?

7 A Correct.

8 Q These words that were used by Brianna, penis and vagina,
9 you were asked questions about that. You've done 1,600
10 interviews. Have you heard all kinds of words for private
11 parts?

12 A Yes.

13 Q Okay. And some kids know the actual real words, don't
14 they?

15 A Yes.

16 Q Even at a very young age?

17 A Yes.

18 Q There's no right or wrong to that, is there?

19 A No.

20 Q But you have to use the words that they use --

21 A Correct.

22 Q -- when you're interviewing? Okay. You were asked, I
23 think, specifically about -- by Mr. Nedwick -- and I think you
24 were asked the question about, did she tell you that the
25 defendant walked into the living room wearing nothing but

1 underwear. Do you remember that line, when he asked you that?

2 A Yes.

3 Q And you said she did not say that, but she did tell you he
4 was wearing nothing but underwear in the bedroom. Is that
5 right?

6 A Correct.

7 Q And she -- did she say it was just the two of them in the
8 bedroom?

9 A Yes.

10 Q Did she say he put his hand on her leg before he touched
11 her vagina?

12 A I know she talked about him going up the leg of her pants
13 and moving it up, yes.

14 Q And did she say he rubbed on her vagina with his fingers?

15 A Yes.

16 MS. AUSTIN: If I could have just one second, your
17 Honor?

18 THE COURT: You may.

19 MS. AUSTIN: Thank you, Ms. Cornett.

20 Pass the witness.

21 MR. NEDWICK: Nothing further, Judge.

22 THE COURT: Thank you, Ms. Cornett. You may be
23 excused.

24 THE WITNESS: Thank you.

25 MS. AUSTIN: Your Honor, at this time the State of

1 Oklahoma has no further witnesses, and the State would rest.

2 THE COURT: Very well. Thank you.

3 Counsel, would you please come up to the bench.

4 Jurors, I'm not going to excuse you, but you're welcome
5 to stand up and stretch if you'd like.

6 (The following discussion took place at the bench,

7 outside the hearing of the jury:)

8 THE COURT: Mr. Nedwick, do you have a motion?

9 MR. NEDWICK: Yes, your Honor. We would demur to the
10 evidence and ask that the Court dismiss both counts for
11 insufficient evidence and direct a verdict of not guilty.

12 THE COURT: All right. I believe that the State,
13 through the presentation of the seven or eight witnesses that
14 have been on the stand so far, as well as through the evidence
15 that has been entered, has provided enough evidence to overcome
16 the defendant's demurrer, and that for those reasons, I'm going
17 to deny the request.

18 MR. NEDWICK: Okay.

19 THE COURT: All right.

20 MR. NEDWICK: If you want to give -- release the --
21 or not release them, but give them a break and give me 20
22 minutes to talk to my client, he might -- we might not have
23 anymore witnesses.

24 THE COURT: Okay.

25 (In open court.)

1 THE COURT: I was kidding. We're going to put you on
2 a break now. Let's be back at 3:15.

3 (A recess was taken, after which the following
4 transpired at the bench, outside the hearing of the jury,
5 all parties present:)

6 (This portion was previously transcribed and under separate
7 cover.)

8 (In open court.)

9 THE COURT: All right. At this time, Mr. Nedwick,
10 you're recognized.

11 MR. NEDWICK: Thank you, your Honor.

12 The defense rests, your Honor.

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

14 Ladies and gentlemen of the jury, you have now heard
15 all of the evidence in this case. And next up in the case
16 would be to give you the instructions and then to hear closing
17 arguments. I still need time to finalize the jury
18 instructions.

19 So at my decision, we are going to conclude today and
20 we will start promptly at 9:00 a.m. tomorrow morning where I
21 will instruct you as to the law. You will hear closing
22 arguments, and then you will be excused so you can begin your
23 deliberations.

24 You may take as long as required for deliberations. So
25 please come prepared tomorrow with any food that you would like

1 to eat, with any medications that you might need to take, and
2 any arrangements you need to make so that you're not looking at
3 the clock and feeling pressured to get home to pick up somebody
4 or attend to something.

5 I am speculating that by noon tomorrow, you will have
6 heard the closing arguments and you'll be ready to deliberate.
7 So, you know, just kind of go from there. I can't really tell
8 you how long, because it's up to you how long you deliberate.

