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IN THE DISTRICT COURT OF STEPHENS COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. CF-2010-17
)	
CHARLES ALAN DYER,)	
)	
Defendant.)	

PRELIMINARY HEARING

Proceedings Taken on
July 19, 2010

HONORABLE CARL O. LAMAR
Special District Judge

COPY

REPORTED BY:
Betty Chenault, CSR, RPR
Official Court Reporter in
and for Stephens County,
State of Oklahoma, CSR #1906

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CHARLES ALAN DYER,)
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IN THE DISTRICT COURT OF STEPHENS COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
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 Plaintiff,)
)
 vs.) CASE NO. CF-2010-17
)
 CHARLES ALAN DYER,)
)
 Defendant.)

EXHIBIT INDEX

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>OFFERED</u>	<u>RULED</u>	<u>LOCATED</u>
<u>STATE'S EXHIBITS:</u>				
1 - Photograph	20	36	36	173
2 - Photograph	21	36	36	174
3 - Photograph	21	36	36	175
4 - Anatomical Drawing - Female	132	140	141	176
5 - Anatomical Drawing - Male	132	140	141	177

1 The case is scheduled today for a Preliminary Hearing. And
2 the State appears by District Attorney Bret Burns. The
3 Defendant is personally present with his counsel, David
4 Hammond. And the Court has recently, recognizing that there
5 is a minor involved in the matter as the alleged victim,
6 appointed Mr. Jerry Herberger as guardian ad litem for the
7 minor. And I don't believe the minor is present in the
8 courtroom, but Mr. Herberger is present, and the record
9 should so reflect.

10 Mr. Burns, is the State ready for Preliminary Hearing?

11 MR. BURNS: Yes, sir. And as I told you off the
12 record, we have one witness who is in between courthouses
13 and should be on her way. We are ready to begin the
14 Preliminary Hearing.

15 THE COURT: All right. Mr. Hammond, is the
16 Defendant ready?

17 MR. HAMMOND: Defendant is ready, Your Honor.

18 THE COURT: All right. Any preliminary matters?

19 MR. BURNS: Yes, sir. I would like to take up the
20 matter of the appointment of Jerry Herberger, guardian ad
21 litem.

22 THE COURT: All right. Go ahead.

23 MR. BURNS: Judge, is there a recent Order where
24 you appointed Mr. Herberger? I just haven't seen it as yet.

25 THE COURT: There is. My bailiff is going to

1 retrieve it right now.

2 MR. BURNS: Do you mind? Can I look at it?

3 THE COURT: No problem. It should be in the
4 KellPro records as well here. Looks like, I think looking
5 at the computer record here, there is quite a few documents
6 that haven't made it to the paper file yet. It would appear
7 that one of them is an amended Information that I'm not
8 aware of. The Information was filed January 20th. And the
9 journal entry that scheduled this hearing was from the
10 Preliminary Hearing Conference on May 25th. And then there
11 was a second amended Information filed Friday, the 16th of
12 July.

13 Mr. Hammond, are you aware of that?

14 MR. HAMMOND: Yes, I got a copy of it Friday, Your
15 Honor.

16 MR. CREEKMORE: Your Honor, I just represent to the
17 Court that I filed that second amended Information and --

18 THE COURT: Was it just to add Count 2?

19 MR. CREEKMORE: It does, Your Honor. That's the
20 only thing. There are also some additional witnesses that
21 are added to the -- in the area of the endorsement. And I
22 spoke to Mr. Hammond about that on Friday, Friday afternoon,
23 after it was filed.

24 THE COURT: I assume that the Defendant has no
25 objection then to the Court hearing evidence on both counts?

1 They're both alleged to be felonies. So the Preliminary
2 Hearing would be for the purpose of requiring the State to
3 establish reasonable and probable cause for both felony
4 counts.

5 MR. HAMMOND: I have no objection for the Court
6 hearing them all in one hearing.

7 THE COURT: All right.

8 All right. Mr. Burns, I have the pleading here before
9 me, both the Information that I was talking about, the
10 second amended Information, that adds Count 2. It's --
11 Count 1, of course, is a single felony count alleging child
12 sexual abuse, and Count 2 is a single felony count alleging
13 concealing stolen property.

14 And then I have the Order appointing Mr. Herberger as
15 guardian ad litem for the minor alleged victim. And you
16 wanted to address something about that.

17 MR. BURNS: I just wanted to see that, Judge, and
18 see where we were on that.

19 THE COURT: All right. Any preliminary issues?

20 MR. BURNS: No, sir. I just got a sticky note too,
21 though. The one witness I told you I thought would be here
22 later in the morning, it may be noon before she arrives.

23 THE COURT: Well, the Court has a full afternoon
24 docket. So if we're not going to have the key witness,
25 we're not going to have a hearing effectively. I only have

1 the morning to address this case. I've got about 20 people
2 in jail that I've got to see this afternoon that were
3 arrested over the weekend.

4 MR. BURNS: I understand. I would request we start
5 the prelim. If the Court doesn't want to, that's fine.

6 THE COURT: No, I have no problem with that.

7 MR. BURNS: We won't --

8 THE COURT: I have no problem with that. As a
9 matter of fact, I would assume we could at least get all the
10 evidence that we need on Count 2.

11 MR. BURNS: Yes, sir, real quickly. 30 minutes.

12 THE COURT: All right.

13 MR. BURNS: I was just letting you know that one
14 witness was subpoenaed for another court case, and she will
15 be here as soon as she gets done.

16 THE COURT: I would think that we can probably
17 conduct the rest of the business that we need to put on the
18 record besides that witness, unless anybody has any
19 objection to it.

20 MR. HAMMOND: No objection, sir.

21 THE COURT: All right. Mr. Herberger, did you need
22 to make any record?

23 MR. HERBERGER: Yes, Judge. I would like to make
24 for the record, as Your Honor just stated for the record, I
25 was appointed guardian ad litem. I have done this many

1 times for the Court in both this court and Judge Russell's.
2 I have always been allowed to talk to the child prior to any
3 hearing beginning. I understand my role is limited;
4 however, in this particular case Mr. Burns has refused to
5 allow me contact with my client.

6 And, you know, it's up to the Court, obviously, and he
7 has his reasons and so forth; but at the same time, I just
8 believe I should -- I don't know how I can represent her
9 properly if I haven't been able to talk to her. And I don't
10 know of any statutory prohibition from allowing me to talk
11 to her as my client.

12 THE COURT: Mr. Burns.

13 MR. BURNS: Yes, sir. Judge, I wasn't aware that
14 Mr. Herberger had been appointed until he walks in at 9:30,
15 which was the time scheduled for this prelim, saying, I
16 demand to see my client. And his client is a seven-year-old
17 girl that's obviously gone through a very traumatic
18 experience. One of the issues before this Court today may
19 be the nature of her statement. It may be whether she has
20 been coerced, how many times she has given a statement, all
21 kinds of things the Court may or may not be looking at.

22 This young lady has met prosecutor Josh Creekmore on
23 previous occasion. She just met me this morning. She has
24 this forensic interviewer that's coming. She has a
25 counselor that she's dealing with. For Mr. Herberger to

1 walk in and at 9:30 when this little girl is set for hearing
2 at 9:30, I don't want it to shock and traumatize this little
3 girl.

4 And the Court was gracious enough to provide me a copy
5 of the Order appointing. You know, it looks it was signed
6 last Friday as well and it was filed this morning in the
7 court file. I've looked up the guardian ad litem statute.
8 And I'm assuming the Court is appointing Mr. Herberger under
9 Title 21, 843.7. And the Court is surely within your
10 discretion, within your power to do so; but it also says,
11 A 3, except for good cause shown to the Court, the attorney
12 shall meet with the child not less than 24 hours prior to
13 any hearing.

14 My problem is if we're dealing with child credibility
15 issues, trustworthiness, how many times have you talked, I
16 do not want to traumatize that child minutes before she is
17 called to the stand, if she is called. I don't think
18 Mr. Herberger has met with the child 24 hours prior. But to
19 give him the benefit of the doubt, he wasn't appointed until
20 Friday either. So it's a delicate situation.

21 It's my general viewpoint that guardian ad litem are
22 not necessary for child victims. This is the only county I
23 have ever come across this issue where I have a child victim
24 and I talk to them and tell them to tell the truth and I let
25 them read their statements and stories and review things,

1 this is the only county where Courts appoint attorneys for
2 that child and make an attorney part of that process.

3 That's why we have victim witness coordinators in
4 Oklahoma. That's why we meet with the children and form a
5 relationship where they trust us and they can talk to us and
6 we call them to the stand in front of the Courts and we take
7 care of them. That's our whole process. So as a general
8 rule I'm against outside attorneys coming in at the last
9 second.

10 THE COURT: I'm not sure why other counties don't
11 do it. I can't answer for that, but the statutes, of
12 course, empower the Court to appoint a guardian ad litem for
13 a minor who's involved in any proceedings, civil or
14 criminal. And it certainly appears to me that this child is
15 the object of Count 1 in the indictment or the Information.
16 It's my opinion after 25 years of practice, mostly
17 representing and advocating for individual clients, that a
18 minor definitely needs an advocate anytime they're involved
19 or effected by proceedings like this.

20 It's my intention to always appoint an attorney to
21 represent a minor who's alleged to be a victim if there is
22 any chance that they're going to be called to testify. Now,
23 that's -- I overheard your conversation with Mr. Herberger
24 before we went on the record, and so I'm not as concerned as
25 I would otherwise be because it's my understanding that the

1 State does not intend to call the girl to testify in this
2 hearing.

3 But the State is not the attorney for the little girl as
4 much as the State is the attorney for the people. And the
5 people's interest don't always dovetail exactly with an
6 alleged victim, especially a minor victim who can't
7 understand the complexities of the issues involved in this
8 matter. Certainly a minor has constitutional rights, and
9 the State does not have the duty to protect the rights of
10 that minor individual. That's why I have appointed
11 Mr. Herberger.

12 It's his duty. It's his fiduciary duty to protect the
13 interests of this minor should they diverge from the
14 interests of the State. So I think it's good practice to
15 make sure that any minor is protected from being harmed in
16 any way if their interests are not otherwise protected in
17 court proceedings. So it certainly does no harm to have
18 somebody looking out for this little girl in addition to the
19 State or the attorneys for the State.

20 The question, of course, at this point in time is
21 whether it's necessary for Mr. Herberger to meet with his
22 client before we proceed. It's probably not. But what I
23 have told Mr. Herberger before we came in is that it's up to
24 him to determine that. And if he perceives that the Court
25 needs to be aware of any concerns he has with regard to the

1 interests of his client as we go on through the evidence in
2 this proceeding, that it's his duty to interject himself and
3 object to any testimony that he believes or any evidence
4 that he believes is being offered which might damage the
5 interests of his client.

6 And so he can certainly object and approach the bench
7 with the other attorneys and advise me of any problem he
8 might perceive with the evidence coming in without him
9 meeting with his client beforehand. If she's not going to
10 testify, we're probably not going to have any problem with
11 that. And, of course, I didn't know for certain whether the
12 State might call her to testify.

13 I would certainly want him to meet with her and let her
14 know that she has an attorney that's looking out for her
15 interests if she is called to testify. But if she's not
16 going to be called, then I don't see any reason why we need
17 to stop the proceeding to make sure that a meeting occurs at
18 this time.

19 MR. BURNS: And, Judge, just for the record, I will
20 make her available for Mr. Herberger during a break or
21 whenever I get time.

22 THE COURT: All right.

23 MR. HAMMOND: I just wanted to let the Court know,
24 Your Honor, we subpoenaed H. D., the alleged victim in this
25 particular case. I know the Court may not allow me to call

1 her, but I just wanted you to know that we did subpoena her.

2 THE COURT: Well, of course, I usually don't allow
3 the Defendant to call witnesses, but I can't make a
4 predetermination about that until I hear the State's case.
5 At this point the Court of Criminal Appeals has been
6 abundantly and repetitively clear that it's the State's
7 burden merely to prove probable cause for these felony
8 charges.

9 And if they can do that without calling a particular
10 witness, then I usually don't allow the Defendant to call
11 that witness, unless it would be on an issue that might
12 foreclose a bindover. And that's pretty rare. So I doubt
13 that I would let the Defendant call witnesses, but that's --
14 I can't make a prejudgment about that until I hear the
15 State's evidence.

16 So we can deal with that issue if it does arise; and if
17 the Defendant was going to be allowed to call the minor
18 witness to testify, I would certainly want Mr. Herberger to
19 meet with her beforehand.

20 All right. With that, the State may call their first
21 witness.

22 MR. BURNS: State calls Micah Simmons.

23 THE COURT: Sir, if you would come right up here
24 next to this platform and raise your right hand for me. I
25 need to administer an oath.

1 THE WITNESS: (Witness complies.)

2 THE COURT: Do you swear or affirm the testimony
3 you're about to give will be the truth, the whole truth, and
4 nothing but the truth, under the pains and penalties of
5 perjury?

6 THE WITNESS: I do.

7 THE COURT: Have a seat right there, please.

8 Mr. Burns, you can proceed.

9 MR. HAMMOND: Your Honor, if we could invoke the
10 Rule. There are several people here. I'm not sure who is a
11 potential witness and who isn't.

12 THE COURT: All right. The Defendant has invoked
13 the Rule of Sequestration. This rule requires any witness
14 who might testify for either party to wait outside the
15 hearing until they're called to testify. Any witness who
16 does testify is instructed not to speak with any other
17 witness or potential witness about their testimony until the
18 hearing is concluded.

19 Counsel, you can proceed.

20 MICAH SIMMONS,
21 called as a witness on behalf of the State testified as
22 follows:

23 **DIRECT EXAMINATION**

24 BY MR. BURNS:

25 Q Will you state your name, please.

- 1 **A** Micah Simmons.
- 2 **Q** Micah, how do you spell your name?
- 3 **A** M-I-C-A-H, S-I-M-M-O-N-S.
- 4 **Q** All right. And do you live here in Stephens County?
- 5 **A** Yes, sir.
- 6 **Q** How long have you lived here?
- 7 **A** All my life.
- 8 **Q** How old are you?
- 9 **A** Twenty-six years.
- 10 **Q** Sir, did you own a rifle that got stolen several years
11 ago?
- 12 **A** Yes, sir.
- 13 **MR. HAMMOND:** I would object to the leading form of
14 the question.
- 15 **THE COURT:** Overruled.
- 16 **Q** (BY MR. BURNS) Let's go back to 2002. Did something
17 get stolen from you in 2002?
- 18 **A** Yes, sir.
- 19 **Q** What got stolen?
- 20 **A** A Howa 6.5 x 55 Model 1500 rifle.
- 21 **Q** Okay. And was that rifle in working condition?
- 22 **A** Yes, sir.
- 23 **Q** Where did you get that rifle?
- 24 **A** I bought it from Rusty Smith.
- 25 **Q** Is that here, a local person in Duncan?

- 1 **A** Yes, sir.
- 2 **Q** How long had you had that gun?
- 3 **A** Two years.
- 4 **Q** And where did the gun get stolen from?
- 5 **A** My house.
- 6 **Q** Where is your house?
- 7 **A** It was Duncan Lake.
- 8 **Q** Okay. And is that in Stephens County as well?
- 9 **A** Yes, sir.
- 10 **Q** Did you make a report to the Duncan Police Department
11 or the Sheriff's office that your gun was stolen?
- 12 **A** Yes, sir.
- 13 **Q** In the last eight years, have you seen that gun?
- 14 **A** Not until this morning.
- 15 **Q** Okay. So you never heard back from the police or
16 anybody about your gun being located?
- 17 **A** No, sir.
- 18 **Q** Did your gun, was it in good condition when it was
19 stolen from your house?
- 20 **A** Yes, sir.
- 21 **Q** Did it have a serial number on it?
- 22 **A** Yes, sir.
- 23 **Q** Tell me what is distinct about this gun. Why is this
24 gun different than other guns?
- 25 **A** It's a rare caliber. I mean, there is not very many of

1 them around.

2 Q Okay.

3 A Especially this area.

4 Q What was the caliber again?

5 A 6.5 x 55.

6 Q Anything specific about the scope?

7 A It's just -- it's not a very -- it's just unique. I
8 mean, there's not very many of them.

9 Q Okay.

10 A A rare brand.

11 Q And did you see that gun this morning?

12 A Yes, sir.

13 Q Who showed you that gun?

14 A You did.

15 MR. BURNS: May I approach the witness, Your Honor?

16 THE COURT: Yes, sir.

17 Q (BY MR. BURNS) I show you what's marked as State's
18 Exhibit Number 1. What's that a picture of?

19 A My rifle.

20 Q All right. Is that the rifle you identified this
21 morning?

22 A Yes, sir.

23 Q And it was stolen from your house in 2002?

24 A Yes, sir.

25 Q State's Exhibit Number 3 -- or excuse me, Number 2,

- 1 what's that a picture of?
- 2 **A** The model number and the brand.
- 3 **Q** Okay. What model was it?
- 4 **A** A Model 1500 Howa.
- 5 **Q** And was that a picture of your gun close up showing the
6 model number?
- 7 **A** Yes, sir.
- 8 **Q** State's Exhibit Number 3, what's that a picture of?
- 9 **A** Where the serial number used to be.
- 10 **Q** Okay.
- 11 **A** It's been ground off.
- 12 **Q** All right. And is that also a picture of your gun as
13 it is now?
- 14 **A** Yes, sir.
- 15 **Q** So 1, 2, and 3, do these accurately depict the gun that
16 was stolen from your house?
- 17 **A** Yes, sir.
- 18 **Q** And do they accurately depict the gun that you
19 identified this morning as your rifle?
- 20 **A** Yes, sir.
- 21 **Q** Do you know Charles Dyer?
- 22 **A** Yes, sir.
- 23 **Q** How do you know Mr. Dyer?
- 24 **A** Him and my brother went to school together.
- 25 **Q** Okay. Have you had any conversations with him about

1 this gun?

2 A No, sir.

3 Q Did you give him or anybody else permission to have
4 your gun?

5 A No, sir.

6 Q State's Exhibit 3, real quick, is the one you
7 identified as where the serial numbers used to be?

8 A Yes, sir.

9 Q Were these serial numbers visible --

10 A Yes, sir.

11 Q -- at the time your gun was stolen from you?

12 A Yes, sir.

13 Q Had you ground on the gun or tried to deface it in any
14 way?

15 A No, sir.

16 Q State's Exhibit 3 shows that, correct?

17 A Yes, sir.

18 Q Which you've seen the gun?

19 A Yes, sir.

20 Q And somebody ground those serial numbers off?

21 A Yes, sir.

22 MR. BURNS: No further questions, Your Honor.

23 THE COURT: Mr. Hammond, would you like to
24 cross-examine this witness?

25 MR. HAMMOND: Yes, sir.

1 THE COURT: Go ahead.

2 CROSS-EXAMINATION

3 BY MR. HAMMOND:

4 Q Sir, you stated earlier that you purchased this gun
5 from Rusty Smith; is that correct?

6 A Yes, sir.

7 Q Did you get anything in writing that had the serial
8 number on the gun at that time?

9 A Yes, sir.

10 Q Do you have that with you here today?

11 A No, sir.

12 Q Can you tell the Court what the serial number of the
13 gun is?

14 A Not off the top of my head, no, sir.

15 Q What was the date the gun was purchased?

16 A In 2000.

17 Q Do you recall what month?

18 A March or something like that. I'm not positive on
19 that.

20 Q Where did you live at that time?

21 A Duncan Lake.

22 Q And was that in a home?

23 A Yes, sir.

24 Q And who did you live there with?

25 A My father, Norman Simmons.

- 1 Q Is that where the gun was kept?
- 2 A Yes, sir.
- 3 Q And how was the gun kept there in your home at that
4 time?
- 5 A It was just in the living room probably.
- 6 Q It was --
- 7 A In a case.
- 8 Q But it wasn't in a closet?
- 9 A No, sir.
- 10 Q It wasn't locked up?
- 11 A No, sir.
- 12 Q When was the last time you saw this gun other than
13 today?
- 14 A 2002.
- 15 Q At 2002 how was the gun situated in your home?
- 16 A As far as I remember it was in the living room.
- 17 Q And who all had access to your home at that time?
- 18 A Just me and my dad.
- 19 Q Did you have any friends that were coming over at that
20 time?
- 21 A No, sir.
- 22 Q Did you loan it out to anybody during that time?
- 23 A No, sir.
- 24 Q Tell us what the circumstances were when you first
25 noticed this gun was gone?

- 1 **A** I come home and it was missing.
- 2 **Q** Come home from where?
- 3 **A** Church.
- 4 **Q** Did you talk to your father about it?
- 5 **A** Yes, sir.
- 6 **Q** Did you talk to any other family members about it?
- 7 **A** No, sir.
- 8 **Q** Did you try to determine what had happened to it?
- 9 **A** It was missing. So I just assumed it was stolen.
- 10 **Q** Do you know who had been in your home that day besides
11 you and your father?
- 12 **A** No, sir.
- 13 **Q** You don't really know who stole your gun; is that
14 correct?
- 15 **A** No, sir.
- 16 **Q** Now, you stated earlier that you knew Charles Dyer
17 because he went to school with your brother; is that
18 correct?
- 19 **A** Yes, sir.
- 20 **Q** Did you get along well with him?
- 21 **A** Yes, sir.
- 22 **Q** Do you know if Mr. Dyer was in your home between 2000
23 and 2002?
- 24 **A** Not that he had permission to be, no, sir.
- 25 **Q** You never did see him there at that time; is that

1 correct?

