

APPENDIX A

Rec'd
1/6/2020
9:25AM PAB

Supreme Court of Florida

MONDAY, JUNE 29, 2020

CASE NO.: SC19-1934

Lower Tribunal No(s):

1D17-4063;

172016CF006650XXXAXX

PHILLIP BENJAMIN

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

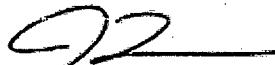
This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

CANADY, C.J., and POLSTON, LABARGA, LAWSON, and MUÑIZ, JJ., concur.

A True Copy

Test:



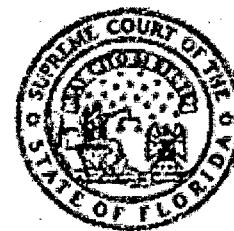
John A. Tomasino
Clerk, Supreme Court

db

Served:

TRISHA MEGGS PATE
ROBERT "CHARLIE" LEE
PHILLIP BENJAMIN

HON. JAN SHACKELFORD, JUDGE
HON. PAM CHILDERS, CLERK
HON. KRISTINA SAMUELS, CLERK



Supreme Court of Florida

THURSDAY, DECEMBER 5, 2019

CASE NO.: SC19-1934

Lower Tribunal No(s).:

1D17-4063;

172016CF006650XXXAXX

PHILLIP BENJAMIN

vs. STATE OF FLORIDA

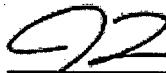
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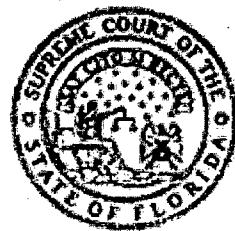
The appendix to petitioner's brief on jurisdiction, which was filed with this Court on December 5, 2019, does not comply with Florida Rule of Appellate Procedure 9.120(d). All documents contained in petitioner's appendix, with the exclusion of the opinion or order of the district court of appeal to be reviewed, are hereby stricken.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



db

Served:

TRISHA MEGGS PATE
PHILLIP BENJAMIN

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-4063

PHILLIP ARNEZ BENJAMIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Jan Shackelford, Judge.

August 23, 2019

PER CURIAM.

Upon review pursuant to *Anders v. California*, 386 U.S. 738 (1967), we find no error with Appellant's judgment or sentence, and affirm. We write only to correct a scrivener's error on Appellant's Criminal Punishment Code Scoresheet. Appellant was found guilty by jury verdict, but his scoresheet incorrectly indicates that the charges were resolved by plea. On remand, the trial court shall correct this error. See, e.g., *Carter v. State*, 173 So. 3d 1048, 1051 (Fla. 1st DCA 2015) (affirming judgment but remanding for correction of scrivener's error where scoresheet incorrectly indicated plea instead of trial).

Judgment AFFIRMED and cause REMANDED for correction of scrivener's error.

LEWIS, OSTERHAUS, and M.K. THOMAS, JJ., concur.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

October 14, 2019

CASE NO.: 1D17-4063
L.T. No.: 2016-CF-006651-A

Phillip Arnez Benjamin

v.

State of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion filed September 09, 2019, for rehearing and written opinion is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Hon. Ashley Moody, AG
Michael Jerome Titus, ARC

Candice Kaye Brower, RC
Phillip Arnez Benjamin

th

Kristina Samuels
KRISTINA SAMUELS, CLERK



APPENDIX B

10

1 THE COURT: Okay. We're on the record on
2 State of Florida versus Phillip Benjamin, which is
3 Case Number 16-6651. I want to tell y'all about some
4 jurors that have some issues so you know.

15 MS. AMBROSE: Like, tuberculosis?

16 THE COURT: T.B., yeah.

17 MS. AMBROSE: Okay.

18 THE COURT: T.B., T as in Thomas, buts, B. I
19 assume it's a tuberculosis test.

20 Number 42, Lavetta Hatcher says she's a
21 teacher; it's hard for her to serve. It's hard for
22 everybody to serve. I will look her up real quick.

23 I am a teacher at a Title One school and would
24 not want to leave my students at this time. That's in
25 her form.

1 And finally, Number 55, Stacy White says that
2 she is medical staff at the Escambia County Jail.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: I don't want you to be
11 uncomfortable, but don't wait until the goldfish are
12 floating passed your eyes before you tell me, okay?

13 THE DEFENDANT: Yes, ma'am.

18 Ms. Ambrose, other than our standard pretrial
19 motions, have we taken care of business so that we can
20 be ready if we start at 8:30 and by 8:45, we can try
21 the case?

22 MS. AMBROSE: Yes.

23 THE COURT: Mr. Nichols, are you aware of
24 anything else special going on?

25 MR. NICHOLS: Nothing unusual, Judge.

1 I was looking at it just for y'all this morning because
2 it's showing Sunday the earliest in Miami. So again,
3 you'll have time between now and Thursday and you'll
4 have time after Thursday to get prepared for the
5 hurricane, and I hope that we are not affected.

6 Let me tell you about this case. This is the
7 case of State of Florida versus Phillip Benjamin. It
8 is Case 16-6651. Prosecuting the case for the State of
9 Florida is Ms. Erin Ambrose. Ms. Ambrose is going to
10 stand. Take a look.

11 MS. AMBROSE: Good morning.

12 THE COURT: Defending the case is Mr. Wesley
13 Nichols.

14 And, Mr. Benjamin, I want you to stand and
15 stand for a moment so everybody in the panel gets a
16 good look, just because we will be asking some
17 questions.

18 Thank you, Mr. Benjamin.

19 As I said this case is going to be tried
20 Thursday. It is a one-day trial.

21 I'm going to read you what's called the
22 information. The information is, in fact, the document
23 that tells the jury and the defendant what the charges
24 are. It's a piece of paper. The State still has to
25 prove these charges. This is just a piece of paper.

29

1 And the reason I'm looking at my computer is
2 because we've gone paperless, more or less. And so if
3 you see me on my computer, I'm not on Ebay, I'm not on
4 wwwdelta.com trying to figure out a flight out of here.
5 I am looking at the file or I am communicating with my
6 office. But right now I have got the information
7 pulled up.

25 Now, before I finally do turn it over to

1 PROSPECTIVE JUROR: I believe so, yes.

2 MS. AMBROSE: Anyone else? I don't think I
3 recognize anyone else, but does anyone else think they
4 may know me?

5 Does anyone recognize the defendant, Phillip
6 Benjamin?

7 Ms. York.

8 PROSPECTIVE JUROR: He looks familiar. I just
9 cannot place from where. I'm sorry.

10 MS. AMBROSE: Okay. Okay. So you might know
11 him or you might just recognize him from somewhere?

12 PROSPECTIVE JUROR: Might recognize him from
13 somewhere.

14 MS. AMBROSE: Okay. Anybody else?

15 Mr. Brown, Number 12.

16 PROSPECTIVE JUROR: I think I might have seen
17 him in jail maybe. I'm not sure. Seems like, but I
18 think I can still be fair.

19 MS. AMBROSE: Okay. Thank you, Mr. Brown.

20 Any other hands? Let's see.

21 PROSPECTIVE JUROR: Mr. Work.

22 MS. AMBROSE: Mr. Work, Number 29.

23 PROSPECTIVE JUROR: Yes. He looks familiar.
24 I can't remember. I don't know if I particularly know
25 him, but his face looks familiar.

1 impartial. I will ask kind of a catch-all question, If
2 there is anything else that you know based on your
3 experiences or your beliefs, you cannot be fair and
4 impartial, let us know, and that will come at the end.
5 Only you know what's in your mind, what's in your
6 heart, and what you have experienced in life and
7 whether you can be fair and impartial.

8 I do also want to mention, this is the only
9 time that Mr. Nichols and I can interact with you guys
10 and ask questions and things like that. So if later
11 today or on Thursday if you see us in the courthouse
12 and we, you know, ignore you basically, it's not to be
13 rude, it's that we can't interact with you really past
14 today.

15 Now that I'm standing up here longer, does any
16 one think they might know me? I know Ms. York, Number
17 7. You used to work in the state attorney's office as
18 well?

19 PROSPECTIVE JUROR: Yes. I don't think we
20 ever interacted, but you were there when I was there.

21 MS. AMBROSE: As a result of us working for
22 the same office at the same time, if you were picked to
23 be on this jury could you still be fair and impartial?

24 PROSPECTIVE JUROR: Yes.

25 MS. AMBROSE: Yes?

1 THE COURT: Okay.

2 MR. NICHOLS: Judge, I would like to strike
3 Number 4.

4 THE COURT: Ms. B-a-u-d-e-n-t-i, let's try
5 that again. B-a-u-d-e-n-d-i-s-t-e. (sic)

6 MS. AMBROSE: I think that carries on.

7 THE COURT: There's an "L" at the end.

8 Nevermind. I give up on spelling. Number 4. You're
9 right. That takes us to Number 13.

10 You are still up, Mr. Nichols.

11 MR. NICHOLS: May I have just a moment?

12 THE COURT: Sure.

13 (Pause in proceedings)

14 THE COURT: Hang on a second. The court
15 reporter is getting her chair.

16 Go ahead.

17 MR. NICHOLS: Judge, we move to strike Number
18 8 peremptory.

19 THE COURT: Ms. Mull. Okay. That takes us to
20 14. You're still up.

21 MR. NICHOLS: Move to strike Number 14.

22 THE COURT: Ms. Hall. That takes us to 15.
23 You're still up.

24 MR. NICHOLS: I did four and fourteen.

25 MS. AMBROSE: Fourteen.

1 MR. NICHOLS: That brings us to sixteen; is
2 that right?

3 THE COURT: I have us to fifteen. Let me
4 doublecheck. Yeah, fifteen.

5 MR. NICHOLS: I tender.

6 THE COURT: One, six, ten, twelve, thirteen,
7 fifteen.

8 MR. NICHOLS: Before I tender, I will strike
9 Number 16. I can't strike Number 16 --

10 THE COURT: We're not there. Settle down.

11 MR. NICHOLS: What?

12 THE COURT: We're not at sixteen.

13 MR. NICHOLS: I know.

14 THE COURT: Settle down.

15 MS. AMBROSE: I will strike Number 12.

16 THE COURT: Mr. Brown. Now we are to Number
17 16.

18 MS. AMBROSE: And Number 13.

19 THE COURT: Mr. Lyons.

20 MS. AMBROSE: And the State tenders.

21 THE COURT: Okay.

22 MR. NICHOLS: Judge, so Mr. Lyons is a black
23 male. It's not reflected on his juror form, but I
24 would request a race-neutral reason.

25 MS. AMBROSE: Judge, he filled out nothing in

1 the top portion of his questionnaire, which is also the
2 reason I plan to strike Number 38, Joann Davis. She
3 also did not fill out -- the only thing he put in is
4 single. He didn't put age, occupation --

5 MR. NICHOLS: Can we bring him up here and ask
6 him those questions?

7 (Bench conference concluded)

8 THE COURT: Mr. Lyons, can you come up here,
9 please.

10 (At the bench:

11 MS. AMBROSE: Judge, I gave a race neutral
12 reason.

13 MR. NICHOLS: That can --

14 THE COURT: Okay, okay.

15 (Prospective Juror Lyons present at bench)

16 THE COURT: Mr. Lyons --

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: -- we have got a juror form, and
19 there are some questions asked here that you didn't
20 answer. What is your age, sir?

21 PROSPECTIVE JUROR: Forty-eight.

22 THE COURT: Okay. And what do you do for a
23 living?

24 PROSPECTIVE JUROR: I don't have a job right
25 now.

1 THE COURT: Okay. Are you -- you say you're
2 single?

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: Were you the one that actually
5 filled out the form or did somebody help you fill it
6 out?

7 PROSPECTIVE JUROR: Somebody helped me.

8 THE COURT: Okay. Do you have a little
9 trouble reading sometimes?

10 PROSPECTIVE JUROR: Yeah. I can't hardly see
11 the little letters.

12 THE COURT: It's hard to read.

13 PROSPECTIVE JUROR: Yeah.

14 THE COURT: And that's why you didn't fill it
15 out?

16 PROSPECTIVE JUROR: Yes, ma'am.

17 THE COURT: Okay. Let me see if there is
18 anything else. You said you are not working right now.
19 Have you done work in the past?

20 PROSPECTIVE JUROR: Yes, I used to work in a
21 restaurant.

22 THE COURT: What kind of restaurant?

23 PROSPECTIVE JUROR: I worked at Wendy's and
24 I've worked at Winn-Dixie and Albertsons.

25 THE COURT: Okay. Anything else you want to

1 ask him?

2 MS. AMBROSE: Mr. Lyons, how long have you
3 been in Escambia County?

4 PROSPECTIVE JUROR: I have lived here all my
5 life.

6 MS. AMBROSE: All of your life. Okay.

7 THE COURT: All right. Thank you.

8 MR. NICHOLS: For the record, sir, what is
9 your ethnicity?

10 PROSPECTIVE JUROR: Huh?

11 MR. NICHOLS: What is your ethnicity?

12 PROSPECTIVE JUROR: What is that?

13 THE COURT: Sir, are you black?

14 PROSPECTIVE JUROR: Yeah, I'm black.

15 THE COURT: Okay. To get to the point. Yes,
16 sir. Thank you, sir.

17 (Prospective Juror Lyons leaves bench)

18 MS. AMBROSE: Judge, now I will move to strike
19 him if asked for a race-neutral reason, if he's not
20 literate, when he goes back and looking at jury
21 instructions, he will have to rely on other people to
22 help him read through jury instructions.

23 MR. NICHOLS: It's my understanding that
24 literacy is not a basis to strike a juror. The
25 government has to provide reasonable accommodations.

1 THE COURT: Is it your understanding that it's
2 not a basis for a peremptory --

3 MR. NICHOLS: No.

4 THE COURT: -- versus a for-cause challenge?

5 MR. NICHOLS: No.

6 THE COURT: I think she's saying she wants to
7 use a peremptory but it's a race-neutral reason.

13 THE COURT: If we have a juror -- if we have a
14 juror --

15 COURT REPORTER: Do you want me to take this?

16 THE COURT: No. I'm sorry.

17 (Off-the-record discussion)

1 THE COURT: Do you understand the difference
2 between telling the truth and telling a lie?

3 MISS HENDERSON: Yes, ma'am.

4 THE COURT: And if I said I'm wearing a green
5 robe, would that be the truth or a lie?

6 MISS HENDERSON: A lie.

7 THE COURT: What happens to you if you tell a
8 lie?

9 MISS HENDERSON: Get in trouble.

10 THE COURT: Get in trouble.

11 Do you understand that today, no matter what
12 else you said, any other day, that I want you to tell
13 the truth and only the truth in the courtroom?

14 MISS HENDERSON: Yes, ma'am.

15 THE COURT: Do you understand that what I want
16 you to tell is what you actually know, and not what
17 somebody told you?

