

going to testify to that the other one didn't testify to?

MS. FISK: One factor, Your Honor, just one, and that is the only thing that I will address, that is during the night when the defendant arrived, that is the only thing.

I do not intend to go over at *why*  
all --

THE COURT: Go ahead.

KYLE SMALLWOOD, having promised to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. FISK:

Q Kyle, how old are you?

A Eight.

Q Where do you go to school?

A Cassidy.

Q Is that the full name?

A Yes.

Q Okay.

What grade are you in at

Cassidy?

A Third.

Q Who is your teacher?

A Ms. Jefferson.

Q Do you have any brothers?

A Yes.

Q Do you have a twin brother?

A Yes.

Q What is his name.

A Kevin.

Q And you have a big brother, what is his name?

A Keith.

Q And you just promised to tell the truth, right?

A Yes.

Q If I were to tell you that the shirt that you were wearing was purple, would that be the truth?

A No.

Q What would that be?

A A lie.

Q Now, if I told you the shirt that you were wearing was white, would that be the truth?

A Yes.

Q Now, what happens if you tell a lie?

Q You get in trouble.

Q When you promise to tell the truth today, you know that if you told a lie you would get in trouble?

A Yes.

Q And are you going to tell any lies when you are asked questions today?

A No.

Q Are you going to tell the truth?

A Yes.

Q And do you promise that?

A Yes.

MS. FISK: I have no further questions on that line, Your Honor.

THE COURT: Go ahead.

MS. FISK: Now, this attorney may ask you some questions about that, too.

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CROSS-EXAMINATION

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BY MR. GILLISON:

Q What happens when you get in trouble?

A I get a beating.

Q Who does that?

A My dad.

Q So, if you told a lie in here, you think the same thing would happen, you would get in trouble and get a beating, right?

A No.

Q What would happen if you told a lie in here?

A I don't know.

MR. GILLISON: Same objection, Your Honor.

MS. FISK: May I proceed, Your Honor?

THE COURT: Yes -- no.

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DIRECT EXAMINATION (Cont'd)

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BY MS. FISK:

Q Do you understand that lying in court is against the law?

A Yes.

Q And if you break the law, what happens to you?

Could you go to jail?

MR. GILLISON: Objection.

THE WITNESS: My dad would.

BY MS. FISK:

Q Your dad would go to jail.

And if you told a lie in the courtroom, what would happen to you?

Do you know?

Is it a bad thing to tell a lie?

A Yes.

Q And can you get in trouble for it?

A Yes.

Q And if you tell a lie in the courtroom, would you get in trouble for telling a lie?

A Yes.

Q And do you know that this judge would put you in trouble if he found out that you were telling a lie?

A Yes.

Q And you don't want to get in trouble, right?

A No.

Q And you don't want to tell lies in this courtroom?

A No.

Q And are you promising this judge that you will not tell lies in this courtroom because you know that they are wrong to tell?

A Yes.

Q And are you promising this judge that you are going to tell the truth because that is what you promised to do?

A Yes.

THE COURT: Go ahead.

CROSS-EXAMINATION (Contd.)

BY MR. GILLISON:

Q Do you know anything of what she just said?

Do you really understand what she just said?

A Yes.

Q You do?

A Yes.

Q What did she just say? •

A She said, don't tell a lie because you are going to get in trouble.

Q What does that mean to you?

A It means that the judge is going to put us in trouble.

MR. GILLISON: Same objection, Judge.

THE COURT: All right, continue.

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DIRECT EXAMINATION (Cont'd)

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BY MS. FISK:

Q Now, Kyle, well, who is your mom, Kyle? What

was her name?

A Pamela Blue.

Q And how about your aunt, what was her name?

A Roseann Young.

Q And did you live with your mom and aunt before they died?

A Yes.

Q Now, the night before they died, Friday night before, did you go to sleep that night in your room with your brothers?

A Yes.

Q And was your aunt in the house when you went to sleep?

A Yes.