2 A No, sir.

3 Q How were you contacted about this gun?

4 A By phone call.

5 Q Who called you?

6 A The Sheriff's Department.

7 Q When did they call you?

8 A About a week ago probably, something like that.

9 Q You never discussed this case with me; is that correct?

10 A Correct.

11 Q Sir, did you try to determine on your own who may have
12 taken this gun from your home?

13 A No, sir. I filed a police report and left it at that.

14 MR. HAMMOND: That's all the questions I have, Your
15 Honor.

16 THE COURT: Mr. Burns, any redirect?

17 MR. BURNS: No, Your Honor.

18 THE COURT: All right, sir. You can step down.

19 Thank you.

20 State may call their next witness.

21 MR. BURNS: State calls Rusty Smith.

22 THE COURT: Officer, if you will stand right here
23 for me, please, and raise your right hand.

24 THE WITNESS: (Witness complies.)

25 THE COURT: Do you swear or affirm the testimony

1 you're about to give will be the truth, the whole truth, and
2 nothing but the truth, under the pains and penalties of
3 perjury?

4 THE WITNESS: I do.

5 THE COURT: Thank you. You can have a seat right
6 there.

7 Counsel, you can proceed.

8 RUSTY SMITH,

9 called as a witness on behalf of the State testified as
10 follows:

11 **DIRECT EXAMINATION**

12 BY MR. BURNS:

13 Q Will you state your name, please.

14 A Roy Smith, also known as Rusty.

15 Q Okay. Rusty, what do you do for a living?

16 A I work for the City of Duncan as a lake ranger and lake
17 superintendent.

18 Q Okay. What do you do for a side job or side pleasure,
19 I should say?

20 A I got a gun business on the side.

21 Q Okay. Let me go back to early 2000. Did you sell an
22 odd caliber rifle to a Micah Simmons?

23 A I sold it to his dad for him. His dad bought a Howa
24 1500 in a 6.5 caliber.

25 Q Is that a unique caliber?

1 **A** You don't see too many of them anymore. They make some
2 military guns in it, and Howa makes a gun in it.

3 **Q** Okay. How did you come in possession of this gun, this
4 Howa gun?

5 **A** I ordered it for Norman because he was wanting to buy
6 it for Micah.

7 **Q** So it was a special order basically?

8 **A** Yes.

9 **Q** For that family. And did you see that gun when it came
10 in?

11 **A** Yes.

12 **Q** Was it brand-new?

13 **A** Brand-new.

14 **Q** Perfect working order?

15 **A** Yes, sir.

16 **Q** Did you have an occasion to shoot it, to examine it
17 closely?

18 **A** I just -- I handle them when I, you know, get the
19 serial numbers off of them and sell them. I enter them in
20 my books and stuff.

21 **Q** All right. And did you get the serial number off this
22 gun when you got it in?

23 **A** Yes, sir.

24 **Q** And you showed me a slip of paper today. Did you bring
25 that with you?

- 1 **A** Yes, sir.
- 2 **Q** Is that the number that came off your records at home?
- 3 **A** Yes, sir. It come out of my bound book.
- 4 **Q** So the number you have in your hand, the little piece
5 of paper, would be a number you took off a book that you
6 entered in 2002; is that when it was?
- 7 **A** It come in in 2000.
- 8 **Q** In 2000?
- 9 **A** Yeah. Well, he probably picked it up the same day. It
10 come in September 28th of 2000.
- 11 **Q** Okay. And you recorded the serial numbers of that
12 rifle?
- 13 **A** Yes, sir.
- 14 **Q** And then you gave it to Mr. Simmons?
- 15 **A** Yes, sir.
- 16 **Q** Or sold it, however you did it. What was the serial
17 number of that gun?
- 18 **A** B, boy, 064237.
- 19 **Q** Can you say that again?
- 20 **A** B, boy, 064237.
- 21 **Q** Okay. And you retrieved that record from your or that
22 serial number from your business records you maintain --
- 23 **A** Yes, sir.
- 24 **Q** -- as a firearms dealer?
- 25 **A** Yes, sir.

- 1 Q You're required to keep that serial number, correct?
- 2 A Yes, sir.
- 3 Q By probably ATF records or -- ATF?
- 4 A Yeah, we're required to keep them.
- 5 MR. BURNS: May I approach, Judge?
- 6 THE COURT: Yes, sir.
- 7 Q (BY MR. BURNS) I'm going to show you what's marked as
8 State's Exhibits 1, 2, and 3. Do you recognize Exhibit
9 Number 1?
- 10 A Yes, sir.
- 11 Q What is that?
- 12 A That looks -- appears to be the rifle that I sold him.
13 It's got the -- you can't see the scope real well, but it
14 had an oddball scope on it. That's what stuck out in my
15 mind too. And it's got a band on it that had some reloaded
16 shells in it. I new Norman, you know, reloaded shells for
17 his boy.
- 18 Q Exhibit 2, it shows the model number. Is that the same
19 model number as you were describing?
- 20 A Yes, sir, Howa Model 1500.
- 21 Q All right. And Exhibit 3 shows a place where the
22 serial number has been ground off on that picture. Was that
23 serial number ground off at the time you gave it to the
24 Simmons?
- 25 A No, no.

1 Q Have you seen that rifle since that time?

2 A Since the -- since I sold it?

3 Q Yes, sir.

4 A Well, I think he brought it back to me a time or two,
5 you know, and had me bore sight it and mess with it, but --
6 and then Gene Pool brought it by and asked me if I knew
7 where the serial number was on this gun. And I looked at it
8 and told him right there where it's been ground off and
9 painted over.

10 Q Okay. Let me stop you. From the time of 2002 until
11 2010, have you seen it since that time?

12 A Just when Gene Pool brought it by.

13 Q Okay. And that would be the current case we're on
14 here?

15 A Yes, sir.

16 Q Gene Pool is an FBI agent, correct?

17 A Yes, sir.

18 Q So within the past five or six months, that's when Gene
19 came by and asked you to identify it?

20 A Yes, sir.

21 Q Did you instantly recognize that as the gun that you
22 had given to Mr. Simmons?

23 A Well, because of the reloads, the oddball caliber, and
24 the scope that was on it, I told him, I said, I recognize
25 the gun as one that I had sold to Norman that had got

1 stolen.

2 Q Now, you're a gun dealer, correct?

3 A Yes, sir.

4 Q Class 3 license?

5 A Class A.

6 Q Class A?

7 A Class 1.

8 Q Okay. Part of your job is buying and selling guns, I'm
9 sure?

10 A Yes, sir.

11 Q Part of your hobby, however you call it.

12 A Yeah.

13 Q Is it common for you to buy or sell a gun that the
14 serial numbers have been ground off?

15 A No, sir. I don't have nothing to do with them.

16 Q Why is that?

17 A It's illegal.

18 Q Okay. And is it a big red flag for somebody if they're
19 buying or possessing a gun with the serial numbers ground
20 off?

21 A Yes, sir. Anytime anybody sees the serial numbers
22 ground off, they, you know, it gives you a red flag it's
23 stolen.

24 MR. BURNS: No further questions, Judge.

25 THE COURT: Mr. Hammond, any cross-examination?

1 MR. HAMMOND: Yes, sir.

2 THE COURT: Let me ask you to wait just a second.

3 (Discussion off the record.)

4 THE COURT: All right. Counsel, you can proceed.

5 **CROSS-EXAMINATION**

6 BY MR. HAMMOND:

7 Q Mr. Smith, could you tell us what the caliber of this
8 gun is again, please?

9 A 6.5 x 55.

10 Q Now, does this type of gun have to go through any
11 registration with national?

12 A Yes, sir. Any kind of modern guns have got to go
13 through a dealer. You know, you order one, and yellow sheet
14 it out.

15 Q Did -- now, on your paperwork that you do when you sell
16 a gun, do you have to put down who the registered owner of
17 the gun is?

18 A Yes.

19 Q And did you put it down as Micah Simmons or his father?

20 A His father.

21 Q So actually his father, in your mind and with your
22 paperwork, he was the actual owner of the gun; is that
23 correct?

24 A He was the one that bought the gun, but he told me at
25 the time that he was buying it for Micah. I don't know

1 whether it was for his birthday or what, but he was buying
2 it for Micah.

3 Q Now, does Mr. Simmons live close to where you live?

4 A He lived at Duncan Lake. I live at Clear Creek.

5 Q This gun was missing in 2002; is that correct?

6 A I'm not sure of the date. I just know that it was --
7 come up missing, and they entered it in NCIC that it was
8 stolen.

9 Q Did you have a conversation with Mr. Simmons or his son
10 about that time when it was stolen?

11 A Yes.

12 Q Did you do any investigation yourself as far as who
13 might have taken this gun?

14 A No. They reported it, and in the paperwork it was on
15 City property and it went to the Duncan Police Department to
16 detectives, and they would follow up on it from there.

17 Q Was there any suspects based on your knowledge?

18 A None that I know of.

19 Q So between 2002 and the current date, you really don't
20 know where this gun has been; is that correct?

21 A Correct.

22 Q And Mr. Pool brought the gun to you and had you look at
23 it; is that true?

24 A Yes.

25 Q And what was the reason he brought it to you?

1 **A** He brought it to me because he couldn't find the serial
2 number on it.

3 **Q** So he didn't know it had been scratched off; is that
4 correct?

5 **A** That's correct.

6 **Q** Is it difficult to see on the gun that the serial
7 number was scratched off?

8 **A** Well, it had been painted over. So it made it a little
9 more difficult, you know, where it was.

10 **Q** Did you have a hard time finding it at first?

11 **A** No. I just -- they're generally on that one cylinder,
12 one side there, and I could see the roughed area where it
13 was painted over.

14 **Q** Mr. Pool told you he couldn't see the numbers; is that
15 correct?

16 **A** Correct.

17 MR. HAMMOND: I think that's all the questions I
18 have, Your Honor.

19 THE COURT: Mr. Burns, any redirect?

20 MR. BURNS: Just briefly.

21 THE COURT: Okay.

22 **REDIRECT EXAMINATION**

23 BY MR. BURNS:

24 **Q** Rusty, did now know Charles Dyer? Do you know Charles
25 Dyer?

1 **A** I don't remember ever -- he lived in the area. I don't
2 remember seeing him. I know his dad.

3 **Q** Had you ever bought or sold guns to him, any kind of
4 gun trading with him?

5 **A** No.

6 MR. BURNS: No further questions, Judge.

7 THE COURT: Mr. Hammond, any redirect -- or recross
8 there?

9 MR. HAMMOND: No questions, Your Honor.

10 THE COURT: All right. Officer, you can step down.
11 Thank you.

12 MR. BURNS: The State moves to admit 1, 2, and 3.

13 THE COURT: Mr. Hammond, any objection?

14 MR. HAMMOND: I don't believe so, Your Honor, but I
15 want to look at them real quick.

16 MR. BURNS: Judge, for the record we have the
17 actual gun here. I just chose to take pictures this morning
18 so we wouldn't be admitting the gun into the record for
19 prelim.

20 THE COURT: I would prefer it that way.

21 MR. HAMMOND: No objections to the pictures, Your
22 Honor.

23 THE COURT: Without objection, State's Exhibits
24 Numbers 1, 2, and 3 are admitted for purposes of Preliminary
25 Hearing.

1 State may call their next witness.

2 MR. BURNS: State calls Gene Pool.

3 THE COURT: If you will stand right here for me,
4 sir, I would appreciate it.

5 THE WITNESS: Yes, sir.

6 THE COURT: Do you swear or affirm the testimony
7 you're about to give will be the truth, the whole truth, and
8 nothing but the truth, under the pains and penalties of
9 perjury?

10 THE WITNESS: Yes, Your Honor, I do.

11 THE COURT: Thank you. You can have a seat right
12 here.

13 Mr. Burns.

14 GENE POOL,

15 called as a witness on behalf of the State testified as
16 follows:

17 **DIRECT EXAMINATION**

18 BY MR. BURNS:

19 Q Will you state your name, please.

20 A Gene Pool.

21 Q How do you spell your last name, Gene?

22 A P-O-O-L.

23 Q How are you employed?

24 A Federal Bureau of Investigation.

25 Q How long have you worked for the FBI?

- 1 **A** Eight years.
- 2 **Q** And are you a certified peace officer?
- 3 **A** Yes, sir.
- 4 **Q** You have been through Quantico, all the training that
5 FBI agents get?
- 6 **A** Yes, sir.
- 7 **Q** Where are you currently assigned?
- 8 **A** The Weapons and Master Instruction Unit in Washington
9 D.C.
- 10 **Q** Prior to that, were you assigned in the Stephens County
11 area on a general assignment?
- 12 **A** Yes, sir, Lawton Resident Agency.
- 13 **Q** How long have you been here?
- 14 **A** A little over two years.
- 15 **Q** Let me go back to the month of January, 2010. Did you
16 help execute a search on the home belonging to Charles Alan
17 Dyer?
- 18 **A** Yes, sir, I did.
- 19 **Q** Was that a search warrant? Was that consent? What was
20 it?
- 21 **A** It was a consent.
- 22 **Q** Okay. Who all -- first off, where was that house?
- 23 **A** It was out near Clear Creek Lake. I believe on Hope
24 Road, there from the Hope Baptist Church.
- 25 **Q** Was that a rural residence then?

- 1 **A** Yes.
- 2 **Q** Was it in Stephens County?
- 3 **A** Yes, sir.
- 4 **Q** Who all participated in this search?
- 5 **A** It was myself and some members of the Sheriff's County
6 police department.
- 7 **Q** Okay. And did you determine when you went to that
8 residence who lived there?
- 9 **A** Yes.
- 10 **Q** Who lived there?
- 11 **A** Mr. Charles Dyer and his girlfriend, Amanda Monsalve,
12 "Mon-sol-vay."
- 13 **Q** Was there a child there as well?
- 14 **A** Not at the time that I went there, no, sir.
- 15 **Q** So the time you were there, it was just the two adults?
- 16 **A** Yes, sir.
- 17 **Q** Did you talk to Mr. Dyer?
- 18 **A** Mr. Dyer was not there. Just it was Amanda and
19 Mr. Dyer's father.
- 20 **Q** All right. Did you have an occasion to talk to
21 Mr. Dyer subsequent to that?
- 22 **A** Yes, sir, the night before at the Sheriff' Department.
- 23 **Q** Did he acknowledge to you that he lived at that house?
- 24 **A** Yes, sir, he did.
- 25 **Q** Lived there with Amanda Monsalve?

- 1 **A** Yes.
- 2 **Q** How do you say that? How do you spell that?
- 3 **A** Monsalve?
- 4 **Q** Yes, sir.
- 5 **A** M-O-N-D-E-S-A-L-V-O, I believe, if I remember
- 6 correctly.
- 7 **Q** So you're there to -- for a consent search of that
- 8 residence in Stephens County?
- 9 **A** Yes, sir.
- 10 **Q** What do you observe when you go in the house, when you
- 11 were allowed in?
- 12 **A** We went to the room where the weapons were located.
- 13 There were a number of weapons that were on the wall, some
- 14 different weapons that were stacked up there by the corner
- 15 in a very small utility room by the closet.
- 16 **Q** What got your attention about these weapons?
- 17 **A** They were assault rifles. I'm a collector of assault
- 18 rifles, and just the variety of weapons, you know,
- 19 definitely caught my attention.
- 20 **Q** Anything about the nature of any of these weapons or
- 21 any other thing in that room grab your attention that maybe
- 22 they might be illegal?
- 23 **A** Just that they were -- I didn't know if they were fully
- 24 automatic or not fully automatic. If they were fully
- 25 automatic, they would have to have a license for them.

1 Q Did you seize any items from this house during this
2 search?

3 A Yes, sir.

4 Q What did you seize?

5 A The rifle -- the rifles that were in question, I was
6 writing the serial numbers down. And there was one
7 particular rifle that I could not locate the serial number.
8 And it was a -- I'm a sniper for the FBI. So I understand
9 sniper rifles. And this particular rifle, it had a good set
10 of optics on the scope and it had really large scope rings.
11 And I was thinking the serial number may be under the scope
12 ring, but I did not have the tools to take the scope ring
13 off.

14 And so I transported the weapon over to Rusty Smith,
15 that's a police armorer for Duncan P.D., to see if he would
16 have the tools. And he was familiar with the rifle. He
17 was, oh, the serial number should be, and he pointed to a
18 location on the rifle. He said, This serial has been -- I
19 believe he used the words, ground down and then painted
20 over.

21 Q Okay. Where was that gun, the rifle you're referring
22 to, where was it located in the house?

23 A It was on the wall on mounts. There were -- I don't
24 remember exactly how many rifles that were stacked up.
25 Three or four maybe. That were like on -- for display

1 purposes.

2 Q Okay. This is the house being occupied by Charles Dyer
3 and the girlfriend?

4 A Yes, sir.

5 MR. BURNS: May I approach?

6 THE COURT: Yes, sir.

7 Q (BY MR. BURNS) I show you State's Exhibit Number 1 --
8 1 through 3, actually. What are those pictures of, Gene?

9 A That's the rifle that I took over to Officer Smith.

10 Q Is that the one we have been referring to?

11 A Yes, sir.

12 Q And is that the one that was displayed prominently in
13 Charles Dyer's house?

14 A Yes, sir.

15 Q Did you seize any other items from Mr. Dyer's house at
16 that time?

17 A Yes, sir.

18 Q What else did you seize?

19 A There were a number of items that at that point were in
20 question that were possibly owned by the U.S. government,
21 the military. There were bulletproof vests.

22 MR. HAMMOND: Your Honor, I object to the relevance
23 of that question. He's been charged with concealing this
24 particular rifle. So the other items, unless it's connected
25 with the rifle, would not be relevant.

1 THE COURT: I'll overrule it. It's certainly
2 necessary for the Court to determine whether there is
3 sufficient evidence that the Defendant knew or should have
4 known that the rifle was stolen. And this evidence could be
5 helpful in that regard. So I'll allow it.

6 **A** There were two tubs of approximately -- I don't
7 remember the exact number, but there were a number of AR-15
8 .223 caliber magazines that were taken. I'm going to guess
9 25 or 30 of those. Bulletproof helmet. There was a
10 bulletproof helmet that had a serial number similar to the
11 serial number of the one I was issued when I was in Iraq.
12 Six ceramics plates that are bulletproof that go into a
13 bulletproof vest that are usually issued by the military or
14 law enforcement.

15 I took those and just various military items that
16 looked like some kind of attachment for an optic for a
17 Humvee that I really didn't know what it was, but it looked
18 like something that was military issue.

19 **Q** (BY MR. BURNS) Okay. And did you determine through
20 your investigation any of those items had been stolen?

21 **A** No, sir. Just by when I talked to Mr. Dyer on how
22 those item were acquired.

23 **Q** Okay. Let me go on with a more specific question. Did
24 you ever seize any grenade launcher out of that house?

25 **A** Special Agent Kevin Titus did that.

- 1 Q Okay. Was that part of this same investigation?
- 2 A Yes, sir.
- 3 Q And was that grenade launcher in that same room?
- 4 A Yes, sir.
- 5 Q Did you observe it in there?
- 6 A Yes, sir.
- 7 Q And was it later determined to be stolen?
- 8 A Yes, sir.
- 9 Q You told us the grenade launcher was stolen. The Court
10 has evidence about this rifle being stolen. Any other items
11 that you retrieved from that house or observed, was there
12 anything else determined to be stolen?
- 13 A Just what Mr. Dyer told me that was taken from Camp
14 Pendleton.
- 15 Q Let me stop you there. When did you talk to Mr. Dyer?
- 16 A It was the night before. It was like at 10:30 p.m. at
17 the Sheriff County's conference room.
- 18 Q And was Mr. Dyer in custody at that time?
- 19 A Yes, sir.
- 20 Q And had he been arrested previous to this by a deputy?
- 21 A Yes, sir.
- 22 Q What room did the interview take place?
- 23 A It was next to the main office of the Sheriff's
24 Department. I guess in the Sheriff's conference room.
- 25 Q Was this interview recorded or videotaped?

1 **A** No, sir.

2 **Q** And prior to asking Mr. Dyer questions, did you
3 Mirandize him?

4 **A** Yes, sir.

5 **Q** What Miranda rights did you read him?

6 **A** That he did have the right to remain silent; anything
7 he said could be used against him in court; that there
8 was -- a lawyer would be provided to him if he could not
9 afford one. And I asked him if he understood these rights,
10 and he did and signed a waiver.

11 **Q** Okay. So there is a written waiver?

12 **A** Yes, sir.

13 **Q** And he indicated to you that he understood?

14 **A** Yes, sir.

15 **Q** What was Mr. Dyer's demeanor? Was he acting like he
16 was under the influence of alcohol, drugs, anything that was
17 out of the ordinary?

18 **A** No, sir. He was very helpful, very cooperative.

19 **Q** Okay. After this Miranda, what did Mr. Dyer tell you
20 about these items in the house that you recovered?

21 **A** He used the term acquired. He said there is -- he
22 said, Being in the military, you try to acquire equipment
23 sometimes by trading different items to other soldiers,
24 especially over in Iraq. And he said, You bring these items
25 back and, he said, they kind of become your property. And

1 so he said he acquired these items from a locker at Camp
2 Pendleton that no one wanted these items. They weren't
3 assigned to anyone in particular. And he said that he put
4 the items in a bag and put them in his car.

5 Q Have you verified that the grenade launcher was
6 reported by Camp Pendleton as stolen?

7 A Yes, sir. It was one of three going to Iraq.

8 Q Did you ask Mr. Dyer about the rifle that you have
9 testified here today, Exhibit Number 1?

10 A Yes, sir.

11 Q What did he tell you about this rifle?

12 A He said that he had purchased it. I am fairly sure he
13 used the figure of either 150 or \$200 for the rifle. He
14 said he went to Danny's Gun and Pawn here on Main Street. I
15 don't remember the reason for his visit to the pawnshop.
16 But he said there was a guy that was standing behind the gun
17 store. And as Mr. Dyer was walking in, he approached him
18 and said, Hey, I really -- you know, I really need some cash
19 and the pawnshop is not giving me a lot for this gun. Would
20 you give me X amount for it?