9 So I guess what I'm trying to say is I don't anticipate
10 you'll be here late into the evening tomorrow night, but I have
11 no idea. So you just need to be prepared so that, again,
12 you're not put in a position where you're worried about needing
13 to be home and then -- and, you know, taking away from your
14 deliberations.

15 So I'm going to excuse you now to go home today.
16 Please leave your notes here on the chairs. And remember the
17 admonition I've given you before. You're not to conduct any
18 research on this case or into any of the matters that you've
19 heard, people that you've heard. Your decision must be made
20 strictly upon the evidence that you have heard here in this
21 courtroom.

22 Thank you very much. You may be excused. We'll see
23 you tomorrow morning at 9:00 a.m.

24 (After the jurors were excused, the following
25 transpired in open court:)

1 THE COURT: All right. Please be seated. I would
2 like to settle these jury instructions and make any records we
3 need to per those instructions. Do counsel for the State and
4 the defendant both have copies of the jury instructions?

5 MS. AUSTIN: Yes.

6 MR. NEDWICK: Yes.

7 THE COURT: Okay. Might be easier if you want to
8 stand up here at the bench while we do this.

9 Both the State and the defendant have presented the
10 same instructions for 10-1 and 10-2, so I'm assuming there's no
11 argument, that they're in agreement with those instructions?

12 MR. NEDWICK: Yes, your Honor.

13 THE COURT: Same with the State?

14 MS. AUSTIN: Yes.

15 THE COURT: 10-3, the only difference is that the
16 State has given me the instruction that has both Counts I and
17 II in one sentencing -- well, sentence. And it looks like the
18 defendant's instruction has them spelled out in different
19 paragraphs.

20 MS. AUSTIN: I like that one better. The more broken
21 down one.

22 MR. NEDWICK: I like theirs better.

23 MS. AUSTIN: Just one paragraph. I mean, it doesn't
24 matter. I mean, they both --

25 THE COURT: Also, the defendant's --

1 MR. NEDWICK: Yours is just -- I see what
2 yours --

3 THE COURT: Also, the defendant's explains the
4 differences in Counts I and II.

5 MS. AUSTIN: What the different allegations are.

6 THE COURT: Which I think would be more accurate.

7 MS. AUSTIN: I do too. I think yours is the more
8 detailed.

9 THE COURT: Yes.

10 MR. NEDWICK: Let's make sure that Jennifer and I
11 have this straight. If what you're calling defendant, is it
12 the one in the larger type?

13 THE BAILIFF: Judge has them in his hand.

14 THE COURT: She just puts a sticky on mine to
15 indicate --

16 MS. AUSTIN: This one is State's (indicating).

17 THE COURT: Oh.

18 MS. AUSTIN: And that one's defendant (indicating),
19 according to this packet that you have here.

20 THE BAILIFF: That's not what I had from -- again, we
21 all did this in February. But I had the stickies from --

22 MS. AUSTIN: Either way, we like the one broken down
23 in two. How about that?

24 MR. NEDWICK: These are defendants (indicating).
25 Yeah. So I think it's State's, Judge, that we're --

1 MS. AUSTIN: That one broken down with the two
2 counts.

3 THE COURT: However, I believe the last sentence
4 should -- there should be an S added to the word charges so
5 that it reads -- well, and I think this should be changed to
6 these. So it should read, To these charges, the Defendant has
7 entered a plea of not guilty.

8 MS. AUSTIN: Yes.

9 THE COURT: Are we in agreement with that?

10 MS. AUSTIN: Yes.

11 MS. WHATLEY: Yes.

12 THE COURT: Mr. Nedwick?

13 MR. NEDWICK: Yes.

14 THE COURT: On the next page, I have instructions
15 10-4 and 10-5. I believe both sides gave me that one. So no
16 objection?

17 MR. NEDWICK: There's something goofy going on here.
18 My next one is --

19 THE BAILIFF: I put them together.

20 MS. AUSTIN: We're going by the set she --

21 THE BAILIFF: We're going by the set I sent you.

22 THE COURT: I skipped the ones that I generally read
23 during the trial.

24 THE BAILIFF: Yeah. Do you want me to go print you
25 what I sent you?

1 MR. NEDWICK: Yes, please.

2 THE BAILIFF: I have it pulled up.

3 MR. DOUGLAS: We submitted the 1 series, 1 dash such
4 and such, which is all for you, ahead of time. The 10 series
5 is where it starts, Ladies and gentlemen, you have now received
6 all the evidence. That's where it all really starts, I think.
7 The 10-1, et cetera.