18 MISS HENDERSON: Yes, ma'am.

19 THE COURT: In other words, what you actually
20 had happen to you, what actually you know happened, not
21 somebody told you and later you thought that's what
22 happened. I wanted you to tell me what happened to
23 you.

24 Do you understand?

25 MISS HENDERSON: Yes, ma'am.

1 THE COURT: Mr. Lorenzo -- Mr. Benjamin, do
2 you understand?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Okay. All right. Y'all can step
5 outside. We'll call you when we need you, okay?

6 (Witnesses exit the courtroom)

7 (Janiya Henderson enters courtroom)

8 THE COURT: All right. Remind me of her first
9 name.

10 MS. AMBROSE: Janiya.

11 THE COURT: Okay. Janiya, come up here just a
12 second and just talk to me, okay? Want to pull the
13 chair back and have a seat for a second? And you can
14 just look at me if you want to.

15 Hi, Janiya. How do you spell your first name?

16 MISS HENDERSON: J-A-N-I-Y-A.

17 THE COURT: Okay. And what's your last name?

18 MISS HENDERSON: Henderson.

19 THE COURT: Henderson? All right.

20 Now, how old are you?

21 MISS HENDERSON: 13 -- 14.

22 THE COURT: 14?

23 MISS HENDERSON: (Nodding head affirmatively).

24 THE COURT: And what grade are you in?

25 MISS HENDERSON: 8th.

1 THE COURT: Okay. And I want you to speak up
2 when you're talking to the jury. You're going to pull
3 up a little closer to the microphone, look at them, and
4 you keep your voice up, because if you keep your voice
5 up, I won't have to ask you to repeat, okay?

6 MISS HENDERSON: Okay.

7 THE COURT: And the way it's going to work is,
8 Ms. Ambrose will ask you some questions, and then
9 Mr. Nicholls will ask you some questions. Then
10 Ms. Ambrose will get to go one more time, and then
11 we'll be done.

12 Does that make sense?

13 MISS HENDERSON: Yes, ma'am.

14 THE COURT: Do you have any questions about
15 what's happening?

16 MISS HENDERSON: No, ma'am.

17 THE COURT: Going to put you outside, and just
18 like everybody else, nobody's going to talk to you
19 about what's happening in the trial.

20 You can talk to Ms. Ambrose if you need to.

21 If Mr. Nicholls needs to talk to you, he can talk to
22 you also. Probably Ms. Ambrose will be with you also.
23 But nobody else can come up and talk to you about the
24 case.

25 And I know the victim's advocate won't, so

1 she'll be fine.

2 Do you have a favorite football team?

3 MISS HENDERSON: No, ma'am.

4 THE COURT: Do you have a favorite -- what
5 things do you like to do for fun?

6 MISS HENDERSON: Watch TV.

7 THE COURT: Okay. What's your favorite
8 program, or some of them?

9 MISS HENDERSON: *Casey Undercover*.

10 THE COURT: *Casey Undercover*. And what's that
11 a show about?

12 MISS HENDERSON: Teenage spies.

13 THE COURT: Teenage spy, okay. Well, I can't
14 say that I've seen it.

15 Did you watch *Stranger Things* on Netflix? Do
16 you know what I'm talking about?

17 MISS HENDERSON: No.

18 THE COURT: It's about bunch of teenagers that
19 had some weird things happen to them. What's another
20 show that you really like?

21 MISS HENDERSON: I don't really watch TV.

22 THE COURT: Well, what do you like to do?

23 MISS HENDERSON: Play on my phone instead,
24 study.

25 THE COURT: How are your grades so far this

1 from work. Because we was already short.

2 Q. Okay.

3 A. So I couldn't get off.

4 Q. When you said ended up going out there, what
5 do you mean?

6 A. Just checking on her.

7 Q. Back home?

8 A. Yeah.

9 Q. Okay. How long did it take you to get home?
10 What's that drive?

11 A. It took me about -- I'm over there by the
12 jail. It's going to take me over my 30 minute. Probably
13 about 40 minute.

14 Q. Okay.

15 A. To get home. Probably 30 at that time of
16 morning, because traffic.

17 Q. By the time you get home to her, how is Janiya
18 acting when you finally get home to her?

19 A. She was crying.

20 Q. And who all was at the house when you got back
21 for that brief break that you got?

22 A. My kids. My smaller kids was sleep. Her and
23 Leon was the only two people up.

24 Q. Okay. And how was Leon acting, Leon Benjamin
25 acting, when you got there?

1 MS. AMBROSE: I can move on, Judge.

2 THE COURT: All right. I'll sustain the
3 objection.

4 Q. (By Ms. Ambrose) Ms. Henderson, did you -- so
5 Janiya tells you this on the phone.

6 Did you know where -- did you ask, you know,
7 Where is your dad, what's --

8 A. Yeah, I asked her where was her dad and why
9 she didn't wake up her dad. She said he was scared -- she
10 was scared. He told her not to tell nobody.

11 Q. Okay. Do you have a closer relationship with
12 Janiya than Leon Benjamin does?

13 A. Yes.

14 Q. Is it more common for her to tell you more
15 private things than her to tell him?

16 A. Yes.

17 Q. When you're talking to Janiya, at any point
18 did you ask her for you to talk to Leon Benjamin? Does she
19 bring the phone to him?

20 A. At the time -- no, at the time, he was on the
21 phone with Michael Benjamin.

22 Q. Okay. So how did you get off the phone with
23 Janiya? How did that phone call end?

24 A. I'm trying to think. I think I end up going
25 out there just checking on her, because I couldn't get off

1 So I'm just asking did you ever see him or
2 hear him without telling us anything that was said, did
3 he talk to her about the allegations.

4 MR. NICHOLLS: Judge, it sounds like she is
5 trying to rebut something that hasn't been elicited, so
6 at this point it's not relevant. If she wants to call
7 her in rebuttal talk about it, she's free to do it.

10 (Bench conference concluded)

11 THE COURT: You may proceed.

12 Q. (By Ms. Ambrose) And, Ms. Henderson, where did
13 you go after leaving the Kids House?

14 A. I went home.

15 Q. Okay. And did Janiya go home as well?

16 A. Yes, ma'am.

17 Q. When you got home, how was Janiya acting?

18 A. She just want to take a shower and go to bed.

19 Q. Now, prior to this incident, how was Janiya
20 doing in school?

21 A. She had a couple complications.

22 Q. Like, what were her grades like?

23 A. Her grades -- she's an A honor roll student.
24 She's a dean assistant.

25 Q. After thi

1 Q. You have to answer out loud.

2 A. Oh, yes, ma'am. Yeah.

3 Q. Okay. At some point, did Janiya come back up
4 to where you were waiting?

5 A. Yeah.

6 Q. How did she look after she came back up front?

7 A. She -- well, you tell --

8 Q. How was she acting?

9 A. You could tell she had been crying. We
10 were -- I mean, she was just sitting there, basically.

11 Q. Okay. And after Janiya came back up front,
12 did you ever see Douglas Benjamin speak to Janiya about what
13 had happened the night before?

14 A. No. The only thing he did was hug --

15 MR. NICHOLLS: Objection.

16 MS. AMBROSE: Don't tell us what he said.

17 And, Judge, I can approach.

18 THE COURT: Counsel approach.

19 (At the bench:

20 MS. AMBROSE: Judge, I also plan to call her
21 on rebuttal. I believe Doug is going to testify and
22 say that he took the child, had a conversation with her
23 privately or off to the side about the allegations, and
24 that she he's going to testify that she said that she
25 was never touched.

1 A. Yes.

2 Q. Mr. Benjamin's lived at the same -- now, you
3 referred to Mr. Benjamin's residence; you knew where Mike
4 lived, didn't you?

5 A. Yes.

6 Q. He lived there all 12 years that you knew him,
7 didn't he?

8 A. Yes.

9 Q. And Mike has attended family events -- family
10 events, not necessarily at your house, family events that
11 you and your family attended for all 12 years that you've
12 known him, hasn't he?

13 A. Can you repeat that?

14 Q. When it comes to family events, not
15 specifically at your house but family events in general,
16 you've seen Mike around for family events the whole 12 years
17 that you've known him, haven't you?

18 A. Yes.

19 Q. And this was the particular first time that
20 Leon invited people over to this particular house, correct?

21 A. Yes.

22 Q. You've never known Mr. Benjamin to shower your
23 children with gifts or attention, have you?

24 A. Yes.

25 Q. Okay. Do you remember your deposition on

1 bed, right?

2 A. Yes.

3 Q. Okay. And you knew this -- you knew this was
4 happening before the particular night that we're talking
5 about, right?

6 A. No.

7 Q. So this was the first time you'd ever heard?

8 A. That's because we -- we --

9 THE COURT: Ma'am.

10 A. Yes, this is the first time. Yeah.

11 Q. (By Mr. Nicholls) And what Janiya told you was
12 she was asleep and felt a hand on her belly, right?

13 A. (Nodding head affirmatively).

14 Q. Yes?

15 A. Yes.

16 Q. And then it went down the top of her pajamas
17 into her privates, correct?

18 A. Yes.

19 Q. And this was all at one time, not two separate
20 events, correct?

21 A. Yes.

22 Q. And the police, I think you said, collected
23 the bed sheets; is that right?

24 A. Yes.

25 Q. And Janiya's clothing?

1 Q. (By Mr. Nicholls) Did you hear Mike say why he
2 was giving her the money?

3 A. Yes. Okay. Well, Keyondrace, that's my
4 nephew, and Paris, that's my niece, you know, they showed me
5 their report cards, you know, they do good, I'll give them
6 couple dollars.

7 So I gave those two -- I had about 10 or 15
8 bucks, so I gave that to them. And then, Niya came in the
9 living room, she was, like, Well, I did good on my report
10 card, too. So I'm like, Oh, man. Ain't got no more money.

11 Q. Okay.

12 A. So my uncle say, I got a couple bucks, you
13 know. He say, This all I got. You know, don't tell them
14 about it, he said, because I don't have nothing else to give
15 them. He said, I just have to give them something when I
16 come back.

17 And I was like, Yeah, I have to get you some
18 when I come back because I done gave it to the other two.

19 Q. Now, did Mike wake you up during halftime, or
20 did you wake up on your own?

21 A. I woke up on my own.

22 Q. When you woke up, did you observe anything
23 unusual about Mike's behavior at that time?

24 A. No, sir.

25 Q. On the ride home, did you notice anything

1 But --

2 Q. Okay. Did the horseplay kind of look or sound
3 like some sort of an argument?

4 A. Yeah. Leon got kind of serious, but you know,
5 I don't remember being no big argument.

6 Q. Now, and just to be clear, this was earlier in
7 the day, at somebody else's house?

8 A. At my parent's house, my mom's house.

9 Q. Okay. Now, let's say sometime after that,
10 while you were at Leon's house watching the ballgame,
11 sometime before everybody fell asleep, did you see Mike give
12 Janiya some money?

13 A. Yes.

14 Q. Okay. Did you hear Mike say why he was going
15 to give her money?

16 A. Yes.

17 MS. AMBROSE: Judge, object to hearsay.

18 THE COURT: Sustained.

19 MR. NICHOLLS: Not offered for truth of the
20 matter, offered for the fact that it was said.

21 MS. AMBROSE: Judge, I would still object. I
22 can foresee -- I'm just objecting to this.

23 THE COURT: All right. I'll overrule the
24 objection.

25 He can answer.

1 the interview. And I ask them to speak openly about what
2 happened, and not just provide yes or no question --
3 answers, excuse me.

4 Q. And after you spoke with Janiya about these
5 ground rules, did she seem confused or hesitate about
6 following them?

7 A. No, ma'am.

8 Q. Was she able to articulate answers and provide
9 information regarding this case?

10 A. Yes, she did.

11 Q. And when you first meet with a child, are you
12 aware of the general allegations?

13 A. Yes, ma'am.

14 Q. Okay. Did Janiya use age-appropriate language
15 and references to answer your questions?

16 A. Yes, ma'am.

17 Q. And approximately how long was this interview?

18 A. Between 15 and 20 minutes.

19 Q. During the course of the interview, did you
20 leave the interview room?

21 A. I did.

22 Q. Okay. And why?

23 A. One of the observers -- I'm sorry, the only
24 observer, Investigator Heather Canard with the Escambia
25 County Sheriff's Office, was in the observation room. I

1 consulted with her.

2 Q. Is that a common practice, for the interviewer
3 to leave the room and go speak with the observers?

4 A. Yes, ma'am.

5 Q. And what is the purpose of that?

6 A. The purpose of that is, in this case, so I can
7 speak with the investigator to see if they're -- do they
8 have a clear understanding of the child's disclosure, if
9 there are any more questions I need to ask.

10 Q. And are you taking notes while you're
11 interviewing the children?

12 A. No, ma'am.

13 Q. Okay. So is it possible that a question might
14 be asked more than one time?

15 A. Yes, ma'am.

16 Q. Okay. Where did Janiya go after you were
17 finished interviewing her?

18 A. Janiya went back out to the lobby.

19 Q. At some point that day, did she also have a
20 medical exam?

21 A. Yes, ma'am.

22 MS. AMBROSE: May I approach the witness,
23 Judge?

24 THE COURT: You may.

25 Q. (By Ms. Ambrose) Ms. McCreary, I'm showing you

1 what's been marked for identification as State's Exhibit 6.

2 Do you recognize that?

3 A. Yes, ma'am.

4 Q. How do you recognize it?

5 A. I reviewed it and initialed it.

6 Q. Do you see your initials on it?

7 A. Yes, ma'am.

8 Q. Okay. What is that?

9 A. That's the forensic interview conducted with
10 Janiya.

11 Q. Does it fairly and accurately depict the
12 interview that you had with her on October 24th, 2016?

13 A. Yes, ma'am.

14 Q. Has it been changed or altered in any way that
15 would be misleading?

16 A. No, ma'am.

17 Q. And does that disc contain all the substantive
18 contact you had with her at this interview?

19 A. Yes, ma'am.

20 MS. AMBROSE: Judge, I'd like to admit at this
21 time State's 6.

22 MR. NICHOLLS: Based on your prior rulings, no
23 basis to object.

24 THE COURT: All right. It will be received as
25 State's 6.

1 (State's Exhibit No. 6 admitted into evidence)

2 Q. (By Ms. Ambrose) Ms. McCreary, before that date,
3 October 24th, 2016 had you ever met Janiya before?

4 A. No, ma'am.

5 Q. Had you ever met her mom or dad?

6 A. No, ma'am.

7 Q. Had you already met the defendant, Phillip
8 Benjamin, before the date of the interview?

9 A. No, ma'am.

10 MS. AMBROSE: Thank you, Judge. At this time,
11 I'd like to publish it.

12 THE COURT: You may.

13 MS. AMBROSE: Leave it up to Ms. McCreary
14 whether she wants to stay up there.

15 THE WITNESS: I'm fine.

16 (Recording played and reported as heard by the
17 court reporter)

18 MS. McCREARY: Can you have a seat for me over
19 there? Okay.

20 Like I said, my name is Aayana, and my job is
21 just to talk to kids.

22 Can you tell me your whole name?

23 MISS HENDERSON: Janiya (inaudible) Henderson.

24 MS. McCREARY: Okay. And how old are you?

25 MISS HENDERSON: 13.

1 MISS HENDERSON: I asked her could she come
2 home because Uncle Mike just touched me. And she told
3 me to get up and go hand the phone to my daddy, and I
4 did.