21 And Mr. Dyer said he didn't have that amount of cash on
22 him at the time. And so he went down the street to the bank
23 to an ATM and withdrew some money and came back and
24 purchased the weapon. And if I remember correctly, he said
25 that he never fired the weapon. He just got it as a part of

1 his collection and put it in a closet or wherever.

2 Q So he told you he bought it from some unknown person in
3 the alley behind the pawnshop?

4 A Yeah. I believe it was Danny's on Main Street.

5 Q Did you ask him about the serial numbers being ground
6 off?

7 A Yes, sir. And he was not aware of any numbers at all
8 being ground off.

9 Q Would you say through his collection there at the house
10 he was a person who was very interested and familiar with
11 firearms?

12 A Oh, definitely.

13 Q So this rifle wasn't the first rodeo for him as far as
14 buying guns?

15 A No, sir. Especially with eight years in the Marines, I
16 would say -- I would consider Mr. Dyer a weapons expert.

17 Q Would you agree most weapons experts, if there is no
18 serial number on a gun or it's been ground off, that is a
19 red flag?

20 A Yes, sir.

21 Q Would you buy a gun from some person on the street who
22 walks up with the serial numbers ground off?

23 A No, sir.

24 Q Did you have any discussions with Mr. Dyer about the
25 child sexual abuse allegation?

1 A No, sir.

2 Q Were you involved in any of those interviews or did you
3 listen to any of them?

4 A No, sir.

5 Q Did you listen to any of Mr. Dyer's phone calls from
6 the jail?

7 A No, sir.

8 Q Were you the case agent on behalf of the federal
9 government for that charge?

10 A Along with Special Agent Ken Western.

11 Q Did Mr. Dyer tell you when approximately he had bought
12 this gun from this unknown man?

13 A I don't recall exactly. It seems like he had had this
14 weapon for a few years, but I do not recall the exact date.

15 MR. BURNS: No further questions, Judge.

16 THE COURT: Mr. Hammond, cross-examination?

17 **CROSS-EXAMINATION**

18 BY MR. HAMMOND:

19 Q Mr. Pool, when you obtained Mr. Dyer's consent to
20 search the home, were you the first agent that came in
21 contact with the rifle that we're here on today?

22 A The first agent, not the first law enforcement officer.

23 Q And you looked at the rifle and you wrote down the
24 serial numbers, or attempted to; is that correct?

25 A Yes, sir.

1 Q Now, was it difficult to see if there were any serial
2 numbers on the rifle in question?

3 A Yes, sir. The serial numbers I was taking from
4 different rifles on the wall, they were very clear, right on
5 the side where most serial numbers for long guns are. And
6 as I mentioned, this one had really large scope mounts on
7 top. And I was assuming that that vicinity, the serial
8 number was under one of those scope rings. And that's why I
9 took it to Mr. Smith. So he would have the tools to take
10 off the scope.

11 Q So you didn't notice any scratched off numbers at that
12 point in time; is that correct?

13 A No, sir, I didn't.

14 Q And Mr. Smith showed you where the serial number was
15 supposed to be; is that correct?

16 A Yes, sir.

17 Q And you looked at that area?

18 A Yes, sir. He was familiar with that rifle and -- with
19 that type of rifle. And he goes, he -- Mr. Smith made the
20 comment that whoever did this -- because it's really hard to
21 grind a serial number off of a weapon. He said, Whatever
22 tool was used was a really good one. And then they even
23 tried to paint it flat black across that. And you really
24 had to look at it, but once you really focused you could see
25 the marks on it, like scratch marks, you know, deep into the

1 metal.

2 Q It had been painted over; is that correct?

3 A Yes, sir.

4 Q Any testing done to see when the painting was done?

5 A Not unless ATF did that. You know, with future
6 testing, I don't know, sir.

7 Q Now, you talked to Mr. Dyer and he agreed to visit with
8 you; is that correct?

9 A Yes, sir.

10 Q And he was cooperative?

11 A Very cooperative.

12 Q When you asked him about the rifle in question, he told
13 you that he bought it off somebody in the vicinity of
14 Danny's Pawnshop; is that correct?

15 A From behind.

16 Q When he told you how he obtained that rifle, did you
17 have any indication that he was lying to you about that?

18 A No, sir.

19 Q He ever change his statement to you in any manner or
20 was inconsistent?

21 A No, sir.

22 Q Now, is it illegal for individuals to buy used guns off
23 each other?

24 A No, sir, not to my knowledge, unless it's a particular
25 type of weapon.

1 Q Did you go to Danny's Pawnshop and visit with him and
2 show him that gun to see if anybody had attempted to sell
3 that item?

4 A No, sir, I did not. After I took possession of the
5 weapon, I turned it over to Special Agent Western. I
6 believe that was on the 13th, and then Mr. Western, I
7 believe, either -- he's got documentation that it was given
8 to the ATF on either the 14th or the 15th, if I recall
9 correctly.

10 Q Based on your investigation and based on your
11 questioning of Mr. Dyer, did you have any indication that
12 Mr. Dyer either knew that this gun was stolen or could have
13 been stolen?

14 A He said he did not. He said he did not know that, sir.

15 Q Now, you testified earlier about a grenade launcher
16 that was also found in Mr. Dyer's home. And you talked to
17 him about that as well; is that correct?

18 A Yes, sir.

19 Q Now, did you have evidence during your investigation
20 that Mr. Dyer knew that the grenade launcher was stolen?

21 A No. He just considered it a gift from a friend in
22 California.

23 Q Is there any evidence to indicate otherwise, during
24 your investigation?

25 A No, sir.

1 Q Did you attempt to obtain any of Mr. Dyer's bank
2 records to see if he withdrew some money to purchase this
3 gun?

4 A No, sir.

5 MR. HAMMOND: That's all the questions I have, Your
6 Honor.

7 THE COURT: Mr. Burns, any redirect?

8 MR. BURNS: Just briefly.

9 **REDIRECT EXAMINATION**

10 BY MR. BURNS:

11 Q Mr. Pool, you said there is no evidence you came across
12 that Mr. Dyer knew this or he didn't tell you he knew the
13 gun was stolen, correct?

14 A Yes, sir.

15 Q You have been involved in this case now for six months?

16 A Yes, sir.

17 Q Has Mr. Dyer been truthful in your opinion throughout
18 this investigation and the prosecution?

19 A Regarding this weapon or --

20 Q Regarding this whole -- everything seized from that
21 house.

22 A He was honest by saying what items that he took from
23 Camp Pendleton. I've never questioned his authenticity of
24 what he told me actually occurred.

25 Q Did you listen to his testimony in the federal court?

1 **A** Yes, sir.

2 **Q** Did you agree with his testimony?

3 **A** No. On the grenade launcher -- on this weapon, yes.
4 He never changed his story. On the grenade launcher, he
5 said he got it from his friend.

6 **Q** So he changed his story to you about the grenade
7 launcher?

8 **A** There were three of the grenade launchers that were
9 taken. And he said he probably knew where the other two
10 were. And he actually made a phone call, a consensual
11 monitored phone call for the FBI, trying to acquire the
12 other two items that were stolen.

13 **Q** Okay. So he acknowledged to you to a certain extent he
14 knew some of that property there was stolen property in his
15 house?

16 **A** Yes, sir. Yeah, he said he took it. He said, We don't
17 use the word steal. We use the word acquire.

18 **Q** Has there been a person in California prosecuted in
19 relation to Mr. Dyer for some of this stolen property?

20 **A** I know it's an ongoing investigation. I do not know
21 the details of that investigation. The last thing I recall
22 is there was a search warrant for that individual's
23 property. I do not know the outcome of that due to my
24 transfer to Washington D.C. I haven't kept apprised of the
25 case, because the case when I transferred was given to

1 Special Agent Western.

2 MR. BURNS: No further questions, Judge.

3 THE COURT: Recross, Mr. Hammond?

4 MR. HAMMOND: I don't think I have any more
5 questions, Your Honor.

6 THE COURT: Officer Pool, out of curiosity more
7 than anything else, have you -- you said you did serve also
8 in Iraq?

9 THE WITNESS: Yes, sir.

10 THE COURT: Is it common, by your understanding,
11 for soldiers to return from war and keep mementos such as
12 weaponry as spoils or just souvenirs?

13 THE WITNESS: I know the unit that I was attached
14 to, Department of Defense, the items that we were issued,
15 they were strictly monitored. And when we came to Duhok
16 once we served in Iraq, there was basically a unit there
17 that took, you know, piece by piece and checked it off that
18 the military seemed, you know, that we had checked out, we
19 had to return it or --

20 THE COURT: So something as important as weaponry
21 is pretty closely monitored?

22 THE WITNESS: Oh, absolutely, sir.

23 THE COURT: All right. Any questions by either of
24 the counsel?

25 **REDIRECT EXAMINATION**

1 BY MR. BURNS:

2 Q Just to draw back a step, you have already said the
3 grenade launcher found in Mr. Dyer's home was determined to
4 be stolen from Camp Pendleton?

5 A Yes, sir.

6 Q Where was the grenade launcher found in the home?

7 A It was in this room where the other weapons were on
8 display.

9 Q Was this a room full of ammunition and weapons?

10 A It was full of military items, such as AR-15 magazines
11 that hold bullets, bulletproof vests, flags, different types
12 of flags on the wall, weapons displayed, practice grenades.
13 Of course, when you see something like that, you don't know
14 if it's real or practice. But that -- there was a practice
15 grenade that was laying next to the grenade launcher.

16 Q Is there any heightened sense of, say, alertness by a
17 police officer when you find somebody with Kevlar vests and
18 bulletproof helmets?

19 A Yes, sir, definitely.

20 Q Is that something you run across every day?

21 A No, sir.

22 Q Mr. Dyer told you he doesn't use the word steal. He
23 used the word acquire.

24 A Yes. And he told that statement kind of tongue in
25 cheek.

1 Q Okay. Did he tell you who was involved with him with
2 taking those things unlawfully from Camp Pendleton?

3 A No, sir. He just mentioned that there was an area that
4 they had, and I don't remember if it was a move involved,
5 but there was one locker he said that was on the very end
6 that was just full of the vests, the helmets, and everything
7 that apparently was not checked out, that was maybe
8 surplused or whatever. And he just said no one took them
9 and he did.

10 Q And you determined that's not accurate?

11 A He said he put them in a gym bag and took them off
12 base.

13 Q Did he tell you if he sold any of these items?

14 A No, sir.

15 Q You mentioned the other two grenade launchers that were
16 taken. What did Mr. Dyer tell you he did with those two?

17 A He said his friend sold them. And during the
18 consensual phone call, Mr. Dyer was using the ruse that here
19 in Oklahoma there is a lot of good old country boys that
20 have a lot of money. And his friend out in California told
21 him that he had just got rid of one. And Mr. Dyer said, Is
22 there any way you can get it back, because I have got
23 someone here in Oklahoma that may give up -- I believe he
24 used the word five grand for one.

25 And the guy said, Well, I can -- I would like to try to

1 get it back and maybe we could split some coin, was kind of
2 the phraseology that was used. But what the gentleman in
3 California told agents is that he got scared and cut the
4 weapon up into pieces and threw it in a Dumpster behind a
5 grocery store.

6 Q Because he knew it was stolen?

7 A (Nods head.)

8 Q Did you ever talk to Mr. Dyer about his -- any
9 antigovernment beliefs or his plans for this rifle?

10 MR. HAMMOND: Object to relevance to those
11 questions, Your Honor.

12 THE COURT: Sustained.

13 Q (BY MR. BURNS) Did Mr. Dyer tell you he was a firearms
14 expert?

15 A He told me his training in the military and his love of
16 weapons and training. There was a definite awareness that
17 he was a weapons expert and a collector.

18 Q On this rifle that you seized from his house, did you
19 seize ammunition with that?

20 A No, sir.

21 Q Did you find any ammunition that fits that caliber?

22 A The drawer -- there was a drawer at the bottom -- the
23 middle of the closet. There was like maybe two or three
24 drawers stacked. In the bottom one where all the AR-15
25 magazines were, there was a host of different types of

1 ammunition. And we did not -- we just seized the entire
2 drawer. We did not go through bullet by bullet, because
3 some of the magazines were topped off full. So we did not
4 eject every round from the magazines. And we just seized
5 that whole drawer and put it in a container.

6 MR. BURNS: No further questions, Judge.

7 THE COURT: Recross?

8 **RE-CROSS-EXAMINATION**

9 BY MR. HAMMOND:

10 Q Mr. Pool, you said that Mr. Dyer made a call to a man
11 in California about two other grenade launchers; is that
12 correct?

13 A Yes, sir.

14 Q You asked him to make that call, did you not?

15 A Yes, sir.

16 Q And you recorded that call?

17 A Yes, sir.

18 Q So isn't it true that Mr. Dyer was trying to elicit a
19 response from this person so that a case could be made
20 against him --

21 A Yes, sir.

22 Q -- for possessing and selling stolen grenade launchers;
23 is that correct?

24 A Yes, sir. We were trying to get the other two grenade
25 launchers off the street.

1 Q During your investigation of that, was there any
2 evidence to indicate that Mr. Dyer knew that the grenade
3 launcher had been stolen?

4 A Okay. Repeat that again.

5 Q Did Mr. Dyer ever tell you or was there any evidence to
6 indicate that he knew that grenade launcher had been stolen?

7 A No. Mr. Dyer told me that it was given to him as a
8 gift when he left Oklahoma.

9 Q So the call that he made, he was doing it at your
10 direction?

11 A Yes, sir. And he volunteered to do so to assist the
12 government.

13 Q Now, these -- the Judge had asked you questions about
14 taking items when you leave the military.

15 A Yes, sir.

16 Q And let me ask that question a little bit differently.
17 Is it uncommon for soldiers to take items from the base that
18 they're in here, here in the states, like helmets, jackets,
19 and those types of things? Did you ever see that when you
20 were in the military?

21 A No, sir, not bulletproof vests or armor, you know,
22 armor, you know, flak helmets that would actually be
23 bulletproof because those are very expensive items. And
24 usually those are recycled back into other units.

25 Q Did you ever contact the military base where Mr. Dyer

1 was stationed to see if the federal government wanted to
2 prosecute the taking of those items?

3 **A** No, sir. And I'm not aware if the agents in California
4 did or did not. There were two cases kind of running side
5 by side.

6 **Q** In fact, isn't it true that those items were actually
7 returned back to Mr. Dyer once his federal case was
8 completed?

9 **A** I don't believe the flak jackets or the helmets were,
10 sir. And the items that were stamped U.S. Government I
11 don't believe those where.

12 MR. HAMMOND: That's all I have, Your Honor.

13 THE COURT: Mr. Burns?

14 MR. BURNS: No, sir. Thank you.

15 THE COURT: Just one more thing.

16 THE WITNESS: Yes, sir.

17 THE COURT: What's a grenade launcher look like?
18 Can you describe it for me?

19 THE WITNESS: It's -- are you familiar an AR-15 --

20 THE COURT: Uh-huh.

21 THE WITNESS: -- or an M-4 machine gun in the
22 military?

23 THE COURT: AR-15, yeah.

24 THE WITNESS: Yes. It's basically an attachment
25 that goes underneath the weapon. It's got a -- it just

1 looks like a cylinder tube that goes along about 12 to 14
2 inches with a trigger guard and a trigger that just snaps in
3 the bottom of that, of the M-4. And then the round is
4 actually put in it and fired with a separate trigger.

5 THE COURT: The reason I ask, it's not something
6 that somebody who's not familiar with military weaponry
7 would see like at a gun shop and think that it was a
8 conventional hunting weapon or something like that?

9 THE WITNESS: Exactly.

10 THE COURT: All right. Anything else?

11 MR. BURNS: No, sir.

12 MR. HAMMOND: No questions.

13 THE COURT: All right, sir. You can step down.

14 Thank you.

15 THE WITNESS: All right. Thank you, sir.

16 THE COURT: State may call their next witness.

17 MR. BURNS: Amanda Monslave -- or Monsalve.

18 THE COURT: Would you please stand right there and
19 raise your right hand for me?

20 THE WITNESS: (Witness complies.)

21 THE COURT: Do you swear or affirm the testimony
22 you're about to give will be the truth, the whole truth, and
23 nothing but the truth, under the pains and penalties of
24 perjury?

25 THE WITNESS: I do.

1 THE COURT: Thank you. You can have a seat right
2 here.

3 Mr. Burns.

4 AMANDA MONSALVE,

5 called as a witness on behalf of the State testified as
6 follows:

7 **DIRECT EXAMINATION**

8 BY MR. BURNS:

9 Q Will you state your name, please.

10 A Amanda Nichole Monsalve.

11 Q Can you spell that for us?

12 A The whole name?

13 Q Yes, ma'am.

14 A A-M-A-N-D-A, N-I-C-H-O-L-E, M-O-N-S-A-L-V-E.

15 Q You say it "Mon-sal-vay"?

16 A "Mon-sol-vee."

17 Q Monsalve. Where do you live, ma'am?

18 A In Marlow, 5819 Hope.

19 Q Okay. Where were you living in January of 2010?

20 A 5819 Hope.

21 Q The same place?

22 A Yes.

23 Q Who were you living with?

24 A Mr. Dyer.

25 Q All right. And what's your relationship with Mr. Dyer?

1 A I'm his girlfriend.

2 Q And the person you're referring to as Mr. Dyer, do you
3 see him sitting in this courtroom?

4 A Yes.

5 Q Can you point to him and tell the Judge where he is
6 sitting and what he is wearing?

7 A He's right there. He's wearing a suit with a blue
8 undershirt.

9 Q Okay. And that would be Charles Alan Dyer; is that
10 correct?

11 A Correct.

12 MR. BURNS: Let the record reflect that she
13 identified the Defendant, Your Honor.

14 THE COURT: The record should so reflect.

15 Q (BY MR. BURNS) How long have you been in a
16 relationship with Mr. Dyer?

17 A Since about August of last year.

18 Q Okay. And were you living in someplace else part of
19 that time?

20 A Yes.

21 Q Where were you living?

22 A In California.

23 Q When did you come back to Stephens County?

24 A December -- around December 4th.

25 Q Of 2009?

- 1 **A** 2009.
- 2 **Q** And is that when you moved into this residence?
- 3 **A** Yes.
- 4 **Q** And did you buy this residence? Rent?
- 5 **A** It's rented.
- 6 **Q** Rented?
- 7 **A** Yes.
- 8 **Q** Who is on the lease?
- 9 **A** Mr. Dyer.
- 10 **Q** Okay. And are you his co-tenant there as his
11 girlfriend?
- 12 **A** No, I'm not on the lease.
- 13 **Q** Okay. But you live there with him?
- 14 **A** Correct.
- 15 **Q** Are you the only two adults that live there in that
16 house?
- 17 **A** Yes.
- 18 **Q** Are there any other men that live there besides
19 yourself and Mr. Dyer?
- 20 **A** No.
- 21 **Q** And do you have a child?
- 22 **A** Yes, I do.
- 23 **Q** How old is your child?
- 24 **A** She's six years old.
- 25 **Q** Did she live there in the house with you?

- 1 **A** Yes, she did.
- 2 **Q** Starting in December of '09?
- 3 **A** Correct.
- 4 **Q** And do you still live in that house today with
- 5 Mr. Dyer?
- 6 **A** Yes.
- 7 **Q** Ma'am, did you give the Sheriff's Department and the
- 8 FBI a consent to search in January of 2010 to come in and
- 9 look around?
- 10 **A** Look for what?
- 11 **Q** To look in your house, period.
- 12 **A** They had a warrant.
- 13 **Q** Okay. Did they come back another time and ask you to
- 14 consent to come in your house and look for something else?
- 15 **A** Yes.
- 16 **Q** Did you let them in?
- 17 **A** Yes, I did.
- 18 **Q** Did they seize certain firearms that second time?
- 19 **A** They got one.
- 20 **Q** One. What gun did they get?
- 21 **A** The grenade launcher.
- 22 **Q** Okay. Where was that grenade launcher kept?
- 23 **A** In a storage room that we have there.
- 24 **Q** When did they seize the rifle, the 6.5 x 55 caliber
- 25 rifle?

- 1 **A** I don't remember.
- 2 **Q** I would ask you to look at State's Exhibit 1 that's
- 3 sitting there next to you. Would you look through there for
- 4 me on -- at 1? Do you recognize State's Exhibit Number 1?
- 5 **A** Yes.
- 6 **Q** What is that?
- 7 **A** A gun.
- 8 **Q** Okay. Do you recognize that gun?
- 9 **A** Yes.
- 10 **Q** That's a rifle, correct?
- 11 **A** Correct.
- 12 **Q** All right. And you saw it in my office this morning,
- 13 right?
- 14 **A** Yes.
- 15 **Q** And had that gun -- was that gun in your house when the
- 16 police officers came and did the search warrant?
- 17 **A** Yes.
- 18 **Q** Where was that gun located?
- 19 **A** In that room.
- 20 **Q** Okay. And was it on the wall? Was it in a closet?
- 21 Where was it?
- 22 **A** I believe it was on the wall.
- 23 **Q** Had you seen that gun before?
- 24 **A** Prior to that, no. Well, yeah, in the room I did.
- 25 **Q** So when was the first time you saw that particular

1 rifle?