8 THE COURT: While we're waiting, I told the jurors
9 we're going to begin at 9:00. If there's any records that need
10 to be made, you need to be here by 8:50 to make those records.

11 MS. AUSTIN: Certainly.

12 THE COURT: Okay. Do you see the instructions on
13 presumption of innocence and definition of evidence, 10-4 and
14 10-5?

15 MR. NEDWICK: I do. I see what's going on now.

16 THE COURT: Any objection to those?

17 MS. AUSTIN: They're standard OUJI. No objection.

18 THE COURT: According to Jami, these are what you
19 both submitted to me.

20 MR. NEDWICK: Yeah. I'm fine.

21 THE COURT: All right. 10-6, any objection to 10-6?

22 MS. AUSTIN: Standard OUJI, no objection.

23 MR. NEDWICK: No objection.

24 THE COURT: All right. The next instruction I have
25 was submitted to me by the State. And this is the -- I'm

1 guessing this is verbatim the -- what's in the Information?

2 MS. AUSTIN: Yes, sir. This is the instruction we
3 were requesting. We have submitted this and asked for this to
4 be given and has been given in numerous cases over the years,
5 and those cases have all been affirmed by the Court of Criminal
6 Appeals. We think it is an appropriate instruction to be given
7 when there is a timeframe charged.

8 MR. NEDWICK: We object to it, your Honor. There's
9 -- if there was one that was proper and necessary, it would be
10 among the uniform jury instructions by now.

11 This one is --

12 MR. DOUGLAS: Eases their burden.

13 MR. NEDWICK: Eases their burden and actually puts
14 even a higher burden on the defendant who has already had to
15 defend allegations that have no definitive date to them
16 whatsoever. It has been very challenging as it is.

17 So we would object to that. It's not necessary and
18 it's not proper and does prejudice the defendant.

19 THE COURT: Ms. Austin, you mentioned that there is
20 case law that supports --

21 MS. AUSTIN: Judge, I'm sorry. There are no cases
22 that cite to it, but we have given it in numerous cases and
23 none of those cases have been reversed, nor has it been brought
24 up as an issue in those cases. It has not been addressed.

25 It does not state something that's not accurate. It's

1 not an inaccurate statement of the law because there is not an
2 element to the crime. As we get into the fours later, the
3 Court will see it's not an element to the crime. It just
4 points out the date that is alleged is not something that is
5 required to be proven so long as the crime is committed during
6 the time period set out in the Information is what they find.

7 MR. DOUGLAS: Your Honor, the -- forgive me. The
8 fact that it hadn't been raised -- the fact that there hasn't
9 been a case overturned because that was included is not a
10 reason to include it. And it is not persuasive authority for
11 the fact that it should be included.

12 It is -- if -- they must show that it happened within a
13 period of, what, three years, I think? It may not be one of
14 the elements, but it certainly is for -- it eases the burden
15 for the State and increases our burden.

16 And don't be fooled by the fact that it hasn't been
17 overturned by the Court of Criminal Appeals. That's not
18 authority for the fact that you should adopt it here.
19 Fundamental fairness should apply here.

20 THE COURT: Well, I'm always reluctant to use a OUJI
21 that's not standard. I believe that the State, in their
22 closing arguments, can essentially argue these things. You
23 can't represent that it's the law because I'm not giving it,
24 but I'm not going to give the instruction. I would expect the
25 State to make arguments that are along these same lines. Okay?

1 MS. AUSTIN: Okay.

2 THE COURT: So over the State's objection, I'm not
3 going to give this one.

4 On the next page are three jury instructions, 9-1, 9-2,
5 9-3. I believe those are standard. Any objection?

6 MS. AUSTIN: No.

7 MR. NEDWICK: No, your Honor.

8 THE COURT: Next page is 9-4, 9-5, and 9-6A.

9 MS. AUSTIN: No objection.

10 MR. NEDWICK: No objection.

11 THE COURT: The next page I have is an instruction
12 submitted by the defendant, 9-9, Proof of Other Crimes.

13 MR. DOUGLAS: I don't want to speak for Keith.
14 I keep interrupting here. Forgive me.

15 THE COURT: Well, since you are, go ahead.

16 MR. DOUGLAS: Well, you remember, it's not so much
17 other crimes as bad acts or misconduct if Bailey Ferguson's --
18 if the testimony surrounding all that sort of stuff is to be
19 introduced into evidence, which it was, it can't be used to
20 determine whether he's guilty here. And that is -- if the
21 Court of Crims says that that's a curative-type instruction, it
22 comes far from curing it, but it certainly is needed.