5 MS. McCREARY: And then what happened?

6 MISS HENDERSON: She was talking to him, and
7 then he called him, and he was talking to him on the
8 phone, yelling at him.

9 MS. McCREARY: Okay. And what happened after
10 that?

11 MISS HENDERSON: He told me to just go lay
12 down, and he called my granddaddy and my grandmother.

13 And I went to sleep, and my mama get off at
14 7:00, so when she came home this morning, she called
15 the police. And that's what happened.

16 MS. McCREARY: Okay. Has your Uncle Mike ever
17 done anything to you like this before?

18 MISS HENDERSON: (Shaking head negatively),
19 no.

20 MS. McCREARY: Do you know if he's done that
21 to anybody?

22 MISS HENDERSON: No.

23 MS. McCREARY: Okay. Is there anybody that
24 you're scared or afraid of?

25 MISS HENDERSON: No.

1 Your private area that he touched, what do you
2 use that for?

3 MISS HENDERSON: To pee.

4 MS. McCREARY: To pee, okay.

5 Did he touch any other part of your body?

6 MISS HENDERSON: No, but my stomach.

7 MS. McCREARY: Your stomach, that area? Okay.

8 And after he touched you, what happened then?

9 MISS HENDERSON: He told me that it was just
10 between me and him, and don't tell nobody. And that's
11 when he left, about 10 minutes later, and I called my
12 mom. And my mom told my dad.

13 MS. McCREARY: Okay. Do you know about what
14 time this was?

15 MISS HENDERSON: 11:00 -- between 11:00 and
16 11:30.

17 MS. McCREARY: Okay. What helps you know that
18 that was the time?

19 MISS HENDERSON: Because when I picked up the
20 phone, I looked at the time and it said 11:29.

21 MS. McCREARY: Okay. And you said it happened
22 about 10 minutes before that?

23 MISS HENDERSON: (Nodding head affirmatively).

24 MS. McCREARY: Okay. When you called your
25 mom, what did you say?

1 the jury where everybody was sleeping in the bed, okay?

2 A. Yes.

3 Q. Come on down.

4 Okay. There's the gold button on it. Hold
5 with your thumb to move around the screen. And this is the
6 bed you were sleeping in, right?

7 A. Yes.

8 Q. Okay. Where were you sleeping?

9 A. Right there.

10 Q. It looks like -- is that a pillow in the
11 picture?

12 A. Yes.

13 Q. Is your head on that pillow?

14 A. Yes.

15 Q. Okay. What about LaParis? That's your
16 sister, right?

17 A. At the bottom.

18 Q. Okay.

19 A. Here (indicating).

20 Q. When you say at the bottom, what do you mean?

21 A. Her legs by the headboard, and her head down
22 here.

23 Q. Okay. And what about Keyondrace, your little
24 brother?

25 A. Right here (indicating).

1 light off?

2 A. Light off.

3 Q. Is there a nightlight in the room?

4 A. No.

5 Q. Okay. Was there any light in the room?

6 A. The TV.

7 Q. Okay. So was the TV on or off?

8 A. On.

9 Q. What about the door to the room, was that
10 opened or closed?

11 A. Open.

12 MS. AMBROSE: May I approach the witness,
13 Judge?

14 THE COURT: You may.

15 Q. (By Ms. Ambrose) Janiya, I'm showing you a
16 picture that's in evidence as State's Exhibit 5.

17 Do you recognize what's in that picture?

18 A. Yes.

19 Q. Okay. What is that?

20 A. My brother and sister room.

21 Q. Okay. Is that the room you guys were sleeping
22 in that night?

23 A. Yes.

24 Q. Okay. Can I have you come down here, stand
25 next to me, and use this laser pointer and so you can show

1 hair or something.

2 Q. On your hair?

3 A. Yes.

4 Q. Okay. So when you felt someone rubbing your
5 stomach, who did you first think it was?

6 A. My little brother Keondrace.

7 Q. Did you see anybody else in the room?

8 A. No.

9 Q. Okay. So what did you do when you thought it
10 was your little brother rubbing your stomach?

11 A. I asked was it him, but he was sleep so I went
12 back to sleep.

13 Q. Okay. At any point later, did you wake up
14 again?

15 A. Yes.

16 Q. Okay. What made you wake up the second time?

17 A. When Uncle Mike hands was inside my private
18 area.

19 Q. Okay. I want to kind of take it piece by
20 piece, okay?

21 And what you said is, you woke up to his hand
22 inside your private area; is that right?

23 A. Yes.

24 Q. Okay. When you say inside your private area,
25 what do you mean?

1 A. On the side closest to the wall.

2 Q. Okay. So now you said -- what did you feel
3 that made you wake up?

4 A. Him touching my stomach. Uncle Mike.

5 Q. Okay. And what made you think it was your
6 Uncle Mike?

7 A. Because he came back up in there.

8 Q. Okay. Well, let's talk about the very first
9 time you feel someone touching your stomach. Are they
10 touching your pajama, or on your skin?

11 A. On my skin.

12 Q. What are they touching you with?

13 A. Their hand.

14 Q. And could you tell by the size of the hand how
15 big this person's hand was?

16 A. Yes.

17 Q. Okay. Can you describe that for us?

18 A. Average-size hand. Like, average size of a
19 man's hand.

20 Q. Okay. Was there any point that you thought
21 this could have been your little brother?

22 A. Yes.

23 Q. Okay. Why would you think it was your little
24 brother at first?

25 A. Because when he going to sleep, he rub on our

1 A. Hands inside my drawers.

2 Q. Okay. What are we -- now, at any point, did
3 his -- any part of his hand go inside your private area?

4 A. Yes.

5 Q. Okay. Can you describe what you felt go
6 inside?

7 A. His finger.

8 Q. Okay. And when you say your private area,
9 what do you use that part of your body for?

10 A. You go to the bathroom, pee.

11 Q. Okay. When you felt his hand inside your
12 private area, what did you do next?

13 A. I woke up.

14 Q. Okay. When you say you woke up, it makes it
15 sound like you weren't awake when it happened --

16 MR. NICHOLLS: Objection. Objection; leading.

17 THE COURT: Sustained.

18 Q. (By Ms. Ambrose) I need you to be able to explain
19 to the jury what you mean when -- were you -- okay.

20 When you say you woke up, was there a point --
21 did you ever sit up, or roll over?

22 A. Yes.

23 Q. Okay. Before you sat up or rolled over, did
24 you open your eyes?

25 A. Yes.

1 Q. . . When your eyes were open, did you still feel
2 Uncle Mike with his finger inside your private area?

3 A. Yes.

4 Q. Okay. So was there a time when you were awake
5 and you felt this?

6 A. Yes.

7 Q. Okay. How did his -- do you remember what you
8 were wearing?

9 A. I remember what pants I was wearing.

10 Q. Okay. So you had on pants?

11 A. Pink polka dot pants.

12 Q. Okay. Did you have underwear on?

13 A. Yes.

14 Q. How did his hand get to you to be able to put
15 his finger inside your private?

16 A. He went inside my pants. He reached over my
17 little brother, went inside my pants.

18 Q. Okay. What did you -- now, you said you
19 rolled over. So when he's first touching you, where are you
20 facing?

21 A. Towards the wall.

22 Q. Okay. So when you roll over, is his hand
23 still in your pants?

24 A. No, he stops.

25 Q. Okay. When you rolled over, could you see

1 what they said?

2 A. My grandmother, my Uncle Bo, and my
3 Uncle Mike.

4 Q. Okay. And how did he sound on the phone?

5 A. Mad.

6 Q. Did your mom -- shortly after you called her,
7 did your mom come home?

8 A. Yes.

9 Q. How long did she stay there?

10 A. 5 or 10 minute.

11 Q. Okay. Where did she leave -- did she leave
12 the house?

13 A. Yes, she had to go back to work.

14 Q. At some point later, did your mom come back?

15 A. No, she got back at 7:00 when she got off.

16 Q. Okay. The next morning, did you have to talk
17 to anybody, to any police officers?

18 A. Yes.

19 Q. Okay. Did you have -- the pajamas and the
20 clothes that you were wearing when your Uncle Mike touched
21 you, did you keep those on after he had touched you?

22 A. Yes.

23 Q. How long did you keep them on?

24 A. I -- I don't know.

25 Q. Did you have them on still when your mom came

1 Q. While you were talking to your mom, did they
2 wake up?

3 A. No.

4 Q. By the time you called your mom, did you tell
5 you dad what had happened?

6 A. No.

7 Q. Why not?

8 A. Because I feel more comfortable telling my
9 mom.

10 Q. At any point, did you -- after talking to your
11 mom, did you leave the bedroom and go find your dad?

12 A. Yes.

13 Q. Okay. And what was he doing?

14 A. He was sleep.

15 Q. Okay. Where was he sleeping?

16 A. On the couch.

17 Q. Okay. Did you have to wake him up?

18 A. Yes.

19 Q. What did you do when you woke him up?

20 A. I gave the phone to him.

21 Q. Okay. And without telling us anything was
22 said, did your dad talk to anybody else after he got off the
23 phone with your mom?

24 A. Yes.

25 Q. Okay. Who did he talk to, without telling us

1 Q. (By Mr. Nicholls) You mentioned that Mike took
2 some photographs of you and your siblings before he went to
3 bed. Did he say why?

4 A. For family memories.

5 Q. So for other people that weren't there?

6 A. Yes.

7 Q. Now, it's my understanding that Mike came over
8 with Bo to watch football; is that right?

9 A. Yes.

10 Q. And when they came over, did they ever leave,
11 or did they stay the whole evening?

12 A. They left to go to the store.

13 Q. Okay. When they left to go to the store, do
14 you remember about how long they were gone?

15 A. About 5 minutes.

16 Q. Okay. And then they came back; did your dad
17 go with them to the store?

18 A. No.

19 Q. Okay. Now, when they got back -- well, first
20 of all, when they first came over, was it daytime or
21 nighttime?

22 A. Daytime.

23 Q. Okay. Was it in the afternoon?

24 A. Yes.

25 Q. Okay. And I think you said that they --

1 question and it's a little bit difficult with the
2 witness that we have.

3 THE COURT: Go ahead.

4 Q. (By Mr. Nicholls) Did you see the person -- did
5 you see somebody come in the room when your stomach was
6 rubbed?

7 A. No.

8 Q. Did you see a person leave the room when your
9 stomach was rubbed?

10 A. No.

11 Q. When your stomach was rubbed, did you wake up
12 immediately?

13 A. Yes.

14 Q. And --

15 MR. NICHOLLS: Can I have just a moment?

16 THE COURT: Okay.

17 Q. (By Mr. Nicholls) When it comes to the
18 photographs -- you mentioned Mike took some photographs.
19 Did he say why?

20 A. Can you repeat?

21 Q. I'm sorry?

22 A. Can you repeat?

23 THE COURT: Speak up a little bit. It's hard
24 to hear you.

25 MR. NICHOLLS: Sure.

1 there's a fan; is that right?

2 A. Yes.

3 Q. And his head was up towards the headboard of
4 the bed.

5 A. Yes.

6 Q. Now, then, when you went to sleep, I think you
7 said your brother was still awake. When you last saw him,
8 what direction was he facing? Was he facing towards the fan
9 or facing towards the wall like you?

10 A. Facing towards the TV by the fan.

11 Q. Okay. So the TV would be over in the
12 direction of the fan?

13 A. Yes.

14 Q. Now then, just so that I'm clear, after the
15 person touched your stomach, did you say you went back to
16 sleep?

17 A. Yes.

18 Q. Okay. And when you went back to sleep, were
19 you still in the same position facing the wall?

20 A. Yes.

21 Q. And then, when you woke up -- I'm going to put
22 the lid back on this.

23 Actually, before we get to that. So when the
24 person rubbed you on the stomach, did you notice a odor
25 of -- distinctive odor of aftershave?

1 A. No.

2 Q. Did you notice a distinctive odor of alcohol?

3 A. No.

4 Q. And then I think you said you went to sleep.

5 Do you have any idea how long you were asleep?

6 A. 5 or 10 minutes.

7 Q. Now, have you ever said before that you
8 weren't -- that you didn't know how long you were asleep?

9 A. Yes, I think so.

10 Q. So -- but today -- even though you said that
11 before, what you're saying today is, you think it was 5
12 minutes?

13 A. Yes.

14 Q. Okay. Now, when the hand touched your vaginal
15 area, did it come from the top of your pajamas?

16 A. I don't remember.

17 Q. Okay. Is that to say that -- can you say
18 where it came from, or you can't remember?

19 A. I don't remember. I'm not for sure.

20 Q. Okay. Now, when you felt the hand in your
21 private area, did you -- did you immediately move when you
22 felt it?

23 A. No. I opened my eyes.

24 Q. Okay. And when you opened your eyes, what did
25 you see?

1 A. Turned around, seen Uncle Mike.

2 Q. Okay. Now, when you opened your eyes, were
3 you still facing the wall?

4 A. Yes.

5 Q. Okay. And then when you moved, did the
6 touching stop?

7 A. Yes.

8 Q. Okay. And when that -- when it stopped --
9 well, first of all, is the touching what woke you up?

10 A. Yes.

11 Q. Okay. So when you turned around, you said you
12 flipped over. Were your brother and sister still asleep?

13 A. Yes.

14 Q. And they were still in the same places that
15 they were sleeping like what you described before?

16 A. Yes.

17 Q. Okay. And when you turned over, what
18 direction did you turn in?

19 A. Towards the fan or the TV.

20 Q. Okay. So where your brother was?

21 A. Yes.

22 Q. Okay. And then, haven't you said that when
23 you rolled over, you saw Mike at the end of the bed?

24 A. Yes.

25 Q. Okay. But today, what you're saying is, Mike

1 was on the side of the bed?

2 A. Yes.

3 Q. Okay. Now, is it accurate that Mr. Benjamin
4 had given you some money earlier in the night for your good
5 grades and making the honor roll?

6 A. Yes.

7 Q. Okay. And did he tell you not to tell anybody
8 about that money?

9 A. No.

10 Q. Okay.

11 MR. NICHOLLS: May I have just a moment,
12 Judge?

13 THE COURT: You may.

14 Q. (By Mr. Nicholls) Has Mr. Benjamin asked you to
15 keep any other secrets?

16 A. No.

17 Q. Now, the phone that you used -- I think you
18 said you were using your cell phone earlier in the night; is
19 that right?