Q Now, during the night while it was still dark out and while you were still sleeping in your room with your brothers, did something make you wake up?

A Yes.

Q What was it that made you wake up?

A Roseann and Darryl.

Q When you say Roseann and Darryl, did you hear

something?

A Darryl was fighting.

Q And when you say they were fighting, you heard voices, you heard fighting, you heard people talking to each other or arguing?

A Yes.

Q And where was that argument coming from?

A Downstairs.

Q When you heard fighting from downstairs, was it dark outside, still nighttime?

A Yes.

Q Did you hear what the fighting was about?

Did you hear what your Aunt Roseann was saying?

A No.

But my brothers --

MR. GILLISON: Objection.

BY MS. FISK:

Q Don't tell me what your brothers said.

A Okay.

Q But after you heard that there was fighting

downstairs, did you leave your bedroom?

A Yes.

Q And where did you go?

A To the bathroom.

Q And that is the bathroom next to your bedroom?

A Yes.

Q Then where did you go?

A I then went back in my room.

Q Did you see your Aunt Roseann when you went out to go to the bathroom?

A Yes.

Q And where was she?

A Sitting on the step.

Q Did she see you, do you know?

A Yes, she saw me.

Q What did she say to you?

A Go back in your room.

Q And did you do that?

A Yes.

Q Now, the person that she was arguing with when you woke up during the night, did you see that person

or did you just hear that person?

A I didn't see him.

Q You just heard him?

A Yes.

Q Now, when you woke up the next morning, did you Aunt Roseann again?

A No.

Q Did you ever see your Aunt Roseann again?

A No.

Q When you woke up the next morning, was there anyone in the house who usually was not in your house?

A Yes.

Q Who was that?

A Darryl.

Q Now, do you see Darryl in the courtroom?

A Yes.

Q Tell the judge where he is sitting and point to him so the judge knows who you are talking about.

A (Pointing)

MS. FISK: He is indicating,  
Your Honor, in the direction of

counsel table.

BY MS. FISK:

Q Are you talking about the man who is sitting in the middle between the other two men?

A Yes.

Q Now, that next day, did you have a chance to talk to Darryl and to hear Darryl talk?

A Yes.

Q And did you recognize his voice from that day as the voice that you had heard as the person who was arguing with your Aunt Roseann the night --

MR. GILLISON: Objection.

THE WITNESS: Yes.

THE COURT: Sustained.

MR. GILLISON: Motion to strike.

THE COURT: Granted.

BY MS. FISK:

Q When you heard your Aunt Roseann arguing with somebody during the night, who was she arguing with?

MR. GILLISON: Objection.

THE COURT: Sustained.

BY MS. FISK:

Q Did you hear the voice of the person that she was arguing with?

A Yes.

Q And did you ever recognize that as someone else's who you came to know?

A Yes.

Q Whose voice was that that you recognized it as?

MR. GILLISON: Objection.

THE COURT: Overruled.

BY MS. FISK:

Q You can answer that question.

A Darryl.

MS. FISK: Thank you.

I have no further questions,

Your Honor.

THE COURT: Cross-examine.

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CROSS-EXAMINATION

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BY MR. GILLISON:

Q When you -- what time did you go to bed that night on Friday?

A I don't know.

Q Well, what was the last thing that you remember seeing or being told was on TV, I guess, when you went-- before you went to bed?

A I was watching the Simpsons.

Q Okay.

Was that a videotape or was that on TV?

A It was a videotape.

Q Do you remember what time it was that you, I guess, ate dinner that Friday night?

A No.

Q After you went to bed, you sleep in the middle room on the second floor; right?

A Yes.

Q And when you were sleeping there, you said you heard something that woke you up; right?

A Yes.

Q And that was, you said it was fighting but it was really grownups and they were talking loud?

A Yes.

Q And that is when you just went to the bathroom and then went right back to bed?

A Yes, I went to the bathroom and then I looked down the banister and Roseann told me to go back in the room.

Q So, she is sitting on the stairwell because you can sit on the stairs and kind of look like up and you could see, right?