23 MR. NEDWICK: Your Honor, actually, I would -- and I
24 definitely need to make a record on this. Even though the
25 Court has found that it's res gestae, I would actually propose

1 a different instruction than the one given there.

2 And it would -- it wouldn't be titled Proof of Other
3 Crimes. It would -- and it wouldn't have all the exceptions
4 there, the Burks exceptions, motive, opportunities, so on and
5 so forth.

6 It would simply say that evidence has been received
7 about the defendant that he has allegedly committed misconduct
8 other than that's -- well, relating to Bailey Ferguson. That
9 evidence has been introduced to explain how, as res gestae in
10 this case, as to explain for your benefit why the investigation
11 started. You may not consider it as proof of guilt in your
12 deliberations.

13 MS. AUSTIN: Judge, we would object to that being
14 given. I think we just had a discussion not two minutes ago
15 that we don't like giving non-OUJIs, and here we are doing the
16 exact same thing talking about this.

17 9-9, the committee notes on this are that it was used
18 with other crimes evidence and it must be read before the other
19 crimes evidence comes in and then given at the time when the
20 jury instructions are given.

21 This Court did not rule that this evidence was other
22 crimes evidence. You ruled it was res gestae. There is not a
23 OUJI for res gestae because it is part of the chain of events
24 of the crime, the facts and circumstances that help explain the
25 crime. There is not a OUJI for that.

1 This one is specifically made for Proof of Other
2 Crimes. And we did not have that evidence admitted before this
3 jury. I think to alter it in any way, and especially to use
4 the words res gestae to the jury, would be confusing --

5 MR. NEDWICK: To say the least.

6 MS. AUSTIN: -- and a limiting instruction that is
7 not necessary, in that there is not a specific OUJI necessary
8 for res gestae.

9 MR. NEDWICK: I will say this, Judge. I did come
10 across a case out of New Mexico Tenth Circuit where this whole
11 issue of res gestae versus other bad acts was at issue. And
12 they had determined that it was res gestae. And what the Judge
13 said was, Okay, I get it, it's res gestae, so this
14 instruction's not required, but there's also nothing stopping
15 me from doing it and I think it's appropriate. That's why I
16 let it in.

17 And so anyway, it's simply the absence of an
18 instruction on it and the absence of a requirement that it be
19 given because it's not Burks doesn't equal it can't be given.
20 And it's very prejudicial evidence that -- absent an
21 instruction. But anyway.

22 THE COURT: Well, I'm not going to include it.
23 Again, it's a pretty high burden to convince me to include a
24 non-OUJI instruction. I believe that if the Court of Criminal
25 Appeals feels like it should be one, that they'll speak to the

1 trial courts, and/or the OUJI criminal committee can address it
2 at some future point in time.

3 Next page is 9-24, and 9-42. Any objection to that?

4 MS. AUSTIN: No.

5 MR. NEDWICK: No objection, your Honor.

6 THE COURT: All right. Next is instruction 13-20
7 submitted by the defendant. You are instructed that Brianna
8 Jackson and Tayra Cates, AKA Tayra Norton, are competent
9 witnesses. Their testimony is to be judged in the same way as
10 any other witness.

11 For what purpose is that given, Mr. Nedwick?

12 MR. NEDWICK: It is a uniform jury instruction. And
13 it's given so that the jury knows that even though they're a
14 child, they're a competent witness, which the case law says, if
15 they're competent, then they are just like any other witness.
16 I mean, you do that threshold analysis to determine whether a
17 child is competent.

18 Then once they're -- if they meet that threshold, then
19 they're treated as any other witness.

20 MR. DOUGLAS: And the child's testimony is the source
21 of a couple of other witnesses's testimony who just repeated
22 it.