20 A. No, the house phone.

21 Q. Hold on --

22 A. When I called my mom?

23 Q. Okay. Earlier in the night before you went to
24 bed, what were you doing?

25 A. Before I went to bed?

1 Q. Yes.

2 A. I was playing on my laptop.

3 Q. Okay. Using your cell phone at all?

4 A. At that point in time, I didn't have a cell
5 phone.

6 Q. Okay. Have you previously said that you were
7 playing on your cell phone before you went to bed?

8 A. Most likely.

9 Q. Okay. Now, when it comes to -- so just so
10 that I'm clear, your testimony today is that you -- did you
11 have a telephone in the room you were in?

12 A. The house phone.

13 Q. Was that house phone in your bedroom?

14 A. Yes.

15 Q. Okay. So in order to call your mother, did
16 you have to leave your bedroom to go get the house phone?

17 A. No, I was in my brother and sister room.

18 Q. All right. Okay. So the phone was already in
19 the bedroom. So you didn't have to -- have you previously
20 said that you had to --

21 MS. AMBROSE: Judge, I'm going to -- this is
22 an attempt to impeach, not the correct way.

23 MR. NICHOLLS: How about this, Judge. May I
24 approach the witness?

25 THE COURT: Sure.

1 MR. NICHOLLS: Page 27; line 8.

2 May I approach, Judge?

3 THE COURT: You may.

4 Q. (By Mr. Nicholls) What I would like you to do,
5 read this part. This is just information. I'm going to ask
6 you to read about where the telephone was, okay?

7 So from line No. 8 to line No. 18, read it
8 quietly to yourself. Look up when you're done, okay? Do
9 you understand what we're doing?

10 A. (Nodding head affirmatively).

11 Q. Does that help you remember?

12 A. (Nodding head affirmatively).

13 Q. Yes?

14 A. Yes.

15 THE COURT: Speak up, Mr. Nicholls, so we have
16 a record.

17 Q. (By Mr. Nicholls) So, Janiya, we were talking
18 about the telephone that you used to call your mom.

19 How did you call your mom?

20 A. With the house phone.

21 Q. And did you have your phone with you in the
22 bedroom?

23 A. No, I didn't have a telephone at the time.

24 Q. So when you went to bed, where was your
25 telephone?

1 A. The house phone was in the room with me. I
2 didn't have a phone at the time.

3 Q. Okay. And that's the same room that you were
4 sleeping in?

5 A. Yes.

6 Q. Thank you.

7 MR. NICHOLLS: Judge, I don't have any other
8 questions, thank you.

9 THE COURT: All right. Ms. Ambrose.

10 REDIRECT EXAMINATION

11 BY MS. AMBROSE:

12 Q. Janiya, when you went to go wake up your dad,
13 when your -- after you talked to your mom, was he awake or
14 asleep?

15 A. He was sleep.

16 Q. Now, earlier, Mr. Nicholls ask you about what
17 direction the hand came from that touched your privates,
18 right?

19 A. Yes.

20 Q. Okay. Were you wearing pajama pants or pajama
21 shorts?

22 A. Pajama pants.

23 Q. Do you know what a waistband is?

24 A. Yes.

25 Q. Do you remember if the hand was coming up

1 through the pant leg or waistband, or some other way? Do
2 you remember how your uncle's hand got to your privates?

3 A. I think to the -- I don't know how for sure.

4 Q. How else would his hand have got to your
5 privates?

6 MR. NICHOLLS: Object; speculation.

7 MS. AMBROSE: Judge --

8 THE COURT: Overruled. She can answer.

9 A. I really don't remember.

10 Q. (By Ms. Ambrose) Okay. Well, you said these were
11 long pants, right?

12 A. Yes.

13 Q. Was there any kind of -- do you know what a --
14 you know, like, on jeans or pants, there's a zipper or
15 buttons?

16 A. Yes.

17 Q. Was there anything like that on these pants?

18 A. No, it was something that you tie up to make
19 them tighter.

20 Q. Okay. So do you remember how his hand got
21 through your underwear?

22 A. No.

23 Q. Okay. What did you feel on your body? Let me
24 just -- let me ask you this: <

25 You're laying on your right side, right,

1 There's many factors that go into touch DNA.

2 Q. In that way, is it somewhat different from
3 blood, or semen?

4 A. Yes. Blood and semen, I usually expect a very
5 good profile. And touch DNA is not as reliable. It
6 doesn't -- you -- it cannot -- or -- sometimes, it won't
7 have as well of transfer as, say, blood that has many
8 cellsful of DNA.

9 Q. Did there come a time when FDLE was requested
10 to conduct DNA analysis on the sexual assault kit collected
11 from Janiya Henderson in investigation of FDLE case
12 No. 20160206224?

13 A. Yes.

14 Q. Okay. And what did you receive into your
15 custody?

16 A. I received the sexual assault evidence kit
17 from Janiya Henderson.

18 Q. And what does that include?

19 A. Inside the kit were buccal cheek standards.
20 That's a swabbing of the inside of her mouth to serve as her
21 standard for DNA. Also, there were vaginal swabs, and
22 external genitalia swabs.

23 Q. And which of these items were subjected to the
24 analysis you previously described?

25 A. All of them went through some form of

1 analysis.

2 Q. What were the results obtained from the
3 evidence you tested?

4 A. For the buccal cheek standard, I ran it
5 through the entire DNA process and contained a complete DNA
6 profile that could be used for Janiya Henderson's standard.

7 In terms of the vaginal swab, it went through
8 the extraction process, and then the DNA quantitation
9 process.

10 At that step, it says how much DNA's in that
11 sample. And for the vaginal swab sample, it did not detect
12 any male DNA, because the DNA quantitation step will say how
13 much human DNA is there, and what amount of that is
14 applicable to a male individual. And in terms of the
15 vaginal swabs, there was no quantifiable male DNA there, so
16 by our protocols, analysis was stopped on that sample.

17 Q. And was that for both the external and the
18 internal swabs?

19 A. That was for the vaginal swabs in terms of the
20 external exterior genitalia swabs, that also went through
21 the extraction process. Then DNA and quantitation process.
22 The male quantitation result for that sample was that it was
23 very limited. It was -- indicated a trace amount of male
24 DNA.

25 And in comparison to how much human or female

1 DNA can be very limited to begin with, but then, on top of
2 that, you're talking about entering those skin cells, say, a
3 vagina or external genitalia where there's tons of female
4 DNA.

5 So a lot of times, female DNA can potentially
6 mask any male DNA. For example, say you had an empty pool,
7 and you filled it with thousands of pink balls, and those
8 pink balls represent the female DNA that is found in the
9 vagina.

10 Then say maybe you threw maybe 10 green balls
11 into the pool, mixed it in. The green cell balls represent
12 skin cells from a male individual sampling that area.

13 Say I took a bucket, dipped it into the pool,
14 and then looked at what resulted, more than likely, you'd
15 basically just see the pink balls or the female DNA. That's
16 an analogy for digital penetration skin-cell-only transfer.

17 Q. On top of that, do -- how well do skin cells
18 survive in the vagina?

19 A. Foreign skin cells do not survive well in a
20 vagina. What survives well in vagina are sperm cells.
21 They're heartier. They're made to be there. They usually
22 survive a lot better.

23 Q. Now, if Janiya, in between being digitally
24 penetrated and having these swabs collected, if she had gone
25 to the bathroom and wiped herself, would that have any

1 DNA was there, it was substantially low. And it falls
2 within the category where there's trace amounts very low of
3 male detected. If I were to continue through the process, I
4 wouldn't expect any further information, so at that point, I
5 stopped, and it was concluded that the quantitation failed
6 to demonstrate a sufficient amount of DNA for further
7 testing.

8 Q. So there was a very small amount, but you
9 couldn't do anything else with it?

10 A. Correct.

11 Q. Okay. And when you say you can't do anything
12 else with it, there's no way to do the further steps of
13 trying to figure out who that DNA belonged to; is that
14 right?

15 A. Correct. There's such a small amount that
16 even if I ran it through the process, I wouldn't see
17 anything.

18 Q. In cases of the allegations that are digital
19 penetration only, do you expect to get a similar result as
20 far as touch DNA goes?

21 A. If you're talking about digital penetration
22 where you're only talking about skin cell transfers from
23 hands, or -- or fingers, in my opinion, the results mostly
24 to get are no DNA results, or limited DNA results.

25 And the reasoning for my opinion is that touch

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1 MS. AMBROSE: Thank you. Those are my
2 questions.

3 THE COURT: Any redirect?

4 MR. NICHOLLS: No redirect.

5 THE COURT: Now is Dr. Elliott free to go?

6 MR. NICHOLLS: Yes, Judge.

7 MS. AMBROSE: Yes, Judge.

8 THE COURT: You're free. Don't discuss your
9 testimony.

10 THE WITNESS: Thank you.

11 (Witness exits courtroom)

12 THE COURT: Ladies and gentlemen, to kind of
13 explain, Mr. Nicholls wanted to call Dr. Elliott in his
14 case. We went ahead and did that so she could go on,
15 so that was the second part of what we could do.

16 Okay. Ms. Ambrose.

17 MS. AMBROSE: Judge, at this time, the State
18 has no other witnesses. The State rests.

19 THE COURT: Okay. All right. Ladies and
20 gentlemen, it's -- we need to take up some things
21 outside your presence, and so I'm going to ask that you
22 all step in the back. Don't discuss the case.

23 And then I'll bring you back in, we'll figure
24 out where we're going from there, okay? Thank you.

25 (Jury out)

1 THE COURT: All right. Mr. Nicholls.

2 MR. NICHOLLS: Judge, have a minute to -- one
3 witness is in the hallway. I'm going to talk to
4 Mr. Benjamin about whether or not he'd like to testify.
5 If I could have just a few minutes, give me a minute or
6 two.

7 (Recess)

8 MR. NICHOLLS: First of all, Mr. Benjamin
9 decided he'd like to testify.

10 THE COURT: Okay.

11 MR. NICHOLLS: Then I want to double-check,
12 make sure the witness is out in the hallway.

13 MS. AMBROSE: He is.

14 MR. NICHOLLS: Okay.

15 THE COURT: Let me do an inquiry of
16 Mr. Benjamin.

17 Raise your right hand.

18 (Defendant sworn)

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Mr. Benjamin, have you -- you can
21 put your hand down. Stand up for me.

22 Have you had a chance to talk to your attorney
23 about the advantages and disadvantages of testifying?

24 THE DEFENDANT: Yeah -- yes, ma'am.

25 THE COURT: Okay. And you understand that you

1 THE DEFENDANT: Yes, ma'am. I understand.

2 THE COURT: That means no blurting. The
3 question is have you ever been -- I think this is the
4 way it goes:

5 Have you ever been convicted of a felony?

6 Answer would be yes.

7 THE DEFENDANT: Yes.

8 THE COURT: How many?

9 THE DEFENDANT: Six.

10 THE COURT: That's the end of it.

11 THE DEFENDANT: Uh-huh.

12 THE COURT: You understand?

13 THE DEFENDANT: I got it. Yes, ma'am.

14 THE COURT: Okay. Not six, and let me tell
15 you all about them. It's six, yes, period. Okay?
16 That's the way it works if you want to testify. That's
17 up to you. But the State gets to do their thing, and
18 that's the way it comes out.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Okay. Expect you to follow my
21 rules.

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you want to make a motion just
24 for the record?

25 MR. NICHOLLS: Sure, Judge. The Defense would

1 make a Motion Judgment of Acquittal of Insufficient
2 Evidence. There -- just leave it at that.

3 THE COURT: Okay. Ms. Ambrose, do you need to
4 say anything?

5 MS. AMBROSE: Do I need to say anything?

6 THE COURT: I don't think so, but I did want
7 Mr. Nicholls put it in the record.

8 MS. AMBROSE: Yes, ma'am.

9 THE COURT: Deny the Motion for Judgment of
10 Acquittal. Apparently, there are other witnesses out
11 there. If you all are ready, I'm ready.

12 Okay.

13 (Pause in proceedings)

14 (Jury present)

15 COURT SECURITY: Jury's in the box.

16 THE COURT: Okay. Everybody okay over there?

17 JURORS: Yeah.

18 THE COURT: Okay. For the record, defendant
19 is present. Counsel, assistant state attorney is
20 present.

21 Mr. Nicholls, the State has rested.

22 MR. NICHOLLS: Thank you, Judge.

23 Defense called Douglas Benjamin.

24 THE COURT: Douglas Benjamin.

25 (Witness enters courtroom)

1 A. I found Katina and Leon.

2 Q. Okay. And was Katina in the front, or at some
3 point did she go back there with Janiya, or was she out
4 there the whole time?

5 A. As some point -- when I got there, she was in
6 the front, and -- both of them's in the front, Leon and her.

7 Q. Okay. And did she stay in the front the whole
8 time, or did she --

9 A. No, I think they did -- if I'm mistaken (sic),
10 she went back there a time or two.

11 Q. Now, did that leave you in the front with Leon
12 for some period of time?

13 A. Yes.

14 Q. Okay. Did Leon complain about how long it was
15 taking for the interview process?

16 A. Yes. He said he had them --

17 MS. AMBROSE: I'm going to object to what he's
18 saying.

19 THE COURT: Sustain -- hearsay?

20 MS. AMBROSE: Yes, ma'am.

21 THE COURT: Sustained.

22 MR. NICHOLLS: And, Judge, just briefly. My
23 purpose is not to offer this for the truth of the
24 matter asserted, just that Leon complained about these
25 things.

1 THE COURT: I'm going to sustain the
2 objection.

3 MR. NICHOLLS: Okay.

4 Q. (By Mr. Nicholls) Did Leon's demeanor seem like
5 he was agitated to you?

6 A. When I walked in, seemed like he was agitated.
7 He was, like, "They -- "

8 THE COURT: Don't repeat what he said, just
9 answer his question.

10 A. Yes.

11 Q. (By Mr. Nicholls) Okay. And do you know Leon
12 well?

13 A. Yes, I do.

14 Q. How are you related to Leon?

15 A. That's my son.

16 Q. Okay. And what was Leon's reaction when
17 Janiya came out of the interview?

18 A. When he come -- when they come out the
19 interview, when they brung Janiya out, they walked -- walked
20 them out to the door, and I was behind them. And the
21 nurse -- and talked with Katina. And the nurse turned
22 around, went inside, and when the nurse turned her back,
23 went inside, the first thing Leon --

24 MS. AMBROSE: Objection.

25 THE COURT: Sustained.

1 A. And we got -- when we got ready to leave, Leon
2 had been laying back down. He layed on the sofa. He was --
3 you know, he was reclining back. And we was getting ready
4 to walk out, and me and Bo went to -- was going to the door.