A Yes.

Q So, you were looking from her side and you could see looking down, right?

A Yes.

Q But you couldn't see anything else that was going on in the living room, right?

A Yes.

Q And when you went back to your room, was your brother awake?

A My brother Kevin was.

Q Did you talk to Kevin?

A I woke him up.

Q You woke him up?

A Yes.

Q When you -- did you play or did you stay up for a little bit of time?

A I stayed up for a little bit of time and then I went back to sleep.

Q Okay.

Q Now, when you woke up in the morning, you know around what time it was?

A No.

Q Did you go watch TV or something?

A Yes.

Q What were you watching on TV?

A I was playing my Sega Saturn.

Q Yes, Sega Saturn?

A Yes.

Q A video game?

A Yes.

Q Who were you playing with?

A My brother.

Q Which one?

A Kevin.

Q And you said that you -- there was someone else there in the house that usually was not there.

Was Justin there?

Do you know the little baby's name?

A Justin, yes, he was there.

Q And how about Simone?

A Yes.

Q They weren't there when you went to sleep, is that right?

A No.

Q Who else was there when you woke up?

A My brother.

Q And anyone else?

A And my mom.

Q Anybody else that you saw?

A No.

Q All right.

Now, did you get hungry and want some breakfast?

A Yes, yes.

Q Who did you tell?

A I told my mom to go get me some breakfast, and she went down the stairs and came down and we brung her breakfast.

Q Darryl brought up breakfast?

A Yes.

Q So, he went downstairs and then he came right back up with the breakfast?

MS. FISK: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. EILLISON:

Q So, when he came up with the breakfast, what did you eat?

A We ate some cereal.

Q And then what did you do?

A And then he brung up soda.

Q Did you go back to playing the games or watching

TV, I guess?

A We went back to --

MS. FISK: Beyond the scope of  
direct examination.

THE COURT: Overruled.

BY MR. GILLISON:

Q Go ahead, you can answer that.

A I was playing a game.

Q Was Darryl playing with you?

A He came in and he started playing with us.

Q Playing on it?

A No, playing with my brother.

Q With your brother?

A Yes.

Q On the Sega game or something else?

A On the Sega game.

Q Do you know how to tell time?

A Yes.

Q Where is the clock in your room?

A We don't have one in our room.

Q Do you know what time -- did you get lunch?

A No.

Q Do you remember what time it was that you took your nap, around?

A No.

Q Was it in the afternoon?

A Yes.

Q But that was a long time between the time that you had breakfast and until the time that you took your nap?

A Yes.

We ate lunch.

Q You did eat lunch?

A Yes, we ate Coddies of Noodles.

Q Who fixed that for you?

A Darryl.

Q Did you go downstairs to help him with it

A No.

Q How about your brothers?

A No.

Q So, he went downstairs?

A Because we was all asleep except for me, because

I woke back up with Sequoia and Simone.

Q So, Darryl was fixing lunch and fixing breakfast and doing all of that stuff for you guys?

He was taking care of you guys?

A Yes.

Q After you took your nap and you woke up, did you then continue playing games on TV or whatever?

A After we woke up, yes, me and Darryl was playing games.

Q You and Darryl were playing games.

Was that the TV on the Sega system or was that just watching, just playing like chutes and ladders, monopoly?

A We was playing a video game.

Q Did you ever hear anybody yelling out or screaming or hollering or, you know, cursing or doing any of that kind of stuff?

A No.

MR. GILLISON: Just a moment,

Your Honor.

BY MR. GILLISON:

Q Before this day, before, you know, the 23rd of March, had you ever seen Darryl before?

Had you ever seen him before?

A No.

MR. GILLISON: All right.

I don't have anything further.

THE COURT: You can step down.

Kyle, you can step down.

(Witness excused)

MS. FISK: Your Honor, the Commonwealth would next call Keith Smallwood. I believe --

MR. GILLISON: There is a comfort break needed by the defendant.

THE COURT: All right.

Recess)

THE COURT: Who is Keith?