23 MR. NEDWICK: I would say, Judge, we would need to
24 remove Tayra Cates, AKA, Tayra Norton if the Court -- because
25 she didn't testify.

1 MS. AUSTIN: And, Judge, I think it's -- the Court
2 determines who a competent witness is. But this specific
3 instruction comes from Chapter 13, which is the juvenile
4 delinquency chapter.

5 And the 13-20, the notes -- well, there's two
6 paragraphs of 13-20. The first one is the one that is cited
7 here. The second one is -- or the name of the child, is not
8 compelled to testify and the fact that the child did not
9 testify cannot be used against it.

10 So it says, This trial court should use the first
11 alternative, which is this one that they've given you, if the
12 child did testify.

13 The second alternative should be used if the child did
14 not testify and it's requested by the child. So this is the
15 instruction that's given if a child is a defendant and they are
16 competent to testify or they are not competent or they don't
17 have to testify.

18 It is the mirror image of the 4 -- or the 9-41 or 9-44.
19 It is 9-41 and 9-44. This is the delinquency version of 9-41
20 and 9-44 that talks about the defendant is a competent witness
21 to testify or the defendant is not compelled to testify.

22 I don't think that's appropriate to give in this case.

23 THE COURT: I believe that this instruction is not
24 applicable to this case. I'm not going to give it.

25 Next is 9-41 --

1 MR. NEDWICK: That can be removed.

2 THE COURT: -- which is not applicable.

3 9-44. Assuming there's an agreement that this should
4 be given?

5 MS. AUSTIN: Yes.

6 THE COURT: Okay. 10-7, 10-8. I've read 10-7
7 already, and I believe I've read 10-8. But I will go ahead and
8 read it again tomorrow. Any objection?

9 MS. AUSTIN: No objection.

10 MR. NEDWICK: Is that what you normally do?
11 You read it twice?

12 THE COURT: Yes.

13 MR. NEDWICK: Okay. I have no objection then.

14 THE COURT: Okay. 10-8A and 10-9.

15 Again, I've given these instructions, and I would like to give
16 them again. Any objection to that?

17 MS. AUSTIN: No.

18 MR. NEDWICK: No.

19 THE COURT: Okay. The next instruction is 4-129.
20 This is lewd acts to a child under 16, the elements. This goes
21 back to our previous discussion. Do they need to be separate
22 instructions because there are two counts?

23 MS. WHATLEY: Separate because the acts are actually
24 different.

25 MS. AUSTIN: I do like the two, because one says

1 forced or required the child under the age of 16 to touch or
2 feel the body or private parts. And the other one just says
3 touching the body or private parts.

4 So I think it's appropriate to have two separate. Is
5 there a way, Jami, though, to do kind of like this one is laid
6 out where it has the underline for each?

7 THE BAILIFF: Underline the elements.

8 THE COURT: So let's look at the instruction for
9 Count I as it is written on the piece of paper you have before
10 you. Other than underlining the words that are the numbers,
11 any suggested changes or corrections, or are you in agreement
12 with it as written?

13 MS. AUSTIN: I think the one that -- Count II or the
14 fifth element, it says -- okay. Yes, I'm sorry.

15 Yes. Count I's good. Count --

16 THE COURT: Mr. Nedwick, are you good with Count I?

17 MR. NEDWICK: Yes, which is the elements that are on
18 the State's current one?

19 MS. WHATLEY: This one (indicating).

20 MR. NEDWICK: Okay. Yeah. Count I, the way we have
21 it there, that's fine.

22 THE COURT: All right. Let's look at Count II now.

23 Ms. Austin, do you have some suggestions?

24 MS. AUSTIN: The only thing is the last one, the
25 sixth, where it says, Used force or fear. I don't think we've

1 had any evidence of that. I think just the, At least three
2 years older than the child.

3 MR. NEDWICK: Yeah. This should be -- basically
4 should mirror the way we did No. 1. I'm not sure why we left
5 the --

6 MS. AUSTIN: Because Count II is alleged to having
7 her touch him. So it's a different allegation under lewd acts.

8 MR. NEDWICK: Right. Yeah. What I'm talking about
9 though is you know how we put, Touched the body parts in the
10 third element?

11 MS. AUSTIN: Yes.

12 MR. NEDWICK: Rather than listing all the different
13 ways it can be proved, I don't know why we wouldn't do the
14 same.