5 I stuck my head in the doorway and told Niya,
6 I said, "Goodnight." I said, "Lock the door because I think
7 your dad's trying to sleep."

8 And I said, "Don't forget, don't tell anybody
9 about that money that we gave you. Don't forget to tell,
10 because I don't want your mother mad with me. Keep that to
11 yourself."

12 Q. And you said you stuck your head in the door.

13 Are you talking about stuck your head in the
14 doorway of the children's bedroom?

15 A. Pretty much, yes, sir.

16 Q. Did you enter?

17 A. I probably stood in the doorway, like
18 (indicating).

19 Q. Okay. Did you walk as far in as the bed?

20 A. No, I don't go in.

21 Q. Seconds, minutes, hours or days, how long were
22 you standing there?

23 A. Seconds.

24 Q. Okay. Ten seconds?

25 A. She woke. She woke. She was kind of -- you

1 talk to them?

2 A. The only time I went back there spoke to them
3 when I was leaving. When me and Bo was leaving out the
4 door.

5 Q. Okay. So before we get to that, how much of a
6 time period went by between you hearing this commotion and
7 then you getting up to leave?

8 A. We left about -- maybe about 20 minutes after
9 that.

10 Q. Okay. And --

11 A. We -- it was just going into overtime.

12 Q. During that 20 minutes, did Janiya come out of
13 her room at any point?

14 A. I think she walked out and went in the kitchen
15 and got something to drink. And she went back in.

16 Q. Now, who all -- was Leon awake at that point?

17 A. Yes.

18 Q. Okay.

19 A. I think he was awoken at that point.

20 Q. What about Bo?

21 A. No, Bo wasn't quite woke then.

22 Q. So when you decided it was time to go, what
23 did you do?

24 A. I woke Bo up. I hollered at Bo.

25 Q. And then what did you do?

1 Q. Was there anything like that with Keyondrace
2 having a bad dream or crying?

3 A. No.

4 Q. Did anybody from the living room ever yell
5 out, "Hey, what's going on in there"?

6 A. No.

7 Q. Okay. Before your Uncle Bo, Lorenzo and
8 Uncle Mike, Phillip, left, besides coming in when he touched
9 you, did Uncle Mike ever come in and say goodnight to you?

10 A. No.

11 Q. Okay. Did he ever come in and talk about the
12 money he gave you earlier that day?

13 A. No.

14 MS. AMBROSE: Thank you. I don't have any
15 other questions.

16 THE COURT: All right. Mr. Nicholls is going
17 to ask you some questions again. And remember, if it's
18 a yes or no, keep a short yes or no answer.

19 CROSS-EXAMINATION

20 BY MR. NICHOLLS:

21 Q. Janiya, did Uncle Bo come back and say
22 goodnight, they were leaving, lock the door?

23 A. I don't remember.

24 MR. NICHOLLS: No other questions.

25 THE COURT: Okay. Anything else?

1 THE WITNESS: Janiya Henderson.

2 THE COURT: And you're still under oath.

3 Ms. Ambrose is going to ask you some questions.

4 Oh, we need to clear the courtroom again.

5 (Pause in proceedings)

6 THE COURT: You may inquire.

7 WHEREUPON, JANIYA HENDERSON,

8 having been previously duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. AMBROSE:

12 Q. Janiya, after you got in bed and said your
13 prayers, and you said the TV was on turned, the lights were
14 off?

15 A. Yes.

16 Q. Did you ever get back out of bed to get a
17 drink of water from the kitchen?

18 A. No.

19 Q. Or any drink from the kitchen?

20 A. No.

21 Q. Okay. At any point that night, was there --
22 do you know what a commotion is?

23 A. Yes.

24 Q. Okay. Like, a big noise or anything?

25 A. No.

1 one point, even Mr. Benjamin, the defendant, agrees
2 that he goes back into the children's rooms and he's
3 hanging out back there, taking pictures. He was there
4 when they said their goodnight prayers. But he's also
5 getting the lay of the land. How is this room set up,
6 how can I maneuver around this room.

7 As the game continues, both Leon Benjamin and
8 Uncle Bo fall asleep. They're asleep. You heard Bo,
9 Lorenzo Benjamin's testimony, that basically the entire
10 second half of the football game, and the entire period
11 of overtime.

12 You heard Bo's testimony today that when he --
13 by the time he dozed off, his brother Leon Benjamin had
14 already been asleep. And when he wakes up with 20
15 seconds left in the game, his brother Leon Benjamin is
16 still asleep.

17 So it's his testimony that his brother had
18 been asleep basically the entire second half of the
19 game, again, leaving Phillip Benjamin, the defendant,
20 the only adult who's awake in this house, free to do
21 whatever he chose to do as his nephews slept in the
22 living room. And what he chose to do was go back in
23 the bedroom where the children were sleeping and to
24 sexually abuse his great-niece.

25 She told you she woke up -- she said the first

1 defendant is present with Counsel. Assistant state
2 attorney is present.

3 Ladies and gentlemen, both the State and the
4 Defense have rested their case. The attorneys will now
5 present their final arguments. Please remember what
6 the attorneys say is not evidence; however, it is
7 intended to aid you in understanding the case.

8 Each side will have equal time, but the State
9 is entitled to divide that between an opening and a
10 rebuttal argument after the Defense has spoken.

11 Ms. Ambrose.

12 MS. AMBROSE: Judge, may it please the Court,
13 defense counsel.

14 Members of the jury, on October 23rd of 2016,
15 Janiya Henderson is at home with her family members;
16 her dad, her uncle, her great uncle. At home, with her
17 family. A place where she should feel safe. But,
18 unfortunately, this defendant violated those feelings
19 of safety, violated that family trust, when he entered
20 her bedroom and he touched her.

21 Now, you heard testimony today that Katina
22 Henderson, Janiya's mother, was at work. You heard
23 testimony that Leon Benjamin the dad, Uncle Bo, and the
24 defendant were all watching football. You heard that
25 the father and the defendant were drinking beer, and at

1 got -- you know, so she gets the call, she talks to her
2 daughter, talks to Leon Benjamin, then drives 30 to 45
3 minutes.

4 She gets home and her daughter is still very
5 upset and crying about what happened to her. And then
6 when she gets off shift that morning, she calls the
7 police, gets that ball rolling, and was directed to go
8 to the Kids House, all that.

9 Now, that Monday, October 24th, they go to the
10 Gulf Coast Kids House. You heard from Aayana McCreary,
11 you saw the interview yourself.

12 And so you understand that this
13 then-13-year-old girl has to meet this friendly but
14 perfect stranger, to her, and had to talk to her in
15 detail about a very personal, unpleasant, embarrassing
16 thing that's just happened her in her own home.

17 And after that, she's given an invasive
18 medical examination head-to-toe. She has to undress.
19 You heard she has to get in a gown, and then on top of,
20 you know, being visually examined, she has to be
21 swabbed both externally and internally to look for
22 potential DNA.

23 And despite this unpleasantness and this
24 embarrassment, at no point did she say, "I don't want
25 to do this," did she just say, "Never mind this didn't

CREATE (STEWART) FOR RECORDING STATEMENT IS NOT TO STATE IT WAS NEVER MADE
BUT WILL "CONTINUE TO TELL EXACTLY WHAT THAT MEANS"

1 And lo and behold, around 11:00, 11:30 at
2 night, she happens to be awake. She told you she was
3 woken up when her great-uncle came in the room and
4 touched her.

5 So then she calls her mother, who was at work,
6 in a panic about what happened to her. You heard
7 Ms. Henderson talk about she couldn't even understand
8 her until she got Janiya to calm down. And, again, all
9 the while, even during this very emotional phone call
10 that was made in the same bedroom as her little brother
11 and sister, they never woke up.

12 So it's not hard to believe that they also
13 slept through the defendant creeping into the bedroom,
14 and quietly touching their sister.

15 She goes and she wakes up her father in the
16 living room. Remember, he was asleep the whole time,
17 according to Bo, and Janiya said she had to go wake him
18 up on the couch, tells him what happened to her. He
19 calls his brother, who's driving the defendant home.

20 Now, again, throughout all of this, her
21 siblings slept.

22 Her mother comes home from work, and couldn't
23 get off the entire shift since they're already
24 short-handed, kind of had to take a quick break. She
25 said the ride was maybe 30 to 45 minutes after she

1 that her male uncle has touched her.

2 And Dr. Elliott also told you many reasons
3 where it wasn't surprising to her that she wasn't able
4 to find enough DNA skin cells to run additional tests
5 to determine who does this male DNA belong to.

6 There was also testimony that she was not
7 provided any clothing to analyze, and she talked about
8 numerous issues and reasons that would have arisen if
9 she had tried to test the clothing for touch DNA. It's
10 very different from blood or semen that -- skin cells,
11 there's a lot of variables go into it to determine if
12 enough cells would be left to -- even on this podium to
13 give her enough to test.

14 Now, she said the sheer volume of Janiya's
15 cells may have masked any foreign DNA. And we talked
16 about foreign DNA. We mean DNA that doesn't belong to
17 the person wearing the clothes.

18 She also said the fact that Janiya had her
19 clothes on, you know, from before midnight until the
20 clothes were collected early that next morning, she
21 would be constantly depositing her own cells on her
22 clothes, masking any DNA profile that might be on
23 there. She gave the example of the pool with the paint
24 balls in it. The fact that Janiya slept in her bed
25 with her siblings would have caused problems with

1 happen to me." She continued to tell both women
2 exactly what she told you all today almost a year
3 later.

4 Now, Barbie Valletto, Nurse Valletto, she
5 described that she didn't -- on visual examination, she
6 didn't find any injuries. You know, internally or
7 externally. And she described the anatomy of, you
8 know, the vaginal area to you, and she explained why
9 it's not shocking to her that based on the allegations
10 of digital penetration, she's not surprised there's not
11 tearing, bleeding, redness, anything.

12 She also said the lack of physical injuries
13 doesn't mean this doesn't happen, and she also used the
14 analogy of chest pain: You can't see it but that
15 doesn't mean the history isn't accurate. If someone
16 says "I have chest pain," it's not something you can
17 see, but they're telling you something that happened to
18 them.

19 Now, the swabs were sent to Florida Department
20 of Law Enforcement. And you heard from Dr. Elliott
21 that she ran all of those tests that she talked about,
22 and the -- she could only find a trace amount of male
23 DNA. So not enough to do any further analysis to say
24 who does this belong to, but that's very important
25 because it still corroborates what Janiya has said,

1 charged with lewd or lascivious battery. To prove lewd
2 or lascivious battery, the State must prove the
3 following two elements beyond a reasonable doubt:

4 The first is that Janiya Henderson was 12
5 years of age or older, under 16 years of age. You
6 heard the testimony she was 13 at the time. The second
7 element is that Phillip Benjamin committed an act upon
8 her in which her vagina was penetrated by an object,
9 and the object includes a finger.

10 So that's -- those are the two things that the
11 State has to prove to you beyond a reasonable doubt for
12 you to find him guilty of lewd or lascivious battery.
13 And I submit to you that the evidence and the testimony
14 that you've heard today, we've met that burden.

15 You heard from Janiya, that that's exactly
16 what he did to her almost a year ago. You heard from
17 numerous witnesses that Mr. Benjamin was present in
18 this house, that he had the opportunity to go back
19 there. He was the only adult who was awake as the
20 other adults were sleeping, or Ms. Henderson, who was
21 at work. So he had the opportunity to commit this
22 crime.

23 And you might be wondering, Well, why would he
24 do that? And that is an interesting but legally
25 irrelevant question, because nowhere in this packet of

1 instructions are you going to find the State has to
2 prove why someone would sexually abuse a child.
3 Because, I mean, we -- we simply could not answer that
4 question for you.

5 But you do recall that there was testimony
6 from several witnesses that throughout the day, I think
7 there was three different football games they were
8 watching, they were watching football, drinking beer
9 throughout the day.

10 The jury instructions are going to tell you
11 when you're deliberating and considering the evidence
12 you can use your common sense. And anyone who's ever
13 had too much to drink, or been around people who have
14 had too much to drink, using your common sense, you
15 know that alcohol can lead to very bad behavior.

16 And in this case, perhaps, that's the reason.
17 But we don't know why. Maybe that's why this led to
18 very criminal behavior.

19 You've heard throughout jury selection and
20 throughout this trial today that the State has the
21 burden of proof. That we must prove Mr. Benjamin's
22 guilt to you beyond a reasonable doubt. And I respect
23 that burden. And I accept it. And I have met that
24 burden.

25 And that's why I'm asking you to find him

1 Janiya, who at no point was up against the wall, as
2 defense counsel tried to show with that laser pointer
3 that one time.

4 She told you you can see the pillow where she
5 was laying. That's where she said her head was. There
6 was not a lot of space between the edge of the bed
7 where Mr. Benjamin would have been and her, and having
8 to touch her.

9 For as much of a point about speculation as
10 defense counsel made about, Don't speculate, the
11 State's inviting you speculate, don't speculate, the
12 entire dream theory is a complete and utter
13 speculation. It's a total invitation to speculate
14 about, Oh, she must have been dreaming because your
15 verdict must be based on evidence and the law. And
16 there is absolutely zero evidence in this case that
17 Janiya Henderson was dreaming.

18 Defense counsel said it himself before he
19 brought this dream -- he said, "This is just my
20 opinion." Well, great, because that's not evidence.
21 That's not the law. That -- that is pure speculation.

22 Janiya testified she woke up, and the
23 defendant was still touching her. And he was touching
24 her until she rolled over and saw that it was him, that
25 until she could have moved, he knew she was awake, was

1 still touching her.

2 She was 13 years old when this happened, not
3 6, not 5, a little kid who maybe had a dream about
4 this. She's a teenager, and was very clear this is not
5 a dream. And just minutes before she woke up to the
6 defendant touching her, she had woken up to someone
7 touching her stomach. So how deep in sleep could she
8 have possibly been about having dream about digitally
9 penetrated?

10 MR. NICHOLLS: Objection; facts not in
11 evidence.

12 THE COURT: Overruled.

13 MS. AMBROSE: And let's get this straight
14 about this whole, Don't tell anybody about the money I
15 gave you. That did not happen.

16 Janiya herself took the stand after
17 Mr. Benjamin testified and said he never told me not to
18 tell. And this whole thing -- it didn't make sense
19 when he was saying it. He said, you know, before I had
20 given one of the kids something and not the other two,
21 and Ms. Henderson told me only give the kids something
22 if you can give all three, and I didn't want Janiya to
23 say anything because the other two kids didn't have
24 anything.

25 Well, didn't you just tell us that Bo gave the

1 has been accused of the crime of lewd or lascivious
2 battery, victim under 12 but under 16 years of age.

3 To prove the crime of lewd or lascivious
4 battery, the State must prove the following two
5 elements beyond a reasonable doubt:

6 No. 1, J.H. was 12 years of age or older but
7 under the age of 16 years.

8 No. 2, Mr. Benjamin committed an act upon J.H.
9 in which the vagina of J.H. was penetrated by an
10 object; an object includes a finger.

