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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DYLAN TREY FOSTER,

APPELLANT

APPELLATE CASE NO. 2022-001274

RECORD ON APPEAL

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INDEX

INDEX i

TRIAL TRANSCRIPT DATED AUGUST 31, 2022 – SEPTEMBER 2, 2022 1

STATE'S MOTION TO AMEND DATE ON INDICTMENT 41

COURT'S RULING TO GRANT MOTION TO AMEND DATE OF INDICTMENT.....42

DEFENSE MOTION TO SEQUESTER WITNESSES 44

COURT'S RULING TO GRANT MOTION TO SEQUESTER WITNESSES 44

DEFENSE MOTION TO LIMIT THE USE OF THE WORD VICTIM 46

COURT'S RULING TO DENY MOTION TO LIMIT USE OF THE WORD VICTIM.....46

OPENING STATEMENT BY MS. LANDSVERK.....57

OPENING STATEMENT BY MR. SANFORD.....60

TESTIMONY

RENE BEAUFORT
Direct Examination by Ms. Landsverk 61
Cross-Examination by Mr. Sanford 64

COMPLAINANT
Direct Examination by Ms. Landsverk 69
Cross-Examination by Mr. Sanford 92
Redirect Examination by Ms. Landsverk.....105

DOUGLAS BOWLBY, JR.
Direct Examination by Ms. Landsverk 107
Cross-Examination by Mr. Sanford 111

HAROLD ANDERSON
Direct Examination by Ms. Landsverk 115

CHRISTINA REESE
Direct Examination by Ms. Landsverk 118
Cross-Examination by Mr. Sanford 122
Redirect Examination by Ms. Landsverk.....128

BLAKE WOLFE
Direct Examination by Ms. Landsverk 126
Cross-Examination by Mr. Sanford 132

TERESA LIPSCOMB
Direct Examination by Ms. Landsverk 137
Cross-Examination by Mr. Sanford 152

MATTHEW WATERS
Direct Examination by Ms. Landsverk 159
Cross-Examination by Mr. Sanford 161
Redirect Examination by Ms. Scott 163

CHERI LYDA (*IN-CAMERA*)
Direct Examination by Ms. Landsverk 169
Cross-Examination by Mr. Sanford 178

COURT RULES DEFENDANT STATEMENT WAS VOLUNTARILY MADE 183

TESTIMONY

CHERI LYDA
Direct Examination by Ms. Landsverk 186
Cross-Examination by Mr. Sanford 208
Redirect Examination by Ms. Landsverk.....216

TYLER BUCHOLTZ
Direct Examination by Ms. Landsverk 218
Cross-Examination by Mr. Sanford 226

TIMOTHY NAFZIGER, JR.
Direct Examination by Ms. Scott.....229
Cross-Examination by Mr. Sanford 235

BRIAN BROWNING
Direct Examination by Ms. Scott.....236
Cross-Examination by Mr. Sanford 245
Redirect Examination by Ms. Scott 248

THE STATE RESTS 249

DEFENSE MOTION FOR A DIRECTED VERDICT 250

COLLOQUY WITH DEFENDANT REGARDING FIFTH AMENDMENT RIGHTS 251

TESTIMONY

BROOKS BARTLEY
Direct Examination by Mr. Sanford....255
Cross-Examination by Ms. Scott....257

LAWSON JANARELLO
Direct Examination by Mr. Sanford....261
Cross-Examination by Ms. Scott....265

THE DEFENSE RESTS....267

DEFENSE RENEWS MOTION FOR DIRECTED VERDICT....268

COURT'S RULING TO DENY MOTION FOR DIRECTED VERDICT....269

CLOSING ARGUMENT BY MS. LANDSVERK....275

CLOSING ARGUMENT BY MR. SANFORD....290

REBUTTAL CLOSING ARGUMENT BY MS. LANDSVERK....303

JURY CHARGE....306

VERDICT....336

SENTENCING....344

INDICTMENTS....346

SENTENCE SHEETS....350

CERTIFICATE OF COUNSEL....354

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

STATE OF SOUTH CAROLINA,	)	
	)	
PLAINTIFF,	)	
	)	
-VS-	)	2021-GS-23-04397 - 04400
	)	
DYLAN TREY FOSTER,	)	
	)	TRANSCRIPT OF RECORD
DEFENDANT.	)	
	)	

AUGUST 31, 2022 - SEPTEMBER 2, 2022
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE PERRY H. GRAVELY

A P P E A R A N C E S:

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ATTORNEY FOR DEFENDANT:

RUSSELL C. SANFORD, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

2

INDEX

WITNESS	PAGE NO.
WEDNESDAY, AUGUST 31, 2022:	
JURY QUALIFICATION	13
JURY SELECTION	27
PRETRIAL MOTIONS	41
OPENING COMMENTS BY THE COURT	51
OPENING STATEMENTS	
MS. LANDSVERK	57
MR. SANFORD	59
RENE BEAUFORT	
DIRECT BY MS. LANDSVERK	61
CROSS BY MR. SANFORD	64
ASHLEY NICOLE ANDERSON	
DIRECT BY MS. LANDSVERK	68
CROSS BY MR. SANFORD	92
REDIRECT BY MS. LANDSVERK	105
DOUGLAS BOWLBY	
DIRECT BY MS. LANDSVERK	107
CROSS BY MR. SANFORD	111
HAROLD ANDERSON	
DIRECT BY MS. LANDSVERK	114
CHRISTINA REESE	
DIRECT BY MS. LANDSVERK	118
CROSS BY MR. SANFORD	122

INDEX

WITNESS	PAGE NO.
CHRISTINA REESE	
REDIRECT BY MS. LANDSVERK	125
BLAKE WOLFE	
DIRECT BY MS. LANDSVERK	125
CROSS BY MR. SANFORD	132
TERESA LIPSCOMB	
DIRECT BY MS. LANDSVERK	136
CROSS BY MR. SANFORD	152
MATTHEW WATERS	
DIRECT BY MS. LANDSVERK	158
CROSS BY MR. SANFORD	161
REDIRECT BY MS. SCOTT	163
THURSDAY, SEPTEMBER 1, 2022:	
JACKSON V. DENNO HEARING:	
CHERI LYDA	
DIRECT BY MS. LANDSVERK	169
CROSS BY MR. SANFORD	178
CHERI LYDA	
DIRECT BY MS. LANDSVERK	186
CROSS BY MR. SANFORD	208
REDIRECT BY MS. LANDSVERK	216
TYLER BUCHOLTZ	
DIRECT BY MS. LANDSVERK	217

4

INDEX

WITNESS	PAGE NO.
TYLER BUCHOLTZ	
CROSS BY MR. SANFORD	226
TIMOTHY NAFZIGER, JR.	
DIRECT BY MS. SCOTT	229
CROSS BY MR. SANFORD	235
BRIAN BROWNING	
DIRECT BY MS. SCOTT	236
CROSS BY MR. SANFORD	245
REDIRECT BY MS. SCOTT	248
STATE RESTS	249
DIRECTED VERDICT MOTION	250
THE COURT SPEAKING TO DEFENDANT	251
BROOKS BARTLEY	
DIRECT BY MR. SANFORD	255
CROSS BY MS. SCOTT	257
LAWSON JANARELLO	
DIRECT BY MR. SANFORD	261
CROSS BY MS. SCOTT	264
DEFENSE RESTS	267
DIRECTED VERDICT MOTION	268
FRIDAY, SEPTEMBER 2, 2022:	
MATTERS OF LAW	271

5

INDEX

WITNESS	PAGE NO.
CLOSING ARGUMENTS	
MS. LANDSVERK	275
MR. SANFORD	290
MS. LANDSVERK	303
CHARGE OF THE COURT	306
VERDICT OF THE JURY	335
SENTENCE OF THE COURT	338
CERTIFICATE OF REPORTER	345

6

EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE
S-1	DVD - 911 CALL (NOT TRANSCRIBED)--	48	63
S-2	PHOTO ----------	67	74
S-3	PHOTO ----------	67	74
S-4	PHOTO ----------	67	74
S-5	PHOTO ----------	67	74
S-6	PHOTO ----------	67	74
S-7	PHOTO ----------	67	74
S-8	PHOTO ----------	67	82
S-9	PHOTO ----------	128	129
S-10	PHOTO ----------	128	129
S-11	CHAIN OF CUSTODY REPORT ----------	136	161
S-12	WAIVER OF RIGHTS ----------	172	199
S-13	PHOTO ----------	186	192
S-14	PHOTO ----------	186	192
S-15	PHOTO ----------	186	192
S-16	PHOTO ----------	186	192
S-17	PHOTO ----------	186	192
S-18	PHOTO ----------	186	192
S-19	P&E REPORT ----------	186	208
S-20	DVD - DEFENDANT'S STATEMENT ------ (NOT TRANSCRIBED)	186	202
S-21	LATENT PRINT CARDS (3) ----------	204	226

7

EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE
D-1	PHOTOS - SECURITY CAMERA --------	98	98
D-2	PHOTO FROM QT -------------------	102	102

8

EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE
C-1	JURY FOREPERSON SELECTION -------	106	
C-2	JURY QUESTION & ANSWER ----------	333	
C-3	JURY QUESTION & ANSWER ----------	333	

Wednesday, August 31, 2022:

(Whereupon court convened at 10:02 am)

THE COURT: Good morning, Mr. Foster.

MR. FOSTER: Good morning.

THE COURT: All right. I think we're -- I've been provided the voir dire from both sides. And I'll just add that to my normal. But anything else from the State before we bring the jury up?

MS. LANDSVERK: Nothing further, Your Honor. I do have a quick motion in limine, but I can do ---

THE COURT: We'll do that after we select the jury. How about that?

MS. LANDSVERK: Yes.

THE COURT: Anything else from the defense?

MR. SANFORD: I don't have anything, Your Honor. The one thing I would request is I need a jury list. I tried to get one yesterday, and I didn't have one.

(Whereupon the attorneys were conferring off the record)

THE COURT: All right. And I'll say in front of -- while Mr. Foster is here, Sanford, as we've discussed, I mean, you know, I'm not familiar with anything about the facts of this case yet other than what little bit I've looked at it, but I know that just the charges themselves carry a lot of time. I don't know if y'all need any further time to discuss anything. We've got -- we'll give you a few minutes to discuss, but,

10

otherwise, we're ready to go to trial.

(Pause)

THE COURT: And you had a chance -- you got your jury list?

MR. SANFORD: I do -- I do have the jury list, Your Honor.

THE COURT: Are you ready to go with that or do you need anything ---

MR. SANFORD: I'm good with it, Your Honor.

THE COURT: Okay. Well, before we bring the jury in, did both of you have a chance to look at the voir dire from both sides?

MS. LANDSVERK: Your Honor, let me review that quickly.

(Pause)

MS. LANDSVERK: Your Honor, there is something on here that I'd like to ---

THE COURT: Okay.

MS. LANDSVERK: Your Honor, for the record, this is Courtney Landsverk for the State. It appears that Mr. Sanford has -- one of the questions is asking is anyone on the jury panel a mandated reporter. And, Your Honor, that has to do with minors as far as reporting something that a minor child tells in regards to sexual misconduct. And this case is an adult case. I just don't think it applies. I don't think it's necessary.

11

MR. SANFORD: Your Honor, I would -- I would want to know that on the basis that if there is somebody who is knowledgeable about sexual things in being a mandated reporter, I believe that that is something that potentially could put them at -- a bias against me or I would just want to be able to know that because they do have more knowledge about these types of instances, whether it be with a minor or an adult, they do have more knowledge in that area. And so, you know, having that level of expertise, I would like to know that before I put somebody on a jury.

THE COURT: I mean, I think it's appropriate to give him a little more information. Although I'm not sure, I mean, mandated reporter, that just means a person knows of something happening they've got to report. I mean, that's the extent of it, I think.

MS. LANDSVERK: Okay. I just figured sometimes it just gets unnecessary with all the questioning, but I understand.

THE COURT: Well, at least they don't have the bumper sticker ---

MS. LANDSVERK: True. That's true. Sounds good.

THE COURT: Although I like your -- do I need to read all this about Skilling (ph.) versus United States?

MR. SANFORD: No, Your Honor, just the questions.

THE COURT: Usually on these type of cases I ask does any member of the jury panel or member of their immediate family

12

ever worked for any organization, agency which investigated on behalf of victims or victim's families who've been sexually molested or assaulted? Is any member of the jury panel or member of their immediate family or close friend been the victim of a sexual assault or abuse? Any connection with the Department of Social Services? Any problem with any of those?

MS. LANDSVERK: No, Your Honor, not from the State.

MR. SANFORD: Nothing from the defense, Your Honor.

THE COURT: And, of course, on those what I will do is have them come up here, you know, usually have -- several of these questions are very, you know, they're private.

I think with -- we won't have -- we've got 41 coming up. So we'll need all of the -- all of the benches.

(Pause)

THE BAILIFF: Are you ready for the jury?

THE COURT: Is the State ready?

MS. LANDSVERK: The State's ready, Your Honor.

THE COURT: Defense ready?

MR. SANFORD: Defense is ready.

THE COURT: All right. Bring the jury in. And, I think -- Mr. Sanford, I think your question number three will be covered by my regular, but if not, at the end of it, let me know ---

MR. SANFORD: I do believe it will, Your Honor.

THE COURT: All right. But, yeah, let me know if it

doesn't.

(Whereupon the jury pool entered the courtroom at 10:31 am)

THE COURT: All right. Good morning again, ladies and gentlemen. I think several of you I saw -- feel like I've seen just a few hours ago. So thank you again. I never want to miss an opportunity to thank you for your service. It's very important.

I know you feel like you've been kind of herded around for the last few days, but we've gotten a lot done. We've had one civil trial. We've had several criminal trials going. So your service has been very important and allowed us -- allowed us to accomplish a lot, which is very important coming out of COVID because we -- although Greenville, we've worked pretty hard through COVID and probably not as far behind as others. But in this, you know, a week like this has allowed us to kind of move forward.

So we -- now we will have a -- we're getting ready to strike a jury on another case. And, again, this is general sessions or what is commonly referred to as criminal court when an individual has been charged with particular crimes and has pled not guilty, and it's up to the jury to determine the facts of the case.

Now I know -- this case will start today. And we expect that it will last -- tomorrow -- we may be able to finish it

tomorrow. At worst case scenario, it could leak into Friday morning. I know there's one person protected for Thursday morning. Okay. What was your name?

JUROR: Charles Joyce.

THE COURT: What's your number?

MR. JOYCE: 112.

THE COURT: All right. Okay. We will -- I will let you be excused from this jury, but you need to -- that doesn't mean you can leave because there's some other things that I need to tell you to do in a minute. But -- all right.

(Whereupon juror number 112, Charles Joyce, other male, was excused from the trial)

THE COURT: As I said, this is a -- I'm going to read to you the indictments that have been -- that relate to this matter. And always before I read indictments I always -- I want to make sure you understand that these are merely allegations by the State. The defendant has pled not guilty to these indictments. And this is not evidence. This is the formal papers that brings this matter to court and establishes the burden that the State has.

But this is the State versus Dylan Trey Foster. And the indictments -- the first one is for kidnapping. Dylan Trey Foster did in Greenville County on or about January 31st, 2019 unlawfully seize, abduct, confine, inveigle, decoy, kidnap, abduct or carry away [redacted] without the authority of

law.

The second indictment is burglary, first degree, that Dylan Trey Foster did in Greenville County on or about July 31st, 2019 willfully and unlawfully enter the dwelling of [redacted] Complainant located at [redacted] Buttercup Way without consent with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation to wit: the entering or remaining did occur in the nighttime or did cause physical injury to a person who was not a participant in the crime.

Domestic violence, first degree, that Dylan Trey Foster did in Greenville County on or about July 31st, 2019 unlawfully cause physical harm or injury to Ashley Anderson, a household member, or did unlawfully offer or attempt to cause physical harm or injury to [redacted] Complainant, a household member, with apparent present ability under circumstances reasonably creating fear of imminent peril and great bodily injury resulted to [redacted] Complainant or the act was accomplished by means likely to result in great bodily injury.

And then criminal sexual conduct in the first degree, and that is that Dylan Trey Foster did in Greenville County on July 31st engage in sexual battery with [redacted] Complainant and used aggravated force to accomplish this sexual battery. All right. Those are the indictments.

First of all, is anyone aware of any -- have any

information, reviewed any media coverage or know anything about this case? If so, please stand.

(No response)

THE COURT: All right. And I also wanted to tell you in the beginning, and some of y'all heard me tell this yesterday, but the purpose of this questioning is two-fold. One is so that the attorneys can get a little more information about you so when they are selecting the jury they can have a little more information. And the most important reason is, for these questions, is to make sure that the jury can -- that if you're selected on the jury you can be fair and impartial to both the State and the defendant.

Some of these questions will be very personal. And at that point I will have you come up here one at a time because we have to have the court reporter and the lawyers hear it, but you won't have to broadcast it to the whole jury panel.

So -- all right. With that information, at this time, Mr. Foster, if you could stand and face the jury just so ...

(Whereupon the defendant complied)

THE COURT: All right. Thank you. All right.

Is anybody related by blood or marriage or close personal friends, social -- have a social or business relationship with Mr. Foster. If so, please stand.

(No response)

THE COURT: All right. At this time I would ask that the

-- well, let me go through -- these are possible witnesses that the parties have indicated may be called. So listen up. And if you know any of these people, if you would stand and I'll ask you personally which one.

But, again, the question is going to be are you related by blood or marriage, have a close personal, business, social relationship with these individuals? And the fact that you know them doesn't mean it excuses you, just if you can still be fair and impartial.

So Rene -- is it Beaufort or Beaufort?

MS. LANDSVERK: Beaufort, Your Honor.

THE COURT: Rene Beaufort, Greenville County Sheriff's Office, [redacted] Complainant, Doug Bowlby, Harold Anderson, Deputy Christina Aardsman, Aardsma, of the Greenville County Sheriff's Office, Deputy Blake Wolfe with the Greenville County Sheriff's Office, Deputy Tyler Bucholtz from the Greenville County Sheriff's Office, Sergeant Cheri Lyda, Greenville County Sheriff's Office, Teresa Lipscomb, Matthew Waters, Greenville County Sheriff's Office, Tim Nafziger, Dr. Jagannadha Kandala, Andrew Sturman, Greenville City Police Department, Brooks Bartley and Lawson Janarello. Okay.

Does anybody know any of those individuals? Yes.

MS. LANDSVERK: Your Honor, may I add to the State's witness list Brian Browning?

THE COURT: Okay.

MS. LANDSVERK: Thank you.

THE COURT: Brian Browning.

MS. LANDSVERK: Yes, Your Honor.

THE COURT: Is he with any agency?

MS. LANDSVERK: He's with the Greenville County Sheriff's Office.

THE COURT: All right. And add to that list Brian Browning, Greenville County Sheriff's Office. All right.

Does anybody know any of these individuals, related by blood or marriage, have any close business, personal or social relationship with any of these individuals? If so, please stand.

(No response)

THE COURT: Okay. All right.

At this time I'm going to ask that the attorneys stand, introduce themselves and anybody that'll be assisting them in the case.

MS. LANDSVERK: Hi. Good morning. My name is Courtney Landsverk. I'm with the solicitor's office. Seated here with me is Haley Kernell. She's also with the solicitor's office. And we have Complainant, the victim in the case. And also Brittany Scott with me as well. She's a prosecutor in our office.

MR. SANFORD: Hey. My name is Russell Sanford. I work for the law firm of Richard Warder. And it is my privilege to

be representing Mr. Dylan Foster.

THE COURT: All right. Is anybody related by blood or marriage, have a close personal, business or social relationship with the attorneys in this matter? If so, please stand. Yes. Your name and number?

JUROR: Ephraim Moody, 143.

THE COURT: Okay.

MR. MOODY: I know the lawyer, Russell.

THE COURT: Okay. Has he represented you or just know him?

MR. MOODY: Just close friends. We've worked together for years.

THE COURT: All right. Could you still be fair and impartial in the trial of this case if you were selected?

MR. MOODY: Yes.

THE COURT: Okay. Thank you. All right.

Now the next question is has anybody been represented by these attorneys or their law firm or have you been in a matter with these lawyers or their law firms have been on the other side of you? If so, please stand.

(No response)

THE COURT: All right. No response.

Has any member of the jury panel formed or expressed any opinion about this case? If so, please stand.

(No response)

THE COURT: Okay. And no response.

Is any member of the jury panel or member of their immediate family associated with or related by blood or marriage with anyone who's employed with the Greenville County Sheriff's Office or the Thirteenth Circuit Solicitor's Office? If so, please stand. Yes, your name and number?

JUROR: Tammy Smith, 195.

THE COURT: Okay.

MS. SMITH: My step-father is retired from both the sheriff's department and the solicitor's office.

THE COURT: Okay. And what was his name?

MS. SMITH: Danny Clyde.

THE COURT: All right. And could you still be fair and impartial in the trial of this case?

MR. SMITH: Yes, sir.

THE COURT: All right. Thank you. Anyone else?

(No response)

THE COURT: Okay. Is there any member of the jury panel a member of or contributor to any group or organization which promotes victim's rights or law enforcement such as MADD or SADD or any other advocacy group which promotes the interest of law enforcement or victim's rights? If so, please stand.

(No response)

THE COURT: Okay. And no response.

Has any member of the jury panel read any newspaper

articles, articles posted on the internet, social media or any information about this defendant or any issues relating to this case? If so, please stand.

(No response)

THE COURT: All right. And no response.

Is there any member of the jury panel or member of your immediate family ever been employed by a law enforcement agency? If so, please stand. Yes. And other than the lady who's already spoken. Yes, your name and number?

JUROR: Ellison Gilbert, 77.

THE COURT: All right.

MR. GILBERT: My father's retired from federal.

THE COURT: All right. And could you still be fair and impartial in the trial of this case?

MR. GILBERT: Yes.

THE COURT: All right. Thank you. Anyone else?

(No response)

THE COURT: Okay.

Is there any member of the jury panel a member of any political, religious, social, industrial, fraternal, law enforcement or other organization whose beliefs or teachings would prejudice them against either the State or the defendant in this matter? If so, please stand.

(No response)

THE COURT: All right. No response.

Is there any member of the jury panel aware of any physical, mental or emotional condition which would prevent them from giving the defendant a fair, and the State, a fair and impartial trial? If so, please stand.

(No response)

THE COURT: Okay. No response.

Is any member of the jury panel, a member of their immediate family now or in the past ever worked for any organization, agency or business which investigated or counseled victims or victim's families in relation to sexual assault? If so, please stand.

(No response)

THE COURT: Okay. No response.

Is there any member -- and this is one where I'm going to ask you to stand, and if you need to come up here and talk more privately with me, then I'll be glad to do that.

Is there any member of the jury panel or member of your immediate family or close friend been the victim of a sexual assault? If so, please stand. Okay. All right. And what I will do is I will come down here and call you up. The lawyers want to come up?

(Whereupon a bench conference was held on the record in the presence of the jury pool, but out of their hearing)

THE COURT: All right. Sorry to have to do this, but your name and number?

JUROR: Darlene Hansen, 82.

THE COURT: And how do you respond to that question?

MS. HANSEN: A very good friend of mine in college was raped.

THE COURT: Okay. And do you think you could still be fair and impartial in the trial of this case?

MS. HANSEN: I do.

THE COURT: Okay. Thank you.

MS. HANSEN: Thank you.

THE COURT: Sorry to have to ask this question. Yes, your name and number?

JUROR: Page Watson, 222.

THE COURT: Okay. All right. Yes.

MS. WATSON: Actually, my daughter in middle school was kind of, not attacked, but in the restroom by three boys at school.

THE COURT: All right.

MS. WATSON: We never found out who or anything like that.

THE COURT: All right. Would you be able to listen to the facts of this case ---

MS. WATSON: Yes.

THE COURT: --- and be fair and impartial?

MS. WATSON: Sure.

THE COURT: Okay. Thank you.

(Whereupon the bench conference was ended)

THE COURT: All right. And, again, this question also I will allow you to come up here one at a time. Has anyone or a member of your family or a close friend been accused, charged or convicted of a criminal sexual conduct? If so, please stand.

(No response)

THE COURT: Okay. All right. And no response.

Is there any member of the jury panel, member of your immediate family employed by or ever been employed by the South Carolina Department of Social Services? If so, please stand. Okay. Yes. Your name and number?

JUROR: Angela Burnside, 25.

THE COURT: All right. And how -- what is your response to that question?

MS. BURNSIDE: I have a sister that works for DSS.

THE COURT: I'm sorry. What?

MS. BURNSIDE: I have a sister that works for DSS.

THE COURT: Okay. And can you still be fair and impartial in the trial of this case?

MS. BURNSIDE: Yes, sir.

THE COURT: All right. Thank you.

All right. And this relates -- does anyone have a -- closely related to or made campaign contributions or was involved in the campaign for Sheriff Hobart Lewis or Solicitor

Walter Wilkins? If so, please stand.

(No response)

THE COURT: All right. And no response.

Is there anyone who's received any special training or education in the subject of sexual offenses, whether it be minors or adults? If so, please stand. Yes.

JUROR: Jonathan Tillman, 207.

THE COURT: Okay.

MR. TILLMAN: I was a pastor for 29 years and was trained in counseling those victims.

THE COURT: Okay. And could you still be fair and impartial ---

MR. TILLMAN: Yes.

THE COURT: --- in the trial of this case? All right. Thank you.

Your name and number?

JUROR: Darlene Hansen, number 82.

THE COURT: Okay.

MS. HANSEN: Teacher and youth leader at church. So we've gone through training for that.

THE COURT: All right. And could you be fair and impartial in the trial of this case?

MS. HANSEN: Yes, sir.

THE COURT: All right. Thank you.

All right. Is there anyone on the jury panel who is

designated as a mandated reporter? And that's one of those things, if you are a mandated reporter, you'll know what that means and know if you are one, so. Yes. And, again, your name and number just for the record?

JUROR: Darlene Hansen, 82. I've worked for the school.

THE COURT: Okay. And you're a mandated ---

MS. HANSEN: (Affirmative nod).

THE COURT: Okay. Could you still be fair and impartial in the trial of this case?

MS. HANSEN: Yes, sir.

THE COURT: Okay. Thank you. Name and number again?

JUROR: 207, Jonathan Tillman. Yes, mandated reporter.

THE COURT: Okay. And could you still be fair and ---

MR. TILLMAN: Yes.

THE COURT: --- impartial in the trial of the case?

MR. TILLMAN: Yes.

THE COURT: All right. Thank you.

Is there any juror who would give more credibility or believability to testimony of a police officer simply because they're a police officer compared to another witness? In other words, would you give credibility to a witness because they're a police officer? Does anybody believe that? If so, please stand.

(No response)

THE COURT: All right.

Is there any member of the jury panel aware of any bias or prejudice to either the State or the defendant in this matter? If so, please stand.

(No response)

THE COURT: All right.

Does any member of the jury panel know of any reason whatsoever that they could not be fair and impartial to both the State and the defendant in this matter? If so, please stand.

(No response)

THE COURT: Any additional questions from the State?

MS. LANDSVERK: Nothing further, Your Honor.

THE COURT: Any additional from the defendant?

MR. SANFORD: Nothing from the defense, Your Honor.

THE COURT: I think I covered all the ones that you had presented, then.

MR. SANFORD: Yes, Your Honor.

THE COURT: All right, ladies and gentlemen, then at this point what we will do is your name will be called, you will stand and then the State gets to state their position first, then the defendant. And if you are selected, you'll come and sit in the box.

This is a ten and five. And we'll do two alternates. And for your purposes, that means the State gets five strikes and the defendant gets ten under our law. So that's -- all

right.

MR. SANFORD: Judge, would that be one and one on the alternates ---

THE COURT: It's two and one.

MR. SANFORD: --- strikes? Okay.

THE COURT: Two and one.

MADAM CLERK: Juror number 38, Lauren Craine.

(Whereupon juror number 38, Lauren Craine, a white female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Ma'am, you may be seated. You've been excused from this case.

Stephanie Stephenson.

(Whereupon juror number 198, Stephanie Stephenson, a white female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Ma'am, you may be seated. You've been excused from this case.

Jonathan Devall.

(Whereupon juror number 47, Jonathan Devall, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Sir, please gather your things and take a seat in the jury box.

Derrick Allen.

(Whereupon juror number 5, Derrick Allen, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Sir, please have a seat in the jury box.

Kellie Freeman.

(Whereupon juror number 71, Kellie Freeman, a white female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Ma'am, please have a seat in the jury box.

Laura Noonkesser.

(Whereupon juror number 156, Laura Noonkesser, a white female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Ma'am, please have a seat in the jury box.

Mark Bumgarner.

(Whereupon juror number 24, Mark Bumgarner, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Sir, please have a seat in the jury box.

Anthony Aldiosa.

(Whereupon juror number 4, Anthony Aldiosa, an Asian male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Sir, you may be seated. You've been excused from this case.

Tammy Smith.

(Whereupon juror number 195, Tammy Smith, a white female, stood)

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the State [sic]?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Ma'am, you may be seated. You've been excused from this case.

THE COURT: That was the defendant.

MADAM CLERK: I'm sorry?

THE COURT: You said State. I was just ---

MADAM CLERK: Oh, sorry.

THE COURT: For the record, I was just saying defendant.

MADAM CLERK: My ---

THE COURT: No, that's good.

MADAM CLERK: I'm sorry.

John Cochran.

(Whereupon juror number 33, John Cochran, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please excuse this juror.

MADAM CLERK: Sir, you may be seated. You've been excused from this case.

Donald Odom, Jr.

(Whereupon juror number 157, Donald Odom, Jr., a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please excuse this juror.

MADAM CLERK: Sir, you may be seated. You've been excused from this case.

Mina Mekhael.

(Whereupon juror number 138, Mina Mekhael, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please excuse this juror.

MADAM CLERK: Sir, you may be seated. You've been excused from this case.

Douglas Oliver.

(Whereupon juror number 158, Douglas Oliver, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Sir, please have a seat in the jury box.

Douglas Oliver.

(Whereupon juror number 158, Douglas Oliver, had already been called and was approaching the jury box, and stopped midstride)

MADAM CLERK: I'm sorry.

(Laughter)

MADAM CLERK: My apologies.

Angela Starks.

THE COURT: Nice reaction.

MADAM CLERK: I'm sorry.

(Whereupon juror number 197, Angela Starks, a black female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Ma'am, please have a seat in the jury box.

Bryce Ellsworth.

(Whereupon juror number 59, Bryce Ellsworth, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please excuse this juror.

MADAM CLERK: Sir, you may be seated. You've been excused from this case.

Edwin Gabriel Rodriguez.

(Whereupon juror number 182, Edwin Rodriguez, a Hispanic male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please excuse this juror.

MADAM CLERK: Sir, you may be seated. You've been excused from this case.

THE COURT: Five for the State.