2 A I don't recall the date.

3 Q Was it in California when you lived there?

4 A No. It was in Oklahoma.

5 Q So you didn't see that rifle, at the earliest, until
6 December of 2009?

7 A Correct.

8 Q Did you ask your boyfriend, Mr. Dyer, where he got that
9 gun?

10 A No, I didn't.

11 Q Did you have any conversations with him at any point
12 about where Mr. Dyer got that gun?

13 A Yes, I did.

14 Q When?

15 A When -- I don't recall exactly the date, but Mr. Dyer
16 did tell me he got it at a pawnshop, behind the pawnshop,
17 because the pawnshop wouldn't take it.

18 Q Okay. Was this after Mr. Dyer was arrested here in
19 Stephens County or before?

20 A I don't recall.

21 Q Okay. Where were you when this conversation took
22 place?

23 A I don't recall.

24 Q So you recall this conversation, but you don't know
25 when or where you were when he told you this?

1 **A** I don't remember, no.

2 **Q** Did you ever have any discussions with Mr. Dyer about
3 the serial numbers being ground off of this weapon?

4 **A** After we found out that they were ground off of the
5 weapon.

6 **Q** What did Mr. Dyer tell you?

7 **A** That he bought it behind the pawnshop and that he did
8 not know.

9 **Q** You said you have been in a dating relationship with
10 Mr. Dyer since the summer of '09?

11 **A** No, since August.

12 **Q** August of '09?

13 **A** Yes.

14 **Q** Would you say he is -- would you call him a firearms
15 expert or somebody that knows his way around guns?

16 **A** Not an expert.

17 **Q** Did he tell you about his training in the military?

18 **A** Not all of it, no.

19 **Q** Did he ever tell you about his firearms training?

20 **A** Yes, a little bit.

21 **Q** What did he tell you?

22 **A** Just drills they did. They shot -- they got to shoot
23 blanks out of guns. They never shot anything real.

24 **Q** Did you ever go with Mr. Dyer to any type of rallies
25 around the United States where guns were shot or traded?

1 **A** No.

2 **Q** Are you part of any type of militia movement or
3 patriotic group?

4 **A** No.

5 **Q** Have you been asked to join those things?

6 **A** No.

7 **Q** Have you had conversations with people on-line about
8 these type of groups and antigovernment activities?

9 **A** No.

10 MR. HAMMOND: I object to the relevance of the
11 question, Your Honor.

12 THE COURT: I'll give Counsel a little leeway based
13 on credibility issues. Overruled.

14 **Q** (BY MR. BURNS) What did Mr. Dyer tell you about the --
15 this grenade launcher that was in your house?

16 **A** He spoke briefly about it when he got it. He said that
17 it was a flare launcher, not a grenade launcher. And that
18 was it.

19 **Q** Did he tell you that he had acquired that launcher from
20 an empty storage container at Camp Pendleton?

21 **A** No.

22 **Q** Did he tell you anything else about the other two
23 grenade launchers that had been acquired or taken from that
24 storage unit at the same time?

25 **A** No.

- 1 Q Did you ask him about the other items that had
2 government tags on them, issued by the government, the
3 Kevlar hats, the Kevlar vests, the other items there that
4 said "Property of the United States"?
- 5 A No.
- 6 Q Now, during this time period -- you're not married to
7 Charles Dyer, correct?
- 8 A Correct.
- 9 Q But you're living with him as boyfriend-girlfriend?
- 10 A Correct.
- 11 Q What were your living arrangements in that house?
- 12 A What does that mean?
- 13 Q Where did you sleep?
- 14 A In a bedroom.
- 15 Q Okay. And how many bedrooms were in this house?
- 16 A Two bedrooms.
- 17 Q And did you sleep in the bedroom with Charles Dyer?
- 18 A Yes.
- 19 Q What was the other bedroom used for?
- 20 A It was the girls' bedroom.
- 21 Q It was for your daughter?
- 22 A My daughter and for Haley.
- 23 Q Okay. Let's talk about Haley. When did you first
24 become -- have the opportunity to be around Haley?
- 25 A About five years ago.

- 1 Q Okay.
- 2 A Around maybe the end of 2005, early 2006.
- 3 Q So she is approximately seven now. You're talking when
4 she was about two?
- 5 A No. She -- I believe she was three.
- 6 Q Okay. And what was your occasion to be around her when
7 she was three years old?
- 8 A I met her mom, and she was doing -- she was watching my
9 daughter.
- 10 Q Was she your babysitter?
- 11 A Yes.
- 12 Q When you were in California, did Charles Dyer ever live
13 with you in California?
- 14 A Yes.
- 15 Q So you started dating him in July of '09 in California.
16 When did he live with you in California?
- 17 A August.
- 18 Q For how long?
- 19 A Until the end of November.
- 20 Q So August to November he's living with you in
21 California?
- 22 A Correct.
- 23 Q And does Haley come over for visitation or to stay with
24 her dad?
- 25 A No.

1 Q And Haley is the daughter of Charles Dyer; is that
2 correct?

3 A Correct.

4 Q So she was never alone with Mr. Dyer in that time
5 period?

6 A No.

7 Q Were you with him at all times?

8 A Yes. She was in Oklahoma. He was in California.

9 Q Okay. You said you have known the family for
10 approximately five years. Were you ever in the home when
11 Charles Dyer was in the home with his wife, Valerie Dyer,
12 when Haley lived there with him?

13 A Yes.

14 Q Can you tell us the circumstances of where it changed
15 from you being a family friend that was around their home
16 and around Haley to you and Charles moving in together?
17 What happened there?

18 A We both were having problems in our marriage, and that
19 didn't happen until a while ago -- or I don't under -- I
20 don't know how to explain it to you.

21 Q When you moved back to Oklahoma -- let's go back to
22 December of '09. When did you move back in December?

23 A Back here?

24 Q Yes, ma'am.

25 A Around December 4th.

- 1 Q 4th. All right. So you moved to Marlow December 4th
2 of 2009?
- 3 A Yes.
- 4 Q And lived in the house we previously talked about?
- 5 A Yes.
- 6 Q Was Haley living here in Stephens County at that time?
- 7 A Yes.
- 8 Q And when you moved back and forth, did Haley start
9 seeing her daddy?
- 10 A Yes.
- 11 Q Would she come over and stay at your house?
- 12 A Yes.
- 13 Q How often?
- 14 A Almost every weekend.
- 15 Q Okay. And what were the sleeping arrangements with
16 Haley when she came in your house?
- 17 A I have bunk beds for the girls. They slept in their
18 bedroom.
- 19 Q And were you working in this time period?
- 20 A No, I was not.
- 21 Q Did you stay home every day?
- 22 A No.
- 23 Q What were you doing?
- 24 A I would go shopping or go into town.
- 25 Q Was Charles Dyer left alone with his daughter in your

- 1 house during that time period?
- 2 A Yes.
- 3 Q How often would that happen?
- 4 A Very seldom.
- 5 Q Let's move to the weekend of on or about January 14th.
- 6 Do you recall that weekend, 2010?
- 7 A Yes.
- 8 Q And was Haley staying with you and Charles Dyer that
- 9 weekend?
- 10 A What was the date?
- 11 Q On or about January the 14th, which would be the second
- 12 week of January of 2010.
- 13 A Of 2010?
- 14 Q Yes, ma'am.
- 15 A Wasn't Mr. Dyer in custody in January of 2010?
- 16 Q It was right before he got placed in custody.
- 17 A No, Haley was not at our home that weekend.
- 18 Q When in January was Haley at your home?
- 19 A Haley was there around the 20 -- no. It was the 17th,
- 20 around the 17th when she got out school until the 3rd,
- 21 January 3rd.
- 22 Q So she was in your home December 17th.--
- 23 A Yes.
- 24 Q -- through January 3rd?
- 25 A Yes.

1 Q Did she come back over after January 3rd for any other
2 visitation?

3 A No.

4 Q When Haley -- she's seven now, correct?

5 A Correct.

6 Q How did she take baths? Was she helped out by you or
7 Charles taking baths?

8 A I gave her a shower.

9 Q After Mr. Dyer was arrested by the Stephens County
10 Sheriff's Office, did you have conversations with him about
11 the child abuse allegation?

12 A Yes, I did.

13 Q Where did those conversations take place?

14 A On the telephone.

15 Q Did you ask him if he molested Haley?

16 A Not in those words.

17 Q What words did you use?

18 A I asked him if all of this was true.

19 Q What did he tell you?

20 A He said no.

21 Q Did you have any other conversations with him about
22 this?

23 A No.

24 Q From January, approximately 14th, 15th, 2010 to now --

25 A We may have had the same conversation a few times that

1 week.

2 Q The week prior to --

3 A I don't recall what --

4 Q -- the police being called?

5 A No. With him the first week he was incarcerated.

6 Q Do you recall a conversation with Mr. Dyer on the jail
7 phone where he tells you about using Haley's panties to wipe
8 the sperm off of himself after sex with you?

9 A I do not recall him saying panties.

10 Q Do you recall him having that conversation with you
11 about cleaning up after sex?

12 A Yes, I do.

13 Q Is that a normal thing you had conversations with
14 Charles about?

15 A No.

16 Q What was the purpose of that conversation for him to
17 explain to you how he cleaned up after sex?

18 A Him being nervous, being scared of what's going on.
19 Not knowing what's going on.

20 Q Are you saying he did not tell you that he used her
21 underwear or her panties to clean up?

22 A I do not recall him saying underwear or panties.

23 Q Was that a common thing in your relationship for
24 Charles to use his seven-year-old daughter's panties?

25 A No.

1 Q And that didn't -- that wouldn't raise a red flag with
2 you if he said that?

3 A Clothing, yes, because it's in there. The laundry is
4 kept right in the restroom.

5 Q And had you recently had sex next to the -- in the
6 restroom?

7 A No. Our bedroom is right next to the restroom.

8 Q Ma'am, it appears from that conversation that you and
9 Mr. Dyer were trying to get your stories straight about DNA.
10 Did you have any other conversations with Mr. Dyer about
11 Haley's clothing or having sex in different parts of the
12 house, what your story was going to be?

13 A There is no story. We have had sex different places
14 around the home.

15 Q Okay. Around the time he got arrested until now, have
16 you had other conversations with him about what your
17 testimony would be here in front of this Judge?

18 A No.

19 Q So the one conversation on the jail phone call about
20 using his daughter's panties, that's the only conversation
21 you have had with him about that?

22 A About the panties?

23 Q About using his daughter's panties, yes, ma'am.

24 A I don't recall.

25 Q Have you ever been threatened with physical harm by

- 1 Mr. Dyer, ma'am?
- 2 A No.
- 3 Q Your child is now in DHS protective custody; is that
4 right?
- 5 A No, she's not.
- 6 Q Is she at home with you?
- 7 A Yes.
- 8 Q Is there some type of safety plan DHS has in place with
9 your daughter living at home with Charles?
- 10 A We have a safety plan, yes.
- 11 Q What is that safety plan?
- 12 A My daughter, she doesn't stay at the home with him.
13 Either he will stay at his mom's or she will spend the night
14 over there.
- 15 Q So she's in the home, but he does not stay there
16 regularly with her?
- 17 A Correct.
- 18 Q Where is he staying?
- 19 A At his mom's.
- 20 Q What's her name?
- 21 A Jan Dyer.
- 22 Q What's your daughter's name again, ma'am?
- 23 A Illiana.
- 24 Q Illiana. How old is she?
- 25 A Six.

1 Q Have you talked to Illiana about whether or not Charles
2 had done anything inappropriate with her?

3 A Yes, I have.

4 Q Have you talked to Haley about whether or not Charles
5 had done anything inappropriate to her?

6 A No.

7 Q Now, you're dating Mr. Dyer or living with him. Was he
8 divorced from his wife at that time?

9 A Not yet, no.

10 Q Valerie.

11 A No.

12 Q Were they going through the divorce in this November,
13 December, and January time period?

14 A November, yes.

15 Q Okay. Were they fighting over assets, money? Is there
16 a golden pot somewhere to fight over as far as divorces go?

17 A Haley.

18 Q Okay. So my question: Were they fighting over money
19 of any kind?

20 A No.

21 Q Fighting over assets?

22 A No.

23 Q Were they both agreeing to do joint visitation with
24 Haley?

25 A At times, yes.

1 Q Was that your understanding of what was going to happen
2 when the divorce was finalized is they would have joint
3 visitation between the father, Charles Dyer, and the mother,
4 Valerie Dyer?

5 A Yes.

6 MR. BURNS: No further questions, Judge.

7 THE COURT: Mr. Hammond, cross-examination?

8 MR. HAMMOND: Yes.

9 **CROSS-EXAMINATION**

10 BY MR. HAMMOND:

11 Q Ms. Monsalve, if I wrote this down correct, you said
12 that Haley came to stay with you during Christmas break
13 beginning on December 17th.

14 A Yes.

15 Q And she stayed with you until January 3rd; is that
16 correct?

17 A Yes.

18 Q What's your relationship with Haley? Do you get along
19 with her good?

20 A Yes.

21 Q During that time frame, did Haley ever complain about
22 anything that her father may have done inappropriately?

23 A No.

24 Q Did she complain about anybody else doing anything
25 inappropriately to her at that time?

- 1 A No.
- 2 Q And did you help give her baths during that time frame?
- 3 A Yes, I did.
- 4 Q Now, where did you work between December 17th and
5 January 3rd?
- 6 A I did not work.
- 7 Q You were home pretty much all the time; is that
8 correct?
- 9 A Correct.
- 10 Q So who would have been in your house with Mr. Dyer
11 between December 17th and January 3rd, 2010?
- 12 A Besides myself and my daughter and Haley, no one else.
- 13 Q You testified earlier that there were times when you
14 left the home; is that correct?
- 15 A Correct.
- 16 Q Can you tell the Court how many times that occurred
17 during that time frame?
- 18 A I want to say three or four times.
- 19 Q What's the longest that you would be gone?
- 20 A A couple of hours maybe.
- 21 Q During those times, would you have had either one of
22 the children with you?
- 23 A I had Illiana.
- 24 Q Each time?
- 25 A Yes. I did have Haley one time.

- 1 Q So possibly if you were gone three or four times and
2 you had Haley with you one time, if I understand your
3 testimony, she may have been alone with her father about
4 three times --
- 5 A Yes.
- 6 Q -- during that time frame?
- 7 A Yes.
- 8 Q But not ever over a couple of hours?
- 9 A No.
- 10 Q Now, those times that you did leave the home and you
11 came back, did you notice anything out of the ordinary?
- 12 A No.
- 13 Q During that time, did Haley ever tell you that she got
14 in trouble for handling a gun?
- 15 A No. He did. Mr. Dyer told me that.
- 16 Q What did he tell you?
- 17 A He told me that -- he told me what happened and that he
18 disciplined Haley, and that was it.
- 19 Q And what day was that?
- 20 A I don't recall. It would have been around the time, a
21 few days before Haley was supposed to go home.
- 22 Q Now, have you seen the first criminal information that
23 was filed in this case in reference to child sexual abuse?
- 24 A I don't --
- 25 Q Mr. Dyer has been charged with child abuse; is that

1 correct?

2 **A** Correct.

3 **Q** And are you aware that the Information states on there
4 that these acts occurred on or about January 2nd, 2010?

5 **A** Yes.

6 **Q** Tell the Court what you were doing on January 2nd,
7 2010.

8 **A** I was at home. I don't recall. I believe that we were
9 painting the girls' bedroom.

10 **Q** Who was there?

11 **A** Myself, my daughter, Haley, and Mr. Dyer.

12 **Q** Were they there all day?

13 **A** Yes.

14 **Q** Was there a point in time when you had to leave the
15 home?

16 **A** I don't believe so, no.

17 **Q** Did you ever run any errands that day and leave both
18 girls there or take any of the girls?

19 **A** I believe I did run an errand, but both of the girls
20 were home.

21 **Q** Where did you go?

22 **A** I don't recall where I went. I may have stepped to go
23 get dinner to -- but I don't recall. That's the only place
24 I would have went.

25 **Q** So is it your testimony that Mr. Dyer was never alone

1 with his daughter on January 2nd, 2010?

2 A He would have been there with my daughter and his
3 daughter.

4 Q So there would have been somebody else there?

5 A Correct.

6 Q Did your daughter ever complain to you on January 2nd
7 or 3rd that Mr. Dyer did anything inappropriate to her or
8 Haley?

9 A No.

10 Q Did you have any conversations with Mr. Dyer's wife in
11 November and December?

12 A No.

13 Q Did Mr. Dyer ever tell you during that time that he and
14 his wife were having some disagreements on the custody of
15 their daughter?

16 A Yes.

17 Q And what did he tell you about that?

18 A I'm trying to remember.

19 Q Let me rephrase the question. Was Mr. Dyer interested
20 in getting custody of his daughter --

21 A Yes.

22 Q -- during that time?

23 A Yes.

24 Q Did he tell you if he had any concerns about her?

25 A Yes.

- 1 Q What did he tell you?
- 2 A The mother doing drugs.
- 3 Q And he said he wanted to get custody of her?
- 4 A Yes.
- 5 Q Did you ever observe Mr. Dyer and his wife have
- 6 conversations about custody issues?
- 7 A On the telephone.
- 8 Q What did you hear Mr. Dyer state during those telephone
- 9 calls?
- 10 A I don't remember. It's so long ago.
- 11 Q If you remember.
- 12 A I don't remember exact words. I don't want to say
- 13 anything that wasn't said.
- 14 Q Have you seen a copy of the OSBI DNA results?
- 15 A Yes.
- 16 Q To your knowledge, was there ever any underwear of
- 17 Haley tested for any DNA evidence?
- 18 A I'm not sure. I don't recall. I know that I gave them
- 19 Haley's pajamas and underwear. I don't recall if it's on
- 20 there or not.
- 21 Q You questioned Mr. Dyer about this rifle, correct, and
- 22 he told you how he received it?
- 23 A Yes.
- 24 Q Did he ever change his statement or what he said in
- 25 reference to how he acquired that rifle?

- 1 **A** No.
- 2 **Q** Did he ever tell you that he knew somebody stole it?
- 3 **A** No.
- 4 **Q** Did he ever tell you that he knew somebody scratched
5 the serial numbers off of it?
- 6 **A** No.
- 7 **Q** Did he ever tell you that somebody painted over it?
- 8 **A** No.
- 9 **Q** Did you ever see him handle that rifle?
- 10 **A** Just in the home when he was putting it up on the wall.
- 11 **MR. HAMMOND:** That's all the questions I have.
- 12 **THE COURT:** Mr. Burns, redirect?
- 13 **MR. BURNS:** Just briefly.
- 14 **REDIRECT EXAMINATION**
- 15 **BY MR. BURNS:**
- 16 **Q** You said that you saw the rifle when he was putting it
17 on the wall, correct?
- 18 **A** Yes.
- 19 **Q** Did he tell you where that rifle had been the last six
20 years or five years?
- 21 **A** In storage.
- 22 **Q** In storage where?
- 23 **A** I don't recall.
- 24 **Q** Somewhere here in Duncan or Stephens County?
- 25 **A** I believe so, yes. Because it was not in California.

1 Q So for how many years had this rifle been in storage by
2 Mr. Dyer?

3 A I don't recall. I don't know how many years it's been
4 in storage.

5 Q How long has he been in California that you've known
6 him out there and hung around him?

7 A Yes.

8 Q How long has he been in California?

9 A Four years, I believe.

10 Q Did the police ultimately seize some or get some
11 panties from you of Haley's panties?

12 A Yes.

13 Q Was that after they listened to your phone call with
14 Charles Dyer in jail?

15 A No.

16 Q When was that?

17 A That was on the initial search.

18 Q What clothing did they take?

19 A Haley's pajamas and her panties.

20 Q And did Haley have more than one pair of panties there
21 at your house?

22 A No.

23 Q So she was there for two weeks and didn't have a change
24 of clothes or dirty clothes?

25 A Yes, she did. She went home. I cleaned all of her

1 laundry and put it back in her suitcase. Those were -- I
2 gave them a shower on Sunday, and those were clothes that
3 she had on. That was the only clothing I had there.

4 Q That would be Sunday you're saying around January 3rd?

5 A Yes.

6 Q And, again, Haley is how old?

7 A Seven.

8 Q Do you know what her birth date is?

9 A I do not.

10 MR. BURNS: No further questions, Judge.

11 THE COURT: Recross?

12 MR. HAMMOND: I don't believe I have any more

13 questions, Your Honor.

14 THE COURT: All right, ma'am. You can step down.

15 Thank you.

16 MR. BURNS: Judge, I have one more. Excuse me.

17 THE COURT: Okay. Please have a seat.

18 Q (BY MR. BURNS) You said the panties you gave the
19 police officers, those are ones you had just washed for
20 Haley so she could take them home with clean clothes?

21 A I did not wash them, no.

22 Q When had she been wearing those panties?

23 A That day.

24 Q Well, help me here. If Haley goes home to her mom's --

25 A She would have worn them that night, Saturday night,

- 1 and that day.
- 2 Q Then she went home to her mom's house. What time?
- 3 A About 6:00 p.m.
- 4 Q And you give her clean clothes to wear?
- 5 A Yes.
- 6 Q And you said you washed all the rest of her clothes to
7 send home with her?
- 8 A Correct.
- 9 Q But you didn't wash the clothes that she had on the
10 night before?
- 11 A No, I did not.
- 12 Q Where did you obtain those panties from that you handed
13 the deputies?
- 14 A The laundry basket.
- 15 Q Was there other clothes in that basket beside Haley's
16 panties?
- 17 A Yes, there were.
- 18 Q What other clothes were in there?
- 19 A Our clothing.
- 20 Q Yours, your daughter's, Charles', everybody's?
- 21 A Yes.
- 22 MR. BURNS: No further questions.
- 23 THE COURT: Anything else?
- 24 MR. HAMMOND: No questions.
- 25 THE COURT: All right. Thank you. You can step

1 down.