11 In considering the evidence, you should
12 consider the possibility that although the evidence may
13 not convince you the defendant committed the main crime
14 of which he is accused, there may be evidence that he
15 committed other acts that would constitute a lesser
16 included crime.

17 Therefore, if you decide the main accusation
18 has not been proved beyond a reasonable doubt, you will
19 next need to decide if the defendant is guilty of any
20 lesser included crimes.

21 The lesser crimes indicated in the definition
22 of lewd or lascivious are lewd or lascivious
23 molestation, committing an unnatural and lascivious
24 act, and battery.

25 To prove the crime of lewd or lascivious

1 versus when he touched her.

2 I want you to remember that she has been one
3 hundred percent consistent regarding how she's been
4 touched and who touched her. To her mother on the
5 phone, minutes after it happened. To Aayana McCreary
6 at the Gulf Coast Kids House the next day. To Barbara
7 Valletto, the nurse who examined her the next day.

8 So September 7th, 2017, when she took the
9 stand and told you exactly what happened to her, are
10 there some maybe minor inconsistencies, like who was
11 drinking what? Sure. But that, I submit to you, does
12 not rise to the level of reasonable doubt, and you
13 should still consider and weigh this evidence, and you
14 will find that you have proof beyond a reasonable doubt
15 that he has done this.

16 And that's, again, why I'm going to ask you to
17 return a guilty verdict as charged.

18 THE COURT: Thank you.

19 All right. Ladies and gentlemen, we're
20 handing out jury instructions. Please wait. We'll
21 read them together, okay?

22 Members of the jury, I thank you for your
23 attention during the trial. Please pay attention to
24 the instructions I am about to give you.

25 Phillip Benjamin, the defendant in this case,

APPENDIX C

1 Q. What is your dad's brother's name?
2 A. We call him Uncle Bo.
3 Q. Uncle Bo?
4 A. Yes.
5 Q. Was Uncle Bo watching football, too?
6 A. Yes.
7 Q. Was this -- again, earlier in the day -- daytime or
8 nighttime?
9 A. This all happened daytime and nighttime. They was
10 there at two o'clock until they left.
11 Q. You mean two o'clock in the afternoon?
12 A. Yes.
13 Q. At two o'clock in the afternoon were they watching
14 football?
15 A. I don't know. My dad started cooking then.
16 Q. They came over to watch football and eat?
17 A. Yes.
18 Q. At some point did Uncle Mike leave?
19 A. No.
20 Q. At some point did Uncle Bo leave?
21 A. No, until like it was time for them to go.
22 Q. From two o'clock until late at night, were they all
23 there together?
24 A. Yes.
25 Q. Did any of them leave, by "any of them," did Uncle

1 Mike leave at any point?

2 A. Like, around twelve o'clock.

3 Q. Midnight?

4 A. Yes.

5 Q. Is that when he left for good?

6 A. Yes.

7 Q. The reason I'm asking, it was my understanding that
8 he was there two different times during the day, but it
9 sounds like what you are telling me is he was there the one
10 time and stayed for a long time; is that right?

11 A. Yes.

12 Q. When Uncle Bo got there to watch football, did he
13 stay until late at night?

14 A. Yes. They came in the same car.

15 Q. Uncle Bo and Uncle Mike did?

16 A. Yes.

17 Q. Your dad, did he stay the whole time or did he leave
18 sometime during the football game?

19 A. He stayed.

20 Q. The whole time?

21 A. Yes.

22 Q. Where was your mom? Let's say starting at two
23 o'clock when these guys got there, where was your mom?

24 A. She was just leaving for work.

25 Q. Do you have any idea about what time she left to go

1 A. I turned off the light.

2 Q. And got in bed?

3 A. Yes.

4 Q. Had Uncle Mike walked out of the room at that

5 point?

6 A. Yes.

7 Q. When Uncle Mike walked out of the room, did he go

8 back in the direction of the living room or somewhere else?

9 A. The living room.

10 Q. Did you go to bed?

11 A. Yes.

12 Q. Fall asleep?

13 A. Yes.

14 Q. As far as you know, did your brother and sister fall

15 asleep before you or after you?

16 A. A little after me. My brother did.

17 Q. They were still awake when you fell asleep?

18 A. Yes.

19 Q. At some point, you woke up; is that right?

20 A. Yes.

21 Q. Tell me what happened when you woke up.

22 A. He was touching on me. I thought it was my little

23 brother. When I turned around, he was asleep, and he was out

24 of the room. I went back to sleep. That's when he came back

25 in there.

1 Q. You are referring to "he," who are you talking
2 about?
3 A. Uncle Mike.
4 Q. You mentioned that when you woke up, he was touching
5 you; where was he touching you?
6 A. He was touching me on my stomach the first time.
7 Q. Where on your stomach?
8 A. Like the upper part.
9 Q. On top of your clothes or under your clothes?
10 A. Under my clothes.
11 Q. What clothing were you wearing when this happened?
12 A. I had a shirt and some pants on.
13 Q. What about undergarments; what, if any,
14 undergarments did you have on?
15 A. I had my panties and my bra.
16 Q. When this is happening, did you actually see Uncle
17 Mike when he was touching your stomach or no?
18 A. NO.
19 Q. When you woke up and felt somebody touching your
20 stomach, what did you do?
21 A. I turned around. I thought it was my brother. When
22 he goes to sleep, he rubs on us. I thought it was him. He
23 was asleep. I thought it was a cover or something, so I
24 turned back around and went back to sleep.
25 Q. Did you see anybody in the room at that point?

1 A. No.

2 Q. Did you see anybody leaving the room at that

3 point?

4 A. No

5 Q. Did anybody say anything to you at that point?

6 A. No.

7 Q. Did you notice a distinctive odor of alcohol or

8 aftershave or perfume or anything like that?

9 A. No.

10 Q. I think you said you went back to sleep.

11 A. Yes.

12 Q. Then at some point you woke up later?

13 A. Yes.

14 Q. Do you have any idea how much later?

15 A. I don't really know. It was somewhere around 11:30

16 or something.

17 Q. Do you have any idea what time it was that you woke

18 up the first time?

19 A. No.

20 Q. Do you have any idea how long you had been asleep

21 when you woke up the first time?

22 A. No.

23 Q. You woke up the second time. What happened?

24 A. He had his fingers in my pants.

25 Q. Touching your private parts?

1 A. Yes.

2 Q. Now, when somebody touched your belly the first
3 time, did they touch anywhere other than your belly?

4 A. No.

5 Q. On this occasion, did the person touch anywhere
6 other than your private parts?

7 A. The second time?

8 Q. The second time.

9 A. Yes, just my private parts.

10 Q. In the front or the back?

11 A. The front.

12 Q. When this person touched the front, was it just on
13 the outside or was it outside and inside?

14 A. Inside.

15 Q. Inside. When that happened, what, if anything, did
16 you do?

17 A. I turned around and that's when he stopped.

18 Q. When you say you turned around, can I presume you
19 were laying down when this happened?

20 A. Yes.

21 Q. Were you laying on your back, were you laying on
22 your front, were you laying on your side; do you remember?

23 A. On my side.

24 Q. Are there three people in the bed at this point,
25 your brother, your sister and you?

1 A. He walked out.

2 Q. What did you do?

3 A. I laid there and waited until he left.

4 Q. When he walked out of your room, did you see what

5 direction he walked in?

6 A. He walked towards the living room.

7 Q. If you know, where was your dad and Uncle Bo when

8 all this was happening?

9 A. They was asleep on the couch.

10 Q. How do you know that?

11 A. Because I went to sleep -- when I woke up, I peeked

12 around the corner and my Uncle Bo was on the couch, on the

13 little couch with his son. My dad was on the other couch.

14 Q. Were they watching football or what were they

15 doing?

16 A. They was asleep.

17 Q. Is this after Uncle Mike walked out of the room?

18 A. Yes.

19 Q. After he walked out of the room, it sounds like you

20 got out of bed.

21 A. Yes.

22 Q. What did he do? Those two guys that were sleeping,

23 what did he do, he being Uncle Mike, what did he do?

24 A. He told Uncle Bo the game was over, and that's when

25 they left.

1 A. Yes.

2 Q. Now, you mentioned he said a couple of things. Did
3 he say anything else?

4 A. No. He was, like, "Keep this between me and you,
5 don't tell nobody. If you need anything, just tell me."

6 Q. Had anything like that happened with Uncle Mike
7 before?

8 A. No.

9 Q. Has Uncle Mike ever told you you were worthless or
10 anything like that?

11 A. No.

12 Q. Did Uncle Mike tell you you were a poor student and
13 you didn't deserve to live in a nice house?

14 A. No.

15 Q. Has Uncle Mike ever been mean to you over the
16 years?

17 A. No.

18 Q. Has Uncle Mike ever touched you anywhere other than
19 the two places that we have talked about today?

20 A. No, just to give a hug or something.

21 Q. Has Uncle Mike ever asked you to keep other
22 secrets?

23 A. No.

24 Q. After he said these things, did he get up and walk
25 out or what did he do?

1 A. She told me to give the phone to my dad.

2 Q. Had you already told your dad or not yet?

3 A. Not yet.

4 Q. Is there a particular reason, or how come you didn't

5 tell your dad because he was there?

6 A. I tell my mom mostly everything.

7 Q. When this happened, did you think it was wrong?

8 A. Yes.

9 Q. Is that why you called your mom as quickly as you

10 could?

11 A. Yes.

12 Q. It sounds like the reason you didn't tell your dad

13 is because you typically tell your mom -- I'm not sure I

14 quite understand.

15 A. I told her more, like, personal girl stuff.

16 Q. Would it be accurate to say you weren't very

17 comfortable telling your dad?

18 A. Yes.

19 Q. When you handed the phone to your dad, tell me what

20 happened.

21 A. I woke him up and handed him the phone. That's when

22 my momma told him, and that's when he said he will handle it.

23 He hung up the phone and called Uncle Mike, and him and Uncle

24 Mike was arguing.

25 Q. Your dad and Uncle Mike were arguing?

1 Q. Did they leave pretty quickly after this happened?
2 A. Not quickly but about five or ten minutes.

3 Q. When Uncle Mike left, what, if anything, did you
4 do?

5 A. I called my mom.

6 Q. How did you call her?

7 A. Through the house phone.

8 Q. Did you have your phone with you in the bedroom?

9 A. No.

10 Q. When you went to bed, where was your telephone?

11 A. It was in my little brother's room because my mom
12 called and wanted to wake us up.

13 Q. When you say in your little brother's room, is that
14 the same room you were sleeping in?

15 A. Yes.

16 Q. When you went to sleep, your phone was in the room
17 that you were in?

18 A. Yes.

19 Q. When Uncle Mike left, you mentioned that you called
20 your mom from the house phone; is that right?

21 A. Yes.

22 Q. What did you tell her?

23 A. I told her that Uncle Mike had touched my private
24 part.

25 Q. What was her reaction?

Time
IRA me
1 1/2 hours
Later went
I got the
Call

APPENDIX D

1 Q. Okay. And --

2 MR. NICHOLS: Thank you, Judge. I don't think
3 I've got any other questions.

4 THE COURT: Ma'am, the word vagina, is that
5 her word that she used --

6 THE WITNESS: Well, that's her -- well, she
7 just -- they call it -- which I call it --

8 THE COURT: Okay. Now, listen to me. When I
9 said that we needed to know exactly what she said, I
10 want you to -- because this is -- what Ms. Ambrose --
11 just listen to me before you start speaking. She's
12 trying to introduce statements that your daughter made
13 to you, which are hearsay, but to make a decision about
14 that, I have to know exactly what she said, and the
15 word vagina, not that a 13 year-old couldn't use it --

16 THE WITNESS: You right. I said vagina. It
17 was her private area. She say my private area.

18 THE COURT: So tell me specifically again what
19 she said that he did to her in her words.

20 THE WITNESS: Okay. He came and rubbed -- he
21 came -- I guess he came in the room, but she say -- she
22 felt something rubbing on her stomach, which she
23 thought was her brother, but when she looked up, it was
24 him. He told her not to tell nobody, and he put his
25 hand in her underwear and went in her private area and

1 A. Yes, he was.

2 Q. Did she wake up Leon while you were on the
3 phone, or did she hang up and call you back?

4 A. She woke him up while I was on the phone.

5 Q. Did you have one phonecall with her or more
6 than one phonecall with her?

7 A. No, I had more than one.

8 Q. Okay. Did she give you any additional details
9 in any of the other phonecalls?

10 A. That was basically it. And we called -- which
11 Leon called Michael and was wondering why he went back there
12 in that area --

13 THE COURT: No, no. Don't get off track,
14 ma'am. Listen to his question.

15 Q. (By Mr. Nichols) So did she give you any
16 additional details about the sexual contact in any of the
17 other phonecalls?

18 A. Yeah, the sexual details was he rubbed on her
19 stomach, and he stuck his finger in her vagina. That's
20 basically what was it.

21 Q. All right. And you said there were other
22 phonecalls. Did she give you all of that information on the
23 first phonecall, or was it peppered out throughout the other
24 phonecalls --

25 A. That was the first phonecall.

31

1 his finger inside her privates. She also described it
2 as painful. So based on her wording and her verbiage,
3 there's no concern that she learned about these sexual
4 acts from another adult or pornographic movies or
5 something like that. She's not saying that she was
6 digitally penetrated. She's saying he put his finger
7 inside me.

8 Other factors that the statements were neither
9 vague nor contradictory, they were not -- she did not
10 confuse fantasy with reality, and she demonstrated her
11 mental competence. She gave details regarding what
12 happened and where it happened. She gave a very clear
13 timeline of the night's events leading up to the
14 incident, what happened before and after, the Defendant
15 touched her, she described what she was wearing, she
16 described who else was in the room, what exactly
17 happened, how it happened, where it happened.

18 Another factor is whether there was any
19 possibility of improper influence on the child. In
20 this case, it's her stepfather's uncle, and there was
21 testimony that -- from Ms. Henderson that he didn't
22 have a huge role in her life but that Mr. Benjamin and
23 the child did get along, and the fact that he had such
24 a minor role in her life would support the idea that
25 she's not making this up to get back at him for

1 offender. In this case, it was her father's -- her
2 stepfather's uncle. This is not a stranger. It's
3 somebody she's familiar with. She's able to identify
4 him.

5 Another factor is that the statement was
6 spontaneous and whether it was made at the first
7 available opportunity. You heard the testimony that
8 immediately after -- essentially immediately after the
9 Defendant leaves her bedroom, she calls her mother and
10 in the middle of the night, crying hysterically while
11 the mother is at work. This is midnight on the morning
12 of a school day.