MADAM CLERK: Lori Parsons.

(Whereupon juror number 163, Lori Parsons, a white female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Ma'am, please have a seat in the jury box.

Michelle Adams.

(Whereupon juror number 2, Michelle Adams, a white female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Ma'am, you may be seated. You've been excused from this case.

David Bell.

(Whereupon juror number 15, David Bell, a black male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Sir, please have a seat in the jury box.

Michael Partridge.

(Whereupon juror number 164, Michael Partridge, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Would you say his name for me one more time?

MADAM CLERK: Michael -- excuse me. Michael Partridge.

MR. SANFORD: Please seat this juror.

MADAM CLERK: Sir, please have a seat in the jury box.

Angela Burnside.

(Whereupon juror number 25, Angela Burnside, a black female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Ma'am, you may be seated. You've been excused from this case.

Joseph Mazur.

(Whereupon juror number 132, Joseph Mazur, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Sir, you may be seated. You've been excused from this case.

Robert Curtis.

(Whereupon juror number 39, Robert Curtis, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Sir, please have a seat in the jury box.

Jonathan Tillman.

(Whereupon juror number 207, Jonathan Tillman, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says ---

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Sir, you may be seated. You've been excused from this case.

Darlene Hansen.

(Whereupon juror number 82, Darlene Hansen, a white female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Ma'am, you may be seated. You've been excused from this case.

Tammy Kelly.

(Whereupon juror number 116, Tammy Kelly, a white female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Ma'am, you may be seated. You've been excused from this case.

THE COURT: And I have ten.

MADAM CLERK: Comiller Wimberly.

(Whereupon juror number 231, Comiller Wimberly, a black female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please seat this juror.

MADAM CLERK: Ma'am, please have a seat in the jury box.

(Whereupon juror number 231, Comiller Wimberly, started

to sit back down)

MADAM CLERK: Ma'am, ---

MS. WIMBERLY: Oh, I'm sorry.

(Laughter)

MS. WIMBERLY: I thought you said -- I'm sorry.

THE COURT: All right. Now for the first alternate.

MADAM CLERK: Thomas Volz.

(Whereupon juror number 216, Thomas Volz, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: What was the last name again?

MADAM CLERK: Volz, V-o-l-z.

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please present this juror.

MADAM CLERK: Sir, please have a seat in the jury box.

THE COURT: All right. And an additional alternate.

MADAM CLERK: Shad Slade.

(Whereupon juror number 190, Shad Slade, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please excuse this juror.

MADAM CLERK: Sir, please be seated. You've been excused from this case.

Page Watson.

(Whereupon juror number 222, Page Watson, a white female, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Ma'am, please be seated. You've been excused from this case.

Ernest Wicker.

(Whereupon juror number 228, Ernest Wicker, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please excuse this juror.

MADAM CLERK: Sir, you may be seated. You've been excused from this case.

Jared Irish.

(Whereupon juror number 100, Jared Irish, a white male, stood)

MADAM CLERK: What says the State?

MS. LANDSVERK: Please present this juror.

MADAM CLERK: What says the defendant?

MR. SANFORD: Please present this juror.

MADAM CLERK: Sir, please have a seat in the jury box.

THE COURT: All right. Any objection or exception from the State ---

MS. LANDSVERK: No, Your Honor.

THE COURT: --- on the jury selection process? From the ---

MR. SANFORD: No, Your Honor.

THE COURT: All right. Ladies and gentlemen, you have been selected for this jury. And I'm going to send you back to your jury room right now. Do not discuss the case. There's a couple of matters I need to go over with the attorneys. And we'll bring you back out to begin the case at that time. So if you'll follow the bailiff, he'll take you back there.

(Whereupon the jury exited the courtroom at 11:11 am)

THE COURT: All right. To the remaining balance, I'm going to send you back downstairs for further instructions. I think that this will be the last I'll see of you. There's another possible trial, but it will be before another judge.

But, again, I want to take this opportunity to thank you for your week. And I know the week before a holiday weekend is sometimes kind of tough. But we do appreciate your being here. And like I said, go downstairs for further instructions, as I said, probably your favorite room in the courthouse.

(Laughter)

THE COURT: Y'all have a good rest of your week.

(Whereupon the remaining jurors exited the courtroom)

THE COURT: All right. Is there anything we need to go over from the State before we bring the -- we're going to take about a ten minute break here in a minute. But anything?

MS. LANDSVERK: I do have a motion to amend a date on one of the indictments.

THE COURT: Okay.

MS. LANDSVERK: And I could do that after. But after hearing you call it out, three were ---

THE COURT: Did I call it ---

MS. LANDSVERK: Three were correct.

THE COURT: Did I call it out correctly?

MS. LANDSVERK: You called it out correctly as it was read, but, Your Honor, we -- the date that it happened, the occurrence happened was July 31st, 2019. And on the kidnapping indictment, it has January 31st, 2019.

THE COURT: Oh, okay.

MS. LANDSVERK: So we just wanted to amend that specific indictment.

THE COURT: All right. Mr. Sanford.

MR. SANFORD: This is a three-year-old case. I don't know when that indictment was issued, but they should have been aware. This situation, I know it's just a date error, but at the same time they still have to prove the date and

times that this occurred. I believe this should have been amended prior. And I would, you know, ask that that indictment be quashed.

THE COURT: I assume that -- and, again, I don't know anything about the facts. I assume this is all one incident?

MS. LANDSVERK: It is, Your Honor.

THE COURT: You know, and, I mean, I assume that all the reports, all the discovery had that date on there and it was a scrivener's error, obviously. I mean, any prejudice that you can come up with?

MR. SANFORD: Other than, you know, there being -- there being an improper date on there and it should have been amended prior to now, no, Your Honor.

THE COURT: Okay. I'm going to grant the motion to amend since I -- I don't find there's any prejudice to the defense.

So anything else form the State? Your Jackson v. Denno ---

MS. LANDSVERK: Yes, Your Honor.

THE COURT: Was that the hearing -- was that the motion you said with your officer tomorrow?

MS. LANDSVERK: That's correct, Your Honor.

THE COURT: All right.

MS. LANDSVERK: And one other thing real quick, which is the motion in limine in regards to the rape shield law. And I'm not sure if this would necessarily apply, but I just want

to throw it out there to be on the safe side. Do you want me to do it now?

THE COURT: If y'all ...

MR. SANFORD: That's fine. I don't think it'll take long.

THE COURT: Okay.

MS. LANDSVERK: Okay. Your Honor, the State just wants to assure that there's compliance with South Carolina code section 16 3 659, the rape shield statute. And this just limits the admissibility of opinion, reputation or specific instances in regards to the victim's sexual activity or her sexual conduct in this case, Your Honor.

THE COURT: All right. Is there ...

MR. SANFORD: Your Honor, of course, I understand where the State is coming from on this. However, I would say that, you know, obviously I don't think this covers -- it covers specific sexual activity with specific individuals and not the broad terms of just, say, a relationship with somebody, if I'm -- if I understand the rape shield law correctly.

MS. LANDSVERK: So -- and I apologize. I should have expounded on that. So this specifically has to do with any other sexual activity with other parties outside of the defendant. You know, the State does not want the defense to mention anything in cross-examination to the victim about sexual activity with any other partner.

THE COURT: All right. Is there any ...

MR. SANFORD: I have no objection to that as long as I'm given a little bit of a latitude maybe to explore the potential relationships outside of the sexual component of that relationship. Not deeply, but just that there may have been other parties at some point.

THE COURT: Well, I think -- I think that relationships are not covered by this. I think it specifically relates to other sexual ---

MR. SANFORD: Yes, Your Honor, it does. And I just wanted to make sure that I do have that latitude, though.

THE COURT: All right. Anything else from the State?

MS. LANDSVERK: Nothing further from the State.

THE COURT: Anything from the defense?

MR. SANFORD: Your Honor, I have two very, very fast motions.

THE COURT: Okay.

MR. SANFORD: My first one would be to sequester all the witnesses just because this is a case where there were no witnesses to the actual act. And so, therefore, I want all their testimony to be as pure and truthful as possible.

THE COURT: All right. Any comment from the State?

MS. LANDSVERK: No, Your Honor.

THE COURT: All right. Well, I'll grant that motion. They will be sequestered. And make sure you advise your --

both sides advise their witnesses that they're not to discuss their testimony or tell what they talked about or anything with any other witnesses.

MS. LANDSVERK: Yes, sir.

MR. SANFORD: And the other motion I have, Your Honor, is just that -- and I have spoken to the State about this. When referencing to the victim in this case to not refer to her as victim as much as possible, to identify her by her name so that way the presumption of innocence is not prejudiced on my client to the jury. And we have talked about this. And she said that that's something that she normally does. So I just wanted to put that on the record for the Court.

THE COURT: All right. But I'm not, I mean, is it a motion? I mean, it sounds like she's agreed to ---

MR. SANFORD: Yes, Your Honor.

THE COURT: --- to ---

MR. SANFORD: I just wanted to -- I just wanted to put that on the record just so that way there wouldn't be any -- if there is a prejudicial, I guess, mention of it. I'm not -- if you say it once, I'm not going to -- I'm not going to come after her. I just wanted to put that on the record.

MS. LANDSVERK: Your Honor, that's just such a normal term for us to use, and I will try my best ---

THE COURT: Well, I know. And ---

MS. LANDSVERK: --- but it may come out.

THE COURT: And that's come up. I've had it -- that motion made in previous things. And, I mean, I understand y'all have kind of a general agreement to that, but I'm not granting your motion. If that is in any way prejudicial or -- I'm not going to -- as far as if it's a motion in limine, I'm not going to limit her from -- if it comes out, she says that.

MR. SANFORD: Yes, Your Honor. I just wanted to put that on the record.

MS. LANDSVERK: Thank you, Your Honor. And just talking to co-counsel, to her point, as far as the investigators and the law enforcement in this case, that's such a normal term.

THE COURT: Yeah.

MS. LANDSVERK: I think it would be difficult to limit all of the witnesses in saying that, but we'll do what we can.

THE COURT: All right. And, again, I'm not making that an order of the Court.

MR. SANFORD: Yes, sir.

MS. LANDSVERK: Thank you, Your Honor.

THE COURT: All right. Anything else?

MS. LANDSVERK: Nothing further from the State.

MR. SANFORD: Nothing from the defense.

THE COURT: Usually what I do is I'll have about a ten minute, I kind of give them preliminary information, just general information about what's going to be happening. And then I'll immediately turn it over to y'all for opening

statements. 11:20, what's -- do you have a short witness that you could possibly ---

MS. LANDSVERK: Pretty short, Your Honor. I was going to call the 911 person first, dispatch, and do that 911 call. And then after that would be the long ---

THE COURT: Okay. Let's do the opening statements and maybe that first witness, and then we'll break for lunch.

MS. LANDSVERK: Okay. And, Your Honor, before we start, because we do have the 911 call, it may be easier for me just to check to ensure that we have it hooked up before we start.

THE COURT: Okay.

MS. LANDSVERK: And it's just audio. And maybe we could go ahead and discuss this now. We redacted a two second portion that had to do with the defendant being on probation.

THE COURT: Okay.

MS. LANDSVERK: And that was something that Mr. Sanford and I had discussed. But that is -- so when we ask the dispatch person if anything has been changed or corrected, nothing other than that, but I didn't want to go into that in front of the jury.

THE COURT: I think -- I like the way Jay did it yesterday, is this -- I think how he put it, has this been changed any way other than to conform to our rules of evidence?

MS. LANDSVERK: Okay.

THE COURT: I thought that was a very good ---

MS. LANDSVERK: That's great.

THE COURT: --- way of saying that.

MS. LANDSVERK: Yes.

THE COURT: So that was -- the brand new lawyer came up with that, I guess.

MS. LANDSVERK: That's fantastic. I'll use that.

THE COURT: No, I liked it, too. And just to let you know, I guess -- is your video running through your computer? Or are y'all going to do it separately over there? How are you doing that?

MS. SCOTT: It's run through our computer.

THE COURT: Well, what I'm saying is to run it through the system, it's going to have your screen on there.

MS. SCOTT: I got it.

THE COURT: You know? Unless y'all want to do it -- I don't know that -- I can't just do it video, I mean, audio.

MS. SCOTT: Right. We got it, Judge.

THE COURT: Okay.

MS. LANDSVERK: Right. Thank you.

THE COURT: All right. Let's take, like I said, ten minutes, everybody get their thoughts together. And then we'll ...

(Whereupon court was in recess at 11:21 am)

(Whereupon State's exhibit 1 was marked for

49

identification)

(Whereupon court reconvened at 11:40 am)

THE COURT: The State ready?

MS. LANDSVERK: The State's ready, Your Honor.

THE COURT: Defense ready?

MR. SANFORD: Defense is ready, Your Honor.

THE COURT: The clerk ready to swear?

MADAM CLERK: Yes, sir.

THE COURT: All right. We'll bring the jury in. And based on my order, there'll be no witnesses in the courtroom.

MS. LANDSVERK: We've got our first witness ---

THE COURT: The first witness will be fine. I mean, you don't have any problem with that, do you, Mr. Sanford?

MR. SANFORD: No, I don't, Your Honor.

MS. LANDSVERK: Your Honor, something -- just quick housekeeping matter. Mr. Sanford?

MR. SANFORD: Yes.

MS. LANDSVERK: I know Your Honor said on the record that you would change the indictment to reflect -- that you would change the indictment to reflect July 31st, 2019, the kidnapping charge. So I just wanted to be sure that that was amended before we said it again in front of the jury.

THE COURT: Okay. And I don't, I mean, I don't read the indictment again anyway. But, yeah, that has been amended.

MS. LANDSVERK: Okay.

50

MR. SANFORD: Okay.

MS. LANDSVERK: Thank you, Your Honor.

THE COURT: Do I need to write it on there and initial it?

MS. SCOTT: Yes, Your Honor.

MS. LANDSVERK: Yes, Your Honor.

THE COURT: All right. So based on my ruling the -- I am amending the kidnapping -- hold on just a second. All right. So amended.

MS. LANDSVERK: Thank you, Your Honor.

THE COURT: Y'all want to look at that -- just show that to both people -- let me initial it.

(Whereupon the jury entered the courtroom at 11:42 am)

THE COURT: All right, ladies and gentlemen, we're going to start this trial. And first I'm going to have the clerk administer the oath. And then I'll have a few things that I need to tell you.

MADAM CLERK: If you would, please, stand and raise your right hand. The correct response to the oath is I will. You shall well and truly try the cases 2021-GS-23-4398, the State versus Dylan Trey Foster, indicted for criminal sexual conduct, first degree; case number 4400 for domestic violence, first degree; case number 4397 for burglary, first degree; case number 4399 for kidnapping, and a true verdict rendered according to the law and the evidence so help you God. I

will?

THE JURY: I will.

MADAM CLERK: Thank you. Please be seated.

THE COURT: All right. Ladies and gentlemen, just to let you know what our schedule's going to be, we are going to -- it's 15 til 12 now. I'm not going to starve you out, but our goal is to do opening statements and one very short witness, and then we'll break for lunch.

For a couple of you familiar faces I'm going to -- you've already heard a lot of what I'm telling you. This is a much different case, but a lot of the same rules and procedures will be the same.

I always like to start off with the jury and let them know the different people that are in the courtroom. Y'all have already met the attorneys and parties and stuff like that. The other people in the courtroom just you may not be familiar with is our court reporter, who sits right here in front of me. And she actually takes down all the testimony that is being presented.

We have our clerk of court whose job is to administer the oath and be responsible for all exhibits and documents there. And to my right is my law clerk, who is a law school graduate, who assists me with any type of research and anything that I need on the trial.

As I always say, the most important people for your

concern are the bailiffs, the gentlemen in the red jackets. And as I always -- I never miss an opportunity to brag on them because they are fantastic. We get to go all over the State, and these are the top. I mean, they really are. They're the cream of the crop. They do a great job.

And if you ever -- if you need anything or have any questions, present that to the bailiffs. And if it's something that I need to address, they will let me know. All right.

What is your role in this matter? Your role and my role are two different roles. My role is to preside over the trial, rule on the -- rule on the evidence. And that -- and that involves -- you may hear objections from time to time.

We have very strict rules of evidence that apply to our court. And that's usually -- and my job is to administer those rules. And, finally, I will charge you on the law at the end of the case. And that's -- I will tell you the law that applies to this case.

I'm going to ask that you not take notes. I think that you will -- this trial should not last long as far as, you know, we may be able to finish it tomorrow, possibly into Friday morning at the latest. But I believe there'll be -- and any kind of exhibits will be -- you'll have with you in the jury room.

The, you know, I've listed the charges. And the

defendant comes in here not guilty. And even though I have read the indictments to you, the fact that somebody has been indicted is not evidence. Those are the allegations by the State.

And the defendant's pled not guilty. And with those allegations the State has the burden of proving all of the elements of those charges beyond a reasonable doubt. And I'll give you more information about what those elements are at the conclusion of the trial.

Reasonable doubt, that's the standard that they -- that the State has. The defendant has no burden in this case whatsoever. The State has all the burden. And that burden's beyond a reasonable doubt, which is much higher. If you've ever been involved in a civil matter, this is much higher than what you apply in a civil case. This is beyond a reasonable doubt.

And part of that is -- since they have the burden, the defendant has pled not guilty, so he has a presumption of innocence which stays with him throughout the whole trial unless you find that he's guilty based on the evidence beyond a reasonable doubt. And that's a very important part of our judicial system.

Now it's very important that you -- when you make -- get to the end of the case that you make your decision based only on the evidence presented in this case, all right, and the

law, which I apply.

And part of that you'll have to determine the credibility or believability of witnesses. And with witnesses and any evidence introduced, you, the jury, should give it the weight and the value which you feel is appropriate, okay? But there's -- it's very important.

And when you take a break, as people on previous juries will tell you, this is what I will tell you every time, do not discuss the case. And that is among yourselves, among family members or friends.

I know that's a very difficult rule to follow because you go home, what did you do all day? Well, you know, -- no, but it's important because once you start discussing the case, then you're making decisions. And when you start discussing it with people that -- outside, then you have outside influences. That's why it's so important, do not discuss the case until it's time to do so.

It's also important for you not to do any type of research. And that's difficult in this day and time because we all have our phones to pull out, oh, let's Google this. You can find anything online. But that is information that is not presented in this courtroom and is not presented using our rules of evidence, which is what we have to -- what governs all evidence and its admissibility.

So it's very important that you not Google the law on

this, the parties, the lawyers, anything about it. Everything that you will need to make a decision will be presented in this courtroom.

Finally, I'm not aware of any media coverage in this, but, you know, do not pay -- if there is any media coverage, whether it be by way of social media, you know, main stream media, TV, television, I mean, that is -- TV and television, it is the same, newspaper, anything like that, please disregard that. Again, that is information not presented in this courtroom.

We will take breaks -- we try to take breaks every hour, hour and a half at the most. And sometimes that depends on where we are with witnesses. But if you need to take a break at some point, we realize this is an inconvenience to you, so we try to minimize that as much as possible.

So if you -- if it's a point that you have to take a break, please indicate to the bailiff, and we'll break as soon as we get -- get an opportunity to do so. But a lot of this is dictated by the witnesses we have.

We try to break for lunch somewhere between 12:30 and one. We give you sufficient time to -- and sometimes that is dictated by where witnesses are. Yesterday when we had a trial, we had to break a little bit early because of the way the witnesses fell. We'll give you sufficient time for lunch.

We try to break as close to 5:00 as possible unless,

again, if you're deliberating, that's a different story as yesterday. But we try to break as close to 5:00. Sometimes we may be in the middle of a witness that may not can come back tomorrow.

And before we go beyond 5:00 I will say, hey, this is where we're headed, just making sure y'all are aware of that and if anybody needs to make any calls or something like that. But any change from that, I will discuss it with you before we do that.

We will generally start at 9:30 in the morning. That's what we -- it could be -- could possibly change, but that's usually what our kind of standard starting time because there's usually a lot of stuff that we have to do before we actually begin presenting the case to you.

So -- oh, and then just finally the kind of procedure for trial. First -- the first section will be opening statements and ask the attorneys to give you a summary of what the case is going to be about. That is not evidence. That's just their summary of what you're getting ready to hear.

The second part is what I call the evidentiary stage. That is where evidence is presented by way of testimony through witnesses, evidence, possibly stipulations, videos, those types of things.

Then once all the evidence that the parties have presented -- then we'll have closing statements by the

attorneys. Then I will charge you on the law. And then at that point you will go back and begin deliberating.

And basically your decisions in this matter is you will have a verdict form that will have each of the charges listed. And as to each charge you will weigh the evidence and you will determine if the defendant, for that charge, is guilty or not guilty. And then you'll go to the next charge, guilty or not guilty.

So that's kind of ultimately what your -- when I say deliberation and your decision, that's what you're going to be doing at the conclusion of the trial. And like I said, I will give you rules that you can use in making that decision.

With that being said, I will now turn it over to the attorneys for opening statements. Ms. Landsverk.

MS. LANDSVERK: Thank you, Your Honor. May it please the Court? Mr. Sanford.

Good morning, ladies and gentlemen of the jury. I introduced myself before. My name is Courtney Landsverk. And with me, co-counsel, is Brittany Scott.

And as you heard the Judge read the indictments before we got started, the defendant is charged with four different counts of criminal charges. One, burglary, two, domestic violence, three, sexual assault and, four, kidnapping.

And you will hear that the defendant, Dylan Trey Foster, knew the victim, [redacted]. And you will hear that

they, in fact, dated and lived together. You actually will be able to hear the testimony today of what happened to [redacted] Complaina on the night of July 31st, 2019 on which could have possibly been the worst night of her life.

You will hear that the defendant forced his way into her home at nighttime. You will hear that he used force to sexually assault her. You will hear that he physically hurt her in the process. And then ultimately you will hear that he forced her to get into her car and go get money out of her account, out of her bank account through an ATM. And you will hear that then he wanted her to go take him to go buy drugs all while her two minor children were at home upstairs sleeping.

Ladies and gentlemen, it will be, just due to the nature of the case, a little difficult at times to hear the testimony today. And as you can imagine, it will be a little uncomfortable for the victim, Complain, to get up and explain the events that happened that night, but bear with us.

You are so important to this case. We really appreciate, despite the distressing testimony that you will hear, the duty that you have in paying close attention to each of the witnesses.

And you have the important job of determining who you think is credible in this case. And you are allowed to assign credibility to each witness and determine how much of that you

believe whether it's all of their testimony, parts of their testimony or none as you are what we call the judge of the facts.

Now after you hear from the victim, you will hear from all of the people in this case that came to her aid. You'll hear from her friend that she called right after it happened. You'll hear from her dad. You'll also hear from law enforcement that came to the scene.

Then you will -- I'm just going to give you a quick layout. Then you'll hear from the nurse that treated her at the hospital. You'll hear from a scientist that further examined evidence that was found on her.

Now all of this is to paint a picture of what happened to her on that night. We will try to be as efficient and quick as possible presenting this testimony to you. And hopefully we'll have this case done by tomorrow afternoon or at the latest Friday morning. That is the goal.

Thank you again for being here. We truly could not resolve this case without you. And at the conclusion of the presentation of the testimony and the evidence I will come back and talk to you about the case in closing. So I look forward to speaking with you then. Thank you.

THE COURT: Mr. Sanford.

MR. SANFORD: Thank you, Your Honor. May it please the Court? Ms. Landsverk and Ms. Scott.

Ladies and gentlemen of the jury, once again, I am Russell Sanford. I am representing Dylan Trey Foster. Let me tell y'all a little bit about me. I like movies. I'm sure some of y'all like movies.

And if you start getting into how a movie is made -- I like to know about the nuts and bolts of how a movie is made. Because once they've shot everything, and even while they're shooting things, it has to go to an editor. And a lot of times they have different cuts of a movie.

I know that you probably have DVDs that have a director's cut, an editor's cut, a TV cut. And it always interests me how the editor influences the story, how they choose to cut their movie. Because you can watch the same movie, you can watch a director's cut, you can watch a cut that the studio put out, and they can be completely different movies. They can play completely different stories. One can be better. They can both be bad. You just -- you just never know.

Ladies and gentlemen of the jury, that's kind of what we have here today. We have two stories that are going to be very, very close to each other. There are things that both the State and the defense agree happened that evening, but we bóth have different cuts of the same movie.

Now the State, obviously, just said that my client committed all of these crimes. And I'm here today to tell you that our cut of the movie shows that he did not, that Mr.

Foster over there did not commit these crimes.

Now one of the things you're going to have to look at is exactly what happened. And there's only a few people that know what happened. And you'll see how all of this came about. But I believe that once you see our cut of the movie, I believe that you'll find my client not guilty. Thank you.

MS. LANDSVERK: Your Honor, the State -- at this time the State would like to call Rene Beaufort.

THE COURT: All right. Come forward and be sworn.

MADAM CLERK: Please pause at the end of the bench. Please place your left hand on the Bible and raise your right hand.

Rene Beaufort, being duly sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

MS. BEAUFORT: Rene Beaufort.

MADAM CLERK: Thank you.

Direct Examination by Ms. Landsverk:

Q. Good morning, Ms. Beaufort.

A. Good morning.

Q. Can you hear me?

A. I can.

Q. Okay. I know I'm a little soft-spoken. So I'll try to speak a little louder. Can you please state your name for the

record.
A. Rene Beaufort.
Q. And what is your occupation?
A. I'm the assistant director of communications ---
Q. Okay.
A. --- for the sheriff's office.
Q. Okay. And how long have you been in this role?
A. I've been in this role since 2018.
Q. And among your duties do you have supervision and the preservation of the 911 calls?
A. I do.
Q. Okay. And I am showing you what is marked as State's exhibit number 1. I just want to see if you recognize it.
A. I do.
Q. Okay. And how -- can you explain to me how you recognize it?
A. After listening and verifying that it was our recording, I signed my signature and the date.
Q. Okay. And was the entire conversation recorded that night from the 911 call?
A. Yes, it was.
Q. Okay. And are these calls a part of the regular business transactions that take place in dispatch?
A. They are.
Q. Okay. And does this record show the authentic record

from that night?

A. Yes, it does.

Q. Okay. And do you know of any alterations or changes that took place outside anything not in accordance with the law in this ---

A. No.

Q. Okay.

MS. LANDSVERK: Your Honor, at this time the State would offer State's exhibit number 1 into evidence.

THE COURT: All right. Any objection?

MR. SANFORD: No objections, Your Honor.

THE COURT: All right.

(Whereupon State's exhibit 1 was admitted into evidence)

MS. LANDSVERK: Your Honor, may we publish to the jury?

THE COURT: Yes, you can.

(Pause)

MS. LANDSVERK: Your Honor, it's 17 minutes long, so if I may, I might sit down so I'm not distracting.

THE COURT: Okay.

(Whereupon State's exhibit 1 was played for the jury)

(Whereupon State's exhibit 1 was ended)

Q. Okay. Thank you, Ms. Beaufort. There are no further questions from the State. Please answer anything from Ms. Sanford -- Mr. Sanford.

THE COURT: Mr. Sanford.

Cross-examination by Mr. Sanford:

Q. How you doing today, ma'am?
A. Good. How are you?
Q. Do you know about what time this call came in?
A. I want to say around three in the morning.
Q. Somewhere between three and four, potentially?
A. Yes.
Q. You heard on the call that there was already a police officer there?
A. (Affirmative nod).
Q. Was that an officer that the 911 dispatched to the house?
A. No.
Q. That was somebody that came otherwise?
A. Yes.
Q. And 911 operators, when they take the call -- did you personally take the call?
A. No, I did not.
Q. When 911 operators take the call, they're there -- could you give me a little description of what they're there to do to somebody that has called 911?
A. First of all they're to get the location of the emergency, and then what the emergency is and then provide them the resources whether it's fire, EMS or law enforcement. And dispatch, we dispatch only for law enforcement. We transfer out, as you heard, for EMS and fire. And then they

get the help that they need dispatched to them.

And if it is a situation where someone's very upset or a situation that's in progress, we remain on the phone with those -- with that individual until the help is there to comfort them, to let them know that help is on the way and that, you know, somebody's with them.

Q. And so part of their job is to keep the individual calm and in a state to where they can answer their questions?

A. Yes.

Q. And they're not there to make any decisions on any of their calls that come in there, just there to assess whatever the person on the other line is telling them?

A. That's correct.

Q. And they have no legal authority or anything outside of just talking to that person?

A. That's correct.

MR. SANFORD: No further questions.

THE COURT: Any redirect?

MS. LANDSVERK: No redirect, Your Honor.

THE COURT: All right. You may step down.

A. Thank you.

MS. LANDSVERK: Your Honor, may she be excused?

THE COURT: Any objection?

MR. SANFORD: No, Your Honor. No objection.

THE COURT: All right. You may be excused.

66

A. Thank you.

THE COURT: All right, ladies and gentlemen, that's -- so we got -- we're on schedule right now. So we'll go ahead and break for lunch. Let's start back at 2:00. So be back in your jury room and we'll bring you out at 2:00.

So, again, my rule, don't discuss the case. Don't -- disregard any type of media coverage if you happen to see any. Don't do any type of research about the case, about the lawyers, anything like that. And if anyone should contact you other than somebody from the clerk's office, then please let the bailiffs know. Otherwise, y'all have a good lunch, and we'll see you back at 2:00.

(Whereupon the jury exited the courtroom at 12:23 pm)

THE COURT: All right. Anything from the State?

MS. LANDSVERK: No, Your Honor.

THE COURT: Anything from the defense?

MR. SANFORD: No, Your Honor.

THE COURT: All right. We'll -- like I said, be back in here a little bit before two. If we need to go over anything, let me know. But, otherwise, I'll see y'all at 2:00.

(Whereupon court was in recess at 12:23 pm)

(Whereupon court reconvened at 2:00 pm)

THE COURT: Please be seated. All right. Anything from the State before we bring the jury in? Do you need to ---

MS. LANDSVERK: Nothing from the State, Your Honor.

67

MR. SANFORD: Nothing ---

THE COURT: Do we need to wait on anybody? You're good?

MS. LANDSVERK: You know what, let me text Brittany.

THE COURT: Okay.

MS. LANDSVERK: If she doesn't show up, it's not a big deal. She should be on her way.

THE COURT: Y'all know 2:00 with me means 2:00.

(Laughter)

THE COURT: There she is.

MS. SCOTT: I was hoping the jury wasn't in because I was just going to wait.

THE COURT: No, we were going to wait on you.

MS. SCOTT: Thank you.

THE COURT: If y'all need to premark, yeah, go ahead and premark. That'll smooth ...

(Whereupon State's exhibits 2 - 8 were marked for identification)

THE COURT: All right. Is the State ready?

MS. LANDSVERK: Ready, Your Honor.

THE COURT: Is the defense ready?

MR. SANFORD: Ready, Your Honor.

THE COURT: All right. Bring the jury in.