15 MS. AUSTIN: Well, there are several different ones
16 under lewd acts. And it meets this one where it's forced or
17 requiring a child to touch or feel the body or private parts of
18 another person, because the allegations are touching the penis
19 of the defendant. So it's -- there are several options that it
20 meets, and this is the one that --

21 MR. NEDWICK: Yeah, that's fine. That works.

22 MS. AUSTIN: But I think the force or fear does not
23 need to be there.

24 MR. NEDWICK: Yeah.

25 MS. AUSTIN: Yeah.

1 THE COURT: Okay. So on the fifth element,
2 I'm -- the way I think it should be given is, To touch, slash,
3 feel the private parts of another person. Are we in agreement
4 to that?

5 MS. WHATLEY: Yes.

6 MS. AUSTIN: Yes.

7 THE COURT: Okay. And Mr. Nedwick, you're nodding
8 your head yes.

9 MR. NEDWICK: Yes, your Honor.

10 THE COURT: Okay. Sixth, the defendant was at least
11 three years older than the child.

12 MS. WHATLEY: Yes.

13 MR. NEDWICK: Yes.

14 THE COURT: Okay. Next page, definitions, 4-139.

15 MS. AUSTIN: No objection. I think those are the
16 only ones that are listed in the instructions.

17 THE COURT: Well, one set has, Knowing or knowingly,
18 lascivious, lewd, and private parts. The other set of
19 instructions also includes genitals or genitalia and force.

20 MS. AUSTIN: I don't think the one with force is
21 necessary.

22 MR. NEDWICK: I agree.

23 MS. AUSTIN: And then I don't think we have
24 any -- we don't have genitalia. We just have private parts of
25 the body.

1 MS. WHATLEY: No, we do have it. We have forced or
2 required a child under 16 years of age to touch or feel the
3 body parts.

4 MS. AUSTIN: Oh, okay. Then I guess we do need
5 forced.

6 MS. WHATLEY: It was just we weren't alleging that it
7 was accomplished through force or fear. But the force was --

8 MS. AUSTIN: Because it says any means, no matter how
9 slight.

10 MS. WHATLEY: No matter how slight.

11 THE COURT: Okay. What's the consensus on do we
12 include a definition for genitals or genitalia?

13 MS. AUSTIN: I don't think that's listed in any of
14 these.

15 THE COURT: Under private parts it says, The genitals
16 are sex organs. So it seems like that's a circular logic
17 thing.

18 MS. AUSTIN: Yeah. Kind of like lewd and lascivious
19 also. I don't think we need it. I think it's superfluous.

20 THE COURT: Please look at OUJI 4-139. Does it
21 include a separate definition for genitals?

22 MS. WHATLEY: It does. It says, The external sex
23 organs. But then we don't have genitals or genitalia as one of
24 the -- listed of either one of our charges.

25 THE COURT: Okay. Well --

1 MR. NEDWICK: But it's -- the reason it's in there --
2 MS. WHATLEY: Oh, because it has it under private
3 parts.

4 MR. NEDWICK: Right. Right. The definition of
5 private parts includes genitals. So that's why genitalia is --

6 THE COURT: Then we're going to keep it in there.

7 MS. AUSTIN: That's fine.

8 THE COURT: So we're going to keep 4-139, that I
9 think was given by Mr. Nedwick, which includes definition for
10 force, genitals or genitalia, knowing or knowingly, lascivious,
11 lewd, and private parts.

12 Okay. Next, we have the Return of Verdict for Count I
13 and Count II submitted by the State, which includes the
14 citation to *Chadwell*, which coincidentally, this Court presided
15 over that case.

16 Ms. Austin, do you want to state on the record why you
17 believe these return of verdict instructions should be read the
18 way you've submitted them?

19 MS. AUSTIN: Yes. I'm making sure, Judge, that
20 there's not been an amendment to the OUJI that actually
21 includes that yet.

22 In the *Chadwell* case, it was a case similar to this one
23 in age where the child was under 12 at all times for the crime.
24 But -- and the majority opinion did not address it, but in the
25 concurring opinion, one of the justices thought that it was

1 necessary to give this instruction.

2 And it was actually laid out in the opinion that this
3 is the way this should be worded if the child is under 12. I
4 know we've had some discussion, and I think it's -- the Court
5 should be able to instruct on that because you've heard whether
6 or not the child is under 12, and you're the one who determines
7 what the evidence is and what instructions should be given.