2 State may call their next witness.

3 MR. BURNS: State calls Valerie Dyer.

4 THE COURT: Ma'am, please stand right there and
5 raise your right hand.

6 THE WITNESS: (Witness complies.)

7 THE COURT: Do you swear or affirm the testimony
8 you're about to give will be the truth, the whole truth, and
9 nothing but the truth, under the pains and penalties of
10 perjury?

11 THE WITNESS: I do.

12 THE COURT: Thank you. You can have a seat.

13 Mr. Burns.

14 VALERIE DYER,

15 called as a witness on behalf of the State testified as
16 follows:

17 **DIRECT EXAMINATION**

18 BY MR. BURNS:

19 Q Will you state your name, please.

20 A Valerie Dyer.

21 Q Can you spell your name for us?

22 A V-A-L-E-R-I-E, D-Y-E-R.

23 Q How old are you, Valerie?

24 A Twenty-six.

25 Q And where are you from originally?

- 1 **A** Duncan, Oklahoma.
- 2 **Q** Were you gone a certain period of time to California?
- 3 **A** Yes.
- 4 **Q** From what years to what years?
- 5 **A** I left Oklahoma when I was 16, stayed there for a
6 couple of years when he was in 29 Palms, came back, and then
7 went to Tennessee and then came back to California.
- 8 **Q** Okay. So when you were 16, you left with whom?
- 9 **A** Charles Dyer.
- 10 **Q** How old was Charles Dyer when you were 16?
- 11 **A** Nineteen.
- 12 **Q** And did you marry him at that time?
- 13 **A** Yes.
- 14 **Q** So you have been -- and from the facts we know, did he
15 join the military?
- 16 **A** Yes. Well, he was already in the military.
- 17 **Q** He was already?
- 18 **A** Yes.
- 19 **Q** Did you travel with him while he was in his military
20 service?
- 21 **A** Yes.
- 22 **Q** How long did you live in California?
- 23 **A** Roughly eight years.
- 24 **Q** Eight years?
- 25 **A** Eight or nine years.

1 Q Okay. And did you move back here to Stephens County?

2 A Yes.

3 Q When?

4 A When I was 18. I was pregnant.

5 Q Okay. So you moved back when you were pregnant, and
6 then you went back to California?

7 A Uh-huh.

8 Q Is that a yes?

9 A Yes.

10 Q When did you come back for good? When was the last
11 time you moved back from California to Duncan, to Stephens
12 County?

13 A For good good?

14 Q Yes.

15 A September 26, 2008.

16 Q Okay. And was Charles with you when you moved back?

17 A No, he was not.

18 Q So has he been part of your household and you have been
19 together since that time?

20 A No.

21 Q So since December of '08 -- September of '08?

22 A September 26th of 2008.

23 Q You have been here since then without Charles Dyer?

24 A Yes.

25 Q Did you get a divorce during that time period?

- 1 **A** No. It's pending.
- 2 **Q** Okay. Now, as far as you and Charles Dyer's assets, is
3 there a bunch to fight over in your divorce?
- 4 **A** No.
- 5 **Q** Is there any money to fight over?
- 6 **A** No.
- 7 **Q** How about Haley, what was the agreement between
8 yourself and Mr. Dyer about Haley?
- 9 **A** She would live with me, and he would go and have her on
10 the weekends.
- 11 **Q** Okay. Was that a pretty agreeable understanding
12 between yourself and Mr. Dyer?
- 13 **A** Yes.
- 14 **Q** And you told me, you used the words joint custody.
- 15 **A** Yes, joint custody.
- 16 **Q** Had that been agreed upon between yourself and
17 Mr. Dyer?
- 18 **A** Yes.
- 19 **Q** How old is your daughter, Haley?
- 20 **A** She's seven.
- 21 **Q** And when you're living in California, up to September
22 of '08, did Haley ever come to you and say her dad, Charles
23 Dyer, was doing anything to her?
- 24 **A** Yes.
- 25 **Q** What did she tell you?

1 A She told me that --

2 MR. HAMMOND: Your Honor, I object based on hearsay
3 statements. I know the rules require that the Court make a
4 finding that there is reliability. I understand that there
5 is a Court of Criminal Appeals to the contrary, however, in
6 the Kennedy case, Your Honor, if there is independent
7 evidence of physical injury presented by a doctor. The
8 evidence in this case as far as medical evidence, Your
9 Honor, is not clearcut.

10 So I don't think Kennedy would apply. I think the Court
11 has to make a determination prior to her testimony that
12 these statements are actually reliable before they come in.

13 THE COURT: Well, I'm not sure that that -- I find
14 the Kennedy case to be a little bit confusing to some
15 extent. But one thing that is clear is that this is a
16 Preliminary Hearing. I think the main intent of that
17 requirement in the rule that there be a hearing beforehand
18 is to prevent a jury from hearing anything inappropriate. I
19 don't necessarily believe that there needs to be a
20 separation in time between my finding of a reliability and
21 admissibility of the statements before they come in.

22 In other words, I could hear the background information
23 now on the same record and then rule that it could come in,
24 I think, without having a separate hearing. My concern is
25 that the notice that was provided by the State of their

1 intent to use these statements indicates that they intend to
2 introduce them through Jessica Taylor, and that it was
3 derived from a forensic interview.

4 Admittedly, I have little prior experience with this
5 situation and this particular exception to the hearsay rule,
6 but my prior experience is that it's always been brought in
7 through a trained forensic interviewer who has provided the
8 basis for the hearsay evidence to come in by giving me their
9 testimony of their expertise and the circumstances
10 surrounding their interview of the witness so that I could
11 make a finding under this exception that the information was
12 reliable and admissible under this exception.

13 I haven't heard any testimony that would enable me to
14 make that finding at this point. So I don't think it's
15 necessarily not admissible under any circumstances from this
16 witness, but I haven't heard sufficient testimony from her
17 to this point to find that it would be admissible under this
18 rule. So I'll sustain the objection.

19 Q (BY MR. BURNS) I'm not going to go into what she told
20 you in California. How old was she when she told you things
21 weren't right?

22 A Between four and five.

23 Q Okay. And, again, I don't want to get into what she
24 said. Did she tell you that her dad was doing inappropriate
25 things with her?

PH

1 A No.

2 MR. HAMMOND: Same objection, Your Honor.

3 THE COURT: Overruled.

4 Q (BY MR. BURNS) Did she use specific terms for her
5 anatomy with you?

6 A Yes.

7 Q And what was her term for her vagina?

8 A Bo-bo.

9 Q Is that something you and she both came up with, or did
10 she just come up with that on her own?

11 A We used it when she was little.

12 Q Okay. We're going to get to the January incident where
13 you called law enforcement. Prior to that time, had your
14 daughter ever said that something -- Dad was doing something
15 to her?

16 A No.

17 Q Did you tell me in my office prior today when you came
18 in here that, yes, he had made accusations against -- or she
19 had made accusations before?

20 A Yes. He would -- she would tell me that Dad made me
21 lay in bed with her.

22 Q Okay. And did you take that as meaning nothing
23 inappropriate?

24 A Yes, but I still confronted him.

25 Q You confronted him in California?

- 1 A Yes, twice.
- 2 Q And what did he tell you on those confrontations?
- 3 A He said both times that he would handle it and talk to
4 her about it and that she was just wanting attention.
- 5 Q Okay. Did you pretty much believe Charles Dyer at that
6 point?
- 7 A Yes.
- 8 Q What time frame was that when she told you she was
9 lying with him in his bed? What time period?
- 10 A She had to be at least five. The year or --
- 11 Q So she is seven now. Approximately two years ago?
- 12 A Approximately, yes.
- 13 Q About the same time you confronted Mr. Dyer with those
14 things, did you ever observe child pornography or anything
15 in your residence?
- 16 A Yes.
- 17 Q Where did you observe child pornography?
- 18 A On his computer.
- 19 Q And is that something you had downloaded?
- 20 A No.
- 21 Q Who had access to your computer?
- 22 A It was his computer.
- 23 Q Okay. The only one -- people who have access was
24 himself and you?
- 25 A It was in the living room, yes.

1 Q Did you open up any files that contained obvious images
2 of child porn?

3 A Yes.

4 Q And did that upset you?

5 A Yes.

6 Q What did those images depict that you observed?

7 A It was an old, looked like homemade videos. It was in
8 the '70s. And it showed --

9 MR. HAMMOND: I object. She's testifying about the
10 things she's seen. There is no way to cross-examine the
11 accuracy of those items.

12 THE COURT: I don't know that that makes it
13 inadmissible. I'll allow it.

14 Q (BY MR. BURNS) Could you answer the question, please.

15 A It was a '70s videos, and it looked like they were all
16 homemade. And it showed mothers and fathers doing sexual
17 acts to their kids.

18 Q Did you confront Charles Dyer with those images?

19 A I did, that same day.

20 Q What did he tell you?

21 A He laughed about it and told me that he didn't think I
22 would be so upset about it.

23 Q Did you ever find any other images of child porn while
24 you were living there with him?

25 A No.

1 Q Let me jump forward in time. You come back to
2 Oklahoma; is that correct?

3 A Yes.

4 Q Tell me what month you came back to Oklahoma.

5 A September 26th of 2008.

6 Q So that's when you split with Charles?

7 A Yes.

8 Q How often did he see your daughter, Haley, from that
9 time until January 4th of 2010?

10 A He didn't come home from California until about roughly
11 seven, eight months.

12 Q After you did?

13 A Yes.

14 Q So when he came back here to Stephens County, where was
15 he living?

16 A With his parents.

17 Q And did he have regular visitation with Haley?

18 A Weekends.

19 Q Okay. So it was a frequent thing?

20 A Yes.

21 Q Let me move on to the Christmas break of 2009. Did
22 Haley spend time with her father, Charles Dyer, during that
23 time period?

24 A Yes.

25 Q When did she go to the Dyers' house, if you remember?

1 A I had her Christmas day, and so they came and got her
2 on the 26th.

3 Q Okay. What was the agreement between yourself and
4 Charles about that visitation on the holiday?

5 A That he could have her until her sister -- his sister
6 leaves back to Tennessee, because his sister was down to
7 visit.

8 Q Okay. So from the 26th until when?

9 A Until probably the 4th or 5th.

10 Q Of January?

11 A Yes, sir.

12 Q 2010?

13 A Yes.

14 Q And you were good with that?

15 A Yes.

16 Q Did your daughter then go stay with him from the 26th
17 until the 4th or 5th?

18 A Yes.

19 Q And was she staying with him at the house in Marlow?

20 A Yes.

21 Q Did you have an occasion to talk to her on the phone or
22 see her in person during that time?

23 A I would call her every day.

24 Q When did you get Haley back at your house?

25 A I want to say at least the 5th, I think.

1 Q Somewhere in the 4th or 5th range?

2 A 4th or 5th, yeah.

3 Q And did you have an occasion to help her with a bath?

4 A Yes, I do help her.

5 Q What did you see? And tell the Judge what happened
6 there.

7 A It was late at night. I was giving her a bath to get
8 ready for bed. And I took her to the bathroom, and she was
9 crying. And I was wondering why she was crying. So I asked
10 her why she was crying. And she said that her bo-bo was
11 hurt.

12 MR. HAMMOND: Your Honor, same objection that was
13 previously made.

14 THE COURT: Sustained.

15 Q (BY MR. BURNS) Ma'am, how long after Haley left her
16 dad's house was it until this bathroom incident? Hours?

17 A Hours, yeah.

18 Q When did she begin to cry?

19 A She was complaining of her stomach hurting a little
20 bit. And then I gave her a bath. And as soon as we got in
21 the bathroom together, then normally that's -- we talk. And
22 that's when she started complaining about her --

23 Q Her bo-bo?

24 A Her bo-bo hurting.

25 Q Which is --

- 1 A Her vagina.
- 2 Q -- her slang word for vagina?
- 3 A Yes.
- 4 Q Did you observe her vagina then sitting in the bathtub?
- 5 A Yes.
- 6 Q Did it look normal to you?
- 7 A No.
- 8 Q What was different about looking at her then versus any
9 other time?
- 10 A It was red and swollen.
- 11 Q Okay. Had you ever seen it look like that before?
- 12 A No.
- 13 Q Did she tell you why her bo-bo was hurting?
- 14 A I asked her, yes.
- 15 MR. HAMMOND: Your Honor, I object. She's not
16 listed as a person that's --
- 17 THE COURT: Well, she can testify whether she said
18 anything to her. I just am not allowing the statement. I
19 think that's all he's asked her so far.
- 20 A I asked her why it was hurting.
- 21 Q (BY MR. BURNS) And did she respond to you and tell you
22 why?
- 23 A Yes. She was hesitant at first. She was scared.
- 24 Q Do you know why she was scared? Did she tell you why
25 she was scared?

- 1 A She was scared of Charles Dyer.
- 2 Q Are you scared of Charles Dyer?
- 3 A Yes.
- 4 Q Has he threatened harm to you in the past?
- 5 A He has threatened me many times.
- 6 Q Has he threatened to kill you?
- 7 A Yes, he has.
- 8 Q Has he used physical violence against you?
- 9 A Yes.
- 10 Q And was Haley present or seeing that side of Charles
- 11 Dyer?
- 12 A She's seen us arguing and fighting and him screaming in
- 13 my face.
- 14 Q When Haley told you what had happened to her bo-bo and
- 15 you observed that it was swollen --
- 16 A Yes.
- 17 Q -- what did you do?
- 18 A I got -- I just hugged her and held her. I didn't ask
- 19 her too much. I got angry. It was already late at night,
- 20 and I just told myself I was going to go tomorrow and tell
- 21 the police.
- 22 Q And did you -- the next day did you go to -- eventually
- 23 go to the police?
- 24 A Yes, sir.
- 25 Q Were you referred to a forensic interviewer?

- 1 A Yes.
- 2 Q And also a doctor?
- 3 A Yes.
- 4 Q Which doctor looked at Haley?
- 5 A Dr. Waters, Preston Waters.
- 6 Q Is that here in Duncan?
- 7 A Yes.
- 8 Q Was she also looked at by any doctors in Norman?
- 9 A The Abbott House.
- 10 Q Did they have doctors there?
- 11 A No, just the counselors.
- 12 Q So the interview of Haley took place in Norman at the
- 13 Abbott House?
- 14 A Yes.
- 15 Q The physical exam took place here in Duncan?
- 16 A Yes.
- 17 Q And were you with her, present during that physical
- 18 exam?
- 19 A Yes.
- 20 Q Did you sit there and hold her hand in the room?
- 21 A (Nods head.)
- 22 Q Is that yes?
- 23 A Yes. I'm sorry.
- 24 Q Was she pretty scared and traumatized there?
- 25 A Yes.

- 1 Q Did Dr. Waters, did she -- was she very, very thorough
2 in her exam, or did she kind of glaze over it because Haley
3 was so traumatized?
- 4 A Is was pretty thorough.
- 5 Q What time was it you got her to this doctor that next
6 day?
- 7 A It was early in the morning. Maybe 9 o'clock in the
8 morning, I believe.
- 9 Q Was there a Sheriff's deputy with you?
- 10 A Yes.
- 11 Q Who was that?
- 12 A I believe Lemons.
- 13 Q What time was it you got Haley to the forensic
14 interviewer?
- 15 A It had to be in the afternoon, between 11:00 and 1:00,
16 maybe, I believe.
- 17 Q Did you drive Haley to Norman?
- 18 A Yes, I did.
- 19 Q Was Deputy Lemons or anybody else in law enforcement
20 also present during Haley's interview in Norman?
- 21 A Yes.
- 22 Q Did you actually listen to that interview?
- 23 A No.
- 24 Q So she goes back in a room with somebody by themselves?
- 25 A Yes.

- 1 Q Who was that person she went with?
- 2 A Amy.
- 3 Q Okay. Now, since that interview with Haley, have you
4 gone over with Haley about what she told the interviewer or
5 what happened with her dad? Have you gone into questions
6 like that?
- 7 A No.
- 8 Q Why?
- 9 A We just don't talk about it.
- 10 Q Have you been told not to ask her questions?
- 11 A Yes, but I chose not to.
- 12 Q Okay. Have you ever suggested to Haley what she should
13 say about her father or what she should say that happened?
14 Have you ever planted anything in her head?
- 15 A No. I just tell her to tell the truth.
- 16 Q Let's talk about that. Haley is seven years old?
- 17 A Yes.
- 18 Q What's her realization of the truth versus a lie?
- 19 A She knows what happened. And I have told her she -- I
20 tell her, You know what happened. Just tell what happened
21 and do it honestly. And she's seven. She's very
22 intelligent. She knows between a lie and a truth.
- 23 Q Okay. So have you had other conversations with her in
24 the past about a lie and the truth?
- 25 A Yes.

1 Q Have you told her the importance of telling the truth?

2 A Yes.

3 Q Do you think she factually understands the difference
4 between a lie and the truth?

5 A Yes.

6 Q When she came out of her forensic interview, did she
7 tell you she had told the counselor the truth?

8 A Yes. Before she went in there, I told her to say the
9 truth. Then she came back out proud because she did tell
10 the truth.

11 Q When you picked up Haley on the 4th or 5th, whatever
12 day that was, of January 2010, did you bring all her clothes
13 back to your house, if you know?

14 A I don't think so. I believe I left clothes there. She
15 left clothes there by mistake.

16 Q Okay. Do you know how much -- how much clothes or
17 just --

18 A Probably just a nightgown and -- I'm really not sure.

19 Q Okay.

20 A I know I packed her clothes, but --

21 Q Okay. Let's talk about Haley. Has Haley ever been
22 exposed, to your knowledge, to pornography?

23 A Never.

24 Q Would she know or do you have any knowledge how she
25 would know about penises or ejaculations or anything like

1 that?

2 A Never. She never once saw Charles and I have sex.

3 Q She's never?

4 A Néver.

5 Q Did she -- is she allowed to watch porn or anything
6 like that?

7 A Never.

8 Q Is she allowed to watch rated R movies?

9 A No.

10 Q So to your knowledge, she has never been exposed to
11 those type of environments?

12 A Never.

13 Q Now, since Haley has gone to the doctor and time has
14 passed, has she complained any more about her bo-bo hurting?

15 A No.

16 Q It was just that one time when she came home from her
17 dad's house?

18 A Yes.

19 Q When you had these discussions with Haley in the
20 bathtub, was her demeanor -- was she -- did she seem
21 traumatized to you? Did she seem happy? What was her
22 demeanor?

23 A She was traumatized and scared. Very scared.

24 Q Had you ever seen her like that before?

25 A No.

1 MR. BURNS: No further questions, Judge.

2 Thank you.

3 THE COURT: Mr. Hammond, cross-examination?

4 **CROSS-EXAMINATION**

5 BY MR. HAMMOND:

6 Q Ms. Dyer, when you left California, were you and
7 Mr. Dyer having problems with your marriage?

8 A Yes.

9 Q And what month did you move from California to
10 Oklahoma?

11 A September 26th.

12 Q That was in '08?

13 A Yes.

14 Q And at that point in time, did Mr. Dyer confront you
15 with adultery?

16 A No.

17 Q Did he accuse you of having adultery?

18 A No.

19 Q Did he tell you that he had information you were using
20 illegal drugs at that time?

21 A In September 28th?

22 Q Yes.

23 A No.

24 Q Did he confront you with adultery allegations after
25 September of 2008?

- 1 A Yes.
- 2 Q He told that he was going to try to get custody of his
3 daughter, didn't he?
- 4 A Yes.
- 5 Q That upset you, didn't it?
- 6 A Of course.
- 7 Q Did you tell Mr. Dyer that you would do anything or say
8 anything to keep him from getting his daughter?
- 9 A Yeah.
- 10 Q When did you tell him that?
- 11 A Probably a couple of months after I got into Oklahoma.
- 12 Q So wouldn't it be fair to say, Ms. Dyer, that between
13 the time you left California to today's date, you have got a
14 lot of hard feelings against Mr. Dyer, irregardless of the
15 allegations that we're here in court today?
- 16 A But I have reason to have hard allegations towards him.
17 Not just the situation here.
- 18 Q Now, you had had some prior complaint from your
19 daughter in California; is that true?
- 20 A Yes.
- 21 Q But you never did call law enforcement or the
22 California Department of Human Services, did you?
- 23 A No, because she wasn't crying. She wasn't upset.
- 24 Q And you said earlier that you looked at a -- some
25 pornography on the computer.

- 1 A Charles Dyer's computer.
- 2 Q Is that the same one that was confiscated during the
3 search in this case?
- 4 A Yes. Well, I gave it to them.
- 5 Q Are you aware, ma'am, that there has been no
6 pornography or anything like that was found on that
7 computer?
- 8 A Which computer?
- 9 Q Any computer that was searched obtained from Mr. Dyer.
- 10 A No.
- 11 Q Did he have the same computer in Oklahoma that he had
12 in California where you viewed the pornography on?
- 13 A No, because he gave it to me.
- 14 Q But it wasn't on there; is that correct? That law
15 enforcement looked at it.
- 16 A The computer that I found the video on was Charles
17 Dyer's. And I asked for it whenever I was in Oklahoma, and
18 he gave it to me.
- 19 Q Did law enforcement look at that computer?
- 20 A Yes, they did. I gave it to them.
- 21 Q Was anything found on it?
- 22 A Yes.
- 23 Q Do you have it here today, any pornography that was
24 found?
- 25 A I suppose my lawyers do. I mean, they did find

1 something, yes.

2 Q Law enforcement did?

3 A The FBI.

4 Q Now, you made a written report in this case, did you
5 not?

6 A Uh-huh.

7 Q Did you say anything in that written report that you
8 had viewed child pornography on Mr. Dyer's computer or your
9 computer?