(Whereupon the jury entered the courtroom at 2:04 pm)

THE COURT: All right, ladies and gentlemen, hope everybody had a good lunch. And you will recall when y'all

left, the State had started their case and they're still in their case.

And also when we take the afternoon break, I want the original 12 -- the 12, the alternates don't qualify, but select a foreperson. And a foreperson, as I say, doesn't get paid anymore than the rest of you. But their duties would just be to communicate with the Court, if needed, writing notes and also leading the discussion during deliberations.

So y'all just -- if you could select a foreperson amongst the first 12, and you can let me know. I'll remind you when we break. So -- I hope to remind you when we break. But if I forget, then maybe y'all can remind me to remind you, okay? All right. State, you may call your next witness.

MS. LANDSVERK: Thank you, Your Honor. The State would like to call Complainant to the stand.

THE COURT: Ms. Complaina, if you'll come forward and be sworn.

MADAM CLERK: Please place your left hand on the Bible and raise your right hand.

Complainant,

being duly sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

MS. Complainar: Complainant.

MADAM CLERK: Thank you.

Direct Examination by Ms. Landsverk:

Q. Hi. Good afternoon. So, Ms. [redacted] what do you go by? Do you ---

A. I go by [redacted].

Q. Okay. [redacted], where do you live?

A. Currently I live at [redacted] McCrary Street in Greenville.

Q. Okay. And so where are you from?

A. Greenville.

Q. And where did you go to high school?

A. Wade Hampton.

Q. And what is your current job?

A. I'm an accounts clerk for a refrigeration company in Greer.

Q. And can you tell me -- we're going to kind of get in to how you know the defendant. What is your relationship with him or what was it?

A. He is my ex-boyfriend.

Q. Okay. And did y'all ever live together?

A. Yes, ma'am.

Q. Okay. How long did you date?

A. We dated for about 11 months.

Q. And how long of that 11 months did you live together?

A. Probably about 10.

Q. Okay. And do you have any children?

A. I do.

Q. How old are your children?
A. They are currently 14 and six.
Q. Boys/girls?
A. Both boys.
Q. Okay. And when did you and the defendant break up?
A. We broke up probably mid -- mid-June.
Q. Okay. Of what year?
A. 2019.
Q. Okay. And this happened, why we're here today, do you remember the date ---
A. July 31st, 2019.
Q. Okay. So you broke up about six weeks, maybe, before this happened?
A. Yes, ma'am.
Q. Okay. And why did you break up?
A. Because he had relapsed and went back on drugs. And I didn't want that around my kids. And I couldn't trust him in my house.
Q. Okay. And how -- did he stay at your house after you broke up?
A. No, ma'am. After we broke up, he -- I asked him to leave.
Q. Okay. And do you remember him coming by your apartment on July 31st, 2019? I guess it would actually have been the night of July 30th going into the 31st. Do you remember that?

A. Yes, ma'am.
Q. Okay. Can you tell me a little bit about when he stopped by and why he stopped by?
A. He stopped by the first time, it was somewhere between 10 and 11, to get some of his stuff. I had a trash bag with some of his belongings in it. And he stopped by to get that.
Q. Okay. And did y'all have a conversation?
A. Yes, ma'am. He knocked on the door. I went and got his stuff. And I shut the door while I was getting his stuff. And I handed it to him through the door. He asked me if I wanted to step out and smoke a cigarette with him. So I stepped out the front door, and we had a conversation for maybe 10 minutes. But my son, my oldest son came down and told me he was going to bed. So I told -- I told [redacted] that it was getting late and I was going to go in and tell my son goodnight and go to bed.
Q. Okay.
A. And he left. Or so I assumed.
Q. Okay. And what did he want that night when he came by? Did he specifically ask for anything?
A. Just his stuff the first time.
Q. Okay. And then he came back?
A. Yes, ma'am.
Q. Okay. So what time did he come back next?
A. I'm not sure. Somewhere between 12 and one ---

Q. And ---
A. --- in the morning.
Q. Okay. And what door did he come to?
A. My back sliding glass door.
Q. Okay. And can you tell me about your interaction with him at the back door?
A. He knocked on the back door, and I opened the blinds. I asked him what he wanted. And he asked me if he could come in and stay the night because he had nowhere to go. And I told him no. I said, no, I don't feel comfortable with you in my house like at all. So, no, you can't come in. And he asked a few more times. I told him no.

And then he said, well, can I just get some toilet paper, and then I'll leave. So I was trying to give him some toilet paper so he would just leave. And I told him to back up to the back of the patio so I could slide the door open and throw him the toilet paper. And when I slid the door open far enough to throw the toilet paper, he ran up to the door and pushed it open and was standing in the doorway.

Q. Okay. And before you go any further, I just wanted to ask you, what was his living situation at that point?
A. He told me he had nowhere to stay and he was homeless. He told me he was sleeping in the woods.
Q. Okay. And so when you threw the toilet paper at him, what happened?

A. He come up to the door and slid the -- and pushed the door open before I had time to close it and just stood in the doorway and was asking to come in. And I asked him to please leave. I told him I didn't feel comfortable. I told him I wanted to get him out of the doorway so I could shut the door because I was -- I didn't feel safe, I didn't feel comfortable.

Q. Okay. And what happened next?

A. I told him that if he didn't leave I was going to call the cops. And so when I went to reach for my phone on my couch, he shoved me in and shut the door behind him and shoved me down on the couch.

Q. Okay. Okay. I have a few pictures I want to show you.

MS. LANDSVERK: Your Honor, may I approach?

THE COURT: You may.

Q. Okay. I am showing you what is marked as State's exhibit 2 through 7. If you could, just look through those for a minute. Let me know if you recognize those photos.

A. Yes, ma'am. They're pictures of my living room and my hallway leading to the living room.

Q. Okay.

A. A picture of my front door and the parking lot.

Q. Okay. And are those photos an accurate depiction of the night of July 31st, ---

A. Yes, ma'am.

Q. --- 2019? Okay. And how do you know that?
A. Because it's my apartment.
Q. Okay. And would it have to do with the fact that -- the way everything is situated?
A. Yes, ma'am.
Q. The way things are on the floor?
A. Yes, ma'am. I see the towels and my clothes and ---
Q. Okay. Okay. Does it look any different than you remember it being?
A. No, ma'am. That's how I remember it that night.
Q. Okay.

MS. LANDSVERK: Your Honor, at this time the State would like to enter these photos into evidence.

THE COURT: Any objection?

MR. SANFORD: No objection, Your Honor.

MS. LANDSVERK: And, Your Honor, when appropriate, can I publish to the jury?

THE COURT: You may.

MS. LANDSVERK: I'm just going to kind of do it gradually.

(Whereupon State's exhibits 2 - 7 were admitted into evidence)

Q. Okay. Just so we can lay out the scene, I'm going to show you a few photos for you to look at so you can tell the jury what we're looking at. Okay. So what is this a picture

of?
A. My front door and my car.
Q. Okay. Which one's your front door? If you can point to it.
A. The one with the light on.
Q. The one with the light on. Okay. And ...
MS. LANDSVERK: Judge, we just need to clarify. I just put up number 2. And for the record purposes, I'm now showing her number 3, exhibit 3.
Q. Okay. What is this picture?
A. It's a picture of my front door.
Q. Okay. Next I'm showing you number 4. Okay. And if you don't mind, just tell me a little bit about the layout of your house. What are we looking at right here?
A. So when you walk in, my stairs are right here behind the door. And then this is the hall ---
Q. To the left of the door?
A. Yes, ma'am.
Q. Okay.
A. And then this is the hallway that leads down to the kitchen right here. And then my living room is right here on the other side of this island.
Q. Okay. And I'm showing now what's marked as State's exhibit number 4. Okay. And now what is this?
A. That's the hallway when you come in and go right out of

my front door. This is the kitchen. This is the living room. And then there's a bathroom, a half bathroom right here.

Q. Okay. And do I see a sliding glass door at the very back?

A. Yes, ma'am. It's right here.

Q. Okay. Is that where Trey came to the -- to your door ---

A. Yes, ma'am.

Q. --- the second time? Okay. Now I'm showing you exhibit 5. Okay. So if you don't mind, while this picture is up, can you explain to me once he came through the back door, what happened?

A. He was standing at the back door, and my cell phone was right here on the end of the couch. And when I went to reach for it, he pushed me in the door and pushed me face-first down onto the couch right here.

MS. LANDSVERK: Judge, I was thinking about a clicker, but I don't think we have one to show.

Q. Okay. So if you don't mind just explaining for record purposes when you point at the couch, which couch are you pointing to?

A. It's one L-shaped couch.

Q. Right. So the right hand side of the couch?

A. Yes, ma'am.

Q. Okay. So -- okay. So you're on the right side of the couch. What happens?

A. He shoves me down and he used his hand, open hands, and shoved my face face-first down into the couch. He kept shoving it so hard that I was hitting the frame of the couch. And that's what busted my lips. And then he flipped me over onto my back and pulled my shorts down with one hand while the other hand was over my face, and my nose, and my mouth.

Q. Could you breathe?

A. No, ma'am. He was -- he pulled his shorts -- my shorts down and my underwear down, unzipped his pants and then put his penis inside of me. And I asked him to please stop. And I was telling him no. And I was asking him then to just leave.

And he was asking me to unlock my phone while he was doing this. And I kept telling him no. And when he put his hand around my throat and started choking me, I asked him to please stop and told him that I wouldn't scream, and I wouldn't be loud, and I would unlock my phone if he would just let go of my neck and let me breathe.

Q. Okay. And so what happened after that?

A. He -- I unlocked my phone. And then he started going through my phone. And then he put his penis back inside of me and started to rape me. And then -- again. And then when he stopped he just started going through my phone again and then threw my phone onto the left side of the couch.

Q. Okay. And after that interaction what did you try to do?

A. I asked him to please let me go to the bathroom to clean myself up. I asked him if I could go to the kitchen. And then I asked him if I could go upstairs and just check on my kids. I was trying to think of anything I could to get out of the living room.

Q. Okay. So were both kids home that night?

A. Yes, ma'am. They were both upstairs asleep.

Q. Okay. And how old were they that night?

A. They would have been 11 and two -- three.

Q. Okay. So were you trying to be quiet as far as the children were upstairs? And can you tell me a little bit about that?

A. Yes, ma'am. I was quiet because I was scared that if I was loud or if I tried to fight him too much that it would make too much noise, and it would wake up my kids. And I was scared that if my kids came downstairs that he would hurt them or what that would do to them to see that happening.

Q. Okay. So did he -- did he threaten you at all?

A. Yes, ma'am. He wouldn't let me leave. And then -- out of the living room. And then he told me that I was going to leave with him and we were going to go pull money out of my bank account, I was going to take him to get drugs and to his friend's house. I told him, no, I was not going with him, that I couldn't leave my kids upstairs, and that he just needed to leave. That he got what he wanted and he just

needed to leave.

And he said either you can take me or I will beat you up to the point that you're going to die. Then your kids will find you downstairs dead the next morning when they wake up. And I said, okay, please don't just hurt me, like, I'm all my kids have. So I'll go with you, just don't hurt me.

Q. Okay.

A. And I was trying to do whatever I could to get him out of the house so I knew my kids were safe if he was out of the house.

Q. Now before anything else happened, did he try to do anything -- do any other sexual act?

A. Before we left he -- he told me to -- that because I was crying so much that he couldn't F me, and that I was going to give him head. And I told him no. And he pulled his penis out and grabbed the back of my head and shoved his penis in my mouth. And it was so forceful that it caused me to throw up, which made him mad.

Q. Okay. I'm showing you what is State's exhibit number 7 -- or 6. Okay. This one's a little harder to see, but where did you throw up?

A. Right here at the end of the couch.

Q. Okay. Where are you pointing?

A. (Witness pointed).

Q. Okay. In the space between the rug and the couch, ---

A. Yes, ma'am.
Q. Okay. And after you threw up, what happened -- what was the conversation between you and him?
A. He went to the kitchen and grabbed a hand towel and told me to come back in and clean that -- clean it up, and told me to go to the bathroom and clean myself up and put shorts on because we were fixing to leave.
Q. Okay. So which towel -- is the towel in that picture that you used to try to clean it up?
A. I used the hand towel right here. That towel is the one that I used ---
Q. Okay.
A. --- to like clean myself.
Q. Can you tell me what color it is?
A. The blue hand towel in the corner of the rug right here.
Q. Okay. So I'm showing you the next photo, which is number 7, which is a little closer shot of that. And -- so the jury's aware of what this is, but can you explain what that is on the rug?
A. It's where I threw up.
Q. Okay. So after that happened did you try to do anything else before you left?
A. I asked him to please let me just go and check on my kids. And he told me I could, but I couldn't go in their rooms. And he followed me upstairs, holding the back of my

shirt. So I could look into both of the rooms just to see them, but I couldn't go in. And then when I saw them, he said, there, you've seen them, let's go. And we walked -- he walked me back down the stairs.

Q. Okay. Now I'll take you back quickly to the injuries that you talked about on your lip. Did you have any other injuries that night from him?

A. Because of how hard he was shoving my face in the couch, it swolled [sic] my nose up and it swolled [sic] my jaw up. And when he was choking me with his hands -- his hand around my throat, it made my throat hurt and the outside of my neck really sore.

Q. Okay.

A. But the busted lips, too. My busted lip.

Q. I'm going to show you State's exhibit number 8.

MS. LANDSVERK: May I approach, Your Honor?

THE COURT: You may.

Q. Okay. Do you recognize this?

A. Yes, ma'am.

Q. Okay. Do you recognize that?

A. Yes, ma'am.

Q. Okay. What is that a picture of?

A. It's a picture of my busted lip.

Q. Okay. And who took that photo?

A. I did at the hospital.

Q. Okay. Does it accurately depict your lip from that night?

A. Yes, ma'am.

Q. Okay.

MS. LANDSVERK: Your Honor, at this time the State would like to enter this into evidence.

THE COURT: Any objection?

MR. SANFORD: I do have an objection, Your Honor.

THE COURT: All right.

MR. SANFORD: Can we ask the jury to leave because I do -- can we -- could we approach?

THE COURT: Yeah, let's see what -- come over here.

(Whereupon a bench conference was held off the record in the presence of the jury, but out of their hearing)

(Whereupon the bench conference was ended)

MS. LANDSVERK: Your Honor, may we publish this?

THE COURT: Yes. And I'm going to -- it's admitted into -- that's exhibit 8? Admitted subject to the objection of defendant.

(Whereupon State's exhibit 8 was admitted into evidence)

Q. Okay. We're looking at exhibit 8. Okay. Can you explain this injury a little bit more, [redacted]?

A. It's where my lip got busted from when he was shoving my head face-first down into the couch where I had hit the frame of the couch.

Q. Okay. So after you checked on your children upstairs, what happened?

A. He walked me back down the stairs and out the back glass sliding door. And he had my keys, and my cell phone, and my wallet. And we walked around to the front of my apartments and got in the car. He got in the driver's seat. And I was in the front passenger's seat.

Q. Okay. And tell me, that you knew of, did he have a vehicle ---

A. No, ma'am.

Q. --- of his own? Okay. So he was driving, you were in the passenger's seat. What happened after that?

A. It was raining really bad. And I could tell that he was high. And I didn't feel safe. And I told him to please let me drive and he wouldn't. And we drove to a QT, and he left me in the car. He took the keys, and my cell phone, and my wallet and went inside and pulled money out of the ATM inside of QT.

Q. And how much money did he pull out?

A. I'm not sure. I don't remember the exact amount.

Q. And at that point were you in the car by yourself when he was in the ---

A. Yes, ma'am.

Q. --- he left you in the car? So why didn't you get out or try to seek help?

A. Because he had my phone, he had my keys. If I left, he would have taken -- I was scared he would take my car and go back to my apartment where my kids were left by themselves. So I figured if I just did what he asked and I complied with him that he would eventually let me take my car back home to my kids.

Q. Okay. And what did he say he needed the money for?

A. He was going to go buy drugs.

Q. Okay. So after he came back to the car from getting the money at the ATM, what happened next?

A. He drove to a hotel right -- almost right beside the QT and then some guy came out to the car. He was a big black male, came out to the driver's side of the car. And they exchanged money and drugs. And then we left.

Q. Do you remember what hotel it was?

A. I don't remember the name of the hotel, but it was on Augusta or 291, right there.

Q. Okay. And how far ---

A. Like two roads down from the QT.

Q. Two roads down from the QT? Okay. How far away, I was getting at, was the QT and that hotel from your house?

A. From my house? Probably like 15 -- 15 minutes, 20 minutes.

Q. Okay. Now both locations are in Greenville County, correct?

A. Yes, ma'am.
Q. Okay. So your house was in what area of Greenville?
A. In Taylors.
Q. And then the QT was off Augusta?
A. Yes, ma'am.
Q. Okay.
A. It's at Augusta and Mauldin Road. Or 291 and Mauldin Road. I don't remember the names of the roads.
Q. Okay. That's fine. Okay. So what happened after that?
A. After we left the hotel we went to one of his friend's houses on Augusta Road.
Q. And what happened at the friend's -- what friend? Do you remember his name?
A. I do not. I had -- I had never met him before that night.
Q. Okay. And what happened there?
A. He told me we were going to go inside and that I better act like nothing happened or he would come after me and my kids. So we went inside.

And I sat down and I was quiet. And there was a female there. And I remember her asking me if I was okay, and that I looked like something was wrong. I told her, no, I was fine. Trey told her I was just sick and I didn't feel real good. And then him and the male that -- that lived at the house then proceeded to do drugs.

Q. Okay. And how long were you there?
A. I'm not sure. Not -- not long. Maybe 20, 30 minutes.
Q. Okay. Did anything else happen while you were there?
A. Just that they did drugs and then we left.
Q. Okay. And did you get anything specific at the house? When you were there with him did he tell you he needed anything?
A. Not to my knowledge.
Q. Okay. So where did you go after that?
A. We got back in the car. We went back to QT where he got more money out of my bank account. And he made me go in and get the money out of the ATM and buy him a pack of cigarettes.
Q. Okay. And did you get -- how much money did you get out of the ATM?
A. I think it was like a hundred dollars ($100.00).
Q. Okay. And did you see anybody else when you went inside the QT?
A. Just the store clerk.
Q. Okay. And maybe for similar reasons as before, but why didn't you contact or tell the clerk what was going on?
A. Because I was scared. I was terrified that if I tried to get help that it would make it look like I was in there too long, and he would get nervous that I was asking for help and he would leave because he still had my cell phone and the keys to my car. And I was scared that he would go back to the

house where my kids were.
Q. Okay. So what happened after you got the money out and cigarettes?
A. We went to another hotel for him to purchase more drugs.
Q. Okay. And did you stay in the car at that point?
A. Yes, ma'am.
Q. Okay. And what happened after that?
A. After he got the drugs the second time we went back to the same house that we were at on Augusta Road. And he got out, told me that -- that if I called anybody or told anybody, that he would come after me and my kids. And he let me leave, and he went inside.
Q. Okay. So when you started going back home did you call anyone?
A. As soon as I pulled out of the driveway, I called my best friend at the time, Douglas Bowlby.
Q. Okay. And how do you know him? How did y'all become friends?
A. I worked with him at Greenville County Detention Center.
Q. Okay. And what did you do at the detention center?
A. I was a -- I was a detention officer.
Q. Okay. How long did you -- did you do that?
A. For three years.
Q. And can you tell me a little bit about your relationship with Doug? Did y'all have a romantic relationship at all?

A. No, ma'am.
Q. Okay. Just a friendship?
A. Yes, ma'am.
Q. Okay. And why did you call him of all people?
A. After Trey came by the first time, I was texting -- I was texting him and telling him that I just -- something felt off and I didn't feel safe to be at the house by myself, that it just felt weird. And I asked him ---
Q. Did he even know that you were broken up with Trey at that point?
A. Yes, ma'am.
Q. Okay.
A. And so I was just texting him, telling him that. And after I left, I had a bunch of missed phone calls from him and text messages, so I called him.
Q. And what did you tell him?
A. I told him that Trey had forced his way in my house and that he had raped me and busted my lip and made me leave the boys at home by themselves ---
Q. Um-hum (affirmative).
A. --- and that he had just let me leave from where we were.
Q. And did you get any advice?
A. He advised me to call the cops. He advised me to hang up and call the cops immediately.
Q. Okay.

A. I told him I was scared to call the cops because of what Trey said, and I was scared that I might get in trouble for leaving my kids.

Q. And did he assure you ---

A. He told me that I would not get in trouble because I was forced to leave, that I needed to call the cops.

Q. And after you got off the phone with him did you call anyone else?

A. I called my dad and told him I needed him at my house immediately. He asked me what was going on? I said, I just need you at my house, dad. He said, where are you? I said, I'm on my way to the house, but the boys are there by themselves. Can you please get to the house?

Q. Okay. And when you got to the house, was he there?

A. No, ma'am. He arrived after I did.

Q. Okay. Were the boys okay?

A. Yes, ma'am. They were still both upstairs asleep.

Q. Did you at that point stay long with your dad? What happened?

A. As soon as my dad got there, I opened the door for him, and he asked me what happened. And I said, Trey raped me. And he said, we're calling the cops. And he dialed 911 from his phone.

Q. Did Doug also show up?

A. Yes, ma'am. He came after -- he arrived after my dad

did.

Q. Okay.

A. He left work and came.

Q. So where was he working?

A. North Greenville Police Department.

Q. Okay. So did he work night shift then?

A. Yes, ma'am.

Q. And what -- do you remember, I know we're probably kind of hazy on details, but exactly what time it was at that point when you finally got back to your house?

A. No, ma'am.

Q. Can you give ---

A. It was ---

Q. --- a general ---

A. It was probably between like -- probably around 3:00 in the morning.

Q. Okay. Was that another reason why you reached out to Doug, because you knew ---

A. Yes, ma'am. I knew he was awake because I knew he was on shift. And I had a bunch of missed calls from him. And he was my best friend at the time.

Q. Okay. So after you spoke with them did law enforcement come ---

A. Yes, ma'am.

Q. --- to the scene? Okay. And who did you speak with? Do

you remember?
A. The officer's name?
Q. Yes.
A. No, ma'am.
Q. Okay. Was it a man or a woman?
A. I -- I'm not sure. I don't really remember.
Q. Okay. And did you go anywhere after that?
A. I left with EMS in the back of the ambulance to go to the hospital.
Q. Okay. And what happened at the hospital?
A. It's -- it's kind of fuzzy. I don't really remember a whole lot. I remember getting to the hospital and them giving me some medicine and told me it was antibiotics to prevent anything. And then I remember them making me change into paper scrubs. And I remember them putting me in a dark room and taking pictures. And then I remember waking up and Doug was beside me. And then I remember waking up when he woke me up to drop me off at my dad's house.
Q. Do you remember getting what we call a rape kit done?
A. Yes, ma'am. That was in the dark room where they were taking pictures. And they did some swabs of my mouth, and some swabs of my skin, and inside of me.
Q. Okay. Is there anything else that happened that night that we have not gone over? Any details that we didn't discuss?

A. No, ma'am, not that I remember.
Q. Okay. Just one moment.
(Pause)
Q. Okay. That's all the questions I have for you. Please answer anything from Mr. Sanford.
THE COURT: Cross-examination.
MR. SANFORD: Thank you, Your Honor.

Cross-examination by Mr. Sanford:

Q. Hi, Complai[redacted] How are you?
A. All right.
Q. So you previously worked for Greenville County Detention Center?
A. Yes, sir.
Q. And you said about three years, is that correct?
A. Yes, sir.
Q. And in what capacity? Remind me.
A. I was a corrections officer.
Q. And what did that involve?
A. Working with inmates.
Q. So you were in the, I guess, cell -- cell areas?
A. Yes, sir.
Q. Did you have to have any special training to work there?
A. You had to go through the police academy. Yes, sir.
Q. Okay. So did you ever deal with inmates attacking each other or potential for them to come after you?

A. Yes, sir.
Q. And did you have any training for that?
A. Yes, sir.
Q. Now how long were you and Mr. Foster in a relationship?
A. About 11 months.
Q. And at the time did you think y'all loved each other?
A. While we were together, yes, sir.
Q. And did he and your kids get along?
A. Most of the time.
Q. Now at some point Mr. Foster went into rehab, correct?
A. Yes, sir.
Q. And do you know when he came out?
A. Maybe like two weeks before this happened.
Q. And did you get -- was he in contact with you when he got out?
A. Yes, sir. He asked if I -- if he could come and stay with me, and I told him no.
Q. And he did stay with you, didn't he?
A. No, sir.
Q. Did you let him borrow your car?
A. No, sir.
Q. Did you set up a hotel room in your name for him?
A. No, sir.
Q. Now at some point did you find out that Trey was staying with somebody else?

A. No, sir.
Q. That he wasn't staying with another woman?
A. No, sir.
Q. And you didn't go over and you didn't call Trey and yell at him for this?
A. Not to my knowledge, no, sir.
Q. Now the night that this happened you knew that Trey was coming over because he had told you previously, didn't you?
A. He told me he would stop by at some point to pick up his stuff, yes, sir.
Q. And can you tell me what -- what all was in that stuff?
A. I think it was a pair of shoes, and a shirt, and I think a tooth brush.
Q. Okay. And how long had that been at the house?
A. Since he left.
Q. So -- and you talked to him on the front and the back porch?
A. I stepped out on the front porch and smoked a cigarette and talked with him the first time he showed up, yes, sir.
Q. And when you say the first time he showed up, you're assuming that he left?
A. To my knowledge, he left.
Q. So he could have been hanging around the house without you knowing?
A. Could have, yes, sir. I was inside.

Q. Now when he knocked on the back door, were the blinds open or closed?
A. They were closed.
Q. And do you know what -- around what time that was?
A. I think it was around like one -- somewhere between 12 and one, maybe.
Q. Now at some point did you call Doug Bowlby?
A. Not -- in between him knocking on my front door and my back door, yes, sir.
Q. And what did you tell Mr. Bowlby?
A. I told him that Trey had come by to pick up his stuff, and that I felt uncomfortable being there alone, and that I just -- I didn't feel safe, something felt wrong, something felt off.
Q. But you didn't tell him that he was going to stay on your back porch?
A. I was -- no, sir.
Q. You didn't tell him that at all?
A. No, sir.
Q. Now I know that there were pictures up there and a lot of things and a lot of pointing. You have the L-shaped couch, correct?
A. Yes, sir.
Q. There were some towels that were sitting on the corner of this couch. How long had those been there? Or blankets, it

looked like?
A. I'm not sure.
Q. Was your phone in that vicinity when it was over there and Trey allegedly came in and pushed you?
A. Yes, sir. It was sitting over there on the edge of the couch.
Q. And would you say that there was a struggle?
A. Yes, sir.
Q. And it didn't mess up those towels?
A. No, sir.
Q. Now you opened the door and you let Trey in, didn't you?
A. No, sir.
Q. You allowed him to come into your house.
A. No, sir, I did not.
Q. You and Trey sat on that couch and talked.
A. No, sir, we did not.
Q. Now that evening when you say you went up to your children's room, weren't you also trying to get a phone from one of your children?
A. Originally when I asked to go up there the first time, that was my plan, was to get my son's phone and try and call the cops, yes, sir.
Q. But you weren't allowed? You couldn't -- you say you couldn't, correct?
A. Yes, sir. He wouldn't allow me to go up there.

Q. Now when all this was happening -- you had cameras installed on the front and back of your house, correct?
A. Yes, sir.
Q. Were videos made of this?
A. Yes, sir.
Q. Did you give those to the police?
A. No, sir.
Q. Why not?
A. Somehow they got deleted. I have the still pictures, but I don't have the video.
Q. Now when you left you said that Mr. Foster forced you to leave?
A. Yes, sir.
Q. Were you the first one out of the door or were you walking behind him?
A. I don't really remember.

MR. SANFORD: I beg the Court's indulgence.

(Pause)

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

THE COURT: You may.

Q. Ms. Complainant, do you know what that is?
A. Pictures from my back porch off my security camera.
Q. Can -- and that is a true and accurate representation of those security cameras?
A. Yes, sir.

MR. SANFORD: Your Honor, at this point we would move that into evidence.

THE COURT: Any objection?

MS. LANDSVERK: No objection, Your Honor.

THE COURT: All right. And that'll be defense 1?

MR. SANFORD: Yes, sir.

(Whereupon Defendant's exhibit 1 was marked and admitted into evidence)

Q. Now, [redacted] Complainant, if you see that first picture, where are you on the picture?

A. Standing right beside Trey.

Q. And then one of them you're walking behind him, correct?

A. Yes, sir.

Q. And so he wasn't forcing you, you were following him, correct?

A. He told me if I didn't leave with him that he would beat me up to the point that I would die and my kids would come downstairs and find me dead the next morning. So, yes, I agreed to go with him to keep my kids safe and get him out of my house.

Q. But you did tell the 911 operator that he had no weapons, correct?

A. No, sir, he did not.

Q. Now ...

MR. SANFORD: Your Honor, if I may publish this to the

jury?

THE COURT: You may.

MR. SANFORD: Your Honor, I may just hand it to the jury for them to watch as opposed to -- to look at or do you want me to ---

THE COURT: Whatever you want to do.

MR. SANFORD: I'll hand it to the jury if that's fine.

Q. Now, Ms. Complainant, when you left you went to QT, correct?

A. Yes, sir.

Q. Now are you aware that QT is a safe place?

A. No, sir.

Q. You were not aware that it's a place through your work, through the detention center and the police academy that it's a place where you can ask for help?

A. No, sir.

Q. Now you said you were scared to get out of the car at that point even though you were left alone?

A. Yes, sir.

Q. But he was -- how long was he inside the gas station?

A. A few minutes. Long enough to pull money out of the ATM and come right back out.

Q. And you said he had the keys, and the phone, and the wallet?

A. Yes, sir.

Q. Now at that point you went to the hotel next door to buy

some drugs, correct?
A. Yes, sir.
Q. And then you went to a individual's house that Mr. Foster was friends with?
A. Yes, sir.
Q. Now while you're at that house was -- were you always inside with Mr. Foster?
A. Was I what?
Q. Could he always see you while you were there?
A. Yes, sir.
Q. You didn't go into a backyard area with the woman that was there?
A. No, sir.
Q. You didn't have ample time to talk to other individuals?
A. No, sir.
Q. And he was always keeping an eye on you?
A. Yes, sir.
Q. Now at that point did he partake in the drugs?
A. Yes, sir.
Q. And so he was high, correct?
A. Yes, sir.
Q. Do you know what kind of drugs he took?
A. Heroin.
Q. And so at that point he was incapacitated because he was high, was he not?

A. He was high, but he was still able to move and able to hurt me if I tried to move.

Q. But at that point he gave you his car keys and said let's go back to the gas station?

A. He gave me my car keys.

Q. That's what I meant. I'm sorry. He gave you your car keys, correct?

A. Yes, sir.

Q. And he gave you your phone.

A. No, sir.

Q. You didn't have your phone inside the QT?

A. No, sir.

MR. SANFORD: Beg the Court's indulgence.