8 But in an abundance of caution, because the Court of
9 Criminal Appeals has had that in the opinion, we think it's
10 appropriate to do it this way, and to cite *Chadwell* as the
11 bottom of the 10-13 because it's been modified to conform with
12 *Chadwell vs. State* opinion.

13 THE COURT: Mr. Nedwick, you can respond when you're
14 ready.

15 MR. NEDWICK: So if I'm not mistaken, we used the
16 exact language in the -- in the opinion in ours, because I just
17 did another case in February, and the State's was slightly
18 different than ours. And we had prepared ours exactly from the
19 opinion since there wasn't a uniform instruction on it.

20 THE COURT: So yours also talks about a fine up to
21 \$10,000, which the State's does not include.

22 MR. NEDWICK: Yeah. Other than the 10,000, where do
23 we differ on the language? I mean, I think both of them say
24 the same thing. And again, out of an abundance of caution, my
25 recollection is that I insisted that ours, the one we

1 submitted, mirrored the Chadwell opinion, but I can't say that
2 for sure.

3 MS. AUSTIN: I think it just -- it leaves out the
4 sum. Like if you find the defendant guilty and it says, Find
5 beyond a reasonable doubt. Ours says, Find that the State
6 proved beyond a reasonable doubt that the victim was the age of
7 12 or under.

8 MS. WHATLEY: And one says may sentence and one says
9 shall sentence. They're a little bit different.

10 MR. NEDWICK: Well, that's significant.

11 THE BAILIFF: Do you have fines in yours?

12 MS. WHATLEY: No fines in the State's.

13 MS. AUSTIN: The opinion reads, The jury instruction
14 should not change -- the third paragraph of the instruction
15 should read, If you find the defendant guilty, you should then
16 determine the proper punishment. The crime of lewd molestation
17 of a child under the age of 16 is punishable by imprisonment in
18 the custody of the Department of Corrections for not less than
19 3 years nor more than 20 years. You may also impose a fine of
20 up to \$10,000.

21 If you find the defendant guilty and you find beyond a
22 reasonable doubt that the victim, initials, was, is, were, are,
23 the age of 12 or under, then you may sentence the defendant to
24 custody in the Department of Corrections for not less than 25
25 years.

1 And then it's although -- I think the only difference
2 in that is that the statute says "shall." And I think that's
3 why we changed it, is because we looked at the statute and the
4 statute says shall not be less than 25.

5 MR. NEDWICK: Yeah. And since we're not in the
6 uniform instructions, instead taking this instruction from the
7 *Chadwell* case, that's why we included it word for word as they
8 stated it, which includes "may."

9 Whether they meant to use that language or not, who
10 knows. But they say this is the instruction that should be
11 given.

12 MS. AUSTIN: In the statute, it says, Shall upon
13 conviction be punished by imprisonment in the custody of the
14 Department of Corrections for not less than 25 years.

15 The statute itself does not set forth a fine.
16 So there is no fine. That's why we never list a fine. There
17 is no fine in the statute for either one of these offenses.

18 MR. NEDWICK: That's where it gets tricky, because we
19 are deviating using the -- the only reason we're using it is
20 because it comes from that *Chadwell* opinion. And then if we're
21 going to use the *Chadwell* opinion, the *Chadwell* opinion does
22 tell us what language to use verbatim.

23 THE COURT: I believe the --

24 MR. NEDWICK: I don't care, to be honest with you.

25 THE COURT: -- issue of *Chadwell* was the fact that

1 you had the age of the victim.

2 MR. NEDWICK: Right.

3 THE COURT: Whether there's a fine or they're
4 changing the standard from a shall to a may, I think that's --
5 that's not the relevant part. The relevant part is instructing
6 the jury that they need to make sure that the defendant is that
7 age. So I'd like to use the State's suggested instruction.

8 MR. NEDWICK: I'm going to go ahead and say over my
9 objection on that one just to be safe.

10 THE COURT: Sure. Okay. We'll use the State's
11 submitted instructions on 10-13 for Return of Verdict Count I
12 and the Return of Verdict Count II.