10 A I can't remember.

11 Q Don't you think that would be something that would be
12 pretty important for law enforcement to know?

13 A Of course. I let them know, but I guess I forgot to
14 write it down in the statement. But I did let Lieutenant
15 Guthrie know.

16 Q Did you make any complaints to the military or did you
17 have anybody make any complaints to the military in July of
18 '09 that Mr. Dyer had threatened to kill people or someone?

19 A No.

20 Q Was there an investigation done by the Marines into a
21 complaint that either you or your brother made about that?

22 A My brother, yes.

23 Q What complaint did he make?

24 A Sir, I can't even remember. I guess it had to do with
25 the militia or -- I can't remember. It's been a long time

1 ago.

2 Q Did you contact military authorities and tell them that
3 you lied about that complaint?

4 A Yes, because Charles Dyer told me to. He told me to
5 lie.

6 Q Now, you said you're afraid of Charles Dyer.

7 A Yes.

8 Q He's never been prosecuted for any kind of physical
9 violence, has he?

10 A No.

11 Q You've never reported any physical violence to any law
12 enforcement either in California or Oklahoma, have you?

13 A No.

14 Q Now, when you were -- your daughter was taking a bath
15 at the time that she became upset, you looked at her private
16 area and it looked different than what it had looked in the
17 past; is that true?

18 A Yes.

19 Q What was date was that on?

20 A It was between the 4th and 5th of January.

21 Q Did you take any pictures of her?

22 A Of course not. No.

23 Q Did you call any other witnesses to view what you were
24 looking at to verify what you had seen?

25 A No.

1 Q Don't you think it would have been important to
2 document what you saw?

3 A That's why I went to the police the next day. I'm not
4 going to let somebody come in there and look at my daughter.

5 Q Well, she was given a bath on the 3rd or 4th, correct?

6 A 4th or 5th.

7 Q Okay. And what day did Dr. Waters examine your
8 daughter?

9 A It was either the next day or two days later. It was
10 all fast.

11 Q Well, the report's here and it says it was January
12 13th, 2010. Do you have any reason to dispute that date?

13 A No reason. Like I said, I was under a lot of pressure.
14 I was stressed.

15 Q She wasn't examined for at least nine days after you
16 saw her, or maybe eight?

17 A I'm not sure why it took that long.

18 Q Don't you think it would have been important to get her
19 to the doctor just as soon as possible?

20 A Of course. But they're the ones that set up the
21 interview and they're the ones that set up everything for
22 me.

23 Q Were you taking any kind of prescription drugs or
24 illegal drugs the date that your daughter made this last
25 disclosure to you?

- 1 **A** No.
- 2 **Q** Were you on any prescription medication at that time
- 3 that you were ordered to take but you weren't actually
- 4 taking?
- 5 **A** Not at that time.
- 6 **Q** How about today, are you under any kind of medication
- 7 or taking any medication?
- 8 **A** Yes.
- 9 **Q** What are you taking?
- 10 **A** I'm on Zoloft and Xanax.
- 11 **Q** Did you take those this morning?
- 12 **A** I took a half Xanax last night so I could sleep.
- 13 **Q** Did you take any today?
- 14 **A** No.
- 15 **Q** Any other medication you took today?
- 16 **A** No.
- 17 **Q** Since January 4th, have you sent Mr. Dyer or Amanda
- 18 Monsalve any text messages making fun of Mr. Dyer and saying
- 19 that he get -- that you hope that he gets in trouble, those
- 20 types of things?
- 21 **A** Once, yes.
- 22 **Q** What did you say?
- 23 **A** I told her to enjoy him while she can.
- 24 **Q** Did you say anything else?
- 25 **A** No.

1 Q Did you say that -- did you tell her thanks for taking
2 him off your hands?

3 A I don't remember that.

4 Q Did you tell her that you hoped that he gets what he
5 deserves?

6 A Yes.

7 Q Did you ever tell Mr. Dyer that you would perjure
8 yourself to be able to get your child in a custody
9 proceeding?

10 A No.

11 Q Did he ever tell you that you would perjure yourself if
12 you changed your testimony in a custody proceeding?

13 A What's perjure mean?

14 Q It means you lie under oath.

15 A No.

16 Q Y'all never had that conversation?

17 A Not that I'm aware of. I don't remember. I haven't
18 talked to Charles Dyer in months.

19 Q On the text message that you did send to Amanda, did
20 you tell her that both she and Charles aren't worth your
21 time?

22 A It wasn't a text message. It was through the computer.
23 And, yes, they are not worth my time.

24 Q Who lived in your home on January 3rd or 4th, 2010?

25 A My cousin, his -- her husband and some kids. They only

1 stayed there for a week.

2 Q Tell me the names of all the adult males that lived
3 with you during that time.

4 A Billy.

5 Q Billy who?

6 A I can't remember. I don't know last name. I -- I
7 don't know his last name.

8 Q Who else?

9 A That was it.

10 Q Billy have any kind of criminal history?

11 A Yes.

12 Q And what kind was that?

13 A I guess drugs. I'm not sure.

14 Q Are you kin to James Hekia?

15 A Yes.

16 Q Is he a registered sex offender?

17 A Yes, he is.

18 Q Had your daughter been in his presence during that --

19 A No, she has not.

20 Q -- during that time frame?

21 A No.

22 Q When is the last time she has been around him?

23 A A month or two ago, but I was always with her.

24 Q Was he ever left alone with her in December of '09 or
25 January 2010?

1 A No.

2 Q Who else lived in your house the first part of
3 January 2010 other than what you have testified to?

4 A Billy; my cousin, Lori; and her three kids.

5 Q Is that all?

6 A Yes. They didn't actually live with me. They just
7 stayed with me a couple of days.

8 MR. HAMMOND: That's all I have, Your Honor.

9 THE COURT: Mr. Burns, redirect?

10 **REDIRECT EXAMINATION**

11 BY MR. BURNS:

12 Q Valerie, is there a chance your dates could be off some
13 about what date you picked her up and what date she came
14 home, that kind of thing?

15 A Of course.

16 Q How about also what dates that you thought you took her
17 to the doctor or to the forensic interview?

18 A Yes, of course.

19 Q Are the police officers and the forensic interviewer
20 the ones that set up the doctor's appointment?

21 A Yes, sir.

22 Q So it would have to have been after the forensic
23 interview before the exam?

24 A Yes, sir.

25 Q And if the forensic interview wasn't set up until

1 January 12th, then the exam would have been following that,
2 correct?

3 A Yes, sir.

4 Q Did -- strike that.

5 Have you got Haley going to a counselor now?

6 A Yes, sir.

7 Q Who is that counselor?

8 A Her name is Amy at the Youth Center.

9 Q Here in Duncan?

10 A Yes, sir.

11 Q How long has she been going there?

12 A Since about February, I believe.

13 Q Has that been good for Haley?

14 A Yes. She goes once a week.

15 Q What was Haley's demeanor this morning when she had to
16 come to court with you? Was she scared?

17 A Yes, because she did not want to see Charles Dyer.

18 Q Did she seem fairly well traumatized by the fact that
19 she might have to testify in front of her father, Charles
20 Dyer?

21 A Yes, sir.

22 Q Did she tell you she didn't want to?

23 A Yes.

24 MR. BURNS: Nothing further, Judge.

25 THE COURT: Mr. Hammond?

1 MR. HAMMOND: No questions.

2 THE COURT: Ms. Dyer, who told your daughter that
3 she was going to have to testify today?

4 THE WITNESS: I did.

5 THE COURT: Why did you do that?

6 THE WITNESS: Because I would like to tell her
7 what's going on.

8 THE COURT: Did you think she was going to have to
9 testify?

10 THE WITNESS: Yes.

11 THE COURT: Who told you that?

12 THE WITNESS: They said it was a possibility that
13 she could testify.

14 THE COURT: They being the DA's office?

15 THE WITNESS: Yes, sir.

16 THE COURT: If you remember things the way I do
17 with respect to your daughter, it's based on the school
18 calendar. Is -- was Haley going to school this last year?

19 THE WITNESS: Yes, sir.

20 THE COURT: And what grade was she in?

21 THE WITNESS: She was in the 2nd grade.

22 THE COURT: Was it Marlow schools?

23 THE WITNESS: Horace Mann.

24 THE COURT: Okay. Do you remember -- I assume that
25 the visitation she had with her father was roughly during

1 her Christmas break.

2 THE WITNESS: Yes.

3 THE COURT: And was that -- was she coming back to
4 be with you just before she had to go back to school?

5 THE WITNESS: Yes.

6 THE COURT: Do you remember what day school was
7 going to resume in January?

8 THE WITNESS: It's been such a while back.

9 THE COURT: Was it before she went up to the Abbott
10 House for the interview?

11 THE WITNESS: Yes. I believe so.

12 THE COURT: And I don't know what the calendar
13 would show, but you believe she came back home around the
14 4th or 5th?

15 THE WITNESS: I believe so, yes.

16 THE COURT: So that was probably right like a day
17 or two before school was to resume?

18 THE WITNESS: Yes.

19 THE COURT: Okay. Counselors, anything else?

20 MR. HAMMOND: No questions.

21 MR. BURNS: No, sir.

22 THE COURT: All right. You can step down. Thank
23 you.

24 All right. We're going to have to continue the hearing
25 and hear the rest of the testimony on a future date. We

1 will try and do that as soon as the calendar will permit.

2 MR. BURNS: Judge, may I ask, that witness is on
3 her way. She will be here by 1 o'clock. Is there any way
4 to work her in this afternoon at any time just to resolve
5 this?

6 THE COURT: Possibly. How many witnesses do you
7 anticipate? Just her?

8 MR. BURNS: Just her.

9 THE COURT: Let's resume the hearing at 1:30. We
10 will take that testimony. Mr. Hammond, can you do that?

11 MR. HAMMOND: Your Honor, I have got a resolution
12 conference, but they only take about five minutes.

13 THE COURT: Why don't we do it at 2 o'clock?

14 MR. BURNS: Sure.

15 THE COURT: Is that all right?

16 MR. HAMMOND: Yes.

17 THE COURT: All right. Hearing continued until
18 2 o'clock this afternoon.

19 (Following the recess, all parties being present,
20 the proceedings continued as follows:)

21 THE COURT: Let's resume the record of the
22 Preliminary Hearing in State versus Charles Alan Dyer, Case
23 Number CF-2010-17. I would note for the record that the
24 Court met with the attorney for the State, Mr. Burns, and
25 Mr. Hammond for the Defendant to discuss the issue of the

1 admissibility of the next anticipated witness's testimony
2 under the statutory exception to the hearsay exclusionary
3 rule.

4 And that's the subject of the notice of intent to use
5 hearsay that was filed by the State on July 7th that
6 identifies the proponent of the testimony and the basic
7 statements that are going to be offered and cites a case of
8 Kennedy v. State, 1992 Oklahoma Criminal Court of Appeals
9 Case Number 67.

10 And we did discuss those issues, and it's the Court's
11 ruling and finding that taking into consideration the
12 statute and all of the cases that's cited that at a
13 Preliminary Hearing the Court need not conduct a separate
14 hearing to hear evidence about the testimony and then make a
15 ruling about its admissibility. But at a Preliminary
16 Hearing, the Kennedy case seems to suggest that there is no
17 need for a ruling at all.

18 It's my interpretation because that case can be
19 differentiated somewhat from maybe what the circumstances
20 are here that the Court at least needs to hear some
21 foundational testimony to ensure that the testimony to be
22 offered does fall within this exception or this statute
23 before it can come in. I think the attorneys understand
24 what I'm talking about. And so that's the way the Court is
25 going to handle the testimony as we go along.

1 So certainly the State may call the witness at issue,
2 and I would ask Mr. Burns to call her at this time.

3 MR. BURNS: State calls Jessica Taylor.

4 THE COURT: Ma'am, if you could stand right here
5 and raise your right hand, please. I need to administer
6 your oath.

7 THE WITNESS: (Witness complies.)

8 THE COURT: Do you swear or affirm the testimony
9 you're about to give will be the truth, the whole truth, and
10 nothing but the truth, under the pains and penalties of
11 perjury?

12 THE WITNESS: Yes, I do.

13 THE COURT: Thank you. You can have a seat right
14 here.

15 THE WITNESS: Thank you.

16 THE COURT: All right. Mr. Burns, you may proceed.

17 JESSICA TAYLOR,

18 called as a witness on behalf of the State testified as
19 follows:

20 **DIRECT EXAMINATION**

21 BY MR. BURNS:

22 **Q** Would you state your name, please.

23 **A** Jessica Taylor.

24 **Q** How do you spell your first name?

25 **A** J-E-S-S-I-C-A.

- 1 Q And Taylor is the common spelling?
- 2 A Yes, it is.
- 3 Q All right. Ms. Taylor, where do you work?
- 4 A I work at the Mary Abbott Children's House in Norman,
5 Oklahoma.
- 6 Q And what's your dates of employment there?
- 7 A I have been employed there since December of 2006.
- 8 Q What's your job?
- 9 A My job is a forensic interviewer.
- 10 Q Okay. And what does that mean?
- 11 A My job as a forensic interviewer is not to investigate
12 allegations nor to prove or disprove a child's story. My
13 job is to conduct a legally sound age appropriate interview
14 that is neutral and fact finding in nature with children
15 between the ages of 3 to 17 who are involved in an open
16 investigation by child welfare or law enforcement regarding
17 physical abuse, sexual abuse, neglect, or children who've
18 witnessed a violent crime.
- 19 Q What's your education, Ms. Taylor?
- 20 A I received a bachelor's degree in psychology from the
21 University of Central Oklahoma.
- 22 Q How about your training?
- 23 A I've received over 200 hours of training in child abuse
24 and neglect. Of those 200 hours, over 100 are specific to
25 forensic interviewing of children. Of those 100 hours, 80

1 come from two nationally recognized training programs.

2 Q Okay. And your professional organizations?

3 A I am a member of the American Professional Society on
4 the Abuse of Children as well as the Oklahoma Professional
5 Society on the Abuse of Children.

6 Q Let's go to your hands-on experience. Have you
7 conducted forensic interviews in the past?

8 A Yes, I have.

9 Q Approximately how many?

10 A I have conducted over 1,000 forensic interviews of
11 children.

12 Q Okay. And I'm assuming some of those children
13 disclosed?

14 A Yes, that is correct.

15 Q Some of those children did not disclose?

16 A That is correct.

17 Q But your job is not to determine if the kid is telling
18 the truth or not?

19 A No, it is not.

20 Q Do you have a protocol you use when you're doing these
21 forensic interviews?

22 A Yes, I do.

23 Q What is that?

24 A I use a five-step semistructured protocol that allows
25 for one or more of the stages in the protocol to be modified

1 or eliminated depending on the spontaneity of the child's
2 disclosure or their developmental level.

3 Q Okay. What are those five steps?

4 A The name of the protocol is called RATAC, and it's
5 R-A-T-A-C. The first step of the protocol is rapport. In
6 the rapport building phase, we want to assess the child's
7 developmental level, provide comfort to the child, and
8 determine who the child lives with and establish some
9 guidelines for the forensic interview.

10 Q Do you prepare your questions for that child in
11 advance?

12 A No, I do not, but the protocol is followed.

13 Q Okay. And do you use any special tools during your
14 interview to elicit information from children?

15 A Sometimes we will use anatomical dolls, and then most
16 often we use anatomical diagrams.

17 Q Are your questions leading questions, or do you try to
18 elicit narrative responses?

19 A I use very open-ended questions to elicit narrative
20 responses and avoid leading and suggestive questions.

21 Q Let me go to Jessica Taylor. Did you have an occasion
22 to interview -- excuse me. Haley Dyer.

23 A Yes, I did.

24 Q Okay. Where did that interview take place?

25 A That interview occurred in Norman at the Mary Abbott

1 Children's House in January of 2010.

2 Q How old is Haley?

3 A I believe she was seven years at the time of the
4 forensic interview.

5 Q And was that interview just yourself and Haley?

6 A It was only myself and the child in the room; however,
7 there are people observing behind the one-way mirror.

8 Q And was this interview audio and video recorded?

9 A Yes, it was.

10 Q And you provided a copy of that to the DA's office and
11 to law enforcement?

12 A Yes, I did.

13 Q Has a copy also been provided to defense attorney?

14 A As far as I know, it has, yes.

15 Q Okay. How long was the interview with Haley?

16 A It was just under an hour. I believe it was 58
17 minutes.

18 Q Okay. And did you at some point in this interview --
19 at some point did you use anatomical dolls or drawings?

20 A Yes, I did. I used both during this forensic
21 interview.

22 Q At any time did you coerce her or tell her what she
23 needed to say?

24 A No, I did not.

25 Q Did she disclose freely and voluntarily to you?

1 A Yes, she did.

2 Q Did you have a discussion with her about truthfulness
3 and the difference between a truth and a lie?

4 A Yes. That is something that is done during the first
5 step of the interview, during the rapport building.

6 Q And how did Haley do with that section?

7 A She was able to demonstrate an understanding of truth
8 versus lie.

9 Q And did she agree to tell you the truth?

10 A Yes, she did.

11 Q At any time during your interview with Haley, did she
12 ever indicate to you that she didn't understand your
13 conversations or the difference between the truth and a lie?

14 A She didn't ever indicate to me that she didn't
15 understand truth versus lie. If I asked her a question that
16 she didn't understand, she would tell me that she didn't
17 understand. She was also able to tell me if I asked her a
18 question and she didn't know the answer or she didn't
19 remember, she was able to also tell me that as well.

20 Q What was Haley's demeanor during this interview from
21 the start to finish?

22 A She seemed developmentally appropriate on her target
23 age for a seven-year-old. She did talk about at times that
24 she -- her dad had made threats to her about leaving and
25 moving back to California if she ever told anyone about the

1 abuse. At that time during the interview she would become
2 withdrawn and timid as well.

3 Q Did she ever cry during this interview?

4 A I believe she did, yes.

5 Q Did you ask Haley about other men abusing her other
6 than her father?

7 A During the abuse scenario of this, of the protocol
8 which is the -- the last step is closure and abuse scenario
9 is the very next step before you get to closure. One thing
10 that we are taught to do in our training is to explore
11 alternative hypotheses. And a question that we always ask
12 is: ~~Has anybody else ever done anything to you or to your~~
13 ~~body that would be not okay? And at that time Haley had~~
14 ~~stated no.~~

15 Q Let's back up a step. Going through your interview
16 with her, what did Haley tell you during this interview
17 about the abuse by her father?

18 A Her disclosure came out during the third step of the
19 interview, which is the touch inquiry. One thing that we do
20 is we want to determine whether or not children can talk
21 about touches that are okay versus touches that are not
22 okay. In this particular step, we ask about very neutral
23 touches, such as kisses or tickles. I asked Haley if she
24 had ever gotten tickles that would be okay. And she said
25 she had received them. I asked her from who and where on

1 her body. I then followed up with if she had ever gotten
2 tickled -- or I'm sorry, kisses that would be not okay. And
3 she stated that she had. She had gotten tickles on her
4 bo-bo from her dad.

5 Prior to the touch inquiry, we do anatomy
6 identification. And I learned during the anatomy
7 identification stage that her bo-bo is what she called her
8 vagina.

9 Q Okay. And what did she call the male penis?

10 A I'm sorry. I'm unable to recall that. I apologize.

11 Q So what did Haley tell you specifically about any
12 inappropriate kiss on her bo-bo?

13 A She stated that her dad would kiss her bo-bo with his
14 mouth. And she also stated that her dad would put his
15 penis -- and I'm unable to correctly identify the name that
16 she used for that -- inside her bo-bo.

17 Q Did she show you on anatomical drawings what she was
18 referring to as her bo-bo?

19 A Yes, she did.

20 Q And did you have her circle those drawings and identify
21 them for you?

22 A Yes, I did.

23 Q Did you maintain that drawing so you could bring it to
24 court or provide it to law enforcement?

25 A Any evidence produced from the forensic interview is

1 given to law enforcement at the time of the interview. We
2 do not retain any copies on site.

3 MR. BURNS: May I approach the witness, Your Honor?

4 THE COURT: Yes, sir.

5 Q (BY MR. BURNS) I show you what's marked as State's
6 Exhibits 4 and 5. What are 4 and 5?

7 A State's Exhibit 4 is the girl anatomical drawing that
8 was used in the forensic interview with Haley. And State's
9 Exhibit 5 is the boy anatomical drawing that was used in the
10 forensic interview with Haley.

11 Q Does Exhibit Number 4, that's Haley's words she gave
12 you and you wrote on the form?

13 A Yes, that is my writing, but those are her words.

14 Q Okay. And what word did she give on State's Exhibit 4
15 for her vagina area?

16 A Her bo-bo.

17 Q All right. Let's look at 5. Same thing with 5, is
18 that your -- your diagram, correct?

19 A Yes. That's my writing but her words.

20 Q Okay. And what word did she give on State's Exhibit
21 Number 5 for the male genitalia?

22 A Weiner.

23 Q All right. So back to my original questions, she says
24 he used his weiner and did what with it?

25 A She stated that her dad would put his weiner and push

1 it really hard into her bo-bo. She also stated that she
2 would have to put her mouth on his weiner and that he would
3 put his mouth on her bo-bo.

4 Q Okay. And did she tell you how many times this had
5 happened?

6 A She was unable to give me a specific number of times,
7 which is not uncommon with her age, but she was able to tell
8 me that it started when they lived in California when she
9 was younger, approximately four or five, and it continued up
10 until January of 2010 after she had turned seven.