(Pause)

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

THE COURT: You may.

Q. Now, [redacted], do you know what that is?

A. It's a picture of me inside of QT.

Q. And is that a fair and accurate representation of what happened that -- being there that night?

A. Yes, sir.

Q. And what is next to your hand?

A. It appears to be a cell phone.

Q. So you did have your phone with you?

A. I guess I did.

Q. And so you were alone in QT enough to go through a purchase and also -- excuse me. Let me back up.

MR. SANFORD: Your Honor, I would ask to insert this into evidence.

THE COURT: All right. Any objection?

MS. LANDSVERK: No objection.

THE COURT: All right. And that's defense exhibit 2 without objection.

(Whereupon Defendant's exhibit 2 was marked and admitted into evidence)

Q. And so, Complainant, once again, what does that appear to be next to your hand?

A. It appears to be a cell phone.

Q. And so you did have your cell phone inside QT. Why didn't you call somebody at that point?

A. I was trying to get in and out as fast as I could. I was scared that if I was in there too long that he would assume that I was doing something or calling somebody. And he still had the keys to my car. And my kids were still at home alone.

Q. Now your first call was not to 911 but was to Mr. Bowlby, correct?

A. Yes, sir.

Q. And how long was your call to Mr. Bowlby before you called 911?

A. I'm not sure. A couple of minutes.

Q. Did -- and you talked about the situation, obviously?
A. Yes, sir.
Q. Now you were sitting here and you heard the 911 tape.
A. Yes, sir.
Q. You originally told the operator that you had dropped Mr. Foster off at a gas station.
A. Yes, sir.
Q. But you had left him at his friend's house, correct?
A. Yes, sir.
Q. And so that was untrue?
A. It was -- it was a mistake, yes, sir.
Q. And you also told that to the officer that came to your apartment, correct?
A. Not to my knowledge.
Q. If you did, would that surprise you?
A. Probably.
Q. Did you -- did you mention any -- any of going to the friend's house to that officer?
A. I'm sure I did because that was what happened, if he asked me.
Q. Did you mention what -- did you -- let me step back. Strike that. You eventually were taken in for an interview with another detective or officer, correct?
A. Yes, sir.
Q. And at that point you told them that you had dropped off

Mr. Foster at his friend's house.
A. Yes, sir.
Q. Now with regards to the State's exhibit -- State's exhibit 8, when did you send this to the solicitor's office?
A. I'm not sure.
Q. If I told you you sent it on April of this year, would that sound accurate?
A. I re-sent it then, yes, sir.
Q. Now did they take any pictures of you in the hospital?
A. Yes, sir.
Q. Do you know if those were turned over to the solicitor's office?
A. I do not.
Q. And you sent this -- but you did send it to the solicitor's office on April of this year?
A. I re-sent it then.
Q. And it's not -- and you took this the night of July 31st, 2019?
A. Yes, sir.
Q. And this didn't happen somewhere between that three year period?
A. No, sir.

MR. SANFORD: Beg the Court's indulgence.

(Pause)

MR. SANFORD: Your Honor, I have no more questions for

this witness.

THE COURT: Any redirect?

MS. LANDSVERK: Briefly, Your Honor.

Redirect Examination by Ms. Landsverk:

Q. So I want to talk about this surveillance still shot that Mr. Sanford brought up. I just want to confirm the shot of you following the defendant out of the house. And that was after he raped you, he threatened to kill you and your children, and he choked you, correct?

A. Yes, ma'am.

Q. Did you feel like you had any other option?

A. No, ma'am.

Q. Okay. And whether or not you had your phone with you when you were in the QT, did you feel comfortable using it?

A. No, ma'am.

Q. Did you feel like you would be able to reach out to help based on what he told you he would do to you?

A. No, ma'am.

Q. In looking back, based on the traumatic events that took place, is it safe to say that some of the details are a little fuzzy?

A. Yes, ma'am.

Q. Okay. But the details of him raping you are not fuzzy, correct?

A. No, ma'am.

Q. Okay.

MS. LANDSVERK: No further questions.

THE COURT: All right. Thank you. You may step down.

Ladies and gentlemen, since we've been going for an hour, and it is just after lunch, I'm going to go ahead and take a short break. So go back to your jury room.

And at this point if you will also select your foreperson and if you would -- that person would write on a piece of paper their name and number and date it and give it to the bailiff when that has been done. So do not discuss the case. I'll bring you out in just a few minutes.

(Whereupon the jury exited the courtroom at 2:59 pm)

THE COURT: All right. We'll break for 10 minutes.

(Whereupon court was in recess at 2:59 pm)

(Whereupon court reconvened at 3:14 pm)

THE COURT: All right. Is the State ready?

MS. LANDSVERK: The State's ready.

THE COURT: Defense ready?

MR. SANFORD: Yes, sir.

(Whereupon the jury entered the courtroom at 3:15 pm)

THE COURT: All right, ladies and gentlemen, let's see here. All right. So we have a veteran foreperson, Ms. Noonkesser. So, all right. Well, she knows the ropes. Here, mark that, please.

(Whereupon Court's exhibit 1 was marked)

THE COURT: All right. State, you may call your next witness.

MS. LANDSVERK: The State would like to call Doug Bowlby.

MADAM CLERK: Please pause at the end of the bench. Place your left hand on the Bible and raise your right hand.

Douglas Bowlby, Jr., being duly sworn testified as follows;

MADAM CLERK: Please be seated. Please state your name for the record.

MR. BOWLBY: Douglas Wayne Bowlby, Jr.

MADAM CLERK: Thank you.

Direct Examination by Ms. Landsverk:

Q. Good afternoon, Doug.

A. Good morning -- afternoon.

Q. What is your occupation?

A. I work as a fire fighter.

Q. Okay. Where do you work?

A. North Greenville Fire Department.

Q. Okay. And I just want to get, in general, basic information from you as far as how long have you been there?

A. A year and a couple of months.

Q. Okay. And what did you do before that?

A. I worked at the North Greenville University at the Department of Public Safety.

Q. Okay. And before that did you work at the jail?

A. Yes, ma'am.
Q. Okay. And to kind of connect the dots, how do you know the victim in this case, Complainant?
A. I believe she started there in 2016. And she became one of my shadows along with two other officers that worked on the floor with us. And that's how I ended up meeting Complainant.
Q. Okay. And were you a corrections officer?
A. Yes, ma'am.
Q. Okay. Did y'all spend any time together outside of work?
A. We did, yes, ma'am.
Q. Okay. What kind of things did you do?
A. It really depends. We normally hung out, went out to eat, stuff like that.
Q. Did you ever meet her kids?
A. Yes, ma'am.
Q. And from your perspective did she have a good relationship with her kids?
A. She did, yes, ma'am.
Q. Okay. And how would you describe her interactions with her kids?
A. Pretty great. I mean, I would trust her around my own kids.
Q. And do you remember her calling you -- well, I guess before I go there, did you ever meet the defendant?
A. Once or twice, I believe, whenever they were dating,

whenever she was still employed at the jail. I met him there.
Q. Okay. Have you ever hung out with him at all?
A. No, ma'am.
Q. Okay. Do you remember her either texting or calling you the night of July 31st, 2022 -- or, I'm sorry, 2019?
A. I remember her texting me that morning. I was on shift at work at North Greenville University at the time saying that he was at her house asking -- he needed a place to stay that night or somewhere along those lines. And then I never heard back from her from quite some time. So I tried calling her multiple times, texted her several times. Nothing came back ---
Q. Well, why did she reach out to you? Did she -- what was the reasoning?
A. That she was a little worried about, you know, because that he was there and he'd been on some drugs previously before or had started using again. So she was a little worried about why he was there so late in the night knocking on her back sliding glass door wanting in.
Q. Okay. And to your knowledge had she ever used drugs or done drugs?
A. Not that I knew of at the time, no, ma'am.
Q. And -- so after you heard from her the first time, you said that you kept reaching out to her, when did you finally hear back from her?

A. I want to say she finally called me back around three, 3:30, along that timeline.

Q. Okay. And what was her demeanor?

A. So I answered the phone, she was very hysterical, crying, upset. Finally was able to calm her down a little bit and get her to tell me what happened. She told me that he eventually raped her. Told her if she yelled, made any kind of noise, he would hurt her and the kids. And then I told her, I was like get off the phone with me, call the sheriff's office, I'll get off work, and I'll come over there to make sure you're okay.

Q. And what did you do after you spoke with her?

A. Called my supervisor, told him I needed to leave work, I had a emergency with a friend I needed to go -- go to. And he said that was okay.

So I left work, drove to her apartment that was off Taylors off -- near Wade Hampton, went there and met her. And that's -- I want to believe there was a sheriff's office deputy there by the time I got there or shortly after I got there.

Q. And when you got to her house what did she look like? How did she appear to you?

A. She was very upset, shaken, nervous, crying.

Q. Did you see her dad there?

A. Yes. Yes, ma'am.

Q. Okay. And how long did you stay there?

A. I stayed there til after the cops left and everything. And I took her to the hospital.

Q. And then did you stay at the hospital with her?

A. Yes, ma'am, I did.

Q. Okay. And did anything else happen that night that you -- that we haven't discussed as far as your interaction with her?

A. Not that I can recall, no, ma'am. I know after the hospital visit I drove her to her father's house and dropped her off there.

Q. Okay. One moment.

(Pause)

Q. No further questions from the State. If you'll please answer anything from the defense.

THE COURT: Cross-examination.

MR. SANFORD: Thank you, Your Honor.

Cross-examination by Mr. Sanford:

Q. First of all, how are you?

A. Hey. How are you, sir?

Q. The evening that this happened you were -- were you employed with the North Greenville security office or whatever you said at that point?

A. Yes, sir, I was.

Q. Are you a commissioned police officer there or ...

A. No, I'm nothing there now. I'm ---

Q. Well, when you were there were you a commissioned police officer?
A. We went through SLED and had arresting authority and warrant access through the Greenville County Sheriff's Office at the time.
Q. Okay. So were you allowed to make arrests?
A. While we were on the property and stuff, yes, or outside the -- outside of our school, yes.
Q. Okay.
A. Not like out on the streets, but in the area, yes.
Q. Now this night of July 31st, 2019, when was the first call that you received from Complainant?
A. It was after she had told me that he was there at her house. I want to believe it was around three, 3:30. I can't give you an exact time. I mean, ---
Q. Would it surprise you that if you -- if you told the police that it was around 1:00?
A. I heard from her on text message around one or through Snapchat messaging around one.
Q. And did she tell you that he was going to stay there that evening?
A. She did not tell me he was going to stay there. I advised her I wouldn't allow him or let him stay. Then I never heard nothing else back from her.
Q. So you didn't tell the officer that he was staying there

that evening?

A. I did not, no. Not that I recall, no, sir. I know she had told me that he came, knocked on the back sliding glass door and said that he needed a place to stay, he'd sleep on the couch.

Q. Now what time did you get to her house?

A. It had to be about 15, 20 minutes after she called me. What was that? Was it three years ago? I can't remember the exact time-frame.

Q. Was she still on the phone with 911 when you got there?

A. She was on the phone, but I can't tell you if it was with 911 or with a family member.

Q. When she called you around, I guess you said around 3:30, somewhere around in there, how long was that conversation?

A. Maybe five minutes, I think. Long enough for me to be able to get her to calm down to tell me what happened for -- to hang up with me and call the sheriff's office.

MR. SANFORD: I beg the Court's indulgence.

(Pause)

MR. SANFORD: I have no more questions for this witness, Your Honor.

THE COURT: Any redirect?

MS. LANDSVERK: No, Your Honor.

THE COURT: All right. You may step down.

MS. LANDSVERK: Your Honor, may he be excused?

THE COURT: Any objection?

MR. SANFORD: No objection, Your Honor.

THE COURT: All right. You may be excused.

MS. LANDSVERK: Your Honor, the State would like to call Harold Anderson to the stand. And, Your Honor, he is handicapped, ---

THE COURT: Okay.

MS. LANDSVERK: --- so we'll have him come to this microphone.

THE COURT: If you'll come around and be sworn. And I think they've made arrangements for you.

MADAM CLERK: Please place your left hand on the Bible and raise your right hand.

Harold Anderson, being duly sworn testified as follows;

MADAM CLERK: Thank you. Will you please state your name for the record.

MR. ANDERSON: Harold Boyd Anderson.

MADAM CLERK: Thank you.

MS. SCOTT: And, Judge, if you don't mind, we're just going to do some testing real quick.

THE COURT: All right.

MS. SCOTT: Can you say your name one more time for me.

MR. ANDERSON: Harold Boyd Anderson.

THE COURT: I think everybody -- everybody should be able

to hear him.

Direct Examination by Ms. Landsverk:

Q. Hey. Good afternoon, Mr. Anderson. How are you related to the victim?

A. I'm her father.

Q. And were you aware that the defendant, Trey Foster, at one time dated your daughter?

A. Yes.

Q. Okay. And were you aware that on July 31st, 2019 they were broken up?

A. Yes.

Q. And did you know why they broke up?

A. They were just having problems that I know of.

Q. Okay. And did you hear from her the night of July 31st, 2019?

A. Yes.

Q. Okay. And what was she -- what happened? How did you hear from her?

A. She called me late at night and asked me to come and get her boys. And she sounded like something was real wrong. And I asked her what was wrong? And she said, can you just come and get the boys? So I told her I would. And I got up, got dressed and went over there.

Q. Okay. And were you in -- did you have your chair in 2019?

A. Pardon?
Q. The same -- like did you -- were you -- did you have to use ---
A. No. I was able to move around a little better then.
Q. Okay. And what did you do after you talked to her?
A. I got in the car and went over there. And when I got there I knocked on the door, and she asked who it was, which is unusual. She usually just opened the door. So I told her it was me. And she opened the door.

And I could see by her looks and the way she was talking something was real bad. And she was holding a butcher knife so tight her knuckles were white. After that we moved down the hallway to the kitchen, and I convinced her to put the knife down. And I asked her what had happened. And she told me what happened. And I asked her if she called the police. And she said, no. I said, well, call them right now.

Q. Did ---
A. And we did.
Q. Okay. And did you end up calling the police with her?
A. Pardon?
Q. Did you end up calling 911 along with her?
A. Yes.
Q. Okay. And were you concerned about her?
A. Yes, very much.
Q. And after that did you stay at her house while she went

to the hospital?
A. I took -- after she got in the ambulance I took her boys and went to my house.
Q. Okay. And were her boys okay?
A. Yes.
Q. Okay. Did anything else happen with you and her that night that we have not discussed?
A. Other than I could see that something was bad wrong by her tone, and her looks, and her actions.
Q. Was she crying?
A. Yes.
Q. Okay.
A. And she was disheveled.
Q. Okay. I think that's all the questions I have for you. Please answer for Mr. Sanford.
A. Pardon?
Q. Please answer any questions -- I'm done with my questions. If you'll just answer anything for Mr. Sanford.
A. Okay.

THE COURT: Cross-examination.

MR. SANFORD: Your Honor, I have no questions for this ---

THE COURT: All right.

MR. SANFORD: --- witness.

THE COURT: All right. You're free to depart, Mr.

Anderson.

MS. LANDSVERK: Your Honor, I believe the next witness is en route. She might be in the hallway.

THE COURT: All right.

MS. LANDSVERK: But we're just going to check quickly.

THE COURT: All right.

(Pause)

MADAM CLERK: Please place your left hand on the Bible and raise your right hand.

Christina Reese, being duly sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

DEPUTY REESE: Christina Reese.

MADAM CLERK: Thank you.

Direct Examination by Ms. Landsverk:

Q. Hey, Deputy Reese.

A. Hey.

Q. Were you formerly Deputy Aardsma?

A. Yes.

Q. Okay. And were you Deputy Aardsma when this happened July 31st, 2019?

A. Yes, that's correct.

Q. Okay. What is your occupation?

A. I am a deputy with the Greenville County Sheriff's

Office.

Q. Okay. And how long have you been a deputy with the sheriff's office?

A. I've worked there about four years now.

Q. And what were you -- what division were you working in in 2019?

A. I was working on Adam Platoon in the Uniform Patrol Division.

Q. Okay. And what was your like day-to-day activity? What did that look like?

A. Primary responsibility is answering calls for service, so 911 calls. And then there's proactive stuff that we do as well. I was currently on night -- on the night shift when this incident occurred.

Q. And my question, were you working that night?

A. Yes.

Q. Okay. So what's the -- so where did you go when you received the call -- something happened that night when you received the 911 call.

A. Dispatch dispatched me to the victim's apartment at [redacted] Buttercop -- Buttercup Way, apartment [redacted]. That's where I responded.

Q. And was that in Greenville County?

A. Yes, ma'am.

Q. Okay. And what was the first thing you did when you got

there?

A. I got there, I noticed that her friend was there and her father was there. We went in. I believe she sat on the couch and was just talking about what happened to her.

Q. Okay. And what was your interaction with her like?

A. Honestly, this was three years ago.

Q. Um-hum (affirmative).

A. In my report I talked about that she was emotionally distressed. Other than that, I don't remember.

Q. Okay. And as you -- I guess, I know it was three years ago, so it's tough to remember. But as you were on scene and she was telling you the story, did the details of what she was telling you kind of line up with what you saw around you?

A. Yes. I saw that the sliding glass door was right there next to the couch and that there was a pair of shorts laying on the couch -- laying on the floor beside the couch.

Q. Okay. Did you see the throw-up on the floor?

A. I don't remember seeing the throw-up, ---

Q. Okay. Do you remember seeing like her stuff thrown everywhere on the floor?

A. I don't recall.

Q. Okay. I know that we've -- and I can -- you know what, I will refresh your memory.

MS. LANDSVERK: Your Honor, may I approach?

THE COURT: You may.

Q. Okay. I'm just going to show you State's exhibit, let's see here -- I'm going to show you 2 through 7 so you can kind of remember. If you don't mind looking through these to kind of refresh your memory. Do you recognize those photos?

A. Yes.

Q. Do those appear the way that you remember it looking that night?

A. Yes, ma'am.

Q. Okay. Did anything else happen on scene while you were there?

A. I called for forensics to come and process the scene. And then EMS responded to the scene as well to take her to the hospital.

Q. Okay. Do you remember approximately what time you arrived?

A. It says I arrived at 4:02.

Q. Okay. Do you remember anything else from that night that we haven't discussed? Did you do anything else as part of your investigation?

A. I contacted a supervisor about it. And I contacted the on-call investigator about it as well.

Q. Okay.

A. And I think that's pretty much it.

Q. Did you see her children?

A. No. Her children were upstairs sleeping when I was there

Q. Okay.

A. --- or they were upstairs when I was there.

Q. Okay. Okay. No further questions from the State. Please answer anything from Mr. Sanford.

A. Thank you.

THE COURT: Cross-examination.

MR. SANFORD: Thank you, Your Honor.

Cross-examination by Mr. Sanford:

Q. Deputy Reese, how are you?

A. Doing good. How are you?

Q. Good. Now I know that these events happened three years ago and so there's a little -- it's a little fuzzy. I can barely remember what happened last week. So I'm -- bear with me here.

A. Okay.

Q. When you went in did you talk to [redacted]?

A. Yes, actually [redacted].

Q. And when did she say that Mr. Foster first came to her front door?

A. She said that he came around 1:30 that morning.

Q. And that would be 1:30 am?

A. Yes, sir.

Q. Now she gave you a recap of what had happened that evening. Did she ever mention that she and Mr. Foster had

gone to one of his friend's house -- houses?
A. Not that I recall. I remember them going to a QT, and I believe there was a hotel they went to or something.
Q. But she didn't mention the friend's house to you?
A. Not that I recall.
Q. And when did she say that she dropped Mr. Foster off?
A. Shopping center on Augusta.
Q. Now did you also speak to one Doug Bowlby?
A. I did, yes.
Q. And did Mr. Bowlby inform you about a call he received from Ms. Complainant?
A. Correct.
Q. And what time did he receive that call?
A. He said it was around 1:00.
Q. Which would have been before the 1:30 that Ms. Complainant said he showed up at the front door?
A. Yes, sir.
Q. Now did he also say that Ms. Complainant told him that Mr. Foster was going to sleep on her back porch?
A. Yes.
Q. And that he got another call from her later describing the situation?
A. Yes.
Q. But just to reiterate, he did receive a call saying that he was going to sleep on his [sic] back porch?

A. Correct.
Q. And you wrote that in your report?
A. Yes, sir.
Q. When you go out on calls do you ever deal with any people who have been on heroin?
A. Yes, sir.
Q. Are they usually inactive?
A. I wouldn't -- I don't know about inactive. Depends on where they're at. Are they coming off of the heroin? Are they currently on the heroin? Did they just take it? I feel like a lot of times when I deal with them, they're hyperactive.
Q. But they could -- have you also dealt with them when they are passed out?
A. Yes.
Q. And incapacitated ---
A. Yes.
Q. --- to an extent?
A. Yes.
Q. Let me ask you this. Did you talk to Mr. Bowlby about video footage that was on cameras?
A. Yes, sir.
Q. Did he say that he was going to get that to you?
A. He said he was going to ask her about them, I believe. And I put that in my report for the investigator.

Q. Okay. Did you ever receive those?

A. No, sir.

MR. SANFORD: Beg the Court's indulgence.

(Pause)

MR. SANFORD: I have no further questions for this witness.

THE COURT: Any redirect?

MS. LANDSVERK: Okay. Just briefly, Your Honor, yes.

Redirect Examination by Ms. Landsverk:

Q. You didn't have any personal knowledge on whether or not the defendant was going to stay on the back porch, do you?

A. No.

Q. Okay. Thank you.

THE COURT: All right. You may step down.

A. Thank you.

THE COURT: Can counsel approach.

(Whereupon a bench conference was held in the presence of the jury, but out of their hearing)

(Whereupon the bench conference was ended)

THE COURT: All right. You may call your next witness.

MS. LANDSVERK: The State would like to call Deputy Blake Wolfe.

MADAM CLERK: Please place your left hand on the Bible and raise your right hand.

Blake Wolfe, being duly

sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

INVESTIGATOR WOLFE: Blake Edward Wolfe.

MADAM CLERK: Thank you.

Direct Examination by Ms. Landsverk:

Q. Hey. Good afternoon.

A. Good afternoon.

Q. Investigator Wolfe, what is your occupation?

A. I'm currently a master deputy, homicide investigator at the Greenville County Sheriff's Office.

Q. Okay. And how long have you been employed by the Greenville County Sheriff's Office?

A. For the last three years.

Q. Okay. And during the last three years did you come in contact with the defendant on -- or at least involving this case, I was going to say July 31st, did you -- did you go to the house in which this happened on July 31st of 2019?

A. At this time I was still employed by the Department of Public Safety ---

Q. Okay.

A. --- working forensics. It's a separate department from the sheriff's office.

Q. Okay. So let me back up, then. How long were you working in that capacity?

A. For seven years.
Q. Okay. And can you tell me about how you were called out to the victim's residence in Taylors on July 31st, 2019?
A. Yes, ma'am. So when deputies respond to a scene and they feel like they need a forensics unit to come out and process, they just put in a call for service, and then we respond. So I went to [redacted] Buttercup Way, apartment [redacted] for what I was told would be a criminal sexual conduct investigation that night.
Q. Okay. And when you got there, what did you do?
A. So when I got there I first spoke to Deputy Aardsma. And she gave me the facts of the case that she had already gathered. She told me the victim had been transported to the hospital. Investigator Lyda was going to come out and lead that investigation for the sheriff's office.
Q. Okay. And did you take any pictures while you were there?
A. Yes, ma'am. Taking pictures of the crime scene is one of the responsibilities for us.
Q. Okay. What are the other responsibilities that you usually take on while you're there?
A. So I will collect any items of evidentiary value that are necessary, fingerprints, DNA, any -- anything that is necessary based off the information the deputies on scene or the investigator tell me.
Q. Okay.

MS. LANDSVERK: Your Honor, may I approach?

THE COURT: You may.

(Whereupon State's exhibits 9 and 10 were marked for identification)

Q. Investigator, I am showing you State's exhibit 9 and 10. And do you recognize those photos?

A. Yes, ma'am.

Q. Okay. Did you take those photos?

A. Yes, ma'am, I did.

Q. Okay. And can you tell me how do you know that you took those photos?

A. Yes, ma'am. So this is a piece of evidence I collected. One of the things I was told is that our victim vomited after she was forced to give oral sex and the gentleman ejaculated in her mouth. There was vomit on the carpet in this area. So I cut the carpet out and collected the carpet.

Q. Okay. And do those photos fairly and accurately depict what you saw that night?

A. Yes, ma'am.

Q. Okay. And there were no alterations or changes made?

A. No, ma'am.

Q. Okay.

MS. LANDSVERK: Your Honor, at this time the State would like to enter this -- number 9 and number 10 into evidence.

THE COURT: All right. Any objection?

MR. SANFORD: No objection, Your Honor.

THE COURT: All right. In without objection.

(Whereupon State's exhibits 9 and 10 were admitted into evidence)

MS. LANDSVERK: Okay. May we publish for the jury?

THE COURT: You may. Yes.

Q. Okay. So do you mind explaining to me and to the jury what this is a picture of?

A. So that is a picture of the carpet. The area here is ---

Q. If you want, you can get up and ---

A. Yeah.

Q. --- stand up if that's easier.

A. So the area here is the padding under the carpet. This is the carpet that I cut out. And you can see some of the stains that's going to be the vomit.

Q. Okay. I'm also going to show you exhibit number 10 as well. It's a little bit further back.

A. Yes, ma'am. Same -- same piece of evidence, just further back.

Q. Okay. Now why did you cut the carpet?

A. Because I was told that the suspect in this case ejaculated in her mouth. I collected the carpet for DNA purposes in case his semen was in the carpet.

Q. Okay. Now I did want to show you some of the other photos because you were involved, I wanted to see if you

remember -- these were already put into evidence.
A. Okay.
Q. But I just wanted to see -- if you don't mind, thumbing through those and see if you remember those photos and if you had taken any of those photos?
(Pause)
A. Yes, ma'am. I took all of these photos. These are pictures of how her apartment was when I first arrived.
Q. Okay. And did you collect any items that evening?
A. Yes, ma'am. Other than the carpet, I collected some shorts, underwear, I believe a towel, and then a hand cloth, bath cloth, ---
Q. Okay.
A. --- all from this same area where I did the cut-out of the carpet.
Q. Okay. So of the items that you can see here did you -- you mind standing up again and pointing to the things that you did, in fact, collect?
A. Yes, ma'am. So it would be these two items here, the hand towel and the regular towel, shorts, and underwear, and the cut-out of the carpet.
Q. Okay. And I'm going to put this one back -- this is a little bit further back to see if there's anything else that you can see from that scene.
A. Not that immediately catches my eye, no, ma'am.

Q. Okay. Thank you. Did you also collect any fingerprints?
A. Yes, ma'am. I processed the front door, a bathroom door on the lower level of the apartment and then a rear sliding glass door that led into the living room.
Q. Okay. And can you explain the process a little bit on how you collect fingerprints?
A. Yes, ma'am. So I'll begin with how we process for them. We use a brush similar to a makeup brush, just with longer bristles, and we use graphite powder. So you dip the brush in the powder, you twirl it over an area, and the grease on your finger can leave a print behind that the graphite will allow you to see. We use what we call just a tape lift to lift the graphite off of the surface and then we place it on the back of what we call just a latent fingerprint card.
Q. So how many fingerprints did you find?
A. I don't remember what actually -- let me look at my report here. It doesn't say the number of fingerprints that I found, but I did find fingerprints on the interior and exterior of the sliding glass door that leads into the living room.
Q. Okay. And you said that you lifted the prints from the sliding glass door. Is it the same sliding glass door that you're referring to?
A. Yes, ma'am.
Q. Okay. And I know it's hard to see because of the blinds,

but okay. And after you processed the fingerprints where did you take them?

A. So we take them back to our crime scene office, which is located at Greenville Tech. We seal them in an evidence package with evidence tape, then we put them in a drop-box. Usually the next day our latent fingerprint examiners will come and pick them up.

Q. Okay. Is there anything else that you did on scene that we have not discussed?

A. No, ma'am.

Q. Okay. Thank you. Please answer any questions from Mr. Sanford.

A. Yes, ma'am.

THE COURT: Cross-examination.

MR. SANFORD: Thank you, Your Honor.

Cross-examination by Mr. Sanford:

Q. Should I call you Master Deputy Wolfe or Investigator Wolfe?

A. Investigator Wolfe, sir.

Q. Thank you, sir. Investigator Wolfe, with the fingerprints, all that proves is that somebody was there at that place. It doesn't prove anything else, really, correct?

A. That's correct, sir.

Q. And if somebody lived somewhere, you would expect to find their fingerprints there?

A. Yes, sir.
Q. Now in regards to the piece of carpet that was cut out, do you know that that -- if that was sent for testing?
A. No, sir.
Q. No, that you don't know that it was or, no, that it wasn't?
A. I don't know if it was. So when we collect evidence for DNA purposes, we leave it up to the investigator who's handling that case to decide if they want to submit it to our DNA lab.
Q. And so you don't know exactly what was on that piece of carpet? It is just suspected material at this point?
A. That's correct, sir, based off the information I was given.
Q. And you're just basing it off what other deputies and officers have told you that has gone on that evening?
A. Yes, sir.
MR. SANFORD: Beg the Court's indulgence.
(Pause)
Q. Investigator Wolfe, in this exhibit marked State's exhibit 10, do you see where there is some orange substance under the rug?
A. Yes, sir, I do.
Q. Do you know how that -- how that got there? How it's under the rug and not on the rug?

A. No, sir. When I -- I can say that when I arrived, if you look back at some of the earlier pictures that were shown, the carpet was folded down on top of that area.

Q. And, obviously, prior to your arriving, you don't know what state the house was in before you see it, correct?

A. That's correct, sir.

MR. SANFORD: I have no further questions, Your Honor.

THE COURT: Redirect?

MS. LANDSVERK: Nothing in redirect, Your Honor.

THE COURT: All right. You may step down.

MS. LANDSVERK: Your Honor, the State's next witness is en route.

THE COURT: All right. You said it's going to be a few minutes, I believe, you indicated?

MS. LANDSVERK: I think so. Maybe about 4:20.

THE COURT: All right. Ladies and gentlemen, she did indicate in one of our conferences that this witness would not be very long but that they'd probably be here about 4:20. So I'm going to let you take a short break. Do not discuss the case. And we'll bring you out as soon as this witness shows up. And like I said, it shouldn't be very long. So I -- this would be the last witness for the day. So we should be able to finish before 5:00.

(Whereupon the jury exited the courtroom at 3:58 pm)

MS. LANDSVERK: Judge, we just got an update on the

135

nurse. She's apparently closer than we thought. She'll be here in 10 minutes.