13 THE BAILIFF: As is?

14 THE COURT: As is.

15 And can you all just look at those punishments just to
16 make triple sure --

17 MS. AUSTIN: Yes.

18 THE COURT: -- that they are correct?

19 MS. AUSTIN: Okay. The very last paragraph says
20 Return the -- the verdict form for the crime of forcible
21 sodomy.

22 THE BAILIFF: Is that theirs, Judge?

23 THE COURT: That's yours.

24 MS. AUSTIN: The very last paragraph says forcible
25 sodomy.

1 THE COURT: In the instruction for 4-129, it says,
2 Lewd acts to a child. I want to be consistent.

3 MS. AUSTIN: The Information says, To a child under
4 16.

5 THE BAILIFF: What did you just say?

6 MS. AUSTIN: The Information says, To.

7 THE COURT: Then next one, next page I have two
8 instructions, 10-13A and 10-13C.

9 MS. AUSTIN: Yes. I think those are both OUJI. I
10 don't think there's been anything to come out yet that says
11 that we're not doing post-imprisonment supervision on sex
12 crimes yet.

13 THE BAILIFF: And we've changed it to, To a child.

14 MS. AUSTIN: Thank you.

15 THE COURT: No objection by the State or the
16 defendant on 13A and 13C?

17 MR. NEDWICK: No.

18 MS. AUSTIN: No.

19 THE COURT: Next one is the standard 10-10, Closing
20 Charge Instruction.

21 MS. AUSTIN: No objection.

22 MR. NEDWICK: No objection.

23 THE COURT: Okay. We have our verdict forms, Count
24 I, Count II.

25 MR. NEDWICK: Are we going to change the language to,

1 To, to be consistent?

2 THE COURT: I am.

3 THE BAILIFF: He already did.

4 MR. NEDWICK: Okay.

5 THE COURT: So on 10-14, the only one I'm changing is
6 the with to "to." No objection?

7 MS. AUSTIN: That's fine, yes. No objection.

8 THE COURT: Any objection by the defendant?

9 MR. NEDWICK: On what?

10 THE COURT: Verdict forms.

11 MR. NEDWICK: No.

12 THE COURT: Okay. All right. And I have this one
13 that talks about the recordings.

14 MR. NEDWICK: And I object to that one, Judge.

15 MS. AUSTIN: I noticed that when we watched it, there
16 is a bit of a jump in the video. And this one was just to let
17 them not assume or to put additional weight on what has been
18 excluded from that.

19 MR. NEDWICK: I don't want to draw attention to it.
20 Pretty obvious. Looks like she does want to draw attention to
21 it. And it's not a uniform instruction.

22 THE COURT: I'm going to not include this instruction
23 over the State's objection. I -- my own viewing of it, I don't
24 think it's a legal question of the jury, and it's not a
25 standard instruction.

1 Any other arguments to make on the record?

2 MS. AUSTIN: There is no other requested instructions
3 by the State.

4 MR. NEDWICK: None for the defendant.

5 THE COURT: Okay.

6 THE BAILIFF: Okay. I'll go start and I'll e-mail
7 them to you.

8 MS. AUSTIN: Thank you.

9 MR. NEDWICK: Thank you.

10 THE BAILIFF: Of course.

11 THE COURT: Thank you all.

12 (This concludes proceedings had this date. For further
13 proceedings, see Volume IV of this transcript.)

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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

4 STATE OF OKLAHOMA,)
5 Plaintiff,)
6 vs.) Case No. CF-2019-1273
7 DALLAS CHRISTOPHER NORTON,)
8 Defendant.)

CERTIFICATE OF THE COURT REPORTER

I, Angela Thagard, Certified Shorthand Reporter and
Official Court Reporter for Cleveland County, do hereby certify
that the foregoing transcript in the above-styled case is a
true, correct, and complete transcript of my shorthand notes of
the proceedings in said cause.

15 I further certify that I am neither related to nor
16 attorney for any interested party nor otherwise interested in
17 the event of said action.

18 Dated this 2nd day of December, 2022.

ANGELA THAGARD, CSR, RPR, CRR
STATE OF OKLAHOMA
CERTIFIED SHORTHAND REPORTER
CSR# 1711
MY CERTIFICATE EXPIRES: 12/31/2022



Angela Kay Thagard
State of Oklahoma
Certified Shorthand Reporter

CSR # 1711
My Certificate Expires 12/31/2022