11 Q Okay. So she said it happened multiple times?

12 A Yes, that is correct.

13 Q Did she tell you what locations this had happened to
14 her? Where she was living or where the acts happened.

15 A Yes. She was able to give me three different
16 locations. The first location being in California when her
17 mom and dad were still together in California. She gave me
18 another location of, I believe, her father's mother's house
19 once they moved back to Oklahoma. I guess he had lived with
20 her, his mother, and there was some incidents that occurred
21 there. And then the third and final location was the
22 location that her father was currently living in with his
23 current girlfriend.

24 Q Let me go to the second place, the grandparents' house,
25 I would say.

- 1 **A** Okay.
- 2 **Q** Did she tell you where in the house that those
- 3 instances took place?
- 4 **A** I believe she stated it was in the bedroom.
- 5 **Q** And did you ask her if it was nighttime or daytime or
- 6 when?
- 7 **A** I did ask her because we -- I try to get a timeline as
- 8 detailed as I can. And I believe that she stated that the
- 9 allegations occurred at nighttime, I believe.
- 10 **Q** Okay. Did she tell you multiple occasions at Grandma's
- 11 house or one; do you know? Do you recall?
- 12 **A** I'm sorry. I don't recall.
- 13 **Q** Okay. How about at her dad's current residence with
- 14 his girlfriend, multiple times or one time?
- 15 **A** I believe that she stated that it occurred multiple
- 16 times there.
- 17 **Q** Okay. And did she tell you whether or not she was
- 18 required to do anything herself to her father?
- 19 **A** Yes, she did.
- 20 **Q** What did she tell you?
- 21 **A** She told me that she would have to put his mouth -- her
- 22 mouth -- excuse me. I stand corrected. Her mouth on his
- 23 weiner.
- 24 **Q** Did she give you details about what would happen and
- 25 what he would say?

1 **A** Yes, she did.

2 **Q** What are some of those details that she provided to
3 you?

4 **A** She talked about the yucky stuff that came out of her
5 dad's weiner and it would go into her mouth. She talked
6 about how she would have to go to the toilet to spit it out
7 and that it was yellow in color. She talked about that
8 there were times that it wouldn't go into her mouth because
9 it tasted so bad. And on those occasions, her dad would
10 just go to the toilet and he would -- the yucky stuff would
11 come from his weiner into the toilet itself.

12 She also talked about how he would tell her that he
13 wasn't finished, and then she would taste the yucky stuff.
14 And then at that point, he would tell her that he was done.

15 **Q** Did you have specific conversations with her about
16 whether or not she felt her dad put his penis inside of her
17 or outside of her vagina?

18 **A** I believe I asked her and I also had her demonstrate to
19 me whether or not she was able to understand inside versus
20 outside.

21 **Q** How did you do that? How did you start that
22 conversation?

23 **A** I have a pen holder on the table. I'm sorry. I
24 couldn't think of the correct word. A pen holder on the
25 table, and there are markers inside that. And I always ask

1 a child to demonstrate to me whether they can understand
2 something, because if she's unable to correctly identify
3 inside versus outside, then to ask her that type of question
4 would be setting her up for failure.

5 And so I wanted her to correctly identify whether the
6 markers were inside the can or outside the can. After she
7 was able to tell me they were inside, I then removed the
8 markers from the can and asked her to tell me if they were
9 inside the can or outside the can. She was able to tell me
10 that they were outside the can at that point. So then I
11 followed up with the question of whether his weiner was
12 inside her body or outside her body.

13 Q And what did she tell you?

14 A Inside.

15 Q And she said that happened multiple times?

16 A Yes, she did.

17 Q Did you ask her -- did she give you any specifics about
18 what she was wearing and where these things happened in her
19 dad's house?

20 A Yes, she did.

21 Q What did she tell you?

22 A Some of the specifics that she would talk about would
23 be that her dad would do these things to her when nobody was
24 at home, whether it was when they were living in California
25 and her mom was away from the home or whether it was when

1 they were currently in Oklahoma. And I believe her -- it's
2 not her stepsister but her dad's girlfriend's daughter.
3 They would be away from the home as well.

4 She would also tell me that he would take her clothes
5 off and also take his clothes off. He would put her clothes
6 on the bed on a pillow next to them. And then he would put
7 his clothes on the floor. She was unable to specifically
8 tell me where he would lay his clothes on the floor because
9 she stated that his room was really messy, but she was able
10 to tell me who took their clothes off and where the clothes
11 were laid before these things occurred.

12 Q Did she ever describe with any detail her having to
13 throw clothes on in a rush after she was abused by her
14 father?

15 A Yes. There was one time that she talked about when --
16 and I'm unable to remember, I'm sorry, the girlfriend's
17 name. I apologize. But there was one time that Haley said
18 that her dad told her she had to put her clothes on fast
19 because the girlfriend was returning home.

20 Q Would the girlfriend have been Mandy?

21 A Yes, that's it.

22 Q Okay.

23 A I apologize.

24 Q Okay. At some point did Haley demonstrate for you with
25 the dolls what her dad did to her?

1 **A** Yes, she did. We do not introduce the dolls in the
2 forensic interview until after a disclosure has been made.
3 When we introduce the dolls, we introduce them as clothed
4 and we tell the child that they're not to play with.
5 They're just to help us understand what happened. After
6 those -- and that's part of the protocol, and that's the
7 reason why they're introduced that way.

8 So after those steps had been made. I then gave the
9 dolls to Haley fully clothed. And she demonstrated with the
10 dolls how her dad does these things to her body.

11 **Q** And did she take the clothes off the dolls?

12 **A** Yes, she did.

13 **Q** What did she demonstrate for you that her dad did with
14 her?

15 **A** She demonstrated how her dad's weiner would go really
16 hard into her bo-bo.

17 **Q** Okay. And did she describe what he was doing when he
18 would be doing that?

19 **A** I believe that she did. And I'm unable to recall. I
20 apologize.

21 **Q** I understand. Did she demonstrate any other positions
22 that were used by her father and her during these sex acts?

23 **A** I believe that she did, but I'm unable to recall. I'm
24 really sorry.

25 **Q** That's okay. I know you have other cases. So help me,

1 what's the three things -- the three things Haley told you
2 her dad did to her on a repeat basis? What are those three
3 things?

4 **A** She stated that these things always happened, and it
5 would be he would put his mouth and kiss her bo-bo. He
6 would put his weiner into her bo-bo.

7 **Q** Let me ask you this: What did she say she felt like
8 when he put his mouth on her bo-bo?

9 **A** She stated that she didn't like it and that it was not
10 okay with her.

11 **Q** Okay. All right. The second one was what?

12 **A** That he would put his weiner really hard into her bo-bo
13 and that she would put her mouth on his weiner. And that's
14 when the yucky stuff would come out.

15 **Q** Did she tell you what she did with her mouth or her
16 tongue or anything?

17 **A** She did. She told me that her tongue would have to
18 swirl around the tip of his weiner. And that was something
19 that he had taught her to do.

20 **Q** Did she ever indicate to you during this interview that
21 she ~~was scared of her father?~~

22 **A** Yes, she did.

23 **Q** Do you recall what she said specifically?

24 **A** I don't recall what she said specifically. I know that
25 she had a fear that he would go back to California if she

1 ever told anyone, because that was something that he had
2 told her.

3 Q Did she tell you whether or not she suffered any type
4 of pain during these incidents?

5 A I believe that she stated that it hurt when these
6 things happened to her, when his weiner would push really
7 hard into her bo-bo.

8 Q Did she say where her dad put his hands when he had his
9 weiner inside her mouth?

10 A Yes. He would put his hands on her back.

11 Q Did she give you a description for her grandma's house
12 where this first happened back in Oklahoma?

13 A I know that she did provide me with a description, but
14 I'm unable to recall the specific words that she used.

15 Q Okay. My next question: Did she give you a lot of
16 specifics for a seven-year-old child, a lot of specifics
17 about these instances and these sexual acts by her father?

18 A She gave me a lot of details surrounding these
19 allegations. And she also demonstrated, in my training and
20 experience, sexual development and sexual knowledge above
21 the level of a seven-year-old.

22 MR. BURNS: Judge, we move to admit Exhibits 4 and
23 5 at this time.

24 THE COURT: Mr. Hammond, have you seen these?

25 MR. HAMMOND: I have, Your Honor. Let me look at

1 them again. No objections.

2 THE COURT: Without objection, State's Exhibits 4
3 and 5 are admitted for purposes of Preliminary Hearing.

4 Q (BY MR. BURNS) Was Haley able to describe for you when
5 the sexual abuse by her father stopped?

6 A She did. There was -- yes, she did give me a specific
7 date.

8 Q Okay. And how is it she correlated that date to give
9 you; do you know?

10 A I had asked her about that. There was an incident that
11 had occurred where I believe she had shot off a weapon
12 inside her father's home, and she had gotten punished
13 severely for that and was made to sit on the couch. And she
14 stated that the last incident had occurred prior to her
15 firing this weapon off at her dad's house.

16 Q Did she say what date that was?

17 A She said it was January 2nd.

18 Q Did she indicate to you on that incident when she told
19 her mom about what had happened?

20 A She stated that she had told her mom on Sunday right
21 before she was getting ready to take a bath about the things
22 that her father had been doing to her.

23 MR. BURNS: No further questions, Your Honor.

24 THE COURT: Mr. Hammond, cross-examination?

25 MR. HAMMOND: Yes, sir.

CROSS-EXAMINATION

1
2 BY MR. HAMMOND:

3 Q Ms. Taylor, does the state have any requirements before
4 you're an actual licensed forensic interviewer?

5 A There is no credentialing process for being a forensic
6 interview yet -- for being a forensic interviewer yet.
7 There is a credentialing process in the works. However,
8 there are several nationally recognized protocols that are
9 available to forensic interviewers. So the steering
10 committee for the credentialing wants to make sure that they
11 don't exclude everybody.

12 So that is something that will probably be happening in
13 the near future.

14 Q Who contacted you in reference to doing this interview?

15 A Stephens County Sheriff's Department.

16 Q And they brought her to you; is that correct?

17 A Yes. I believe she was transported -- I don't -- I
18 know her mother was with her. So I don't know exactly who
19 transported her, but Stephens County Sheriff's deputies were
20 there to observe the interview.

21 Q Was her -- her mother wasn't present during the
22 interview; is that correct?

23 A That's correct. Our policy is that only investigators
24 are allowed to observe the interview. So any non-offending
25 family members or care givers have to wait downstairs at the

1 Abbott House while the interview is being conducted
2 upstairs.

3 Q But her mother was there in the building?

4 A She was on the property, yes.

5 Q Did you talk to her mother?

6 A My interaction with the family is very brief. And so I
7 went downstairs to introduce myself to her mother. I went
8 down -- when I met her mother, I also introduced myself to
9 Haley. That's really the extent to my interaction with the
10 family, because it's not my investigation. We're just
11 providing a service. So after the interview is complete, we
12 do ask the investigators, in this particular case the
13 deputies, to go down and speak with the family member. In
14 this case it was the mother.

15 Q Do you recall if you asked or if Ms. Valerie Dyer,
16 Haley's mother, told you that she was going through a
17 divorce with Charles Dyer?

18 A I don't believe I got that information from the mother,
19 but I do think -- that is a standard question that we ask,
20 and I do think that information was provided by the
21 Sheriff's deputies.

22 Q What information did you have about this case that you
23 remember before the interview?

24 A Prior to the interview, we get a lot of demographic
25 information. So we get like who's in the family, who the

1 child lives with. The extra information that we get is if
2 there is like any mental illness within the family; if the
3 child's got a mental illness; if they're on any medication;
4 if there is a divorce, custody; and any previous
5 interactions the family may have had with child welfare or
6 with law enforcement.

7 Q Now, I assume during your training and your experience,
8 you're trained to determine if a child has been coached or
9 if a child is not telling the truth. What do you look for
10 on those two?

11 A Well, my job is not to prove or disprove their story.
12 So really I'm not looking for anything specifically. I'm
13 just trying to conduct a legally sound age appropriate
14 interview and get if there has been -- abuse has occurred,
15 get as many allegations as possible. But I don't determine
16 whether or not they tell the truth or not.

17 Q Do you have any training on whether or not a child has
18 been coached?

19 A There are factors that we can look at to see if a child
20 has been coached, yes.

21 Q And what are those factors?

22 A Some of those factors are if a child comes in and just
23 basically tells you that they're there because their mom
24 told them to tell you or their dad told them to tell you
25 that something has happened. That's obviously a very big

1 red flag. Other factors are if the child is unable to
2 provide very many details surrounding allegations. And a
3 lot of time when a child is coached, they're not coached to
4 specific details. They're coached to a very salient event.

5 Abusive genital contact is very salient. So they're
6 coached to penis and vagina, but they may not be coached to
7 other details surrounding the penis/vagina event.

8 Q Now, this interview took about 58 minutes; is that
9 correct?

10 A It did.

11 Q Have you gone back and looked at it since the initial
12 interview?

13 A I have reviewed the video, yes.

14 Q Can you tell me when you did that?

15 A I actually reviewed the video when I got the subpoena.
16 So I reviewed it this weekend.

17 Q Now, there were some questions that Mr. Burns had asked
18 you, you didn't exactly remember; is that correct?

19 A Correct.

20 Q Now, for example, you stated earlier that Haley got in
21 trouble on January 2nd because she discharged a gun. She
22 actually said she was handling the gun; is that correct?

23 A I believe in the interview she said that she shot the
24 gun but no bullet came out.

25 Q You couldn't remember how the grandmother's house, how

1 the rooms were set up and those types of things; is that
2 correct?

3 **A** Yes. I apologize.

4 **Q** Well, I understand you work on a lot of these cases.
5 It's a lot of information.

6 **A** This is my second prelim today actually.

7 **Q** Now, how many questions did you ask Haley?

8 **A** Oh, my gosh. I didn't count them. I don't know.

9 **Q** How long do these interviews usually last?

10 **A** It just depends. There are multiple factors that can
11 make an interview last long. It depends on the age of the
12 child, how talkative they are, if they have endured multiple
13 events or the abuses has been through many years. So they
14 can vary. I think my longest interview on record is eight
15 hours. And then interviews can last anywhere from six
16 minutes to, you know. I mean, they can be very short in
17 time depending on the developmental level of the child.

18 If the child is unable to successfully identify certain
19 factors during the rapport building phase because of their
20 age or their developmental level, then we will be unable to
21 conduct a full forensic interview with them.

22 **Q** I've looked at the tape several times, and it appeared
23 to me the longer the interview went on, the more information
24 she gave you. Do you agree with that?

25 **A** Yeah, you could say that.

1 Q I mean, when you started using the dolls, she got a
2 little bit more --

3 A More detailed.

4 Q -- specific?

5 A Yeah, you could say that.

6 Q Now, Mr. Dyer has been changed with incidents that
7 happened on or about January 2nd, 2010. Do you understand
8 that?

9 A Yes, I do.

10 Q Isn't it true during the interview at one point in time
11 Haley told you that her father committed intercourse on her
12 and then you took a break and came back out and then she
13 said it didn't happen on January 2nd. Do you recall that?

14 A I do recall that, but then I think she made another
15 statement after that saying it did happen.

16 Q But you had to ask her some more questions?

17 A I wanted to know specifically the last date because we
18 really wanted to get that pinned down.

19 Q Did Haley ever refer to any of her body parts as a
20 no-no spot?

21 A Not that I recall. She said bo-bo.

22 Q The reason I ask is some of the medical records refer
23 to no-no spot. Did you ever hear her say the word no-no
24 spot?

25 A Not that I recall, no.

1 Q Did you have a chance to talk to Dr. Waters?

2 A No.

3 Q Did you know that she was examined by Dr. Waters?

4 A No, I wouldn't have known that.

5 Q Did you talk to Valerie Dyer after the interview?

6 A No, I did not.

7 Q Was your interview -- did you transcribe it?

8 A I don't transcribe it, but I do type up a report
9 summary, and that is actually forwarded on to the
10 investigators. I -- there are two -- we record on two DVDs.
11 One DVD is given to the investigator at the time of the
12 interview as well as all the drawings that are used in the
13 forensic interview. And the second DVD is retained on site.
14 I type up a report summary off of that DVD, and then that
15 actual DVD is then forwarded on to the District Attorney's
16 office for that particular county.

17 MR. HAMMOND: I believe that's all the question I
18 have, Your Honor.

19 THE COURT: Mr. Burns, redirect?

20 MR. BURNS: No, Your Honor.

21 THE COURT: Ma'am, I just had a couple of
22 questions. I wasn't sure that you finished telling
23 Mr. Burns about all of the --

24 THE WITNESS: Steps to the protocol?

25 THE COURT: -- details in the acronym that you used

1 to describe the protocol.

2 THE WITNESS: Uh-huh.

3 THE COURT: The first one was rapport?

4 THE WITNESS: Rapport.

5 THE COURT: And was the second, the first A in
6 RATAC, anatomy?

7 THE WITNESS: Anatomy identification.

8 THE COURT: And then touches?

9 THE WITNESS: Touch inquiry.

10 THE COURT: What's the next one?

11 THE WITNESS: Abuse scenario.

12 THE COURT: What's the meaning of that?

13 THE WITNESS: If there is any disclosure that's
14 been made in the forensic interview, the abuse scenario step
15 is where get we get all the details that we can regarding
16 the allegation.

17 THE COURT: Like body parts, time --

18 THE WITNESS: Who, what --

19 THE COURT: -- duration, things like that?

20 THE WITNESS: -- when, where, yeah.

21 THE COURT: And the C?

22 THE WITNESS: Closure. We try to provide a
23 respectful end to the forensic interview, because sometimes
24 the information that comes out is very traumatizing, and we
25 want to make it non-traumatic as possible. So we try to end

1 on a neutral topic. And then we also explore safety options
2 with the child.

3 THE COURT: Okay. Sort of start the therapy
4 process, sort of find out --

5 THE WITNESS: The interview is definitely not
6 therapy, but it's just if something happens to you that's
7 not okay, who can they tell. Because we want to make sure
8 that they do have somebody they can tell if something
9 happens that's not okay.

10 THE COURT: Did you ask Haley who all she had told?

11 THE WITNESS: I did.

12 THE COURT: Who did she list?

13 THE WITNESS: She stated her mom.

14 THE COURT: And did -- I know you said you don't
15 investigate, but did you ask her any question along the
16 lines of why she hadn't told anybody about these previous
17 instances of abuse before January of this year?

18 THE WITNESS: She -- like I had said earlier, she
19 had stated that her dad had threatened her that if she ever
20 told, he would move back to California. And that -- you
21 know, that's her dad. That's the only dad she will ever
22 have. So there is obviously some loyalty there to that
23 person. So maybe that was possibly why.

24 THE COURT: Is that common or is it surprising that
25 she would express that she's both fearful of him but also

1 not wanting to be separated from him?

2 THE WITNESS: Absolutely. We see that a lot.
3 Based off my training and experience, I have seen that a lot
4 in interviews. Kids love their parents no matter what they
5 do to them.

6 THE COURT: And you have said that you had been
7 through this process several times, so I'm sure you're
8 familiar with the statute that I was speaking of earlier
9 that's -- that enables you to testify --

10 THE WITNESS: The hearsay.

11 THE COURT: -- about these statements, whereas
12 usually that would be hearsay. Are you mindful of the
13 things that are required for you to be able to testify about
14 this in court, the criteria that the Court is supposed to
15 use?

16 THE WITNESS: Yes, I am.

17 THE COURT: And this protocol is meant to respect
18 the boundaries, I suppose?

19 THE WITNESS: It is. It's a nationally recognized
20 protocol that's used in several states. It is the most
21 widely recognized protocol in the nation. And it's the only
22 protocol that's actually been upheld within the Court of
23 Criminal Appeals.

24 THE COURT: I think that's all I have. Anything
25 else, Mr. Burns?

1 MR. BURNS: No, Your Honor.
2 THE COURT: Mr. Hammond?
3 MR. HAMMOND: No questions.
4 THE COURT: All right. Thank you very much.
5 THE WITNESS: Thank you.
6 THE COURT: May she be released?
7 MR. BURNS: Yes, sir.
8 THE COURT: You may go. Thank you very much.
9 THE WITNESS: Thank you.
10 THE COURT: All right. Does the State have any
11 further witnesses or evidence?
12 MR. BURNS: No, sir, the State does not. The State
13 would ask this Court to terminate the Preliminary Hearing.
14 We have provided an open file and all reports to Mr. Hammond
15 five days prior to trial. We believe the evidence has shown
16 probable cause that Mr. Dyer committed both crimes and both
17 crimes in Stephens County.
18 I would ask the Court, I would like to modify our
19 charging language a little bit. It's the same count.
20 Count 1 we have chosen to file one count of child sexual
21 abuse by a caretaker, which carries life in prison, rather
22 than each individual count for each individual time. By
23 doing that, we need to put that as a range -- a range of
24 times. I would ask the Court to bind over or allow us on a
25 third amended Information to put from August of '09 until

1 January 5th of 2010, which will encompass the ranges that
2 the testimony has been it's happened in Stephens County
3 somewhere in that range.

4 THE COURT: We probably ought to look at the
5 statute because it's pretty confusing since we're right in
6 the middle of it being recodified at Title 21 instead of
7 Title 10.

8 MR. BURNS: Yes, sir.

9 THE COURT: I was trying to determine exactly what
10 acts the State was charging. Looking at Title 21 where it
11 is now in the computer as opposed to the book, it's already,
12 in other words, in the -- on the OCIS and the OSCN database
13 it's already listed under Title 21, Section 843.5. And it
14 has the old language and the new language that will go into
15 effect November 1st this year.

16 So looking at the one that's currently in effect and
17 then at Subsection E, I believe that's what you're charging
18 there: A parent or other person who shall willfully or
19 maliciously engage in child sexual abuse shall, upon
20 conviction, be punished by imprisonment in the custody of
21 the Department of Corrections not exceeding life or by
22 imprisonment in the County Jail not exceeding one year or by
23 a fine of not less than \$500 nor more than \$5,000 or by
24 both.