But we have one other -- and we can do the next one tomorrow, but we have one chain person who took the rape kit from the hospital to P&E. That is the only reason he's here. Apparently he's also on the way. We can tell him to come in the morning. I think we were just trying to get things moving. We didn't realize it was going to go so quick. So you think we should just tell him to come tomorrow?

THE COURT: Whatever, I mean, how long, I mean, it's 4:00. I mean, you know, ---

MS. LANDSVERK: It may be ---

THE COURT: You tell me.

MS. LANDSVERK: --- like five minutes. It is one of those -- he has no interaction with the case, didn't talk to anybody. He literally just picked up from the hospital. I just -- we tried to get this guy to stipulate. And I understand his position, but we were just trying to make sure we hit all of the chain of custody in regards to DNA.

THE COURT: Well, you want to try to -- if you think we can get him here and get finished by five ---

MS. LANDSVERK: We'll be done by five, I'm sure.

THE COURT: Okay.

MS. LANDSVERK: Thank you, Your Honor.

THE COURT: Now that I've told the jury that we're ---

MS. LANDSVERK: I know. Well, as soon as you said that I got ---

THE COURT: Oh, no, that was intentional by the way.

(Laughter)

THE COURT: That was to make sure that y'all wouldn't go past five. So -- all right. We'll take a break. Just let me know when ---

MS. LANDSVERK: Okay.

(Whereupon court was in recess at 4:00 pm)

(Whereupon State's exhibit 11 was marked for identification)

(Whereupon court reconvened at 4:17 pm)

THE COURT: All right. Is the State ready?

MS. LANDSVERK: We're ready, Your Honor.

THE COURT: Defense ready?

MR. SANFORD: We're ready, Your Honor.

THE COURT: All right. Bring the jury in.

(Whereupon the jury entered the courtroom at 4:18 pm)

THE COURT: All right, ladies and gentlemen, I think we are still on schedule. And if you'll recall, the State was in their case. And you can call your next witness.

MS. LANDSVERK: Okay. Thank you, Your Honor. The State would call Teresa Elaine Lipscomb.

THE COURT: All right.

MADAM CLERK: Please place your left hand on the Bible

and raise your right hand.

Teresa Lipscomb, being duly sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

MS. LIPSCOMB: Teresa Elaine Lipscomb.

MADAM CLERK: Thank you.

Direct Examination by Ms. Landsverk:

Q. Hi. Good afternoon.

A. Hi.

Q. I have a few questions for you. I'll try to make this as quick and expeditious as possible. But, Ms. Lipscomb, what is your occupation?

A. Currently I am an assistant nurse manager in the emergency department at Greer Memorial for Prisma Health.

Q. Okay.

A. I have a secondary position. I resigned from last year also being a sexual assault nurse. So now I occasionally do sexual assault cases, but for four and a half years prior to that I would remain on call for 24 to 48 hours at a time for sexual assault cases inside Prisma Upstate.

Q. Okay. And were you working as a sexual assault nurse on July 31st, 2019?

A. I was, yes.

Q. Okay. And do you remember coming in contact with the

victim, [redacted], in this case?

A. I do.

Q. Okay. And can you please explain or just give us a quick description of what you did as a SANE nurse? And when we say SANE, sexual assault nurse, for short, but can you explain a little bit about your duties as a nurse?

A. Specifically in this situation?

Q. Yes.

A. Yes. So with any case, as with this one, when there is a patient that has presented to the emergency department or to any facility, even if they're inpatient, and they have a complaint of possible sexual assault, they call the sexual assault nurse in because we've been specially trained to examine patients and collect evidence.

So I go to the hospital, meet with the patient, discuss their situation with all the different options that they have as far as moving forward, whether or not they want to contact the police officer, whether or not they want an exam, give them resources for advocacy groups, that type of situation. I did all that in this situation.

When we determined that she did want to move forward, then at that point my position is to collect evidence. So in addition to taking a very brief statement so that I can kind of get a background to guide my evidence collection as far as what swabs I'm going to collect, we go through a process that

is quite tedious and often can be retraumatizing for victims.

But we try to do it with as little retraumatization as possible. That's why sexual assault nurses are trained especially for this. There's a lot of training involved to try to prevent that retraumatization.

We do like -- after we talk with them about their story -- do you want me to go through the whole process?

Q. That'd be great.

A. Okay. So after we talk to them about their story, the patient has to get undressed standing on a debris sheet so that we can catch anything. We collect all evidence. We collect their clothing. Everything's bagged separately. Everything's documented separately with times and dates that I've collected them.

I will then turn the lights out. And using black lights or wood lamps, depending on what the facility has, but it's in essence like a UV light that you can look over the patient. They have to stand there undressed while you examine them to see if you see any evidence of fluid on them, maybe bruises that are not visible yet in light but sometimes you can see under that UV light. Document all of that.

We collect two oral swabs every time with every patient. That's to get like a baseline DNA for them. It's buccal swabs. We collect two or more oral swabs if we're concerned about any kind of kissing or saliva or anything that we can

collect from that. We collect any swabs using the wet-to-dry technique if there is suspected semen, saliva, bodily fluids, or anything on that UV exam that we did earlier.

If there has been penetration, we have to do a vaginal exam. That's usually the toughest part, if -- if I could say that. I think the whole process is quite traumatizing, but that's usually one of the toughest parts because the patient has already been violated and now we kind of have to reintroduce that.

We use a speculum. We look external first, just looking. Then we also kind of maneuver the anatomy so that we can get a better visual look externally with just touch, changing gloves often in between because you don't want to cross-contaminate anything, obviously.

Then we introduce a speculum so that we can visualize the internal anatomy. We're checking their cervix. We're checking for any discharge. We're checking for any kind of lacerations, tears, that kind of thing, but we're also looking to see if there's anything that we need to collect.

Once we do that, we always collect, at minimum, two swabs. Even if you don't see anything, we collect two swabs because, obviously, DNA cannot always be visual. If we see something, and in this case I did, that maybe I didn't get with the first two swabs, I will also do more swabs.

Very carefully when you do those swabs it is important to

note that there's a technique that you have to use because the whole goal for any swabs that are vaginal swabs are that you don't touch anything external. So when I'm looking on the outside, if I see anything, I get swabs of that.

But when I'm going in with a speculum, you have to be very careful so that you put the swabs in, you only swab the vaginal wall and the cervix, and then you come straight out and then go into like a little holder and container so that they don't touch anything to contaminate them. Then you have to put -- once you finish all that, you put them in a dryer.

If there's been any rectal penetration, you can also swab the rectal area, though, usually that's an external swab.

Q. And you said that you saw something in this case. What did you see?

A. So sometimes when you swab or when you're doing that exam you can see discharge, you may see fluid collection, some of that's just natural, if you did that exam on any woman in any time you would see. So I always make sure I collect that.

But if you look in and you see something that maybe I can't even tell you what it is, I just see something, it could be a string, it could be a fiber, it could be something that just appears to be not what you would normally find on an exam, then at that time I'll swab it again because, one, I want to see does it move? Is it possible that that is a laceration that I'm just seeing superficially and I need to

kind of see if it moves?

If it doesn't move, then that tells me that there's probably a laceration there and I can document it that way. If it does move, then oftentimes it could be a hair that's left behind. I don't ever say what it is because, obviously, I'm just looking at it.

My job is just to collect it, it's not to determine what it is. But my process is always the same, which is two swabs no matter what. And if I see something, then I would do additional swabs.

Q. Now when you met with her what was her demeanor like? Do you remember? I know it was three years ago.

A. It was. So I'm going to admit something about myself that I think I admitted to you. Sometimes I kind of block things a little bit because, you know, that's how I get through my job. I've been an ER nurse for a long time.

But I always ensure that my documentation can tell me things about the patient. I always want to make sure that I can remember that. So when I was reading through my documentation on her, I could recall that she was shivering in spite of blankets.

We tried -- again, this is a traumatizing event. This is not like, hey, I have to go to the GYN, and that's not fun. This is not even like, hey, I've had a car accident and now I've got to go get treated for my broken bones. This is

basically reliving what you've just been through, and it's very traumatizing.

And so we try to make patients as comfortable as we can. You know, if they're cold, we get them blankets. If -- whatever we can do. And I remember with her, she was shivering in spite of not being cold.

She was absolutely available to answer my questions, but there were pauses. She had to take her time. She had to recompose herself. You could tell that she as very, like, anxious and tearful throughout, which is where you just have to provide as much emotional support as you can and allow the patient to take the time that they need.

Q. Did she complain of any pain?

A. She did. She had some pain to her face where she reported that she had been kind of held down and that she had his hand over her mouth where it was difficult for her to breathe. And so she reported some pain to her face from that. I documented a little bit of possible swelling related to that reported injury. She also complained, I think, of some thumb pain. I'd have to read my chart to ensure that.

Q. Did she complain about any pain to her neck?

A. I don't recall. I'd have to read the chart to determine.

Q. Okay. And I will ...

MS. LANDSVERK: Your Honor, may I approach?

THE COURT: You may.

Q. Okay. Just to refresh your memory here -- okay. So do you mind, if you refer to page 4 of your report, if you'd talk about her physical appearance and any pain that she has. What did you put?

A. So, yes. It just says that she has pain to her neck and face including her lips, nose, and jaw. And she has -- the patient complains of pain to her right thumb as well.

Q. Okay. Do you have that up there with you?

A. I do.

Q. Okay. Great. Okay. And do you remember about what time you examined her on July 31st, 2019?

A. I do not. It appears that she arrived 04:58.

Q. Okay. And in this case if any DNA were to be found on the vaginal swab, and I think you talked about this before, how invasive did you have to go in order to get the vaginal swab?

A. So to -- the vaginal swabs themselves, again, so I'm not -- I'm not sure how detailed you want this to be, but I don't know how else to explain it. And for, maybe, men that have never had this procedure, there is a speculum that you insert into the vaginal opening. You actually have a push button that you click together and it opens.

And as that opens, that creates -- kind of it opens up so that you're able to see in there. There's a hole that you can get down -- you can visualize, there's light in it. There's

-- ours are plastic with a battery powered light, but there's a light in it so that it lights up the vaginal vault. You're able to see everything in there all the way up to the cervix, which is kind of as far as you can visualize without opening the cervix from a child birth or something.

So with the swabs, when you do that, once that's open, you have the swabs still in the container with just the end that you're going to touch open because that's a sterile container so that, again, it's to prevent cross-contamination of anything. You grab the end of that, you insert them into the speculum being very careful not to touch anything external or touching the speculum as you go through.

There's plenty of space to do that. You just have to do it with a steady hand. So that when you get inside you can swab both sides of the vaginal vault, which is the interior of the vagina. And then you can also swab the cervix around and underneath where sometimes discharge and different things will pool there.

Q. Is it safe to say that this is a very invasive procedure?

A. It is.

Q. And if DNA were to be extracted it's going to come from the inside ---

A. It is from inside, yes. You have to be very certain that when you do these swabs -- that's why you keep them in -- if I'm working here with my patient, they will be right beside

me. They're still in their sterile container so that when I reach for them, I'm pulling them directly from the sterile container, placing them into the vagina through the speculum without touching anything external, taking them out, and on this side or directly in this area somewhere there will be a swab holder, which is literally just like a little box that you can stick the swab in upside down so that that swab never touches anything, so that anything you're collecting from the vaginal area is only from the internal area of the vagina.

Same thing when you do the oral swabs. Oral swabs in, set in a container so it's everything inside the mouth and not touching anything external.

Q. Okay. Now I'm looking at your report in regards to the evidence collection. And you just told us that you normally do two swabs, but if you see something else you'll do a little bit more. How many swabs did you do, vaginal swabs, did you do in this case?

A. I did four.

Q. Okay.

A. Which means from my practice -- because, again, when I was trained from the very beginning I was trained you do it the same way every time. That way there's never a question on how you do it. Same process every time.

So I always do two swabs because I don't want one to miss anything. I want to make sure that I'm doing two swabs no

matter what I swab. So I do two swabs. And then if I see anything else, I would do more.

So in this case I did four. That tells me that I did see something. And I would have automatically done two additional swabs. I would never just do one at a time.

Q. Okay. I'm going to show you this, but before I go there I wanted to ask you quickly, once you collect that evidence, what do you do with it?

A. So it stays with me. It's in a kit. It used to be in a box, now it's in a bag. But regardless, there is a kit that's involved. Everything that you've collected, everything that you have stays with you the entire time. You can't leave the room, you can't leave it with anyone. It has to stay in your possession until you sign it off with a chain of custody.

So in these cases typically what I do is I have two options. I can either, if I have another nurse that's available, call another nurse to come and get the patient and take them to a different part of the ER so that I can finish up all of my documentation and prepare the kit for law enforcement or I will take the kit with me as I walk that patient back. That way, again, you want to make sure that nothing's left.

Oftentimes there's an advocate there from Julie Valentine or possibly the patient has family with them if they've chosen to have somebody with them. And if those are situations --

sometimes that family can kind of help the patient go to a different area so that I can finish my collecting.

Once I've finished all the documentation, the kit's completely sealed, everything's sealed with evidence stickers all the way from -- each individual swab has an envelope that it goes into. So like the vaginal swabs go into one envelope. The oral swabs go into one envelope. Each of those envelopes are sealed with evidence collection stickers. They're all placed inside the kit along with a copy of the record of everything that I've collected. You seal that with evidence tape as well.

And then you either keep it with you until law enforcement picks it up or sometimes we lock it in an evidence locker and it's behind locked doors -- the evidence locker is locked and the door to that room is locked. And the only people that have that key are the charge nurses. If you do that, you sign it over to the evidence locker, and then the charge nurse signs it out.

In this case, I reviewed my documentation, and I know that I actually prepared it for the evidence locker. So I filled out a chain of custody that said I had it, signed my name to it, placed it in the evidence locker because I was going to leave it for police to pick up later, but actually before I ever left, once I -- once I do that, of course, I have to clean the room up and get everything put back together

for the next case.

Before I ever left in this situation, law enforcement actually arrived, and I took it right back out of the evidence locker and handed it over to law enforcement. So the chain of custody will show that it went into the evidence locker, and it did, but it actually never left my possession because they arrived before I left the facility.

Q. Okay.

MS. LANDSVERK: And I just showed Mr. Sanford this. Your Honor, may I approach?

THE COURT: You may.

Q. Okay. I'm handing you State's exhibit number 11.

A. Yes.

Q. Could you please identify this for me?

A. So this is the chain of custody form that says that I -- print my name, I signed my name, I put the time on it, I put it into the evidence locker. And then three minutes later I removed it from the evidence locker because the police had arrived, and I signed it off to Officer, looks like, Waters.

Q. Okay.

A. I don't have my glasses.

Q. And you can ---

A. I'm sorry.

Q. And you can identify that that is, in fact, your signature?

A. It is.
Q. Okay.
A. It is my signature. And it is my handwriting.
Q. Okay. Is there a date on there?
A. There is. This says July 31st, 2019. 9:30 is when I signed it into the evidence locker. And 9:33 is when I signed it out and handed it to the police officer.
Q. Okay. Are there anymore identifying information in regards to the victim on that?
A. There is her name and her MRN, which is her medical record number, which is how Prisma identifies patients.
Q. Okay. Thank you for reading that without your glasses. I apologize I didn't ---
A. That's okay.
Q. --- tell you to bring those. Okay. Okay. Now I'm going to direct you to page 5 just to let you know where I'm going with this question. We talked about, earlier, the patient's injuries and physically her discomfort. Under, like, the physical exam she also reported to you that she was sore. Can you tell me a little bit about that?
A. Yes. So she said that she was sore. She had pain to her neck, and face, lips, jaw, and right thumb. That was related to him holding her down during this event. One of the other things that we always examine is we listen to their voice to see if we're concerned for any type of injury because if the

-- one of the questions that we ask, and we ask this with every patient, is did he choke you? Did he strangle you? Did he hurt you? How did he do it? How many hands? Because all of that can play into the damage that can be caused from that.

She reported that he did hold her down with her neck with one hand. She thinks it was only one hand. Again, and I tell patients this when we examine them, too, you know, you're trying to recall events that are very traumatic to you, so sometimes you don't remember exactly. So she thinks one hand.

She very clearly remembered being held down, him holding her neck and it hurting. She thinks it was one hand, not two. He was definitely in front of her. She was not sure how long he held her down. She did report during the -- her recount of the events to me that there were numerous times that she couldn't breathe. And she told him, I will be quiet if you'll just let me breathe.

Q. Okay.

A. There was no notable hoarseness from that, but that's also not uncommon. It requires quite a significant amount of damage before you'll actually have hoarseness from that.

Q. Okay. Thank you. That's very helpful. Now in the physical exam you talk about two different areas on her face. And do you mind -- that you noted injury. Do you mind going over both one and two areas that you ---

A. Yes. So she reported that her lips were sore and they

were bruised internally. And she also showed me a picture on her phone of what she looked like, because understand, this is the first time I've met her, seen her. So she showed me a picture on her phone of what she looked like prior to the event. And when she showed me that picture, there was some swelling that I could notice of her nasal area based upon comparison with the picture of what her normal appearance looked and what she looked like when she presented into the ER.

Q. Okay. Thank you. I believe that's all the questions the State has for you. Please answer anything from the defense.

THE COURT: All right. Cross-examination.

MR. SANFORD: Thank you, Your Honor.

Cross-examination by Mr. Sanford:

Q. How are you doing, ma'am?

A. I'm sorry?

Q. How are you doing today, ma'am?

A. I'm fine. Thank you.

Q. When Complainant came in to you -- you just talked about the swelling that went on on the front of her face. Where on her face did that take place?

A. So according to my notes, it says that there was swelling of the nasal area. So that would have been just around her nose.

Q. Okay.

A. And then there was bruising like internally to her lips. That can occur like if you're -- if you, obviously, if you bite your lip internally ---

Q. Sure.

A. --- or if it gets pushed in against your teeth.

Q. You did note that the, in your report, that the swelling was minimal?

A. Yes. So minimal is a fairly subjective word, but in my practice with what I do, because understand, I don't just do sexual assault, I also do emergency, minimal would be that I noticed that there was swelling, there was something there that I could definitely define this is not her baseline, but not enough that, say, her eyes were closed. Her, you know, her eyes weren't swelled shut or anything because you can actually have swelling to your nasal area that causes your eyes to completely close.

Q. Are there other things that can cause that swelling to occur other than a force hitting -- hitting that area?

A. I mean, I imagine there's other -- it's typically going to be related to trauma unless you're talking about some type of post-surgical thing or possibly, you know, obviously we've all seen situations where people have sinus drainage and you can look at them and go, oh, your face looks a little bit puffy. But not -- not in generally something that you're going to see very specific nasal swelling. In those

situations you're going to see, you know, like, say, someone's been crying a lot, you're going to see swelling around their eyes and other areas as well.

Q. So your job is to not determine where that came from, it's just to present the evidence?

A. Absolutely. As a SANE nurse, it depends on what role I'm in, but given this day as a SANE nurse, my job is to collect evidence.

Q. And you don't make any determination about anything, you just collect the evidence and then let the process go forward from there?

A. Yes.

Q. Now she did give you a brief overview of what allegedly happened that evening, correct?

A. Yes.

Q. Do you remember anything about her going over to a friend's house or anything like that that she had mentioned?

A. I remember -- I don't remember her saying anything about a friend's house. I can't say that if she did or she didn't. My job, again, would be just the evidence. So it would be -- usually I let them give me a little background just because it will lighten the burden of what they're going through.

Q. Sure.

A. But if the background's not pertinent to the evidence collection, you know, that may or may not -- may not be

included.

Q. Right.

A. The things that are important is what they tell me from the time of the assault, like what's, for example, what's the last thing you remember that was normal? Right? So if you -- let's use an example of someone that goes out to a club and then they have a lapse in memory. All right. What's the last thing you remember that was normal? Well, I went out with my friends. Okay. I'm going to start my story with when you went out with your friends. I don't care if you spent two hours at your friend's house getting ready before.

Q. Right.

A. When you went out with your friends, that's the last thing that was normal, and what changed from there?

And so in her situation, it -- what I recall is what she told me. And I had documented that it began when he came to pick up his belongings. I do know that after that fact she did have to drive him somewhere ---

Q. Gotcha.

A. --- is what she reported to me.

Q. Gotcha. Now you had asked her if, and then I'm sure this is standard protocol, if she knows whether he ejaculated or not, correct?

A. Yes.

Q. And could she remember?

A. So she was not sure. There's three answers to that question that we give everybody. It's yes if you know for certain. Absolutely, yes, then tell me about it. No, you know absolutely beyond a shadow of a doubt for certain no or unsure.

So in her situation what she shared with me was that the only one that she was unsure about -- she wasn't certain, she did not think so throughout the event. She wasn't certain, though, at one point she stated that he forced her to have oral sex with him. It caused her to vomit. And she wasn't -- not certain if he ejaculated during that time.

Q. Now when you did your physical exam, she didn't mention any pain to the back of her head?

A. Not that I recall.

Q. And you didn't see or you didn't mark in your chart anything abnormal that was going on with the back of her head such as lumps or bruising?

A. Right. Correct.

Q. But you did state that even though she did have neck pain and things that she did have normal range of motion in her neck?

A. She did. And so from a nursing standpoint what that means is I'm looking for midline tenderness. If you have neck pain and you say it hurts to move, okay, what I'm saying with normal range of motion is I can move. Does that make sense?

Q. Yes, ma'am.
A. Because if you have a spinal injury, when I touch you there there's going to be a pinpoint space that's going to hurt. And I'm going to tell you don't move. We're going to C-collar you, and we're going to CT you first, and I'm not going to want you to move.

Or you can tell me, you know, like if something happens -- we have patients that come in that say I can't move, I can't look this way. It doesn't necessarily mean it was not painful, it just means she could do it.

Q. Is part of your evidence collection taking any pictures?
A. Not with Prisma. That is something that we are trained in as sexual assault nurse examiners, but Prisma does not do that.
Q. Do you know if anybody prior to seeing you took -- or after you took any pictures of Complainant?
A. I do not. I tend to refrain from being very involved with the law enforcement side because, again, and I explain this to every patient every time, everybody has a role.
Q. Um-hum (affirmative).
A. And their role is to investigate. My role is just to collect evidence.
Q. Did you see any bruising around her neck?
A. I don't recall any.
Q. Did you take her blood pressure?

A. I did not take her blood pressure. The hospital had done that prior to my arrival.
Q. Do you know what that would have been?
A. I don't have ---
MS. LANDSVERK: Objection, Your Honor. She ---
A. --- that record.
MS. LANDSVERK: --- doesn't have personal knowledge.
THE COURT: I think she said she didn't know.
A. Yeah. I don't have that record, so ...
MR. SANFORD: Beg the Court's indulgence.
(Pause)
MR. SANFORD: No further questions for this witness.
THE COURT: Redirect?
MS. LANDSVERK: No redirect, Your Honor.
THE COURT: All right. You may step down.
A. Thank you.
MS. LANDSVERK: Your Honor, may she be excused?
THE COURT: Any objection to her being excused?
MR. SANFORD: No, Your Honor.
THE COURT: All right.
MS. LANDSVERK: Your Honor, we have one person I promise will be very fast.
THE COURT: It's seven til.
MS. LANDSVERK: Okay. We'll make it quick. Your Honor, the State would like to call Deputy Matt Waters to the stand.

THE COURT: All right. If you'll come forward and be sworn.

Matthew Waters, being duly sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

DEPUTY WATERS: Matthew Waters.

MADAM CLERK: Thank you.

Direct Examination by Ms. Landsverk:

Q. Hey, Deputy Waters.

A. Hi.

Q. What is your occupation?

A. I'm currently in Uniform Patrol with the Greenville County Sheriff's Office.

Q. Okay. And how long have you been with the sheriff's office?

A. Almost 15 years.

Q. Okay. And were you working on July 31st, 2019?

A. Yes, ma'am.

Q. Okay. And do you remember going to the hospital in order to pick up a rape kit?

A. I do.

Q. Okay. And I'm going to show you what is marked as State's exhibit number 11, and I want you to identify this for me.

A. Looks like the -- what we call the chain of custody ---
Q. Okay.
A. --- paperwork from the hospital.
Q. And do you recognize the signature on there specifically related to you?
A. I do.
Q. Okay. Can you tell me where it is on ---
A. It is the one at the very bottom, ---
Q. Okay.
A. --- fourth.
Q. And what -- why did you sign it?
A. For the chain of custody. The hospital asks us to sign the paperwork to take custody of the property that they hand over to us, ---
Q. Okay.
A. --- the SANE kit.
Q. So when you went to the hospital to get the SANE kit, what did you do with it? What was your procedure from there?
A. As soon as we pick it up we go straight to property and evidence and immediately place it in a refrigerated locker.
Q. Okay. And did you do that in this case?
A. Yes, ma'am.
Q. And is that an accurate depiction of the chain of custody from July 31st, 2019 that you picked up?
A. Yes, ma'am.

Q. Okay.

MS. LANDSVERK: Your Honor, the State would like to enter this into evidence.

THE COURT: Any objection?

MR. SANFORD: No objection, Your Honor.

THE COURT: All right. In without -- and that's exhibit 11?

MS. LANDSVERK: That's correct.

THE COURT: All right.

(Whereupon State's exhibit 11 was admitted into evidence)

Q. Okay. No further questions. Please answer anything from the defense.

Cross-examination by Mr. Sanford:

Q. Deputy, when you picked up the chain of custody did you go straight to where the evidence locker was?

A. If memory serves, yes, I did.

Q. Where -- where's that evidence locker located?

A. It's in the basement of the law enforcement center at the -- what we call the property and evidence section.

Q. And I believe that's McGee Street, is that ---

A. Correct, 4 McGee Street.

Q. And you took it straight from the hospital to there?

A. Yes, sir.

Q. And you didn't stop?

A. Not to my knowledge, no.

Q. Where did you put it when you put it in the car?
A. Typically the things of greater importance, quote/unquote, I put right in the seat beside me in my patrol vehicle.
Q. And when you put it into the evidence locker do you have to sign something then?
A. We sign a piece of paper, then the nurse or whomever we take custody of from the hospital signs our custody paperwork over to us. And then if there's no personnel working in property and evidence late at night, early in the morning, et cetera, we sign the chain of custody again as we place it into the locker.
Q. Nobody was riding with you that evening?
A. I don't recall to be honest with you. At the time I was a field training officer. So I constantly had people in and out of my vehicle, but I do not recall.
Q. So somebody could have been in your vehicle?
A. It's possible.
Q. Would they have been sitting next to you or in the back?
A. Next to me.
Q. If they were sitting next to you, where would you have put the rape kit?
A. In their hands.
Q. So there's a possibility that somebody had access to that rape kit before it went into the evidence locker?

A. Sure. I wouldn't use the word access, but that's not inaccurate.

Q. But they would be holding it prior to it being in the evidence locker?

A. Yes, sir.

MR. SANFORD: Thank you, Your Honor. No other questions.

THE COURT: All right. Any redirect?

MS. LANDSVERK: Nothing ---

(Pause)

Redirect Examination by Ms. Scott:

Q. Could you explain what you just told the Court about someone else having this rape kit other than you, sir?

A. It would have been a deputy in training. If -- the only way I would know to recollect the memory is if the report has an assisting officer on it. And the assisting officer would generally be the deputy in training.

Q. Thank you.

A. And honestly, depending on what point they're in their training, they would be driving and I would be holding it in the passenger's seat.

Redirect Examination by Ms. Landsverk:

Q. Wouldn't that -- you would not break a seal ---

MR. SANFORD: Your Honor, objection. There is a one witness/one attorney rule.

THE COURT: Yeah, they're kind of tag-teaming here.

MS. LANDSVERK: Okay.

MS. SCOTT: I was going to get back up, Judge. I ---

THE COURT: Well, I mean, she started. So it was her witness, wasn't it?

MS. LANDSVERK: It was.

MS. SCOTT: Yes, Your Honor. Oh, for cross -- well, I don't want to do this in front of the jury.

THE COURT: Yeah. All right. Anything else.

MS. SCOTT: I'll have her answer -- ask the questions. She was asking the questions. So now ---

THE COURT: Well, then you started. So ...

MS. SCOTT: May I complete it or would you like ---

THE COURT: I'll let you complete this one question. Go ahead.

MS. SCOTT: Me?

THE COURT: Yes. Whoever -- just we've got -- as long as you do it quickly.

MS. SCOTT: Okay, Your Honor. We'd just like to preserve this witness for tomorrow. We'll just do that.

THE COURT: All right. Well, I mean, you would need to ask him questions on redirect.

MS. SCOTT: Yes, Your Honor. He just testified that he was in the car with someone and that they may have had it in their hands. So the question that my co-counsel was asking was did anyone break the seal at that point while you were in

the car and someone was holding it?

A. No, we wouldn't break the seal.

MS. SCOTT: Okay.

THE COURT: All right. Anything else?

MS. LANDSVERK: No, Your Honor.

THE COURT: Any recross in light of that?

MR. SANFORD: No, Your Honor.

THE COURT: All right. Thank you. You may step down.

A. Thank you, sir.

THE COURT: All right. We did it before five. All right. Ladies and gentlemen, we are now going to break for the day. So my four rules, don't discuss the case among yourselves, among family members, anything like that. Do not do any type of research about this case. Do not pay any attention to any media coverage, social media, anything like that. And finally, if anybody contacts you other than somebody from the clerk's office, then please let the bailiffs know. Other than that, y'all have a good evening. 9:30, does that work for everybody?

THE JURY: (Affirmative nods).

THE COURT: All right. See y'all at 9:30 in the morning.

(Whereupon the jury exited the courtroom at 4:56 pm)

THE COURT: All right. So what do we think about tomorrow just for planning purposes?

MS. LANDSVERK: Tomorrow we have ---

166

THE COURT: When do you anticipate us ---

MS. LANDSVERK: I think we've got four to five witnesses tomorrow. And I think we'll be able to get done by lunch.

THE COURT: Okay.

MS. LANDSVERK: Now one of those is the main investigating officer. So she's going to be the longest. And we're probably going to play or at least try to get in some audio because the interview was recorded.

THE COURT: Okay. And, again, I'm not holding you to it, but do you expect ...

MR. SANFORD: Your Honor, obviously, the defendant testifying is going to be a -- is that what you're asking about?

THE COURT: Yeah, I mean, I think ---

MR. SANFORD: I believe him testifying, obviously, is going to be a decision once the State finishes their case. But if he does testify and we have our other two witnesses, I expect that we will be -- if they're done by lunch, I expect to probably be done two or 3:00, somewhere around in there. That may be overestimating.

THE COURT: All right. So I guess then if y'all have any jury charges, please email them to my law clerk ---

MS. LANDSVERK: Okay.