13 Another factor is whether the child was still
14 emotionally effective. Again, the child, when she was
15 disclosing to her mother, was so upset that the mom had
16 to get her to calm -- Ms. Henderson had to get her to
17 calm down before she could even understand her. And
18 then when she disclosed to Child Protection Team,
19 again, this is a disclosure that occurred within 24
20 hours of sexual abuse; and while she's not openly
21 sobbing, she's obviously still affected, you know, when
22 she's talking about it by what happened to her.

23 Another factor is whether the child used
24 terminology appropriate for her age. Again, she's
25 saying the Defendant touched her privates, that he put

30

3 I had to repeatedly say it to Ms. Henderson, I
4 honestly think -- she's like a lot of people, she nods
5 when I say something but doesn't really listen to what
6 I'm saying; and finally, because I was -- I mean, a 13
7 year-old could use the word vagina but they also could
8 not, but once she finally got down to it, the testimony
9 that she gave to me is age appropriate terms. And,
10 again, I just think that the indicia of reliability are
11 in place as it pertains to the phone conversation.

12 Again, this conversation was prompted by the
13 child calling the mom and initiating it, and the
14 questions that she -- the mom said she asked, like,
15 well, more details, you know, about who was in the room
16 or et cetera that she testified to are all appropriate
17 and not, I think, designed to suggest or plant ideas.

18 So I'm going to find that, that is -- meets
19 the indicia of reliability and that the conditions have
20 been met. And, of course, Mr. Nichols has more or less
21 indicated that there are safeguards in place, and as it
22 pertains to the interview, again, the questions are
23 very open ended by the interviewer, the terms that she
24 uses to describe seem appropriate for a 13 year-old, so
25 I'm going to allow that testimony as well.

1 Let me just glance over and make sure that
2 I've said everything that I need to say on this.

I think that Ms. Ambrose indicated the interview at the CPT, Child Protection Team interview, was within 24 hours. I had nothing to suggest that the child is not about 13 -- she's physically 13 years old at the time of the statement and that she was mentally deficient in any way; and watching her testify, she seemed to respond appropriately.

10 I agree that there's nothing about -- while
11 there is, I would call, a slight familia relationship,
12 there's nothing about it to suggest that there was any
13 antagonism or issue that was unpleasant that would have
14 prompted her to make something up. Let's see. So that
15 would fall in the lack of motive to fabricate is the
16 way they put it in Ehrhardt.

Nothing to suggest, but I'll confirm this on the day of the trial, that the child cannot distinguish reality from fantasy. There's nothing to suggest an improper influence on the child by participants in a domestic dispute.

22 Okay. Making sure I've got it all covered. I
23 think that covers it. So I am going to allow both to
24 come in front of the jury, but again, we'll make sure
25 the child testifies and get that last bit of the piece

APPENDIX E

1

2 P R O C E E D I N G S

3

MS. AMBROSE: Erin Ambrose for the State.

4

Phillip Benjamin, Case 16-CF-6651.

5

Judge, we're here for sentencing.

6

THE COURT: Thank you.

7

MR. NICHOLLS: Wesley Nicholls with the
Regional Counsel's Office for Mr. Benjamin.

8

(Proceedings held not related to this
Defendant)

9

10 THE COURT: All right. We are here on the
11 case of -- or the cases of -- but I guess we're dealing
12 with the case that he was found guilty on --

13

MS. AMBROSE: Yes, sir. Yes, ma'am.

14

15 THE COURT: -- 6 -- on Phillip Benjamin,
16-CF-6551 -- 6651. All right. And we're here for
16 sentencing.

17

Ms. Ambrose, do you have a scoresheet?

18

MS. AMBROSE: Yes, Judge. I have a scoresheet
19 showing 226.5 months as a lowest permissible.

20

MR. NICHOLLS: Judge, may I have just a
21 moment?

22

THE COURT: Sure.

23

(Pause in proceedings)

24

THE COURT: All right. Any objection to the
25 scoresheet?

2

1 MR. NICHOLLS: Judge, no basis to object to
2 the scoresheet.

8 MS. AMBROSE: It's because of his prior record
9 and because of the enhancement on page -- on page two
10 of the scoresheet --

11 THE COURT: Okay.

12 MS. AMBROSE: -- the adult on minor box.

13 THE COURT: So the combination?

14 MS. AMBROSE: Yes, Judge.

15 THE COURT: The bottom and the top, so to
16 speak, of the guidelines is 226.5.

17 That doesn't stop Mr. Nicholls for arguing for
18 a downward departure --

19 MS. AMBROSE: Correct.

20 THE COURT: -- but that is the sentence that
21 the guidelines calls for, correct?

22 MS. AMBROSE: Yes, Judge.

23 THE COURT: Do you agree, Mr. Nicholls?

24 MR. NICHOLLS: Judge, provided that you find
25 the government has proved the multiplier applies and

1 provide that, for sentencing purposes, you find that
2 these facts have been proven, I don't have any basis to
3 object.

4 MS. AMBROSE: And, Judge, I believe that those
5 were proven during the course of the trial.

6 THE COURT: Yeah, I'm going to find those were
7 proven at trial.. Okay. All right. So we have a
8 scoresheet.

9 Now, State, you're asking for a guideline
10 sentence?

11 MS. AMBROSE: Yes, Judge.

12 THE COURT: Okay. You want to say anything
13 else?

14 MS. AMBROSE: Not at this point, Judge. It's
15 my understanding there might be some witnesses for the
16 Defense. I may have a response.

17 THE COURT: Okay. Mr. Nicholls.

18 MR. NICHOLLS: Judge, if I may call -- I've
19 got a few witnesses to call; one, two, three, four,
20 five, six, seven, plus probably Mr. Benjamin, and I'll
21 be as brief as I can with each of them.

22 THE COURT: Okay. And, hopefully, it's not --
23 I mean, I certainly want to give the family a chance to
24 be heard, but consolidate it, if possible.

25 MR. NICHOLLS: Yes, Judge.

APPENDIX F

6651- E- EA

1705034918
ESCAMBIA COUNTY SHERIFF'S OFFICE

WARRANT/OTTIC SERVED
REPORT NO: ECSO16ARR024124

SERVICE RETURN

Jail Booking No	Offense No	Other No	OBTS
16-017279	ECSO16OFF029101	ECSO16CAD234468	16-017279

[SUSPECT]

Last	First	Middle	Title	Race	Sex	DOB	Age	Hgt	Wgt
BENJAMIN	PHILLIP	A		B	M	11/1/1959	57	6'00"	200
Eyes	Hair	MNI Number	SSN	LD No.	St	Type	OCA/Agency ID		
BRO	BLK	ECSO03MNI004638	262-35-6250	B525661594011	FL	DL	129301		

Birth Location: City: County: State: Nation: Citizenship:
Address:

467 STARÁ CIRÁpt/Lot: A PENSACOLA FL 32505

Occupations (Current/Last Known is Listed First)

Business: UNEMPLOYED, Job Title: , Entered: 12/22/2016

Business: SELF EMPLOYED, Job Title: , Entered: 4/19/2003
Suite:

Aliases (Last, First Middle Title DOB)

BENJAMIN, PHILLIP MICHAEL
BENJAMIN, PHILLIP ARNEZ 11/1/1959
BENJAMIN, MICHAEL
BENJAMIN, PHILLIP MIKE
BENJAMIN, MICHAEL 11/1/1958
DOE, JOHN
BENJAMIN, MICHAEL 11/1/1959
BENJAMIN, PHILLIP M 11/1/1959

Street Names
MIKE

[INCIDENT INFORMATION]

Occurred Date Range: 10/23/2016 23:00 to 10/23/2016 23:30	Lat/Long 30.406272 / -87.350187		
No. Di Street	Apt/Lot City	ST Zip	(GEO)
326 ALBRITT AV	PENSACOLA	FL 32506	3- 05 - A -

[CHARGES]

794.011.5a

SEX ASSLT

BY 18Y OLDR VIC 12Y UND 18Y NO PHY FORC VIOL

Counts	Level	Degree	GOC	UCR	NCIC	AON	Bond Amount
1	Felony	First	Not Applicable	110A		1199	\$200,000.00

[STATEMENT OF PROBABLE CAUSE / NARRATIVE]

On 10/23/2016, at:326 Albritt Ave, in Escambia County Florida, Phillip Benjamin did commit the offense of sexual battery (victim 13 years of age when offender is 53 years of age).

On 10/24/16, Deputy Jonathan Schepper responded to Circle K located at, 5050 Mobile Highway, in reference to a sexual offense. Upon arrival, Deputy Schepper made contact with RP/Katina Henderson. RP/Katina Henderson was visibly upset and crying. RP/Katina Henderson stated under oath that her 13 year old daughter, V/Janiya Henderson, was had been touched in her private area by her uncle only known as, "Michael Benjamin."

Deputy Schepper then spoke with OP/León Benjamin. OP/Benjamin stated under oath that he had some friends and family come to his house on Sunday evening, 10/23/16, to watch the football game. OP/Benjamin stated that V/Janiya Henderson and the other two kids went to their room while the friends and family were watching the football game. OP/Benjamin stated he fell asleep on the couch while watching the game and woke up when his daughter, V/Henderson, was walking to him down the hallway crying. OP/Benjamin stated that he received a call from RP/Katina

Henderson stating that she received a call from V/Henderson to inform her of the incident. OP/Benjamin stated that he called "Michael Benjamin" to ask him what had happened. OP/Benjamin stated that "Michael Benjamin" stated he was sorry for being in the room with the children and making V/Henderson feel as if something had happened. OP/Benjamin stated that he then hung up the phone on "Michael Benjamin" before he was able to say anything else about the incident. OP/Benjamin provided a phone number of 850-232-3126, and an address of, 49-A Stara Circle, for "Michael Benjamin."

Deputy Schepper then spoke with V/Henderson. V/Henderson was visibly upset, scared and crying. V/Henderson stated under oath that "Michael Benjamin" touched her private areas inside her clothes. V/Henderson stated "Michael Benjamin" also penetrated her private parts with his fingers. V/Henderson stated that the incident occurred at, 2330 hours on, 10/23/2016, at her house, which is, 236 Albright Ave. V/Henderson stated "Michael Benjamin" told her not to tell anyone.

The Florida Abuse Hotline was notified.

Deputy Miller, Deputy Schepper and Crime Scene Tech Farrell #707 went to the victim's residence where the incident occurred. CST Farrell collected evidence.

On 10/24/2016, I received this case for further investigation. A local search of the address for "Michael Benjamin" and the alias of "Mike" revealed that the suspect was S/Phillip Benjamin.

I witnessed the forensic interview at the Gulf Coast Kids House. The interview was with V/Henderson conducted by CPT case coordinator Aayana McCreary. During the interview, V/Henderson disclosed that her Uncle, S/Phillip Benjamin touched her inappropriately last night. V/Henderson said that she was laying down in her sibling's room. V/Henderson stated that S/Phillip Benjamin rubbed her stomach and then touched her private parts. V/Henderson advised that S/Phillip Benjamin touched the inside of her vagina with his hand. V/Henderson said that it hurt. V/Henderson stated that it lasted a few minutes. V/Henderson advised that S/Phillip Benjamin told her not to tell anyone. V/Henderson advised that she called her mom shortly after the incident and the time on the phone said 11:29 pm. V/Henderson said she disclose to her mom what happened and then her dad called S/Phillip Benjamin. This interview was audio and video recorded, see CPT DVD for further details.

I spoke with RP/Katina Henderson, V/Henderson's mother. RP/Katina Henderson positively identified S/Phillip Benjamin as "Mike". RP/Katina Henderson advised that she was at work when V/Henderson called her. RP/Katina Henderson stated that V/Henderson was crying and said that S/Phillip Benjamin came in the room and touched her inappropriately. V/Henderson stated that S/Phillip Benjamin told her not to tell anyone. RP/Katina Henderson advised that she talked to OP/Leon Benjamin on the telephone. RP/Katina Henderson said OP/Leon Benjamin called his Uncle, S/Phillip Benjamin. OP/Leon Benjamin told RP/Katina Henderson that S/Phillip Benjamin apologized on the phone and said he did not mean for V/Henderson to think something happened. RP/Katina Henderson stated that when she came home from work, they made a report.

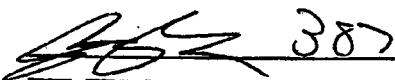
I called S/Phillip Benjamin and left a voicemail.

On 10/28/2016, I talked to S/Phillip Benjamin via telephone. S/Phillip Benjamin advised that he would talk to his attorney about coming to the Sheriff's Office to make a statement.

Between 11/4/2016, and 11/30/2016, I attempted to make contact with S/Phillip Benjamin via telephone. S/Phillip Benjamin advised that he talked to his attorney and she would call me to set up and appointment.

I have not heard from S/Phillip Benjamin or his attorney. A warrant will be initiated for judicial review.