25 Is that the statute that you're still wanting to utilize

1 in the third amended?

2 MR. BURNS: Yes, sir, that's -- that will clean up
3 that language in that count. Also in Count 2 the Court has
4 heard evidence that he was in possession of not only the
5 6.5 x 55 caliber rifle that had been stolen from Micah
6 Simmons. The Court has also now heard evidence that he was
7 in possession of a stolen grenade launcher. The agent
8 testified it was stolen from the base, and he testified that
9 Mr. Dyer had that in his possession.

10 We believe -- we would like to clean that up and add
11 both those things on the concealing stolen property count.

12 THE COURT: And I suppose I don't officially know
13 this, but I've -- anecdotally I believe that Mr. Dyer was
14 tried for that offense in federal court and was acquitted,
15 but I am assuming that was under a federal statute that he
16 was charged and tried with.

17 MR. HAMMOND: He was charged with failing to
18 register.

19 THE COURT: Okay.

20 MR. HAMMOND: I filed a motion in limine to keep
21 out the fact that the device was actually stolen.

22 THE COURT: Okay.

23 MR. HAMMOND: That evidence went ahead and came in,
24 and the Judge gave a special instruction to the jury that
25 there was no evidence to indicate nor had Mr. Dyer been

1 charged with stealing the item, only with the registration.
2 So we --

3 THE COURT: Which was a federal statute, federal
4 crime?

5 MR. HAMMOND: We spent two days in trial on that
6 issue, and there was no finding or determination that he
7 knew it was stolen or had any knowledge about it. In fact,
8 he didn't know it was a grenade launcher, according to the
9 jury, so I don't think he --

10 THE COURT: But what I'm getting at is it's not
11 double jeopardy. He's not been charged under state -- laws
12 of the State of Oklahoma for being in possession of that
13 piece of property as a stolen item of weaponry or what have
14 you?

15 MR. BURNS: I don't believe it is, Judge, double
16 jeopardy. And David may disagree. I also think it's
17 relevant in this case because if you're looking at
18 possession of stolen property, a lot of questions come up in
19 jurors' minds about what somebody knows.

20 THE COURT: Right.

21 MR. BURNS: If you have two pieces of stolen
22 property in your house versus one, I think the jury has the
23 right to know that. I would be forced to file a notice to
24 bring in the fact that he had other stolen property. I
25 mean, the rocket launcher --

1 THE COURT: The only thing I was concerned about
2 was whether we were looking at double jeopardy, and I don't
3 think that's an issue. I think the State can charge him
4 with that. And you're asking me to allow the State to add
5 that as a separate count?

6 MR. BURNS: No, sir. I don't think you can do
7 separate counts. I think you have somebody that's --

8 THE COURT: Or just list that as an additional item
9 within Count 2?

10 MR. BURNS: Yes, sir.

11 THE COURT: All right. Mr. Hammond, I know that
12 you want to make at least a proffer, and you mentioned off
13 the record that you may want the Court to look at the video
14 of the interview that the last witness had talked about
15 making. Why don't you go ahead and let me know on the
16 record what you would like to do by way of submitting
17 evidence and be as detailed as you can be in the event that
18 I don't allow you to call a witness so that I can have a
19 proper idea of what you believe the Court would learn by
20 allowing you to present that evidence.

21 MR. HAMMOND: Could I start with the child abuse
22 allegation first, Your Honor?

23 THE COURT: Sure.

24 MR. HAMMOND: Before the Court makes a decision on
25 binding over Mr. Dyer on the child abuse issue, I know the

1 Court has the discretion not to do what I'm asking, but I
2 would have the Court to consider it. This is the reason
3 why: I would like for the Court to look at the whole taped
4 interview. The reason being I understand Ms. Taylor is
5 probably a very qualified person and works hard and does the
6 best that she can do, but some of her testimony, Your Honor,
7 if the Court watches this tape, is not 100 percent
8 consistent on the major points it was; however, not on all
9 points. So I think it would be more beneficial for the
10 Court to review the whole tape.

11 And the reason I ask that, I'm not necessarily concerned
12 with the date, Your Honor, but I'm concerned with what the
13 child said as far as what happened on January 2nd. The tape
14 will show, if the Court decides to look at it, that that
15 date stuck in her mind, which could be an issue of coaching,
16 which I understand that goes to the reliability. But then
17 when she takes a break and comes back and asked her if it
18 happened on January 2nd, she tells her nothing happened on
19 January 2nd.

20 She doesn't say that anything did happen on January 2nd
21 until there is several other questions about that. I think
22 that's why it's relevant because at this point in time, like
23 I say, I'm not concerned with the date, but I'm concerned
24 with her changing her statement I think the Court -- it
25 will be beneficial to look at that statement.

1 Your Honor, I don't think there is sufficient evidence
2 to bind Mr. Dyer over on that point for the reason that all
3 we have at this point in time is hearsay statements. There
4 is no medical evidence to indicate, which goes to my second
5 argument. I would want to call Dr. Waters as a witness in
6 this case. I know the Court has the ability not to let me
7 do that.

8 And the reason I would want that evidence to come in
9 even at the Preliminary Hearing stage, Your Honor, is
10 because there was no -- according to the medical records
11 supplied by the DA's office, there was no evidence of any
12 kind of physical injuries. The finding as far as whether or
13 not the abuse happened was suspicious at best. It wasn't to
14 the medical certainty degree, which I understand that goes
15 to reliability.

16 There has been -- we believe that would be Dr. Waters'
17 testimony. We did send a subpoena out to his office, and he
18 was not there. And my understanding is he's not there this
19 week, or at least not here in court. We tried to subpoena
20 him.

21 In reference to the firearms issue, Your Honor, the only
22 thing that the State has shown this Court is, number one,
23 that a rifle was stolen and, number two, that it was in
24 Mr. Dyer's possession at some point in time. There has been
25 no evidence to indicate, not even on a probable cause level,

1 that Mr. Dyer either knew it was stolen or should have known
2 that it was stolen.

3 On the grenade launcher, Your Honor, I know he hasn't
4 been charged with having a stolen grenade launcher, but we
5 spent two days in federal trial on the -- whether or not the
6 gun was registered, and a jury acquitted Mr. Dyer on those
7 charges. And, in fact, we filed a motion in limine to keep
8 the stolen item part out that was sustained. However, that
9 evidence did actually come in, and there was an instruction
10 given that there was no evidence to indicate that Mr. Dyer
11 knew it was stolen.

12 So even if the Court lets the State add that to their
13 count, they still have the burden of proving that he knew it
14 was stolen or had reason to believe, and the only -- the
15 State's witnesses have all testified that he had no
16 knowledge. Ms. Monsalve was consistent with that. Agent
17 Pool was consistent with that. There is just no evidence
18 there on those two items. So we would ask the Court to
19 dismiss those counts as well.

20 THE COURT: Just for my information purposes, I'm
21 looking through the State's -- or the Court's file, rather,
22 and I see the original Information filed on January 20, but
23 I can't find a first amended Information. Was that a recent
24 filing?

25 MR. BURNS: I asked Josh the same thing, Judge. We

1 filed another one and we corrected the spelling of Alan
2 Dyer's name.

3 MR. CREEKMORE: Judge, I can address the Court on
4 that. When we appeared for his initial appearance and we
5 had the bond hearing, the Information that the State had was
6 that his middle name was spelled A-L-L-A-N. And so the
7 State at that time moved to correct that spelling and
8 informed the Court that we would file an amended Information
9 correcting the spelling of that name.

10 THE COURT: When was it filed?

11 MR. CREEKMORE: It's my -- Judge, I believe the
12 initial appearance was on April 15th, Your Honor, and it was
13 my understanding, Your Honor, that that was going to be
14 filed that day because that was the date that the State
15 became aware of the change in spelling.

16 THE COURT: All right. I see the original -- the
17 initial appearance documented, and it is file stamped April
18 15th. All of this is just semantics, of course. It's
19 the -- my reading of the criminal procedure code, the State
20 as -- you know, frequently asks the magistrate for
21 permission to amend the pleadings. I don't necessarily
22 think that is required. I think the State can certainly
23 amend their pleadings. The only question that I'm asked to
24 decide is what, if anything, to bind the Defendant over for
25 arraignment on as far as felony charges.

1 And, of course, the State I think does properly ask
2 frequently for additional charges or amended charges when a
3 different maybe felony has been established at Preliminary
4 Hearing as compared to that which is charged in the
5 Information. But I think once the Court announces the
6 charges that the Court binds the Defendant over on, I
7 certainly think the State can make any amendment to the
8 pleading before trial that the code allows from that point
9 on. And anything with respect to correction of names and
10 dates and what have you is, I think, in proper order at that
11 point.

12 In other words, I don't necessarily think that the State
13 needs my permission to amend Count 2 to add an item of
14 property; but insofar as it might be necessary, that is
15 certainly allowed. The State may do that based upon the
16 evidence that we have heard here.

17 And I know that Mr. Hammond is aware that my position as
18 far as the Defendant's opportunity to offer evidence at this
19 point is that unless it's evidence that would completely
20 foreclose a felony charge or any of the felony counts that
21 are asked for by the State, I typically don't allow the
22 Defendant to present evidence beyond a proffer, unless it's
23 evidence that might persuade the Court that there is a
24 complete and total defense to the charge in the nature of
25 something like misidentity or an alibi or something along

1 those lines.

2 Otherwise, this Court, sitting as the magistrate on a
3 Preliminary Hearing, is getting into the weight and
4 credibility of the evidence or the sufficiency of the
5 evidence on a particular element or a crime. It is not up
6 to me to decide whether Mr. Dyer is guilty or not guilty of
7 either of these counts. It's only up to me -- and I dumb
8 the language down quite admittedly to something that I can
9 easily grapple with and understand.

10 The language that I think of when I'm trying to decide
11 whether a bindover is proper and appropriate is: Is it fair
12 for the State to put Mr. Dyer on trial for these crimes?
13 That's truly all I'm asked to decide at this stage. In
14 other words, do they have enough evidence to justify
15 assembling a jury and requiring Mr. Dyer to defend himself
16 as they try to prosecute him for these crimes?

17 So all that I am empowered by the statutes to do at this
18 point is to check off the elements of each of the crimes --
19 and I typically use the model jury instructions to do
20 that -- and make sure that the State has presented some
21 evidence on each those elements. And then the question, of
22 course, becomes somewhat subjective when I have to decide is
23 that evidence enough to make the determination that there is
24 reasonable and probable cause to believe that a jury of
25 reasonable people could find Mr. Dyer guilty of that crime

1 or those crimes.

2 It may well be that -- and a given magistrate in this
3 process believes based on everything they see and hear that
4 a Defendant might probably be not guilty. But that's not
5 for me to decide. I would be putting myself in the place of
6 the jury or the fact finder if I were to pursue it that way.
7 All I'm supposed to decide is: Do they have the framework
8 of a case? A framework that they can then take to trial and
9 build upon it and complete the picture, so to speak.

10 They don't have to put on their whole case in that
11 process. They don't have to put on all their witnesses.
12 And I don't think that prosecutors typically try to hide
13 anything; but if they wanted to, they could certainly do
14 that in the way of not putting all their evidence on until
15 the trial. But basically all Mr. Burns has to do at this
16 point is put enough evidence on to convince the Court that
17 there is a reasonable likelihood that Mr. Dyer could be
18 found guilty at the next step, which is the trial.

19 Certainly, I think on Count 2 there is no question that
20 the State has done that. Just to discuss it backward to
21 some extent -- and that's because that's the way the
22 evidence was put in. We first heard the evidence on
23 Count 2, and so that's the way I'm approaching it here. The
24 elements from the model instruction are, first, that he
25 concealed or withheld something; two, that it was a stolen

1 item; third, that it was withheld from the rightful owner;
2 fourth, that he knew or believed or reasonably should have
3 known that it was stolen; and, fifth, with the intent to
4 permanently deprive the owner of that item.

5 I think the weakest element of the case is was it
6 stolen. Where is the evidence that it was stolen? The
7 first witness was the rightful owner of the property. And
8 he said he came home from church and it was missing, so he
9 believed it was stolen. No evidence of a break-in. No
10 evidence of somebody else having been there. Scant, if any,
11 evidence that there was a crime of theft from the owner.
12 But there is also not a logical explanation of how the item
13 went missing and ended up in the possession of Mr. Dyer if
14 it wasn't stolen.

15 So that's known as circumstantial evidence. And
16 certainly at this stage circumstantial evidence is good
17 enough on most elements. So if it wasn't stolen, there is
18 no other explanation for how it came to be in the possession
19 of Mr. Dyer, at least at this point. So that's a weak
20 charge in some respects on the details of whether it's a
21 stolen item and so forth. But there was some evidence
22 presented on the record on each of these elements.

23 And probably most compelling that there was a serial
24 number that was ground off and the testimony of Mr. Pool
25 then was that anybody with any expertise or familiarity with

1 weapons that that's a red flag, that they should know that
2 there is a good chance that the item is stolen. And so
3 that's something that would have to be left up to the jury,
4 assuming there is a jury trial, to determine whether that's
5 enough to put Mr. Dyer on notice that that's a stolen item.

6 And then, of course, we heard some evidence from another
7 witness that he admitted that it was bought from an
8 individual outside a pawnshop. And I think her statement
9 was that the pawnshop wouldn't take it. And that's another
10 item of evidence that could be seized upon to point out that
11 Mr. Dyer probably should have known, if he didn't, in fact,
12 know that it was a stolen item.

13 So the long and short of it is I believe all of those
14 elements have been addressed by the State's evidence in this
15 hearing and, therefore, Mr. Dyer will be bound over on
16 Count 2, the allegation that he was concealing stolen
17 property in the form of the rifle that is depicted in
18 State's Exhibits 1, 2, and 3. And as I said, certainly the
19 State can amend that count to add that the rocket launcher
20 was there.

21 Although the federal government may have failed to prove
22 that it was a stolen item or there wasn't enough evidence to
23 go to the jury on the issue of it being stolen, that was the
24 evidence confined to that trial. And it's -- the State is
25 certainly not limited to just putting on the evidence that

1 the federal government decided to put on in that trial.
2 They can put on other evidence on those issues that they
3 may, based on the evidence I've heard, allege in their count
4 that that was a stolen item as well.

5 Count 1, of course, is -- heavily depends upon the
6 testimony of the last witness the Court heard from. The
7 statute that we have discussed at some length now -- so I
8 don't use the wrong language here, I'll just pull it up --
9 is at Title 12 where the evidence code is found. And it's
10 somewhat lost in the shuffle issue that there is an
11 important difference between testimony or evidence that is
12 not hearsay versus testimony or evidence that is hearsay but
13 is admissible anyway because it is excepted from the hearsay
14 rule by some identified exception.

15 The exception that we're dealing with in this case is
16 actually not listed in the laundry list of exceptions in the
17 evidence code, but is set out in a special separate
18 statutory exception that the legislature formulated. And
19 that is Title 12, Section 2803.1 entitled Statements by
20 Certain Children Regarding Physical or Sexual Abuse
21 Admissibility.

22 And the preamble to that statute is what sets out the
23 separate requirement in the case of a jury being assembled
24 that there be a prior hearing where the Court can hear all
25 the arguments about whether that should be admitted or not

1 before a jury could hear it. And then there is a lot of
2 detail that we don't have to deal with here about whether
3 the child is available or unavailable for testimony based
4 upon the particular facts of a case.

5 And the preamble says that a statement by a child, if
6 the Court determines that it is basically reliable for the
7 reasons that are listed in the statute, is admissible. So
8 the way I interpret that is they're declaring that that
9 evidence is not hearsay, by definition, if it fits within
10 that statutory framework. So it will be for a later
11 determination at the trial stage whether the child would be
12 required to testify or is available or unavailable based on
13 those sometimes complex interpretations.

14 But for the purposes of the Preliminary Hearing, that
15 testimony is not hearsay for my purposes and is essentially
16 reliable. And as I indicated to the attorneys before we
17 went back on the record this afternoon, it's not for the
18 magistrate at Preliminary Hearing to decide whether that --
19 those statements are necessarily believable, whether they're
20 truthful.

21 Those are decisions left for the fact finder at trial.
22 And those are talked about by lawyers as weight and
23 credibility issues. As I indicated before we went on the
24 record, I believe that a magistrate must bind a Defendant
25 over if I find that the statements are admissible and the

1 statements are to the effect that an act of sexual abuse has
2 occurred.

3 So I'm sympathetic to Mr. Hammond's desire to put on the
4 videotape or the recording of the interview so that I can
5 see the nuance of how the child behaved and so forth, but
6 those things are all left for a jury to see and hear and
7 determine whether, from all that they can derive, whether
8 they believe it. That's not for me to determine. All I am
9 to determine is has she alleged it. Has she alleged that
10 she's been abused by her father? And the evidence that I
11 have is that she did say that. That came in through
12 Ms. Taylor, and properly so under this statute.

13 So the elements on that crime or that alleged crime are,
14 first, that it's a person that's responsible for the safety
15 and well-being of the child; second, that the act is willful
16 or malicious; and that the person did engage in an act which
17 is illegal under the statutory framework, which these
18 describes acts certainly are acts of sexual abuse; and,
19 fifth, that the child is under the age of 18, which is
20 different from the hearsay exception statute that I just
21 talked about which requires that the statement be made by a
22 child under 12. But for the purposes of the crime charged,
23 it's a different age. It's that the act was committed upon
24 or with a child under the age of 18.

25 So there has been evidence submitted on all five

1 elements of that charged crime. And so the magistrate, the
2 Court sitting as magistrate here binds the Defendant,
3 Mr. Dyer, over on Count 1, child sexual abuse, under the
4 statute that's properly numbered in the State's pleading as
5 10, Section 7115 E, although it's redesignated as Title 21,
6 Section 835.1, I believe it was, is the new number.

7 With respect to the range of the dates, again, I believe
8 that's something that the State may not need my authority to
9 alter, but they certainly may amend the pleading to conform
10 to whatever evidence was presented here at the hearing. I'm
11 not sure I heard evidence about a specific date when it
12 began, but I know that there was testimony that -- and I may
13 have missed the date that coincided with Mr. Dyer moving
14 here.

15 But it was my understanding that, through the witness,
16 Ms. Taylor, that there was an allegation or statements made
17 to her that the acts occurred while Mr. Dyer was living at
18 his mother's house. So I may have missed the date that he
19 moved in there. Certainly, if there is evidence that it was
20 September of '09 or whatever Counsel mentioned, then that's
21 a proper amendment.

22 But I don't believe the State needs my permission, but
23 they certainly have it if they wish to amend the date range
24 to allege that the offense or offenses occurred between
25 September or sometime in the fall of '09 when Mr. Dyer came

1 back from California and the date that is currently in the
2 pleading, which is the 2nd of January 2010. I think
3 certainly I do recall testimony being that it could have
4 been as late as the 4th or 5th of January, if the State
5 wishes to confine it to those dates.

6 So noting for the record that the Defendant does wish
7 for the Court to view the video recording of the interview,
8 I'm going to decline to do that. I believe that the
9 statements that were admitted are sufficient to require the
10 Court to enter a bindover on that charge. And also I'll
11 decline to allow the Defendant to call the doctor to testify
12 because I believe that it's only necessary for the State to
13 make their probable cause burden at this point.

14 I don't believe the doctor's testimony would be enough
15 to completely eliminate the evidence that the State has
16 offered at this point. And unless it did that, it couldn't
17 prevent a bindover in any event. So I don't see any
18 necessity of allowing or benefit to the Court of allowing
19 the doctor to be called to testify at a later time.

20 Does the State wish any other record?

21 MR. BURNS: No, Your Honor. We ask to withdraw
22 Exhibits 1 through 5.

23 THE COURT: All right. And substitute copies for
24 the record?

25 MR. BURNS: Yes.

1 THE COURT: That will be allowed.

2 Mr. Hammond, any other record for your client?

3 MR. HAMMOND: No, Your Honor.

4 THE COURT: All right. Let me find out, if I can,
5 what date the District Judge has provided for an
6 arraignment.

7 All right. Mr. Dyer, you are ordered to appear for
8 arraignment on these two felony charges in the large
9 courtroom, the District Courtroom, on the 29th of this
10 month, 29 July, at 9:00 a.m. And your bond is continued
11 conditioned upon your appearance at that time.

12 Anything further?

13 MR. BURNS: Not from the State, Your Honor.

14 MR. HAMMOND: Not from the Defendant.

15 THE COURT: All right. That will close the record.
16 Court is adjourned in this matter.

17 (Proceedings concluded.)
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1 STATE OF OKLAHOMA)

2) SS.

3 COUNTY OF STEPHENS)

4 I, BETTY CHENAULT, CSR, Certified Shorthand Reporter
5 in and for the State of Oklahoma, do hereby certify that the
6 reported proceedings held in the above-styled and numbered
7 cause were reported by me; and that the foregoing transcript
8 from the hearing or trial was reduced to typewritten form by
9 me as the same that appears in my stenographic notes taken
10 at said proceedings.

11 I further certify that the above and foregoing
12 typewritten pages contain a full and correct transcription
13 of my stenographic notes taken at said proceedings.

14 IN WITNESS WHEREOF, I have hereunto set my hand this
15 the 20th day of September, 2010.

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Betty Chenault

BETTY CHENAULT, CSR, RPR
Certified Shorthand Reporter
In and for the State of Oklahoma
Certification Number: 1906
Date of Expiration: December 31, 2010

BETTY CHENAULT
Oklahoma Certified Shorthand Reporter
Certificate No. 1906
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