THE COURT: --- tonight just so he can -- or first thing in the morning. Something just so he can start -- he already

167

started working on the charge, but I want to get that ---

MS. LANDSVERK: Okay.

THE COURT: --- get that together.

MS. LANDSVERK: And I guess did you want to do the ---

THE COURT: Oh, yeah.

MS. LANDSVERK: --- Jackson v. Denno?

THE COURT: When is that -- when do we need to do that? Is that first thing?

MS. LANDSVERK: Pretty much -- that'd be great. That would be the easiest, go ahead and do it first thing.

THE COURT: Is it going to be a long Jackson v. Denno or ...

MS. LANDSVERK: I guess it depends on ---

MR. SANFORD: 'Cause his ---

MS. LANDSVERK: --- audio ---

MR. SANFORD: Yeah, because his audio's around 44, 43, 44 minutes.

MS. LANDSVERK: Right. So, I mean, ---

THE COURT: I don't have to listen to the whole thing to ---

MS. LANDSVERK: You don't ---

THE COURT: --- to make a declaration ---

MS. LANDSVERK: No. No. We're not going ---

THE COURT: --- on Jackson v. Denno.

MS. LANDSVERK: --- to play the entire thing. And so --

168

but there is a lot of discussion as to what he says to the officers. I mean, that'll probably take at least 30 minutes just to go through -- because they had a 45 minute interview. So there's kind of a lot to discuss.

THE COURT: All right. Well, then y'all be here at 9:00 and we'll do the Jackson v. Denno at nine.

MS. LANDSVERK: Okay.

THE COURT: That way with the jury -- since I've already told the jury to be here at 9:30. All right. Anything else from the State before we break?

MS. LANDSVERK: Nothing else from the State.

THE COURT: Anything else from the defense?

MR. SANFORD: Nothing from the defense, Your Honor.

THE COURT: All right. See y'all in the morning.

(Whereupon court was in recess at 5:00 pm)

Thursday, September 1, 2022:

(Whereupon court reconvened at 9:12 am)

THE COURT: All right. I believe we have a Jackson v. Denno hearing. Is that what we needed to do this morning?

MS. LANDSVERK: That's correct, Your Honor.

THE COURT: All right. I'll be glad to hear from you.

MS. LANDSVERK: Okay. Thank you, Your Honor. May it please the Court? Courtney Landsverk for the State.

Your Honor, we have a statement made by the defendant, which the Court needs to determine the admissibility of. And

this is a statement that the defendant made to Sergeant Cheri Lyda after he was arrested.

THE COURT: Okay.

MS. LANDSVERK: Your Honor, the State would like to call Sergeant Lyda to the stand.

THE COURT: All right.

Cheri Lyda, being duly sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

SERGEANT LYDA: Cheri Lyda.

MADAM CLERK: Thank you.

Direct Examination by Ms. Landsverk:

Q. Hey. Good morning, Sergeant Lyda.

A. Good morning.

Q. What is your occupation?

A. I'm a sergeant at the Greenville County Sheriff's Office.

Q. Okay. And how long have you been a sergeant?

A. I've been a sergeant for eight months.

Q. Okay. And how long have you been employed with the sheriff's office?

A. Since 2002.

Q. Okay. And what was your job title in July of 2019?

A. I was an investigator in sex crimes and crimes against children.

Q. Okay. And at that time did you meet with the defendant, Dylan Trey Foster, in this case?
A. Yes, I did.
Q. Okay. And do you remember what day that would have been?
A. I believe it would be on the -- around August 17th, ---
Q. Okay.
A. --- I believe.
Q. Do you want your report? You're ---
A. Please.
Q. Okay.
A. If I could just have the envelope.
Q. Your ---
A. I've got it ---
Q. --- report ---
A. I didn't know, so I didn't bring it up. Thank you.
Q. Yes. Absolutely.

MS. LANDSVERK: Your Honor, may I approach?

THE COURT: You may.

A. Thank you.
Q. We've given all this information in discovery.
A. Okay. Thank you. I just have it written on the front.
Q. Okay.
A. It was on August 17th, 2019.
Q. And I can -- I was going to say I can pull the rest of that if you need ---

A. (Negative nod).
Q. Okay. And how did you arrange this meeting? What was the process that you took?
A. Based on the defendant being incarcerated, I had to call the jail and schedule a formal appointment to meet with him.
Q. Okay. Do you know what time you met with him?
A. Not right off hand, I do not.
Q. Okay. And when you first started speaking with him, was he under arrest?
A. Yes.
Q. Okay. And was he handcuffed?
A. No, ma'am.
Q. Okay. Was he free to leave?
A. No, ma'am.
Q. Okay. Did you read him his Miranda rights?
A. Yes, ma'am.
Q. And how did you do that?
A. I did it by a form. It's a form that the sheriff's office provides. We'll read that form sentence by sentence and ask after each sentence if they understand. And if they don't understand, to please ask us to explain it to them. Once the form was read to him, the last paragraph on that form I asked him to read back to me. And that way -- it's for me to make sure that he can read and write and that he does understand. Once he stated he understood, I asked him if he

still wished to speak to me regarding this investigation. And he stated yes. I asked him would he initial each line of that that I had read to him and he understood, and he did. And I initialed it and signed it -- as a witness.

Q. Okay.

(Whereupon State's exhibit 12 was marked for identification)

MS. LANDSVERK: Your Honor, may I approach again?

THE COURT: You may.

Q. Okay. I am showing you what is State's exhibit number 12. And if you could identify that for me.

A. Yes, ma'am. This is our waiver of rights, our Miranda.

Q. Okay. And how do you know that is the -- did you -- I guess I should back up. Is that the form that you used with Mr. Foster?

A. Yes, ma'am.

Q. Okay. And how do you know?

A. Because I witnessed it.

Q. Okay. And how did you witness it?

A. By signing it.

Q. Okay. And did the defendant also sign it?

A. Yes, he did.

Q. Okay. And you said that you read line by line to him ---

A. Yes.

Q. --- his rights. And he signed each one specifically?

A. That's correct.
Q. Okay. And there is also a video/audio -- not actual -- I think we can actually just hear it.
A. That's correct.
Q. Not ---
A. It was just audio.
Q. Okay. The audio -- you go in and actually explain -- not only do you read the rights, but you also explain it to him and what each specific one means, is that right?
A. That's correct.
Q. Okay.

MS. LANDSVERK: Your Honor, at this time the State would like to enter this into evidence, Miranda rights ---

THE COURT: Okay.

MS. LANDSVERK: --- form.

THE COURT: Any objection?

MR. SANFORD: Is this being entered in for only this -- the purposes of this hearing or for the purposes of trial?

THE COURT: This just will be for this hearing.

MR. SANFORD: Okay. No objection, Your Honor.

MS. LANDSVERK: Okay.

(Whereupon State's exhibit 12 was entered into evidence for the Jackson v. Denno hearing)

THE COURT: And that's what number?

MS. LANDSVERK: This is State's exhibit number 12, Your

Honor, defendant's waiver of rights.

THE COURT: Okay.

Direct Examination by Ms. Landsverk Continued:

Q. And, Sergeant Lyda, when you were reading and explaining the rights to him, did he understand each of the rights?

A. Yes.

Q. Okay. And did you -- I know you said he initialed each one.

A. Yes, ma'am.

Q. Did he -- did you deprive him of anything when you were speaking with him?

A. No, ma'am.

Q. Okay. Did you make him any promises?

A. No.

Q. Did you make -- did you make any threats against him?

A. No.

Q. Okay. And how long, about, did your encounter last? Do you remember?

A. With it being in 2019, I'm not sure, but I'm going to state it was probably around 20 minutes to half an hour.

Q. Okay. Would it surprise you to learn that it was around 45 minutes? And I just have that because that's how long the audio is.

A. Okay.

Q. Do you remember at the very end of the audio -- well,

probably about 10 minutes you talked just about how he was doing. And it became a little bit more personal. And it wasn't so much about the case. So the substance of the investigation may be a little bit shorter.

A. Yeah. Talking about his drug use and, you know, just a conversation about drug use and addiction.

Q. Okay. Now when he was speaking with you did he ever once say that he wanted an attorney?

A. No.

Q. Okay. And did the conversation flow easy as far as him telling you his side of the story and what happened?

A. It did. When we met he was -- he appeared relaxed, wanted to talk to me, answered any questions I had, volunteered information, didn't seem, you know, angry or anything at that time.

Q. Okay. And did he come across, I guess, voluntarily, giving ---

A. Yes.

Q. --- information in that ---

A. Yes.

Q. Okay.

MS. LANDSVERK: Your Honor, we do have audio as part of this. Would you like me to make the motion before that time or would you like to hear some of the audio?

THE COURT: Whatever -- I guess let's hear a little bit

of it.

MS. LANDSVERK: Okay.

Q. Okay. Sergeant Lyda, before we listen to the audio, what was the defendant's education level? It's on the ---

A. Should be on the form.

Q. It's on the form.

A. I don't have it. He had a GED.

Q. Okay.

A. An education of a GED, I think, in 2011.

Q. So he would understand everything ---

A. Correct.

(Whereupon the audio was played for the Court)

MS. SCOTT: It's some acoustics, Judge. We're hearing her clicking.

THE COURT: I mean, is that echo coming from the actual recording?

MS. LANDSVERK: I think it's -- no, I think it's coming from our ---

THE COURT: Yours -- that's off.

MS. SCOTT: May I just take it out and back in, maybe?

THE COURT: Yeah. Yeah, that microphone's off.

(Whereupon the audio continued to be played for the Court)

MS. LANDSVERK: Your Honor, I apologize to stop it. I heard from the IT guy. He was saying that if you mute your

mike, that might help the echo.

THE COURT: I tried that a minute ago, but it didn't -- my mike is muted. Everything's muted except her mike.

MS. LANDSVERK: Okay, cool.

THE COURT: I'll mute hers to see.

MS. SCOTT: There's an overall mute button, and you're saying we're all muted?

THE COURT: I've muted her to see what happens.

MS. LANDSVERK: Yes, sir. Thank you, Your Honor.

(Whereupon the audio continued to be played for the Court)

THE COURT: Are we listening to the whole statement?

(Whereupon the audio was stopped)

MS. LANDSVERK: We don't have to, Your Honor. I just -- I wanted to play a little bit for the Court so you could kind of ---

THE COURT: Yeah.

MS. LANDSVERK: --- understand the environment. But with that said, the basic questions regarding the defendant's statement are already done. Obviously her testimony's a lot longer because she was the main investigator on the case.

But in regards to this, Your Honor, the State would ask that the defendant's statement, because it is -- it was voluntarily given, he thoroughly went through his rights with Sergeant Lyda and agreed to speak with her, we'd ask that this

statement be allowed to be brought into court.

THE COURT: Any questions of the witness?

MR. SANFORD: I have -- I do have just a couple of questions, ---

THE COURT: Okay.

MR. SANFORD: --- Your Honor.

Cross-examination by Mr. Sanford:

Q. Sergeant Lyda, when -- am I pronouncing that correct, Lyda?

A. Yes, sir.

Q. Okay. When you asked about or telling him about applying for a public defender, he told you he had applied for a public defender, correct?

A. That's correct.

Q. Did you contact the public defender's office to see if he had been assigned an attorney or anything?

A. He stated that he was supposed to be contacted within two weeks.

Q. But you didn't -- you, yourself, didn't contact the public defender's office to see if he had been assigned an attorney?

A. No, I did not.

MR. SANFORD: No further questions, Your Honor.

THE COURT: All right. Anything else from the State?

MS. LANDSVERK: Nothing further, Your Honor.

THE COURT: All right. Any ...

MR. SANFORD: Your Honor, I -- with his -- he has been -- he told the sergeant that, investigator at the time, that he had been assigned an attorney from the public defender's office. Or not assigned, but he'd applied.

THE COURT: He'd applied.

MR. SANFORD: He'd applied. She just testified that she did not check with the public defender's office. I do not know whether he had a public defender at that point or not. He could have potentially been represented by an attorney. I do not know.

Now, of course, he said they would get with him in two weeks. That could have been true, that could have not been true. Only the public defender's office knows where they were at that time. With the potential for him having been assigned an attorney and him not -- not being checked that he was actually represented at that time, that attorney should have been notified, if he had an attorney, that he was being questioned by the police. And I do believe that that potentially could have violated his rights.

And so, Your Honor, that's why we would say that this is -- while it's not necessarily coercive or that he had not -- he did not comply or allow that, he might have been denied the ability for his attorney to be there if he had been assigned one. And I do believe his applying to the public defender's

office has at least shown that he wanted an attorney at that point.

THE COURT: Isn't that a lot of speculation, though, ---

MR. SANFORD: Yes.

THE COURT: --- you're asking the Court to do?

MR. SANFORD: It is -- it is, Your Honor, but, you know, the right to an attorney is one that he should be afforded. And he, obviously, said that he had applied. And I do believe that shows initiative that he had wanted an attorney at that point.

THE COURT: Well, I mean, is that any different than somebody saying, well, I'm planning to get an attorney? I've got a call into somebody?

MR. SANFORD: I believe the initiative of filing a -- filing something with the public defender's office is a little bit different than just saying I'm going to try and get an attorney, Your Honor.

THE COURT: And I think in hearing the testimony or the recording there, even if that were true, which he very clearly says, you know, hey, if you don't want to talk to us and you want an attorney, I mean, she was very -- did a very good job with that and very nice about it.

And, you know, I think that there -- that overcomes any speculation that he was represented. So I'm going to find that it was voluntarily made and it's admissible. Now are

there any portions of the recording that are -- you objected to outside of that?

MR. SANFORD: There are a couple -- I believe there is two spots in the recording where he mentions that he is currently incarcerated.

THE COURT: Okay.

MR. SANFORD: And those are the ones that I'd object to just because while the attorneys and you understand the bail system and the bond system, the jurors hearing that he had been incarcerated without any further clarification could be prejudicial to him and especially if they see that he was, you know, denied bond. Because we do go through the process of hiding the fact from the jury that he is incarcerated now, I do believe that could be prejudicial to my client.

THE COURT: Yes.

MS. LANDSVERK: Your Honor, just going to jump in and clarify a little on why I think he is taking this position. And I understand where he's coming from, however, I think we for a couple of reasons it's okay to have that information in because, one, he was already arrested on the charges. So, I mean, it makes sense that someone would be in jail because he was charged with that and served those warrants.

I think what Mr. Sanford might be getting to that he's concerned about, that will not come up. As he was actually arrested on a possession of a stolen vehicle initially and

while these warrants were out for his arrest. And so he stole a vehicle at the Krispy Kreme parking lot on Pleasantburg and they -- a day after this happened. They found him -- that will not come in, Your Honor. We know that's unrelated. They found him, charged him. And then as soon as they booked him at the jail, they then served the warrants for this case. And so if there was any concern with that, we are not going down that road.

And I just -- as far as the jail part is concerned, I think this makes sense that even -- put the stolen vehicle part aside, he's still in there and we know it's only a few days after he's arrested. I think it was five days after he was arrested that Sergeant Lyda actually questioned him.

MR. SANFORD: I understand their portion. Obviously, I can, with my cross-examination questions, clarify that to some extent, just that he was incarcerated on the normal process of bond and bail and through the process of being that way. However, I just don't want something -- it to come up and me somehow open the door to other situations of why he was in jail that way, that she could then bring them up. And I also don't want any prejudice against my client for, you know, them thinking he -- he had been in jail for a long time for other situations without any clarification on that.

THE COURT: Yeah. I mean, I don't -- I'm sure the State is not going to risk that issue of going into anything like

that outside this case. And I don't think that -- I mean, there's no question he was arrested at the time.

MR. SANFORD: Correct.

THE COURT: And I don't think that -- especially the short period of time afterwards, I don't think that prejudices, I mean, and automatically assumes that he's -- was denied bond and all that kind of stuff.

MR. SANFORD: Correct.

THE COURT: I think the fact that it was -- that he was incarcerated at the time, I mean, I think it's a logical assumption that it relates to this case ---

MR. SANFORD: Yes, sir.

THE COURT: --- unless there was -- so is there anything else, though? Any other issues ---

MR. SANFORD: I don't think so. I think everything else is -- I've listened to it multiple times. And I think everything ---

THE COURT: Okay.

MR. SANFORD: --- else is fairly -- is fairly clear.

THE COURT: All right. Well, I find it is voluntary and admissible subject to the objections by the defendant. All right. Anything else from this witness?

MS. LANDSVERK: Nothing else, Your Honor.

THE COURT: All right. You may step down. And I guess when you -- you re-introduce that at the appropriate time.

184

MS. LANDSVERK: Thank you.

THE COURT: All right. Anything else from the State before we bring the jury in?

MS. LANDSVERK: Nothing else, Your Honor. We have four witnesses left.

THE COURT: Okay.

MS. LANDSVERK: And we have -- and I can sit back here ---

MR. SANFORD: Do you want to discuss this with him about scheduling ---

MS. LANDSVERK: Oh, sure.

MR. SANFORD: --- while we did ---

MS. LANDSVERK: Judge, can we approach?

THE COURT: Yes.

MS. LANDSVERK: To just talk about something scheduling-wise.

(Whereupon a bench conference was held off the record)

(Whereupon the bench conference was ended)

MS. LANDSVERK: I have a -- I can go ahead and do Sergeant Lyda, but I have one witness, he's going to be here at ten. He's the fingerprint guy. But I can also -- I don't know that it really matters. I kind of had him in the lineup earlier.

THE COURT: Yeah. And like I said, the jury's been, you know, they're ready to roll. I ---

185

MS. LANDSVERK: Okay.

THE COURT: I don't want to have to let them sit back there for 20 minutes.

MS. LANDSVERK: Okay. I'll go ahead -- I'll go ahead and switch it.

THE COURT: All right. So the State's ready?

MS. LANDSVERK: Ready, Your Honor.

THE COURT: Defense ready?

MR. SANFORD: Defense is ready, Your Honor.

THE COURT: All right. If the jury's ready, bring them in.

(Whereupon the jury entered the courtroom at 9:42 am)

THE COURT: Good morning, ladies and gentlemen. I hope everybody had a good evening. As you will recall when you left, the State was still in their case. I apologize we're running a little bit late. We had some matters we had to go over so that when we got started, everything would be more streamlined. So I think everything's still on schedule as we discussed yesterday.

Like I said, just to kind of let you know, we're not sure if we're going to finish the whole case and put it to you today. Worst case scenario, we'll have the final argument and charge in the morning. But that's kind of -- so it'll just be the morning thing. But that's kind of what we're looking -- we're not sure yet. We'll just see how the day goes. And

I'll keep you posted. But at this time the State can call your next witness.

MS. LANDSVERK: Thank you, Your Honor. The State would like to call Sergeant Cheri Lyda to the stand.

Cheri Lyda, being duly sworn testified as follows;

MADAM CLERK: Thank you. Please state your name for the record.

SERGEANT LYDA: Cheri Lyda.

MADAM CLERK: Thank you.

(Whereupon State's exhibits 13 - 20 were marked for identification)

Direct Examination by Ms. Landsverk:

Q. Good morning.

A. Good morning.

Q. Sergeant Lyda, what is your occupation?

A. I'm a sergeant with the Greenville County Sheriff's Office.

Q. Okay. And how long have you been employed with the Greenville County Sheriff's Office?

A. Since 2002.

Q. Okay. And what was your job title in July of 2019?

A. I was an investigator in sex crimes and in crimes against children.

Q. Okay. And were you involved in the investigation in

regards to the defendant, Dylan Trey Foster?

A. Yes, ma'am.

Q. Okay. What was your involvement in that case?

A. I was the lead investigator.

Q. Okay. So did you interview several parties?

A. Yes.

Q. Okay. Do you remember who you interviewed?

A. I interviewed the victim in the case. I interviewed the defendant. I spoke with the -- a friend of the defendant's, two friends of the defendant's, by telephone.

Q. Okay. And did you visit any of the locations?

A. Yes.

Q. Okay. What location did you go to?

A. I went to both QTs ---

Q. Okay.

A. --- that were involved in the case. And I also went to one of the friend's houses.

Q. Okay. And I want to -- I'm going to go into detail with each thing, but I just kind of wanted to hear the overall layout of what you did ---

A. Yes, ma'am.

Q. --- in your duties. So who was the first person that you interviewed?

A. The victim, [redacted].

Q. Okay. And do you remember when you interviewed her?

A. On August 1st, 2019.
Q. Okay. And what information did you find out in interviewing her?
A. Well, after I introduced myself when I met her, I asked her to tell me, you know, what had happened on the 31st of July.
Q. Okay. And you said you met with her on August 1st?
A. Yes, ma'am.
Q. Okay. What did ---
A. Let me look at my notes real quick ---
Q. Sure.
A. --- just to make sure.
Q. Yeah, sure.
A. Yes, ma'am, August 1st.
Q. Okay. And I know it was a while ago.
A. Yes.
Q. So where did y'all meet?
A. We met at the law enforcement center where my office is located.
Q. Okay.
A. I apologize. Let me make a correction.
Q. Sure.
A. The crimes against children and sex crimes office is at 301 University Ridge, which was -- is County Square. That's where we met in my office.

Q. Okay. Did you -- and do you remember going to the hospital on July 31st to see if she was available?

A. I did. A deputy that was working the road at the time initially got the call and went to the location. The victim had been transported. I was contacted because I was the on-call investigator. I was contacted and asked to respond to Prisma Hospital in reference to a victim being transported for a sex crime.

When I arrived there I introduced myself and was told by the hospital -- the SANE nurse who was going to do her job was -- I was told that the victim would not be available for any questioning or being talked to for at least two hours. So at that time I asked Complainant to contact me when she got back home or after her medical visit and we would schedule a time to meet.

Q. Okay. Now -- and I know you're probably aware, but we know her first name is Complainant, she goes by Complainant.

A. Okay.

Q. And I know, like I said, it's been a while, but ---

A. I'm sorry.

Q. --- that's also her formal first name. So ---

A. I've always just called her Complainant.

Q. Right. Sure. That's her -- that's her given name.

A. I will call her Complainant.

Q. Okay. And I realize in your report you probably referred

to her as ---

A. Complainant.

Q. --- her given name.

A. Yes.

Q. Okay. Just wanted to make sure we were on the same page.

A. Yes.

Q. So -- okay. So you did end up interviewing her the next day when she came to your office?

A. Yes.

Q. Okay. And how did she appear? I mean, what was her demeanor?

A. Complainant came in, she was very sad, very -- she appeared sad, but she wanted to also tell her story. As I was talking to her, she did get choked up several times with her speaking about her children and -- and what had happened to her. She was very distraught over what happened to her.

Q. And did she tell you the complete story?

A. She did.

Q. Okay. And did that lead you to your investigation with the QT and going to the QT?

A. Yes.

Q. Okay. And I'm going to show you these photos. Let me get them in order.

MS. LANDSVERK: Your Honor, may I approach?

THE COURT: You may.

Q. And if you could kind of shuffle through those photos.
A. Um-hum (affirmative).
Q. And, if you could, just tell me what you're looking at and how do you know what it is?
A. During my investigation with Complainan, and she gave me the timeline of events of those that night/early morning hours, she had told me of two QT gas stations, Quik Trip gas stations that they had gone to.

As part of my investigation I wanted to verify her story and get a timeline. So after speaking with her I went to these QT gas stations and asked them to pull up their security video just to verify of seeing them pull up, you know, the events and seeing them leave just to draw a timeline.

Q. Okay. Now did her timeline match with what QT showed in their surveillance as far as the time of when she was there?
A. Yes, ma'am.
Q. Okay. And do those photos -- do they look like they accurately depicted what you saw from the initial still shots that day?
A. Yes, ma'am.
Q. Okay. Have there been any changes made or alterations to the photos?
A. No, ma'am.
Q. Okay.

MS. LANDSVERK: Your Honor, at this time the State would

like to enter -- and I'll tell you the numbers when I get up here, these photos into evidence.

THE COURT: All right. Any objection?

MR. SANFORD: I have no objection, Your Honor.

THE COURT: All right. No objection.

MS. LANDSVERK: May I publish to the jury?

THE COURT: Yes.

MS. LANDSVERK: Your Honor, State's exhibits 13 through 18, what we have here.

(Whereupon State's exhibits 13 - 18 were admitted into evidence)

Q. Okay. Sergeant Lyda, can you shed a little bit of light on what we're looking at here and with that the time-frame? If you could just give me a description of the photo and what's going on.

A. This is a photo of the defendant, Trey, at the ATM at 2:25 am ---

Q. Okay.

A. --- at the QT.

Q. Okay.

MS. LANDSVERK: And that is State's exhibit 18 for the record.

Q. Now looking at State's exhibit 17 -- that first time was 2:25. And can you explain a little bit about what's going on here?

A. Yeah. Once funds were withdrawn from the ATM he made a purchase. And he's paying for that purchase at the checkout at the same gas station at 2:28.

Q. Okay. And it looks like in this photo he has a couple of things down at the register. Is it possible that phone right there with him could have potentially been the victim's phone?

A. I believe that it was just based on her statement. Her initial statement to me was when he made her leave the residence he had her car keys and her cell phone.

Q. Okay. Now I am -- okay. I'm going to bring up State's exhibit number 14, the outside of the QT, at the same time, 2:28 that we have the still shots of the inside. And what was the weather like?

A. I believe that it was raining or had been raining. The ground was wet and there were puddles.

Q. Okay. Does this picture indicate where the car is? Do we know that -- can we identify that car?

A. To the ---

Q. Um-hum (affirmative).

A. --- looking at the store, looking on the left side of the store.

Q. Okay. Was that the victim's vehicle? Do you know?

A. I'm not sure.

Q. Okay. We also have -- this is State's exhibit 16. What are we looking at here?

A. We're looking at Complainant inside at a different QT at 3:09 am making a purchase.

Q. Okay. And I believe we -- we had discussed this yesterday with -- we'll also bring another State's exhibit 15.

A. This is going to be the same store previous to the purchase. Complainant was withdrawing money from the ATM.

Q. Okay. So actually looks like the timing was after -- looks like she purchased something at 3:09 and then at 3:11 went to get ---

A. Cash, yes.

Q. Okay. This is the last one. Okay. Pointing at State's exhibit 13. This is now at 3:11. And it looks like very similar condition weather-wise.

A. Correct.

Q. Okay. So let's keep talking about the rest of your investigation. So what did you do after you left QT? What was the next thing as part of your investigation? Did you interview anybody else?

A. At that time I did not interview anybody else except -- except the victim.

Q. Okay.

A. I was not able to get in contact or know the location of the defendant at that time just based on him being -- I knew that she had made him leave her residence, so I didn't know where he was staying.

Q. Okay.
A. Or living.
Q. Okay. And did you eventually get to interview the defendant?
A. I did.
Q. Okay. And can you tell me where y'all met? You and the defendant? When did you interview him? What day did you interview him?
A. August the 7th, 2019.
Q. Okay. And where did you meet?
A. At the Greenville County Detention Center.
Q. Okay. And at that point was he arrested?
A. Yes.
Q. Okay. And how did you set up that meeting?
A. It's called a formal visit. If you want to meet with someone who is incarcerated, I had to call the detention center and schedule a time and date to meet with the defendant. And that's what I did.
Q. Okay. And do you remember at that point in time about what time it was that you met with him?
A. I don't remember what time it was. I believe it was that afternoon because the date that I met him is the actual date that I called. So the same day on the 7th, I called earlier that day and saw him that same day.
Q. Okay. Now was he handcuffed during ---

A. No, ma'am.
Q. --- his interview? Was he free to leave?
A. No, ma'am.
Q. Okay. And at that point had he already been charged?
A. Yes, ma'am.
Q. Okay. And can you tell me what he was charged with?
A. He was charged ...
(Pause)
A. Let me find ---
Q. I was going to say, if you need me to get warrants ---
A. I ---
Q. --- to refresh your recollection, I can. You want me to -- I can do that.
(Pause)
MS. LANDSVERK: Your Honor, may I approach?
THE COURT: You may.
Q. Okay.
A. I found them.
Q. Okay. Either one.
A. Okay. Yes. Thank you.
Q. Okay. So what did -- what was he charged with?
A. First charge was criminal -- criminal sexual conduct, first degree. The second charge was domestic violence, first degree. Third charge was kidnapping. And the last charge was burglary in the first degree.

Q. Okay. And do you mind going through each charge and telling me why you charged those specific charges or what he was charged with?

A. The criminal sexual conduct, first degree, was based on the -- the violence of the crime. He assaulted her, and the act's forceful. Do you want me to read the warrants?

Q. I'd like you just to summarize it.

A. Okay.

Q. Just to summarize it, yeah.

A. Based on he committed the crime of a sexual act with another crime. He committed -- he burglarized her. He broke into her house and committed a crime. And during that crime she was assaulted. So that classified it and bumped it up to a first degree. And that was on the sexual assault.

The domestic violence is based on his hitting her. During her assault her head -- she was grabbed by her face and pushed into the sofa several times, which busted her lip. He was charged with domestic violence, first degree, also based on him committing -- burglarizing the home and committing the violent act.

The last one is kidnapping. He forced her by taking her keys and her cell phone and forced her to go with him to the QT to withdraw money from her account and to purchase the drugs and told her that if he -- told her that if she didn't, you know, he would physically harm her more.

Q. Okay. Now kind of getting back to the interview. You said that he was already charged at the time. Did you give him his Miranda rights during the interview?

A. Yes, I did.

Q. Okay. And I'm going to show you State's exhibit number 12.

MS. LANDSVERK: May I approach, Your Honor?

THE COURT: You may.

Q. And if you could, just tell me what you're looking at. And read through and explain to me what you said to the defendant during the interview and explain that sheet.

A. This is a sheet that the sheriff's office has. When we do an interview, it's Miranda rights. It's a waiver of rights that we have to read to anybody who is under investigation if we're asking something related to what they're being investigated for. When I met with the defendant, I had this form with me.

Q. And, Sergeant Lyda, I wanted to tell you, too, after you explain it, I will enter it into evidence, and then I will put it up here to show them. So maybe what I'll do is just generally ask you what it is and then get you to explain a little bit more once they see it.

A. Okay.

Q. So I guess I'm just going to sum that up so I can go ahead and put it on the overhead.

A. Sure.
Q. Is it -- how do you know that that was specifically the form that you used that day?
A. This is the form I used -- after I've read and explained the defendant his rights, I had him sign his name, which he signed, and I also witnessed it with my signature.
Q. Okay. And were there any alterations made since that formation of that page?
A. No, ma'am.
Q. Okay.

MS. LANDSVERK: Your Honor, at this time the State would like to enter this into evidence, exhibit 12.

THE COURT: Any objection?

MR. SANFORD: No objection, Your Honor.

THE COURT: All right. In without objection.

(Whereupon State's exhibit 12 was admitted into evidence)

MS. LANDSVERK: Okay. Your Honor, may we publish?

THE COURT: You may.

MS. LANDSVERK: Thank you.