PER JUDGE DICKEY: PTR TO MONITOR; GPS; VICTIM HAS 24 HRS FOR PAGER; IF NOT, PASSIVE;
NO CONTACT WITH VICTIM OR VICTIM'S PARENTS

 387

HORN, JEREMY ALLEN

387

WARRANT/OTTIC SERVED
REPORT NO: ECSO16ARR024124

ESCAMBIA COUNTY SHERIFF'S OFFICE

SERVICE RETURN

[COURT INFORMATION]

Court Judge Date
Sent **CIRCUIT**
Rcvd **CIR CT** **DICKEY** **12/13/2016**
Court Case Number **16WAR029101**

Assigned To: _____

COURT DISPOSITION: _____



(right index)

No Bill / Petition Issue Warrant Prosecution Approved

Signature of Assistant State Attorney

Date

WARRANT/OTTIC SERVED
REPORT NO: ECSO16ARR024124

ESCAMBIA COUNTY SHERIFF'S OFFICE

SERVICE RETURN

[COURT INFORMATION]

Court	Judge	Date
Sent CIRCUIT		
Rcvd CIR CT	DICKEY	12/13/2016
Court Case Number 16WAR029101		

Assigned To: _____

COURT DISPOSITION: _____



(right index)

No Bill / Petition Issue Warrant Prosecution Approved

Signature of Assistant State Attorney

Date



ESCAMBIA COUNTY SHERIFF'S OFFICE
1700 WEST LEONARD STREET
PENSACOLA, FL 32501-0000
(850)436-9620

SUPPLEMENT NUMBER 3

OFFENSE REPORT

Agency Case Number ECSO16OFF029101	Report Date / Time 10/24/2016 12:52 PM	Offense Description 72-0 SEXUAL BATTERY
CAD Incident Number ECSO16CAD234468	External Case Reference Number	Range of Occurrence Date/Time 10/23/2016 11:00 PM to 10/23/2016 11:30 PM

LOCATION OF OCCURRENCE

County ESCAMBIA	Address 326 ALBRIT AV, PENSACOLA, FL 32506	Latitude 30.406272	Longitude -87.350187
Location Category Residence	Location Type Victim's Residence	Location Description	Location Status
Weather <input checked="" type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Fog <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Hail <input type="checkbox"/> Other <input type="checkbox"/> Unknown			Lighting Condition Night

PERSON: OTHER PERSON

First Name LEON	Middle Name VONSHA	Last Name BENJAMIN	Suffix	Date of Birth 10/04/1981	Age 35	Race B	Sex M	Height 6'00"	Weight 150	Hair BLK	Eyes BRO
Master Name Index Number N1997-005040311	Place of Birth ESCAMBIA	Nation	Driver's License or Other ID B525538813640			State FL	Class or Type U	SSN 592-08-0707			
Address 326 ALBRIT AV	City PENSACOLA	County				State FL	Zip Code 32506	Phone (850)760-2840			
Residence Status Within jurisdiction	Vehicle on Report Associated with Person					<input type="checkbox"/> Arrested	<input type="checkbox"/> Wanted				
Occupation	Employer BENJAMIN & SON SEPTIC										Master Business Index Number
Address	City					State	Zip Code	Phone			

PERSON: REPORTING PERSON

First Name KATINA	Middle Name SHINETTE	Last Name HENDERSON	Suffix	Date of Birth 04/09/1975	Age 41	Race B	Sex F	Height 5'07"	Weight 170	Hair BLK	Eyes BRO
Master Name Index Number ECSO05MN1006668	Place of Birth	Nation	Driver's License or Other ID 7229078			State AL	Class or Type DL	SSN 384-78-6231			
Address 209 FRANKLIN ST	City ATMORE	County				State AL	Zip Code 36522	Phone (850)208-4563			
Residence Status Within jurisdiction	Vehicle on Report Associated with Person					<input type="checkbox"/> Arrested	<input type="checkbox"/> Wanted				
Occupation NURSE ASSISTANT	Employer ROSWOOD MANOR										Master Business Index Number
Address	City					State	Zip Code	Phone			

PERSON: SUSPECT

First Name PHILLIP	Middle Name A	Last Name BENJAMIN	Suffix	Date of Birth 11/01/1959	Age 56	Race B	Sex M	Height 6'00"	Weight 200	Hair BLK	Eyes BRO
Master Name Index Number ECSO03MN1004638	Place of Birth	Nation	Driver's License or Other ID B525661594011			State FL	Class or Type DL	SSN 262-35-6250			
Address 467 STARA CIR A	City PENSACOLA	County				State FL	Zip Code 32505	Phone (850)208-4563			
Residence Status Within jurisdiction	Vehicle on Report Associated with Person					<input type="checkbox"/> Arrested	<input type="checkbox"/> Wanted				
Occupation STUDENT	Employer BAILEY MIDDLE SCHOOL										Master Business Index Number
Address	City					State	Zip Code	Phone			

PERSON: VICTIM

First Name JANIYA	Middle Name	Last Name HENDERSON	Suffix	Date of Birth 03/01/2003	Age 13	Race B	Sex F	Height 5'00"	Weight 90	Hair BLK	Eyes BRO
Master Name Index Number ECSO05MN1006669	Place of Birth	Nation	Driver's License or Other ID B525661594011			State FL	Class or Type	SSN +			
Address 326 ALBRIT AV	City PENSACOLA	County				State FL	Zip Code 32506	Phone (850)208-4563			
Residence Status Within jurisdiction	Vehicle on Report Associated with Person					<input type="checkbox"/> Arrested	<input type="checkbox"/> Wanted				
Occupation STUDENT	Employer BAILEY MIDDLE SCHOOL										Master Business Index Number
Address	City					State	Zip Code	Phone			

CHARGES

Counts 1	Charge Number 794.011.5a	Charge SEX ASSLT	General Offense Code NOT APPLICABLE	<input type="checkbox"/> Hate Crime	<input type="checkbox"/> Domestic Violence
Charge Degree FIRST DEGREE	Charge Level FELONY				

Charge Description
BY 18Y OLDR VIC 12Y UND 18Y NO PHY FORC VIOL

INITIAL NARRATIVE: 10/24/2016 12:52 PM

Reporting Officer	Approving Supervisor
Call Number F55	Officer Name SCHEPPER, JONATHAN WADE
Permanent ID Number ECSO16PER00027	Approved <input checked="" type="checkbox"/>
Supervisor Name BEECH, BRANDON DAVID	
Permanent ID Number ECSO02PER000034	
CAD INCIDENT DISPOSITION CODE: [72-0] [B] [3] []	
On 10/24/16, I responded to Circle K located at 5050 Mobile Highway in reference to a sexual offense.	

Agency Case Number ECSO16OFF029101	Report Date / Time 10/24/2016 12:52 PM	Offense Description 72-0 SEXUAL BATTERY
CA D Incident Number ECSO16CAD234468	External Case Reference Number	Range of Occurrence Date/Time 10/23/2016 11:00 PM to 10/23/2016 11:30 PM

Upon arrival, I made contact with a black female who I later identified as RP/Katina Henderson. RP/Katina Henderson was visibly upset and crying. RP/Katina Henderson stated under oath that her 13 year old daughter, V/Janiya Henderson, had been touched in her private areas by her uncle only known as, "Michael Benjamin."

I then spoke with a black male whom I later identified as OP/Leon Benjamin. OP/Benjamin stated under oath that he had some friends and family come to his house on Sunday evening, 10/23/16, to watch the football game. OP/Benjamin stated that V/Janiya Henderson and the other two kids went to their room while the friends and family were watching the football game. OP/Benjamin stated he fell asleep on the couch while watching the game and woke up when his daughter, V/Janiya Henderson, was walking to him down the hallway crying. OP/Benjamin stated that he received a call from RP/Katina Henderson stating that she received a call from V/Janiya Henderson to inform her of the incident. OP/Benjamin stated that he called "Michael Benjamin" to ask him what had happened. OP/Benjamin stated that "Michael Benjamin" stated he was sorry for being in the room with the children and making V/Janiya Henderson feel as if something had happened. OP/Benjamin stated that he then hung up the phone on "Michael Benjamin" before he was able to say anything else about the incident. OP/Benjamin provided a phone number of 850-232-3126 and an address of 49A Stara Circle for "Michael Benjamin."

I then spoke with a black female who I later identified as V/Janiya Henderson. V/Henderson was visibly upset, scared and crying. V/Henderson stated under oath that "Michael Benjamin" touched her private areas inside her clothes. V/Henderson stated "Michael Benjamin" also penetrated her private parts with his fingers. V/Henderson stated that the incident occurred at 2330 hours on 10/23/2016, at her house, which is 236 Albritt Ave. V/Henderson stated "Michael Benjamin" told her not to tell anyone.

I made contact with DCF Operator #259 and informed them of the incident.

Supervisors and Investigations were notified of the incident.

Deputy Miller #336, myself and Crime Scene Tech Farrell #707 went to the victim's residence where the incident occurred. CST Farrell collected evidence.

To my knowledge, there is no video evidence of this incident.

Time of Report/Investigation: 1 hour.

SUPPLEMENTAL NARRATIVE: 10/25/2016 08:25 AM

Reporting Officer Call Number	Officer Name	Permanent ID Number	Approving Supervisor Approved	Supervisor Name	Permanent ID Number
707	FARRELL, JAMES JOSEPH	ECSO13PER000154	<input checked="" type="checkbox"/>	COAD, CHRISTIAN ALLAN	ECSO04PER000030

PREVIOUSLY REPORTED BY: F55 SCHEPPER, JONATHAN WADE
UNIT: L/CHF/PROF STANDARDS/TRAINING/FTO/LE

PREVIOUSLY APPROVED BY: BRANDON DAVID BEECH ON 10/24/2016

REPORT SUPPLEMENT [Added on: 10/25/2016 8:25:49 AM by Report Taker: STSTANLEY]

REVISED DISPOSITION CODE: 69-0-Y-0

The following is supplemental information in reference to Case #16-029101 Child Abuse.

On Monday, October 24, 2016, at approximately 0936 hours, I was notified by Dispatch of a crime scene request located 326 Albritt Ave. in reference to Child Abuse. I arrived at the scene at approximately 1002 hours and made contact with Deputy Johnathan Schepper #F55. Deputy Schepper requested that 2 sheets and a pair of pink w/dots pajamas be collected and turned in to evidence.

Agency Case Number ECSO16OFF028101	Report Date / Time 10/24/2016 12:52 PM	Offense Description 72-0 SEXUAL BATTERY
CAD Incident Number ECSO16CAD234468	External Case Reference Number	Range of Occurrence Date/Time 10/23/2016 11:00 PM to 10/23/2016 11:30 PM

I collected 2 sheets, 1 purple w/ flowers and the other was pink w/flowers. I then collected a pair of pink w/dots pajamas, which were balled up on a chair in the living room. The items collected will be turned in to evidence. I took (14) digital photographs of the exterior and interior of the residence for identification and documentation purposes.

I departed the scene at approximately 1012 hours

The digital photos taken have been downloaded into the Crime Scene Pictures and attached to Case Management.

No further action at this time.

Time spent on investigation: 1 hour.

SUPPLEMENTAL NARRATIVE: 12/13/2016 10:25 AM

Reporting Officer	Approving Supervisor
Call Number 241	Officer Name KINNARD, HEATHER MELONNIE

Permanent ID Number

ECSO04PER000185

Approved

Supervisor Name

JANES, DAWN ELIZABETH

Permanent ID Number

ECSO00PER000395

PREVIOUSLY REPORTED BY: F55 SCHEPPER, JONATHAN WADE
UNIT: L/CHF/PROF STANDARDS/TRAINING/FTO/LE

PREVIOUSLY APPROVED BY: CHRISTIAN ALLAN COAD ON 10/26/2016

REPORT SUPPLEMENT [Added on: 12/13/2016 10:25:18 AM by Report Taker: VSWHITE]

Revised Disposition Code: 72-O-X-O

On 10/24/16, Deputy Jonathan Schepper responded to Circle K located at, 5050 Mobile Highway, in reference to a sexual offense. Upon arrival, Deputy Schepper made contact with RP/Katina Henderson. RP/Katina Henderson was visibly upset and crying. RP/Katina Henderson stated under oath that her 13 year old daughter, V/Janiya Henderson, had been touched in her private area by her uncle only known as, "Michael Benjamin."

Deputy Schepper then spoke with OP/Leon Benjamin. OP/Benjamin stated under oath that he had some friends and family come to his house on Sunday evening, 10/23/16, to watch the football game. OP/Benjamin stated that V/Janiya Henderson and the other two kids went to their room while the friends and family were watching the football game. OP/Benjamin stated he fell asleep on the couch while watching the game and woke up when his daughter, V/Henderson, was walking to him down the hallway crying. OP/Benjamin stated that he received a call from RP/Katina Henderson stating that she received a call from V/Henderson to inform her of the incident. OP/Benjamin stated that he called "Michael Benjamin" to ask him what had happened. OP/Benjamin stated that "Michael Benjamin" stated he was sorry for being in the room with the children and making V/Henderson feel as if something had happened. OP/Benjamin stated that he then hung up the phone on "Michael Benjamin" before he was able to say anything else about the incident. OP/Benjamin provided a phone number of 850-232-3126, and an address of, 49-A Stara Circle, for "Michael Benjamin."

Deputy Schepper then spoke with V/Henderson. V/Henderson was visibly upset, scared and crying. V/Henderson stated under oath that "Michael Benjamin" touched her private areas inside her clothes. V/Henderson

Agency Case Number ECSO16OFF029101	Report Date / Time 10/24/2016 12:52 PM	Offense Description 72-0 SEXUAL BATTERY
CAD/Incident Number ECSO16CAD234468	External Case Reference Number	Range of Occurrence Date/Time 10/23/2016 11:00 PM to 10/23/2016 11:30 PM

stated "Michael Benjamin" also penetrated her private parts with his fingers. V/Henderson stated that the incident occurred at, 2330 hours on, 10/23/2016, at her house, which is, 236 Albright Ave. V/Henderson stated "Michael Benjamin" told her not to tell anyone.

The Florida Abuse Hotline was notified.

Deputy Miller, Deputy Schepper and Crime Scene Tech Farrell #707 went to the victim's residence where the incident occurred. CST Farrell collected evidence.

On 10/24/2016, I received this case for further investigation. A local search of the address for "Michael Benjamin" and the alias of "Mike" revealed that the suspect was S/Phillip Benjamin.

I witnessed the forensic interview at the Gulf Coast Kids House. The interview was with V/Henderson conducted by CPT case coordinator Aayana McCreary. During the interview, V/Henderson disclosed that her Uncle, S/Phillip Benjamin touched her inappropriately last night. V/Henderson said that she was laying down in her sibling's room. V/Henderson stated that S/Phillip Benjamin rubbed her stomach and then touched her private parts. V/Henderson advised that S/Phillip Benjamin touched the inside of her vagina with his hand. V/Henderson said that it hurt. V/Henderson stated that it lasted a few minutes. V/Henderson advised that S/Phillip Benjamin told her not to tell anyone. V/Henderson advised that she called her mom shortly after the incident and the time on the phone said 11:29 pm. V/Henderson said she disclosed to her mom what happened and then her dad called S/Phillip Benjamin. This interview was audio and video recorded, see CPT DVD for further details.

I spoke with RP/Katina Henderson, V/Henderson's mother. RP/Katina Henderson positively identified S/Phillip Benjamin as "Mike". RP/Katina Henderson advised that she was at work when V/Henderson called her. RP/Katina Henderson stated that V/Henderson was crying and said that S/Phillip Benjamin came in the room and touched her inappropriately. V/Henderson stated that S/Phillip Benjamin told her not to tell anyone. RP/Katina Henderson advised that she talked to OP/Leon Benjamin on the telephone. RP/Katina Henderson said OP/Leon Benjamin called his Uncle, S/Phillip Benjamin. OP/Leon Benjamin told RP/Katina Henderson that S/Phillip Benjamin apologized on the phone and said he did not mean for V/Henderson to think something happened. RP/Katina Henderson stated that when she came home from work, they made a report.

I called S/Phillip Benjamin and left a voicemail.

On 10/28/2016, I talked to S/Phillip Benjamin via telephone. S/Phillip Benjamin advised that he would talk to his attorney about coming to the Sheriff's Office to make a statement.

Between 11/4/2016, and 11/30/2016, I attempted to make contact with S/Phillip Benjamin via telephone. S/Phillip Benjamin advised that he talked to his attorney and she would call me to set up and appointment.

I have not heard from S/Phillip Benjamin or his attorney. A warrant will be initiated for judicial review.

REPORTING OFFICER / SUPERVISOR APPROVAL

Reporting Officer		Approving Supervisor		
Call Number 241	Name KINNARD, HEATHER MELONNIE	ID Number 083	Rank SERGEANT	Name GOODWIN, D.
Signature <i>Heather Kinnard</i>		Signature <i>D. Goodwin</i>		