Q. Okay. Now -- okay. So if you don't mind just telling me what you reviewed with the defendant and kind of what we're looking at here. And if you need to stand up, you can, or whatever you want to do to explain it.
A. Okay. When I sat down with the defendant I first told him I wanted to read him his Miranda rights, his waiver of

rights. I read each sentence as it's done. And I try to explain it, what each sentence means and ask them if they have any questions.

Once I read all of these sentences and ask them if they have any questions to it, I'll ask the person that I'm interviewing to read this last paragraph. And that's -- that's just to say that they've read it, they understand it and to know that they can read and write.

After we go through this form I ask him if he still would like to speak with me involving the investigation. If he states that he -- if that person states that they still would like to speak with the investigator on the investigation, they initial each line saying that they understand their waiver -- their rights. After they initial each line, they're asked to sign it. And once -- after they sign it, then I sign it as -- that I witnessed their signature.

Q. Okay. So did he understand each of the rights as you said them to him?

A. Yes.

Q. Okay. And did you -- why do you ask him about his education at the bottom?

A. Just to have an idea as far as to read and write and his -- and his understanding of the process.

Q. Okay. And in this case he had a GED?

A. Yes. He said he got his GED in 2011.

Q. Okay. Now when you were speaking with him did you deprive him of anything?
A. No.
Q. Okay. Did you threaten him in any way?
A. No.
Q. Did you make him any promises ---
A. No.
Q. --- to talk to you? Did he end up talking to you?
A. He did.
Q. Okay. Did he ask for an attorney?
A. No.
Q. Okay. Did he ever ask to leave?
A. No.
Q. Okay. I'm handing you State's exhibit 20.

MS. LANDSVERK: May I approach, Your Honor?

THE COURT: You may.

Q. And I want you to identify what this is.
A. During my interview with him I have a -- if it's not in my office, I always carry a hand-held audio recorder to record any type of interviews that I do. This is a CD that I made from that interview.
Q. Okay. And can you tell me how you can identify that that CD is, in fact, the interview that you gave him?
A. It's got my initials on it, my name.
Q. Okay. And after listening to it were there any

alterations made?

A. No.

Q. From the interview? Was it ---

A. No.

Q. Did it accurately depict what happened between you and him?

A. Yes.

Q. Okay.

MS. LANDSVERK: Your Honor, at this time the State would like to enter this into evidence.

THE COURT: Subject to the previous objection, anything else?

MR. SANFORD: Other than my previous objections, no, Your Honor.

THE COURT: All right. It is in subject to those objections.

MS. LANDSVERK: Okay. Thank you, Your Honor. State's exhibit 20.

(Whereupon State's exhibit 20 was admitted into evidence)

MS. LANDSVERK: Your Honor, at this time may we play it for the jury?

THE COURT: You may.

MS. LANDSVERK: Okay.

Q. Okay. Real quick, before we play this, do you know about how long the interview was?

A. Thirty to 45 minutes.

Q. Okay. Okay. We'll go ahead and play it.

(Whereupon State's exhibit 20 was played for the jury)

(Whereupon State's exhibit 20 was ended)

THE COURT: Is this a good stopping place for y'all?

MS. LANDSVERK: It is, Your Honor.

THE COURT: Okay. Let's just take the morning break, folks. Don't discuss the case. And we'll take a 10 to 15 minute break and then we'll bring you back out.

(Whereupon the jury exited the courtroom at 10:53 am)

THE COURT: All right. Is it Sergeant Lyda?

A. Um-hum (affirmative).

THE COURT: All right. Sergeant Lyda, you can step down, but you're in what I call my witness bubble, which means you can't discuss ---

A. I understand.

THE COURT: --- your testimony with your attorneys. But you're welcome to step down, and we'll bring you back up just before we get started.

A. Thank you.

THE COURT: All right. Anything else from the State right now?

MS. LANDSVERK: No, Your Honor.

THE COURT: Defense?

MR. SANFORD: No, Your Honor.

THE COURT: All right. We'll take about a 10 to 15 minute break.

(Whereupon court was in recess at 10:54 am)

(Whereupon court reconvened at 11:16 am)

(Whereupon State's exhibit 21 was marked for identification)

THE COURT: All right. The State ready?

MS. LANDSVERK: Ready, Your Honor.

THE COURT: The defense ready?

MR. SANFORD: Yes, Your Honor, we are.

THE COURT: All right.

THE BAILIFF: You ready, Your Honor?

THE COURT: Yes.

(Whereupon the jury entered the courtroom at 11:17 am)

THE COURT: All right, ladies and gentlemen. The State may proceed in their case. You may proceed.

Direct Examination by Ms. Landsverk Continued:

Q. Okay. Sergeant Lyda, let's pick up -- after the interview discussion I just wanted to go over a few quick points. So is it true that he just denied that they had sex?

A. Yes.

Q. Okay. And to confirm, did he know that they were -- did he say that they were broken up?

A. Yes.

Q. Okay. And just to review, did he say that she kicked him

out?
A. Yes.
Q. Okay. What did he say in regards to you asking whether or not she threw up? Do you remember?
A. He stated she did not throw up, that she gagged.
Q. Okay.
A. But he denied that she threw up.
Q. Okay. Now after you met with him did you interview or speak to any other witnesses that he brought up in the interview?
A. Yes.
Q. Okay. Now who did you speak with?
A. I spoke with the friend Lawrence Lawson. I think it's Lawrence, but he goes by Lawson.
Q. Okay.
A. And I also spoke to the female, Megan, that he ---
Q. Okay.
A. --- called on.
Q. Okay. And could either of those people be found for trial?
A. No.
Q. Okay. As far as -- and I guess I want to back up a little bit. Those people were also people involved in drugs, correct?
A. Correct.

Q. And that did drugs with him that night?
A. Lawson was not -- I didn't have anything -- questions about Megan with drugs. It was just the fact that he was at her house, just trying to also get a timeline.
Q. Okay. Now I want to go back very quickly about evidence collection. Was there any other DNA collection that you made with the defendant?
A. Yes. I got -- I got a warrant for his DNA. And on the -- before my interview with him I would have there served him with that warrant and did a -- what's called a buccal swab, which is a long Q-tip that runs into his mouth and then secured it and placed it into property and evidence.
Q. Okay. And I'm going to show you a report on that, but before I do, why did you decide to do the buccal swab?
A. Based on after I -- she had stated that she was forcibly raped. So I wanted to have his DNA to compare or the crime lab to have his DNA to compare to her SANE kit.
Q. Okay. In the rape kit?
A. Yes.
Q. As far as you're aware did the nurse collect DNA from ---
A. Yes.
Q. --- from her? Okay. I'm showing defense [sic] exhibit 19. Okay.

MS. LANDSVERK: Your Honor, may I approach?

THE COURT: You may.

Q. Okay. And I'm showing you State's exhibit 19. Do you mind telling me what this is and how you know what it is?
A. I'm sorry. What this is and what?
Q. Can you just tell me what -- well, let's start with the first thing. What are you looking at?
A. It's a -- it's a P&E, it's a property and evidence sheet. It's where if I put in a piece of evidence that I want tested, I have to fill out one of these forms, which is a Greenville County Department of Public Safety property and evidence report. It just states what it -- what it is that I'm turning into property and evidence.
Q. Okay. And then what did you put on there as to what you were putting into property and evidence?
A. I put -- as far as the item, it's CL1, which is my initials, Cheri Lyda, number 1. And it's -- the quantity of it is two. And then the description, it's a forensics swab, in parentheses, DNA for Dylan Trey Foster.
Q. Okay. And had there been any alterations or changes to that, ---
A. No.
Q. --- to the original? Okay.

MS. LANDSVERK: Your Honor, at this time the State would like to put in this exhibit into evidence. It's number 19.

THE COURT: Any objection?

MR. SANFORD: No objections, Your Honor.

THE COURT: In without objection.

(Whereupon State's exhibit 19 was admitted into evidence)

(Pause)

Q. Okay. And -- just one moment. We're getting close.

(Pause)

Q. Okay. Thank you, Sergeant Lyda. Please answer any questions from defense.

THE COURT: Cross-examination.

MR. SANFORD: Thank you, Your Honor.

Cross-examination by Mr. Sanford:

Q. Sergeant Lyda, how are you?

A. I'm good. Thank you.

Q. Did you ever go and view the crime scene at [redacted] Buttercup Way?

A. No, I did not.

Q. And why is that?

A. Deputies and our forensics lab had already gone over there.

Q. Did -- let me ask you kind of a more procedural question with how things happen. When you have a case like this and you're the lead investigator on it, does all of the evidence and stuff come through you initially?

A. No. The way this works on this case was I was on-call. I was the investigator on-call for that week. So a deputy had gone out to the scene. She had already contacted

forensics to come out and photograph and do what they needed to do to the scene while the victim was transported to the hospital. My duty was to be with the victim. So I went directly to the hospital when I was called.

Q. But when they get any evidence, whether it's from the hospital, the deputies, the crime lab, does all of that come to you and you're the one that organizes it and puts together the case file?

A. Correct.

Q. Okay. Did you get documents and things from the hospital?

A. No.

Q. No documents or anything from the hospital?

A. No.

Q. No photos?

A. No.

Q. When you interviewed Complainant did she mention the cameras on her -- outside of her apartment?

A. She did.

Q. And Mr. Foster also mentioned the cameras?

A. Yes, sir, he did.

Q. And did you say that you were going to look at those cameras?

A. She was going to pull up the video from the cameras. And through conversation and phone calls, the cameras were not

working. The cameras did not capture anything.
Q. They didn't capture anything?
A. From my understanding, the cameras were not working.
MR. SANFORD: May I approach, Your Honor?
THE COURT: You may.
Q. I'm showing you defendant's exhibit 1, which is a screen shot of the cameras that were captured from [redacted] cameras.
A. Okay.
Q. Have you -- have you seen those before?
A. No, sir, I have not.
Q. And so you were never presented with ---
A. I've never ---
Q. --- any of those?
A. --- seen these photos.
Q. Now did you do a dump on [redacted] phone? And by dump, I mean did you download all the information from her phone?
A. No.
Q. Had you heard the -- did you ever listen to the 911 call in this case?
A. No, I did not.
Q. So you were unaware that [redacted] said on that call that Mr. Foster ---
MS. LANDSVERK: Objection, Your Honor, hearsay.
MR. SANFORD: Your Honor, this has already been testified to. And the call is already in evidence. I don't believe

that it is hearsay.

THE COURT: Yeah, if it's already into evidence.

(Pause)

MS. LANDSVERK: Sorry, Your Honor. We were also objecting to the fact that she's already been asked the question. She didn't know anything about it. And this is another additional question on top of that.

THE COURT: Well, if she knows and she can answer it, I'll let her do that.

Q. So you were unaware that on the 911 call it was stated that Mr. Foster had used her phone?

A. I'm sorry. What -- what is your question? I'm -- I got a little confused there.

Q. Well, let me try and phrase it better.

A. Okay. Thank you.

Q. After all that -- well, let me -- let me do this another way. In the interview with Complainan she told you that Mr. Foster had taken her phone, correct?

A. That's correct.

Q. And did she state that he had used it?

A. I don't recall -- I don't recall that.

Q. If you knew that he used her phone does somebody -- do you usually dump it -- get a download of that phone in that situation?

A. It depends on what the situation was. What would he have

used it for? I don't see -- I don't know -- who did he call or text? I don't know why -- it all depends on what the investigation is and how it pertained to the case.

Q. And let's go back to -- let's go back to State's exhibit 16.

MR. SANFORD: Can I approach, Your Honor?

THE COURT: You may.

Q. Well, let me -- let me put it up on the big screen. Now you had previously testified that you don't know whose phone that is, correct, on the counter?

A. I stated that I assumed it was Complainant phone based on when they left her residence he was in possession of her vehicle keys and her cell phone.

Q. Mr. Foster also told you in your interview that he had people messaging him on his phone, correct?

A. Yes.

Q. So it's possible that it's also -- it could be his phone?

A. That is correct.

Q. So we're not sure whose phone that is?

A. Correct.

Q. And I want to draw you to -- well, let me ask you this question first. You said that they went to two separate QTs?

A. Yeah, I believe it was two different QTs.

Q. Now if you look at State's exhibit 18, this is the first trip to the QT, correct?

A. Okay. Yes.
Q. At 2:25 in the morning?
A. Yes.
Q. And compare that to this picture at 3:11 in the morning. Is that a different QT or the same QT?
A. I can't tell you if that's a different or same QT ---
Q. So if I put them side by side and you see ---
A. I still can't tell you. The inside of the stores -- if you look directly at a store, the female bathroom and ATM on all QT stores are on the left.
Q. I ---
A. So I don't know that.
Q. I'm -- I'm aware of that, sergeant.
A. Okay.
Q. However, I want you to look at the wet floor cone there. Are they in the same position?
A. There's two wet floor cones, yes.
Q. And so does that look like it could be the same QT because ---
A. It could be.
Q. --- those wet floor cones aren't always in a QT?
A. It could be. It's also wet outside, so all the QTs could have wet floor cones in their stores.
Q. Now we heard on the recording that you said that you were -- that you were told that after they went to the QT the

second time they went to another motel?

A. Yes.

Q. Do you know which motel that was?

A. Not without, I guess, looking at my notes or reading them.

MR. SANFORD: Beg the Court's indulgence for just one second, Your Honor.

(Pause)

Q. Now Complainan said that she dropped Trey off at a -- back at Lawson's house, correct?

A. Correct.

Q. After she finished? After their encounter was done?

A. Correct.

Q. She didn't drop him off at a gas station?

A. She dropped him off at Lawson's.

Q. And you talked to Megan Anderson, correct?

A. I did.

Q. Okay. And did you talk to Complainant about that situation?

A. I did.

Q. And did Complainan say that she went over to the apartments?

A. Yes.

MR. SANFORD: Beg the Court's indulgence one more time.

(Pause)

Q. Sergeant Lyda, let me ask you one more question. As a -- as the chief investigating officer on this case are you tasked

with reading the reports of everybody else that is on this case?

A. Correct.

Q. And you read all the reports in this case?

A. I read the initial deputies who went out to the case and then -- I don't know of anybody else who's added supplements to this report.

Q. And you said that -- also you've heard the testimony or your testimony that Mr. Foster came into the house and Complainant had said that she wasn't -- he wasn't allowed to stay there, correct?

A. On that night?

Q. Yes, on the night of the 31st.

A. Are you talking about when he pushed his way into the house? What's your -- I don't -- I'm sorry, I don't understand your question.

Q. On the night of the 31st you were aware that he was told that he could not stay there? Mr. Foster?

A. That's correct.

Q. And were you aware that Deputy Aardsma had written in her report that she was told that he could stay there by Mr. Bowlby?

A. No.

MR. SANFORD: I have no further questions, Your Honor.

THE COURT: Redirect.

MS. LANDSVERK: One moment, Your Honor.

(Pause)

MS. LANDSVERK: Okay. Just briefly.

Redirect Examination by Ms. Landsverk:

Q. Mr. Sanford talked about a conversation regarding Complainan going over to Megan's house ---

A. Yes.

Q. --- later? Kind of inferring that, you know, Mr. Foster staying at Megan's house and Complaina was upset. But what did you -- what information did you find out about Complainant going over to Megan's house?

A. She didn't actually go to Megan's apartment. She went to the parking lot of the apartment complex, dropped off some items ---

Q. And what did she -- why would she drop off items there?

A. Because she was requested by the defendant to drop those items off to him.

Q. Right.

A. She dropped those items -- she dropped the items off, left the complex. Later he contacted Complainant and said he didn't have a ride, would she please take him to work.

Q. Um-hum (affirmative).

A. She stated that she told him that she would. She went back and picked him up, dropped him off at a church in Greer where he was doing some painting work, but she told him that

was the last thing she would do for him.

Q. And did you ever hear anything from Complainant stating that she cared about Megan or she was jealous of something that was going on?

A. No. She just knew that was someone that he was -- he may have been staying, but he stayed in several locations. She never met with Megan. She just drove to the parking lot.

Q. And do you remember that Complainant told you that the last thing she would ever do for him was to take him to work that day?

A. Correct.

Q. That was the last favor she was going to do for him, ---

A. That's correct.

Q. --- they had broken up? Okay. Thank you. No further questions.

THE COURT: All right. You may step down. All right. Call your next witness.

MS. LANDSVERK: Okay. The State would like to call Tyler Bucholtz to the stand. Your Honor, may we approach?

THE COURT: Yes.

(Whereupon a bench conference was held off the record in the presence of the jury, but out of their hearing)

(Whereupon the bench conference was ended)

MADAM CLERK: Please raise your right hand.

Tyler Bucholtz, being duly

sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

MR. BUCHOLTZ: Tyler Bucholtz.

Direct Examination by Ms. Landsverk:

Q. Hi. Good morning.

A. Good morning.

Q. I apologize for stating your name incorrectly. Bucholtz?

A. That's okay. Bucholtz.

Q. Okay. Mr. Bucholtz, what is your occupation?

A. I'm a latent print examiner and a criminalist for Greenville County Forensics.

Q. Okay. And how long have you employed -- been employed by Greenville County?

A. I've been with Greenville County since 2009.

Q. And what is your official title?

A. I'm a criminalist in the latent print section.

Q. And what are your duties?

A. I receive impression evidence from the Crime Scene Unit or from other agencies. So that would be fingerprints and footwear impressions.

Q. Okay.

A. And then I compare those impressions. I make examinations and then issue reports based on my findings.

Q. And what specialized training and education do you have

in regards to fingerprint analysis?

A. I started in the Crime Scene Unit. So I was there for two and a half years before I went to the latent print section. And in the Crime Scene Unit I learned how to process for latent prints using different chemicals and powders and kind of learned what a fingerprint was and what a shoe print was and what we were looking for.

And then when I transferred to the latent print section, I did an apprentice-style training for a year where another examiner looked at everything that I did, and I looked at everything that he did. And he was already trained, so he knew what to -- what to show me and how to teach me to examine latent prints.

Thereafter, I was released to casework once I showed competency. And I've attended over 517 hours of classroom formal training in crime scene documentation, specifically related to fingerprint analysis and comparison.

Q. Okay. And how many fingerprints do you compare annually?

A. Last year in 2021 I received over 960 cases. And I compare tens of thousands of prints annually. I've made over 860,000 comparisons over the course of my career.

Q. And have you ever been qualified as an expert in -- expert witness in latent print analysis?

A. Yes. Twelve times in the State and one time in Federal court.

Q. Okay. And are you a member of any professional organizations in regards to this?

A. Yes. I'm certified as a latent print examiner through the International Association for Identification. I received that certification in 2015. And I've been an active member in the international body as well as the State chapter as the president, the chairman of the board, and the treasurer.

Q. Okay. Thank you.

MS. LANDSVERK: Your Honor, at this time the State would like to move that Mr. Bucholtz become expert in fingerprint examination and identification.

THE COURT: What was -- say that again.

MS. LANDSVERK: Your Honor, the State's moving that ---

THE COURT: I mean, what's the actual -- examination and identification?

MS. LANDSVERK: Exactly. Fingerprint examination and identification.

THE COURT: All right. Any objection or voir dire?

MR. SANFORD: No objection. No voir dire, Your Honor.

THE COURT: All right. Ladies and gentlemen, -- I so grant that he will be qualified as an expert in fingerprint examination and identification.

Ladies and gentlemen of the jury, normally a person cannot testify about opinions that they have. They can only testify about what they observe, what they heard, what they

felt, smelled, just your normal senses.

Exception to that rule is when somebody has been qualified as an expert based on their experience, education, field of study, work, and so forth. And so, therefore, they can give their opinion in their field of expertise. But, like every witness and every piece of evidence, you, the jury, are to give it the weight and the value which you feel is appropriate. So you may proceed.

MS. LANDSVERK: Thank you, Your Honor.

Direct Examination by Ms. Landsverk Continued:

Q. Okay. Mr. Bucholtz, what type of equipment do you use when you compare fingerprints?

A. Normally we simply just use a magnifier, magnifying glass that's called a loupe. And it's made specifically for fingerprint work. And you place it on top of the image or the impression that you're looking at and it just magnifies it.

We can also scan impressions and put them on a screen in front of us, a computer screen, so it's bigger. If it's a little more complicated, we do that.

Q. Can you explain to me what a latent print is?

A. Latent print -- latent means hidden. So like we talked about earlier, you have to process them with either a chemical or a powder. It's a fingerprint on a surface that you can't see until you process it to make it visible. And once it's processed, it's lifted from the surface or captured in

photograph and preserved that way. Latent also -- we refer to them as unknown prints because we don't know at the time who the source of those prints are.

Q. And then speaking of unknown, can you explain to me what a known print is?

A. Yes. Known prints are prints that are recorded in a controlled environment where you record the person's identifying information such as name, date of birth, race, sex, height, hair color, social security number. All the identifying information is recorded at the same time that the fingerprints are recorded so you know whose prints those are. So that would be a known set of fingerprints. And normally those are rolled, all ten fingers.

And then there are also -- when I say rolled, I mean nail bed to nail bed. They roll them all the way because if you look at your fingers, you know you have those lines on them, those are the fingerprints we're talking about. So they'll roll those. And then at the bottom of the fingerprint card they just put them straight down and lift up so that you have good recording of all the features in the fingerprints.

Q. Okay. How are fingerprints compared and identified?

A. So when I receive latent impressions from the Crime Scene Unit the first thing I do is look at them and see if they're a good enough quality. A lot of times we'll get smudges and that's all it is. And so when we're looking at a fingerprint,

we're looking for those lines, those ridges. And the ridges end and divide. So we're looking at the ridge flow and seeing where the ridges end and divide.

Once we see those features in the latent print or the unknown print, if we have somebody to compare them to, we look at the known prints and see if those features are present in the known prints. If there's not, there's other ways we can put them through databases and other things in order to try to generate a lead.

Q. And can two people have the same prints?

A. No, no two people have ever been found to have the same fingerprints.

Q. Okay. And did you have an occasion in this case to examine latent prints?

A. Yes.

Q. Okay. And I'm going to show you what's marked as State's exhibit 21.

MS. LANDSVERK: Your Honor, may I approach?

THE COURT: You may.

Q. Okay. If you don't mind, describe to me what this is and identify that.

A. This is a latent print envelope that was marked as item BWL. And Officer Blake Wolfe submitted this on 7/31 of '19. And he barcoded this so that -- he scans it and let's us know -- we can look in the computer and see that those have been

dropped in a box over at our crime scene office.

And each day one of the latent print examiners goes and picks up these envelopes out of that box, brings them to the crime scene office, and that's how we get our work for the day. You can see the tape here. They're usually sealed. They should be sealed when we get them. And then they're -- they initial and sign when they drop them in the box. And when we pick them up, we're the first ones to open them.

Q. So in this case where were the prints found?

A. The location where it happened was [redacted] Buttercup Way, is the address. And there were three latent print cards submitted by Officer Wolfe. And latent number 1 was from the interior of the living room sliding door. And then latents 2 and 3 were both from the exterior of the living room sliding door.

Q. Okay. And did you identify anyone as belonging to those prints?

A. Yes. All three were identified -- so latent lift number 1 from the interior of the door was identified as being made by the number 6 finger, that's the left thumb, of [redacted] Complainant [redacted]. Latent lift number 2 was from the exterior of the living room door, was identified as being made by the right palm of Dylan Trey Foster. And latent lift number 3 from the exterior of the living room door was also identified as the right palm of Dylan Trey Foster.

Q. Okay. And can you explain to me how you came to the conclusion that they belonged to those people? How were you able to identify that?

A. As far as the process of the comparison or ---

Q. Yes. Correct.

A. So I was provided the victim and the defendant's information. And so I compared their known fingerprint cards and palm cards, which is what we talked about earlier, compared their known prints to these latent prints, these unknown prints. Normally when our crime scene technicians know of people involved, they'll give us as many names as possible so that we can compare people and eliminate them out.

Q. Okay. Now do those appear to be in the same form once you received them initially?

A. Yes. Officer Wolfe signed them and initialed them and filled out everything on the front. And then I keep these in my possession after we -- anytime we make an identification or we keep -- we get latent prints in our office, we keep them in our office.

Q. Okay. So nobody had access to those fingerprints?

A. No.

Q. Okay.

MS. LANDSVERK: Your Honor, at this time the State would like to enter this into evidence.

THE COURT: Any objection?

MR. SANFORD: No objection, Your Honor.

THE COURT: All right. In without objection. That's what -- what exhibit number?

MS. LANDSVERK: It is -- it is 21.

THE COURT: All right. In without objection.

(Whereupon State's exhibit 21 was admitted into evidence)

Q. Okay. That's all the questions I have for you. Please answer any questions from the defense.

THE COURT: Cross-examination.

MR. SANFORD: Thank you, Your Honor.

Cross-examination by Mr. Sanford:

Q. Mr. Bucholtz, would you find a print somewhere -- all it's showing is that somebody was there, correct?

A. Yes.

Q. It's not evidence that a crime has been committed?

A. No.

Q. And if people had lived or stayed in that -- in a residence, or house, or building, or whatever it is you're getting the fingerprint from, you would normally find fingerprints there of those individuals?

A. It would be reasonable, yes.

Q. And so if the people that you found these fingerprints of, if they had stayed there, then it is reasonable that their fingerprints would have been on that door?

A. That's correct.

227

MR. SANFORD: No further questions.

THE COURT: Any redirect?

MS. LANDSVERK: Nothing further, Your Honor.

THE COURT: All right. You may step down. All right, ladies and gentlemen, it looks like it's a good point to break for lunch. And I think the -- we may have been a little more ambitious than we thought in getting this through today.

(Laughter)

THE COURT: So, I mean, we've still got a few witnesses. I think we should be through with the testimony today, but it looks like we may have to come back for arguing and charge in the morning and let y'all deliberate. That's what it's looking like right now. That's where I'm headed with it unless something goes different. So just, you know, plan accordingly.

So with that being said, we'll go ahead and break for lunch. Be back in your jury room at 1:30. Do not discuss the case. Do not do any kind of research related to this case. Don't pay any attention to media coverage. And if anybody contacts you other than somebody from the clerk's office, please let the bailiffs know. Otherwise, y'all have a good lunch, and we'll see you back at 1:30.

(Whereupon the jury exited the courtroom at 11:54 am)

THE COURT: I think they were concerned. They all kind of chuckled when I said that. I don't know if y'all noticed

228

that. I think they had expressed some concern. One of them had something at 6:30 tonight. So ---

MS. LANDSVERK: Oh.

THE COURT: --- I think they were worried about how far we were going to be going ---

MS. LANDSVERK: Oh, Okay.

THE COURT: But I think we're all on the same page. All right. Anything else from the State before ---

MS. LANDSVERK: Nothing else, Your Honor.

THE COURT: Anything from the defense?

MR. SANFORD: Nothing, Your Honor.

THE COURT: All right. We'll see y'all back at 1:30.

(Whereupon court was in recess at 11:55 am)

(Whereupon court reconvened at 1:36 pm)

THE COURT: All right. Is the State ready?

MS. LANDSVERK: Not quite, Your Honor. We're getting close.

(Pause)

MS. SCOTT: Judge, I'm ready. I'm sorry.

THE COURT: Oh, okay.

MS. SCOTT: I apologize.

THE COURT: That's fine. So the State's ready?

MS. LANDSVERK: Yes, Your Honor.

THE COURT: Defense is ready?

MR. SANFORD: Defense is ready, Your Honor.

THE COURT: All right. Bring the jury in.

(Whereupon the jury entered the courtroom at 1:40 pm)

THE COURT: All right. Hope everybody had a good lunch. We will now resume with the State's case. So the State can call your next witness.

MS. SCOTT: Thank you, Your Honor. The State calls Timothy Nafziger.

MADAM CLERK: Please raise your right hand.

Timothy Nafziger, Jr.,

being duly sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

MR. NAFZIGER: Timothy Nafziger, Jr.

Direct Examination by Ms. Scott:

Q. And where do you work?

A. I work for the Greenville County Department of Public Safety in the DNA lab.

Q. And what do you do there at the DNA lab?

A. I'm currently a DNA analyst.

Q. All right. Tell us a little bit about your educational background and your training as you are a DNA analyst.

A. I have a Bachelor in Science -- Bachelor of Science degree in Biological Sciences from Clemson University and a Master's degree in Entomology from Auburn University. When I was hired here I underwent training in-house to -- in all our

techniques in processing evidence for DNA evidence.

Q. What specific training do you have in the field of serology? And before you answer that question I'm going to ask my co-counsel to put this word up, serology, because I don't know what that word is, okay? Before I'd learned it for this trial, that is. Okay. What is that?

A. Serology is basically the identification of human bodily fluids on evidence.

Q. Okay. And that's -- so the study of it is the study of all the bodily fluids?

A. The study of bodily fluids. And my particular role is forensic serology, so an identification of human bodily fluids on evidence.

Q. Okay. Have you ever been qualified as an expert in the field of serology?

A. Yes, I have.

Q. Tell us about that. How many times?

A. Seventeen times.

Q. All right. And that's in court proceedings?

A. Yes.

Q. Are you up to date in your current training on the field of serology?

A. Yes.

Q. All right.

MS. SCOTT: At this time the State would like to qualify

him as an expert in the field of serology.

THE COURT: All right. Any objections or voir dire?

MR. SANFORD: No, Your Honor.

THE COURT: All right. Then he is qualified in the field of serology. And, ladies and gentlemen, as I told you before, an expert can testify about opinions that they have in their particular field of study based on their experience and education. And like all evidence, you're to give it the weight and value which you feel is appropriate.

Q. All right. We're going turn off -- everybody remember the word. We're going to turn it off. All right. No distractions. What is your particular involvement with the evidence in this case?

A. So in this case I picked up two items of evidence.

Q. Before we talk about the items I want to get them there. All right. What are the two items that you picked up from evidence?

A. I picked up a sealed sexual assault kit of [redacted] Complainant and a sealed package containing buccal swabs of Dylan Trey Foster.

Q. And where are you picking these items up from?

A. So all the items that I pick up are from the property and evidence department.

Q. All right. And what's the case item number of these two different items you picked up?

A. The sexual assault kit case item number is MW1. And the buccal swabs of Dylan Trey Foster are CL1.

Q. And can you tell the Court what does MW1 and CL1 -- why do we come up with these types of acronyms?

A. Those are unique identifiers for each item of evidence.

Q. Do they -- are they traced back to the person who have entered into or collected them from scenes of crimes?

A. Typically.

Q. Okay. Now tell us a little bit more -- after you picked these things up from property and evidence were they sealed?

A. They were.

Q. Okay.

A. So when I pick up items of evidence I -- we always pick them up from the property and evidence department. We always ensure that they are sealed. I take them back to the DNA lab, which is a secure facility. It's key card access, has an alarm system. They're stored there until a time that I work on the evidence.

When I work on the evidence I sterilize my work surface and my tools. I work wearing a lab coat, and mask, and gloves. I open only one item of evidence at a time. I work the questioned items first and then any reference items for comparison afterwards.

Q. All right. Well, tell us about M1. What did you do with -- I believe you said -- sorry, I'm saying it wrong. MW1.

A. Okay.

Q. What type of analysis did you do with that?

A. So in a sexual assault kit typically they contain several different items of evidence. Do you want me to just go through each one?

Q. Absolutely.

A. Okay. So there were four vaginal swabs. And both pair -- there were two pairs of swabs. And both pairs were separately sampled for DNA analysis as items 1A -- 1A and 1A1B, respectably.

We also had oral swabs. These swabs were sampled for DNA analysis as item 1A2A. The swabs of suspected bodily fluid from left elbow area. The swabs were sampled for DNA analysis as item 1A3A.

The fingernail scrapings, all visible material on those scraper tips were sampled for DNA analysis as item 1A4A. The buccal swabs of Complainant [redacted], the swabs were sampled for DNA analysis as item 1A5A.

With the pubic hair combings, I swabbed the comb and the swab was sampled for DNA analysis as item 1B1. For the debris collection I examined it with a magnifying lamp and microscopically examined two hairs that I found. And that microscopic examination revealed possible roots on both hairs and both roots were sampled for DNA analysis as item 1C1.

The underwear in the kit I examined with an alternate

light source, which revealed several tiny flourescent stains in the crotch area. Presumptive examination for acid phosphatase in the crotch area tested negative for the presence of seminal fluid, so no sample was taken. And then the buccal swabs of Dylan Trey Foster, the swabs were sampled for DNA analysis as item 2A.

Q. All right. And the buccal swab from Dylan Trey Foster, what is that item number again?

A. The item number was CL1.

Q. Okay. Again, referencing to possibly the officer who put that particular item into evidence? The property and evidence?

A. Whoever collected it would have assigned that number.

Q. All right. So you're mentioning swabs. What are you doing with these swabs?

A. So I cut typically half of each and put the -- it's like a cotton Q-tip, basically. I take half of each, put it into a small tube. And that tube then gets put into an envelope, it gets a barcode label attached to it so it has its own chain of custody. And then that gets stored in a freezer in the DNA lab for the DNA analyst to pick up.

Q. Okay. Now you mentioned that it gets stored into a refrigerator.

A. Um-hum (affirmative).

Q. Tell me more about how preserved or kept, protected this

refrigerator is.

A. It's in the DNA lab where only -- it's once again key card access, an alarm system. Only people who immediately work in the DNA lab have access to this area.

Q. All right. Answer any questions that the defense counsel might have for you.

THE COURT: Cross-examination.

MR. SANFORD: Thank you, Your Honor.

Cross-examination by Mr. Sanford:

Q. When you open these packages -- I know -- say the vaginal swabs, there were, I believe, four vaginal swabs, do you do each of those swabs individually or do you have all four swabs out at the same time?

A. Whatever's packaged together in an envelope is opened at the same time because they're not in separate packages. Typically -- what happened in this case is there were two, basically, open swab wrappers where they were contained together. So I just took a separate sample of each pair that were in the -- in the individual swab wrappers.

Q. Okay. And you are -- are you there to distinguish in between different types of fluids or whatnots that are found on these swabs or do you just stick them in the DNA vial and then at that point those are sent to the lab and other analysis may be conducted at that point?

A. For the swabs themselves, I didn't do any analysis for a

body fluid. That -- there's further analysis that's done by the DNA analyst later, but for those particular swabs, I just take a cutting of each.

Q. And you make no conclusions on what's actually on those swabs?

A. No, sir.

MR. SANFORD: No further questions.

THE COURT: All right. Any redirect?

MS. SCOTT: No, Your Honor.

THE COURT: All right. You may step down.

MS. SCOTT: The State calls Brian Browning.

MADAM CLERK: Please pause at the end of the bench. You can put your stuff down. Place your left hand on the Bible. Left hand on the Bible, raise your right hand.

Brian Browning, being duly sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

MR. BROWNING: My name is Brian Milton Browning.

Direct Examination by Ms. Scott:

Q. Where do you work?

A. I work for the Greenville County Department of Public Safety, Forensic Division, DNA lab.

Q. And what do you do there at the DNA lab?

A. I'm a DNA analyst.

Q. All right. And will you tell us about what a DNA analyst is?

A. So a DNA analyst, we process -- we basically extract out, quantify and determine DNA profiles from evidence samples as well as reference samples provided from crime scenes as well as from victim, suspects and elimination of witnesses.

Q. And how long have you been a DNA analyst?

A. I've been a DNA analyst since 2010, is when I got certified after extensive comprehensive testing, training by my DNA technical leader and oral examinations as well and mock casework. And I was signed off in 2010.

Q. Okay. Now it's weird for me to say now what's your educational background to get you to be certified, but tell us a little bit about that.

A. Sure. I graduated from the University of Alabama with a Bachelor's in Biology and the University of New Haven, Connecticut with a Master's in Molecular and Cellular Biology.

Q. All right. And do you keep up to date in trainings that are in the field of DNA?

A. Yes. We have continuing education of at least eight hours per year to -- DNA related -- DNA analysis related testing.

Q. Okay.

MS. SCOTT: At this time I'd like to offer this witness as an expert in the field of DNA and also statistical

comparisons, analysis of DNA.

THE COURT: All right. Any objections or voir dire?

MR. SANFORD: No objections or ---

THE COURT: All right. Ladies and gentlemen, as I told you before, when someone is qualified as an expert, then they can testify about their opinions based on their experience, education, and background. And you're to give it the weight and value which you feel is appropriate. And, again, the category was what?

MS. SCOTT: Yes, Your Honor. The study of -- I apologize. The field of DNA analysis ---

THE COURT: All right.

MS. SCOTT: --- and statistical comparison, analysis of DNA.

THE COURT: All right. So he's being qualified as a DNA analysis and statistical comparison of DNA analysis.

MS. SCOTT: Yes, sir.

THE COURT: All right. Okay. Proceed.

MS. SCOTT: All right.

Direct Examination by Ms. Scott Continued:

Q. I wanted to go over the makeup of your laboratory. Can you tell the Court about peer review or supervisory roles within your lab?

A. Yes. So we have a DNA technical leader who supervises the lab. We also have our DNA analyst. And actually all do

casework including the DNA technical leader. Once we get qualified as a DNA analyst, we also are qualified as peer reviewers of the casework.

So in other words, we're looking at the cases of other analysts in the lab to ensure that they have followed all policies and procedures based on our standard operating procedures and our accreditation standards to do all DNA analysis work. So we're looking at every step of their process that's fully documented to make sure that the work is done as proper following all of our protocols.

Q. All right. So in this particular case who was the actual analyst of the evidence that we have present today in the court?

A. Yes. Our DNA technical leader, Dr. Jagannadha Kandala.

Q. All right. Say it again.

A. Jagannadha Kandala.

Q. Okay. Do you peer review -- did you peer review him?

A. I did.

Q. Did you review the report we're about to reference for the Court today?

A. Yes, I did.

Q. All right. Let's talk about some things. We just heard your fellow co-worker talk about the serology involved and we're going to talk about the DNA involved.

A. Um-hum (affirmative).

Q. Did you get those swabs from the refrigerator he mentioned earlier?

A. Yes. So when -- and, again, this is very similar to what I'm doing on the casework. So it's -- we go through the same process, which is once those samples are created by the one that does the serology analysis we will go and get those envelopes that are sealed with the tubes inside of them and we will -- basically that are labeled based on the sub-item numbers related to the case, related to the original items that were created from the sub-items.

And so at that point what we'll do is we'll actually extract out or remove the DNA from those swabs by putting them in a solution that extracts out the DNA. And then at that point we take it to another stage that allows us to find out how -- we purify it so that we end up with just DNA and water. And then at that point we don't know how much DNA's in there, so we quantify it so that we can properly take it to the last stage of DNA analysis.

Q. All right. So we've got some DNA here. Tell us in particular with this case what your conclusions were as the peer reviewer.

A. Sure. So based on Dr. Kandala's report that I reviewed there were several items, sub-items in the case. All sub-items, except for one, had either no DNA or no male DNA. So that means that we have the ability to quantify not only how

much total DNA may be there -- because for especially for sexual assault cases we'll get a lot of the victim off the -- off of the evidence that's taken, but if -- we're a lot of times looking for a specific male or for male DNA.

And so we have the ability with our quantification step to actually assess how much total DNA is there as well as how much male DNA is there based off the Y chromosome. So in this case we only had one sample that actually had male DNA. And that was item 1A1A.

Q. 1A1A. Will you tell the Court where that swab came from according to the report.

A. According to the report item 1A1A is a sample of vaginal swabs.

Q. And that's where you found a male DNA?

A. Yes. From one of the fractions that we had, yes.

Q. All right. Tell us the type that you found, the type of male DNA in there.

A. The type ---

Q. I'm possibly stating it -- stating it wrong, sir. So you need to just bear with me. Tell me more about the male identifying DNA in that vaginal swab.

A. So in that -- in that sample we had our fraction that comes from what we call the F1 fraction, which is -- we have the ability to separate out the -- for intimate samples, the possibility of there being sperm cells. And so we have the

ability to separate out skin cells and possible other cells versus sperm cells. And we call that the F1 fraction for the skin cells and everything and then the F2 fraction for the sperm cells.

And, again, it's the possible presence of those. It's not a guarantee, it's just the terminology we use. So it's really the F1 and F2 fractions. So in this case the only item that had male DNA present was in 1A1 F1, the F1 fraction.

Q. Okay. And that was again found in her vagina or a ---

A. It was found on the sample of vaginal swabs, yes.

Q. Okay. Who did it match to?

A. So in this case, because of the way that our system works, DNA analysis works is it kind of amplifies whatever DNA is there. It's not preferential to one side or the other with our normal or unique testing, which is called autosomal nuclear testing. But basically what that is is it's looking at several different chromosomes of your DNA, not just the Y chromosome. So it's amplifying all that.

And so what happens is if you have a huge amount of the female DNA in this case and a very small amount of the male, everything moves up together and it actually -- the amount of female DNA is so high that we actually can't see any of the male in our final results. So we know that threshold.

And so based on that threshold, Dr. Kandala did not move forward with our normal more unique DNA testing of that --

kind of can go to a single person. Instead, we did have enough DNA to do what we call Y-STR testing.

Q. Tell me what the Y-STR testing is.

A. So what that is is kind of if you look at the DNA as a whole you'd have different chromosomes. And one of the chromosomes are the sex chromosomes, which are the X and X for female and X and Y for male. And in these -- in this case what we can do is we can actually bypass all of the other chromosomes and focus just on the Y chromosome and look at how unique that particular Y chromosome is.

Now the thing to note here is we're only looking at a Y chromosome that is shared by all the males in the family. So your father, grandfather, related uncle, and nephews, and so forth, sons, grandsons, they're sharing that Y chromosome.

Q. Okay. So who is the male that you were able to identify had the Y or could have that same Y chromosome?

A. So in this case Dr. Kandala took the reference sample from -- from the male subject and the sample that I was just speaking about, the 1A1 F1 and did Y-STR testing, and his results are as follows; the Y-STR haplotype -- and haplotype is the name that they give to that male lineage, that -- basically that DNA profile that just comes from the Y chromosome. Y-STR haplotype from item 1A1 F1 matched the haplotype of Dylan Trey Foster and any of his paternal male relatives. Dylan Trey Foster and any of his paternal male

relatives cannot be excluded as a contributor of the Y-STR haplotype obtained from item 1A1 F1.

The Y-STR haplotype obtained from item 1A1 F1 matches four in twenty-nine thousand, two hundred and seventy-five (29,275) total individuals in the U.S. Y-STR database and is not to -- not expected to occur more frequently than one in one thousand, three hundred and sixty-three (1,363) haplotypes in the African American population, one in one thousand, seven hundred and eighty-nine (1,789) haplotypes in the Caucasian population and one in two thousand and seven (2,007) haplotypes in the Hispanic population. And these statistical calculations were made using the Y-STR database including why HR data would reduce low side for the Y founder, ---

Q. Okay.

A. --- which that's kind of our terminology. It's really hard for most people to understand that.

Q. That is true. So going back to the Y and the haplotype, I probably should have wrote that one down, too, ---

A. Um-hum (affirmative).

Q. --- Dylan Trey Foster or any paternal relative would have had that Y particular chromosome?

A. They cannot be excluded from -- from having the Y that was found, yes.

Q. Okay. Answer any questions defense counsel might have.

A. Um-hum (affirmative).

THE COURT: Cross-examination.

MR. SANFORD: Thank you, Your Honor.

Cross-examination by Mr. Sanford:

Q. Dr. Browning, is that correct?

A. No. Mr. Browning's fine.

Q. Mr. Browning. Sorry. Just checking.

A. I appreciate it, though.

Q. Now you said that Dylan Trey Foster cannot be excluded as a contributor to this haplotype, is that correct?

A. That's correct.

Q. But that is not a definitive that it is him, correct?

A. That is correct.

Q. So he could not be excluded, but it cannot be pinpointed to him?

A. That is correct.

Q. Now you just mentioned a little bit about the -- it occurring in other populations. And I noticed on your report that there -- there are two numbers there. There's one that has a 95 -- you'll have to excuse me. I took statistics in college, and I pass/failed it. So you'll have to -- you'll have to excuse me on my statistics analysis. But what's the difference in the UCI there versus the other number that is stated before that?

A. Sure. And if you notice, I actually used the UCI numbers in my statement. So the reason for that is we have a number

that's -- the U.S. Y-STR database is a database where evidence samples that have included Y-STR profile haplotypes have been uploaded into that database to show what the population -- where -- how often that that particular haplotype is in the population. So they're trying to create a database that allows these statistical analysis to be done to show how frequent is this particular Y-STR haplotype profile in the population, which allows us to get to that number that I told you at the end.

And so, again, remember these haplotypes are lineages. They're male lineages. And so currently the total database is twenty-nine thousand, two hundred and seventy-five (29,275) haplotypes. And so what the first number is is how often was it observed in the African American population? How -- so that one in two thousand -- two thousand, three seventy-three (2,373) or how often was it observed in the Caucasian population, which is one thousand, eight -- eight four eight three. And how often the Hispanic, it was -- there were actually none in six thousand one twelve (6,112).

So basically what the UCI is, it's called Upper Confidence Interval. And what it's used for is kind of an adjustment, a conservative adjustment to say, okay, we have it -- because we can't sample all seven billion people on the planet to find out these -- who has exactly what Y-STR haplotype for the males, and that's -- you're really looking

at three point five billion, right, because it's half the population.

And so in this case what they're doing is they're trying to adjust conservatively the number -- the actual statistic of how frequent this particular haplotype might be in the population since they've only -- since they're only working from a smaller sample size.

Q. And so in this case it looks as if it occurs more frequently in the African American population than the Caucasian population? Is that correct?

A. Yes.

Q. So, once again, let me just ask that again. So that does -- this haplotype occurs more frequently in the African American population than the Caucasian population?

A. Again, this is just based off of this haplotype. So there's no way to say that general term ---

Q. No, but according to your analysis it does.

A. The numbers show a higher frequency for this particular haplotype in the African American population in one three -- one thousand, three sixty-three (1,363).

Q. And now going back to the F1 designation here, you said that was the skin or other cells and non-sperm cells, is that correct?

A. We can't say that for sure. The fact is our ability to separate those into two samples are somewhat dependent on the

amount of sperm that are there. So some sperm can be left behind and still be part of the F1 fraction.

Q. Okay. And you said this came from the A1 or 1A1A F1 swab, ---

A. Yes.

Q. --- is that correct?

A. Yes.

Q. And then there was another vaginal swab, 1A1B, and that one, as you stated earlier, did not have any DNA that was comparable in this or -- to test?

A. That is correct.

MR. SANFORD: Beg the Court's indulgence for one second.

(Pause)

Q. And just once again, the finding of this on Mr. Foster, it means he is not excluded from this haplotype, but it also is not a pinpoint designation?

A. Yes.

MR. SANFORD: Thank you, Your Honor. No more questions.

THE COURT: Redirect?

MS. SCOTT: Just briefly.

Redirect Examination by Ms. Scott:

Q. That last question, not excluded, but a part of his paternal lineage?

A. That is correct.

Q. All right. And I hate to do it, but I want to talk to

you about a penis. A penis, could that leave non-sperm DNA, the F1 that you referred to?

A. There are skin cells. So the possibility -- there is a possibility that the skin cells come off from the penis during ---

Q. All right.

A. Um-hum (affirmative).

Q. And then, of course, if something were to come out of the penis, sperm, that would require an F2 analysis, or excuse me, F2 categoration [sic]?

A. Well, we actually treat all intimate samples as if they have sperm even if they end up not showing an F2 fraction. Again, that doesn't necessarily say that there's not sperm there, it just means they were unable to separate it and get a quantified number.

Q. Okay. So, making sure, the skin cells would provide DNA along with possibly sperm?

A. That is correct.

Q. Thank you.

THE COURT: All right. You may step down.

MS. LANDSVERK: Your Honor, at this time the State rests.

THE COURT: Okay. All right. All right, ladies and gentlemen, the State has rested, which means they've put forth all of the evidence that they plan to in their case in chief. There's some things that I have to go over with the attorneys

at this point. So if you would retire to your jury room, and we'll bring you back out when -- as soon as possible. Do not discuss the case yet, though.

(Whereupon the jury exited the courtroom at 2:09 pm)

THE COURT: All right. Anything else from the State?

MS. LANDSVERK: Nothing, Your Honor.

THE COURT: Anything from the defense?

MR. SANFORD: Your Honor, at this point I'm going to make a motion for a directed verdict. I do not believe that the State has met their burden on every element of all of the charges against my client. And I would ask that this Court issue a directed verdict in his favor.

THE COURT: All right. And as you're aware -- as you are aware, I must take all of the evidence in light most favorable to the State. And I think there is sufficient testimony for this to be a jury question. So I'm going to deny your motion there. Anything else?

MR. SANFORD: No, Your Honor, that's all.

THE COURT: And I'll give you a few minutes to talk, but do you anticipate presenting a case?

MR. SANFORD: I do. I think it could be very -- it could be very brief depending on my client's discussions, depending on what that situation ---

THE COURT: All right. Why don't I -- what do you need?

MR. SANFORD: Ten to 15 minutes.

THE COURT: All right. We'll give you 15 minutes.

MR. SANFORD: Okay. That sounds good.

(Whereupon court was in recess at 2:11 pm)

(Whereupon court reconvened at 2:43 pm)

THE COURT: All right. I was just discussing scheduling there. So it looks like you do plan to put forth ...

MR. SANFORD: Yes, Your Honor. We do have a couple of witnesses ---

THE COURT: All right. Before we do that, I guess I will --Mr. Foster -- and this is -- I'm going to ask you some questions. It's just about your Fifth Amendment rights. It's nothing about any substance. So if you'll stand, raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth so help you God?

MR. FOSTER: Yes, sir.

THE COURT: All right. First of all, how old are you?

MR. FOSTER: Thirty.

THE COURT: How far did you go in school?

MR. FOSTER: GED.

THE COURT: All right. Are you under the influence of any alcohol, drugs, or medication today?

MR. FOSTER: No, sir.

THE COURT: You have any health or mental issues which would keep you from understanding what's going on?

MR. FOSTER: No, sir.

THE COURT: All right. And what I'm going to ask you about now, as I'm sure your attorney's told you, is your Fifth Amendment right to -- to not testify. And basically, as I'm sure your attorney's explained to you, you have a right to testify. You have a right to present any evidence which you feel is appropriate, okay?

But you also have a right to not testify. You have a right under your Fifth Amendment right if you decide not to testify, then I will instruct the jury that they're not to consider that in any way, that that's your constitutional right, and you have no burden, and they're not even to discuss the fact that you didn't testify.

Of course, if you do testify, then you'll be subject to the same cross-examination as any witness. Any particular, I mean, any criminal record that he could be -- what would -- and I would just like for you to know what you could be cross-examined on.

MS. LANDSVERK: Yes, Your Honor. There's potentially one, 2018 felony, PWID, ---

THE COURT: Okay.

MS. LANDSVERK: --- drug offense.

THE COURT: All right. That you could be cross-examined on, you know, the jury could get that information. So -- but, you know, ultimately -- and you can -- and I'll give you as much time as you need to talk with your attorney about it.

And your attorney can give you advice and give you suggestions and all that, but ultimately the decision whether to exercise your constitutional right not to testify is up to you.

So, first, do you understand your rights, your Fifth Amendment rights?

MR. FOSTER: Yes, sir, I do.

THE COURT: All right. And do you wish to testify?

MR. FOSTER: No, sir, I don't.

THE COURT: All right. Do you need anymore time to discuss this with your attorney?

MR. FOSTER: No, sir.

THE COURT: Did anybody threaten -- threaten you to make this decision?

MR. FOSTER: No, sir. I came up with it on my own ---

THE COURT: All right. Anybody coerced you in any way?

MR. FOSTER: No.

THE COURT: Is this decision made freely and voluntarily?

MR. FOSTER: Yes, sir.

THE COURT: All right. Then I'll find that you knowingly and voluntarily waived your right to testify, and I will instruct the jury accordingly. And based on what your attorney has told me that you will be presenting some evidence, you're not going to be testifying, but y'all will be presenting a case, is that correct?

MR. SANFORD: Yes, sir, that is.

THE COURT: All right. And that's what -- that's what you wish to do?

MR. FOSTER: Yes, sir.

THE COURT: All right. So -- okay. Anything else from the State before we bring the jury in?

MS. LANDSVERK: Nothing else from the State, Your Honor.

THE COURT: Anything else from the defense?

MR. SANFORD: Nothing from the defense, Your Honor.

THE COURT: Okay. And I'm going -- I'm going to tell -- when we start off I'm going to tell them that there's a -- that you plan to present a couple of witnesses and that we should be through very shortly and -- okay.

MR. SANFORD: Sounds good, Your Honor.

MS. LANDSVERK: That sounds good.

THE COURT: Do you expect any rebuttal? I mean, I guess you don't know yet.

MS. LANDSVERK: I guess -- we don't know. We'll just find out.

(Whereupon the jury entered the courtroom at 2:47 pm)

THE COURT: All right, ladies and gentlemen. Sorry about the delay. As I said, there were certain things we had to go over when the State rests.

Now at this time the defense will present evidence. And it's my understanding that it's not going to be extensive. So I anticipate that we will have -- break pretty early today.

And that will give us a chance to -- for us to make sure we have everything ready for the final stage. And we'll argue and charge in the morning. So that's the kind of final stages.

So at this time, Mr. Sanford, you may proceed.

MR. SANFORD: Thank you, Your Honor. Defense calls Brooks Bartley.

MADAM CLERK: Pause right here at the bench, please. If you'd place your left hand on the Bible, raise your right hand.

Brooks Bartley, being duly sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

MR. BARTLEY: Brooks Bartley.

Direct Examination by Mr. Sanford:

Q. Hi, Mr. Bartley. How are you?

A. Good.

Q. Mr. Bartley, how old are you?

A. Thirty.

Q. Where do you live?

A. Simpsonville.

Q. Where do you work?

A. Southern Painting.

Q. What do you do there?

A. Project manager.
Q. Do you know Dylan Trey Foster?
A. Yeah.
Q. How do you know Mr. Foster?
A. We've been great friends for 15 years.
Q. And how have you -- are you aware of the events that happened on July 31st, 2019?
A. Somewhat, yes, sir.
Q. At that time, June 2019/July 2019, how were you -- were you and Mr. Foster involved in any way?
A. Yes. We were working together.
Q. And what was -- what was your work relationship?
A. So I was a foreman for the company at the time, meaning I just ran the day-to-day stuff out in the field. And Trey worked on my crew. And I would pick him up from Complainant apartment, his and Complainant apartment every day around six am and go to work.
Q. How -- how do you know Complainant?
A. Through Trey.
Q. And you were aware that they had been dating or were dating?
A. Oh, yeah.
Q. How long had you known both of them together?
A. It'd been going on a year or so, give or take, I guess.
Q. Do you remember the last time that you picked up Trey

from that apartment?

A. It was the end of July, right around the 30th, some point. And just typical day, me picking him up for work.

Q. Did you always pick him up?

A. Well, sometimes he would drive her car to the job just depending on where we was at and I guess her schedule for the day.

Q. How did you know it was her car?

A. Because she had it since they first started -- first started talking. And when they first started dating, Trey actually lived with me, and Complainan would drive it to my house.

Q. And when was the last time you saw Trey in that car?

A. About a day or so before the last time I picked him up.

MR. SANFORD: Beg the Court's indulgence.

(Pause)

MR. SANFORD: No further questions for this witness, Your Honor.

THE COURT: Cross-examination.

MS. SCOTT: Just briefly.

Cross-examination by Ms. Scott:

Q. Mr. Brooks, you worked at Southern Painting with Dylan Foster?

A. That's correct.

Q. Are you aware that on July 31st of 2019 he came to Southern Painting later that day?

A. No, because at the time I was working in the field. And if he went to the office that evening, I was unaware of it.
Q. All right. When is payday at Southern Painting?
A. Well, they do it different just for different people. So at the time -- now they do direct deposit, but at the time they would leave your checks out on Thursday evening or you could pick them up Friday morning. There's a couple of different ways to do it.
Q. We've heard testimony that July 31st, 2019 was a Wednesday, so not a Thursday or a Friday, which would be a normal payday.
A. Yeah, but they do loans, too.
Q. Okay. Well, are you aware if Mr. Foster had a loan ---
A. Well, if he was at the office, I would be assuming that's what it would be for.
Q. Okay. So employees are allowed to get money when they need it if they can't wait for payday?
A. That's correct.
Q. Okay. You also mentioned that you were aware of these events. And I -- I don't know what that means. Were you there at the house July 31st, 2019 at 1:00 in the morning?
A. No. I said somewhat, meaning I had heard her side of the story, and I'd heard his side of the story.
Q. But you have no idea what happened ---
A. I don't know the exact details ---

Q. No personal knowledge?
A. No.
Q. You wasn't there -- you weren't there?
A. No.
Q. In fact, July 31st, 2019, even though Mr. Foster possibly came to your job, you didn't see him there?
A. July 31st?
Q. Correct.
A. I don't remember the -- what exactly happened that specific day. I remember the days just leading up to -- I mean, this has been a couple of years ago.
Q. Well, earlier I thought you had testified that you were on the field on that day.
A. Yeah, I mean, I was, but if he went there in the evening to Southern Painting, then, obviously, we weren't together when he done that. I mean, it could have been after work or ...
Q. I want to be clear because it's important that I'm clear, and that everybody's clear. Did you see him on that day or not?
A. Yes.
Q. Okay. And where did you see him ---
A. At work. We were working at Grace Church in Greer.
Q. On July 31st?
A. Yes.

Q. Okay. At Grace Church? What about -- what time were you working at Grace Church, July 31st?

A. We start around 7:00 in the morning.

Q. Um-hum (affirmative).

A. And, like I said, I can't remember the specific time we got off that day or anything.

Q. And it's your testimony that Dylan was with you from seven am, possibly, from whenever you got off on July 31st?

A. Well, like I said, it's been two years ago. I didn't, you know, write what day was what down or anything like that. So it's just hard to remember. But if the 31st was the day after this stuff supposedly happened, then he actually -- he was not at work that day. I know he was at work the two days prior to this happening, I believe.

Q. Okay. Let me stop. July 31st, early morning, is when Complainant was raped. I'm asking you ---

A. Okay. So, no, he was not at work that day.

Q. Okay. So later on that afternoon when you were at Grace Church, he was not at work?

A. No. No, not that day.

Q. And it was a Wednesday. I'm saying that to you because we talked about your payroll system.

A. Okay.

Q. So just to be clear, you did not see him that day?

A. No.

Q. Okay. Were you aware that he was kicked out of the house with [redacted]?

A. They would go back and forth all the time.

Q. All right. Thank you.

THE COURT: Any redirect?

MR. SANFORD: No, Your Honor.

THE COURT: All right. Thank you. You may step down.

MR. SANFORD: Defense calls Lawson Janarello.

THE COURT: All right.

MADAM CLERK: Please pause at the end of the bench. Place your left hand on the Bible and raise your right hand.

Lawson Janarello, being duly sworn testified as follows;

MADAM CLERK: Thank you. Please be seated. Please state your name for the record.

MR. JANARELLO: Lawrence Janarello.

Direct Examination by Mr. Sanford:

Q. Mr. Janarello, how are you?

A. I'm all right.

Q. Do you also go by Lawson occasionally?

A. I do.

Q. Mr. Janarello, how old are you?

A. Thirty-three years old.

Q. And where do you live?

A. Taylors, South Carolina.

Q. And do you work?
A. Not currently.
Q. Do you know Mr. Dylan Trey Foster?
A. Yes.
Q. How do you know him?
A. Well, we're friends. We met through a mutual friend, his uncle Jamie.
Q. Did you see Mr. Foster on July 31st, 2019?
A. I did.
Q. Tell me when -- about when you first -- when you first saw him.
A. Well, he came by my house that day. We hung around a little bit. And early that evening he requested me to take him home. So I dropped him off. And then I saw him later that night.
Q. Where did you drop him off?
A. I'm not familiar with the name of the apartments, but they're right over by the train tracks behind Wade Hampton High School.
Q. But he told -- that's where he told ...
A. He directed me to, yeah.
Q. Did you leave him there and then go back to your house?
A. That's correct.
Q. Did you come back and pick him up at any point?
A. No.

Q. Did you see him later that evening?
A. I did.
Q. Tell me -- tell me about him -- seeing him later that evening.
A. Well, he called me and asked if he could come over. When he came in, it was him and his girlfriend, which was a little bit unusual, she never really came in. When she came in she sat down with us. And after about 20 minutes me and Trey went into the other room. And at that time she told my girlfriend at the time something ---

MS. SCOTT: Objection, Your Honor, to hearsay.

THE COURT: Sustained.

Q. So when -- do you know -- do you know the name of the person, the female that came into your house?
A. Complainant or something. I can't recall her name. I wasn't, I mean, I was friends with him. And they had a -- kind of tumultuous relationship, I guess, towards the end. And so ...
Q. Was Complainant -- were Complainant and Trey always in the same room?
A. No. He and I, as I stated just a minute ago, went into a different room. And she was in my living room with my ex-girlfriend by herself.
Q. And eventually they left?
A. Yes. So as far as what she had apparently said, Brittany wanted to escort her out to the car and give her a chance to

leave. And they were alone for about 15 to 20 minutes. She sat in the car and waited. And Brittany told me that she told ---

MS. SCOTT: Objection, ---

A. --- her several times ---

MS. SCOTT: --- Your Honor. I'm not sure what Brittany -- who she is, but she's not here.

THE COURT: Yeah, sustained.

MR. SANFORD: Yes, Your Honor.

THE COURT: You can only testify to what you observed.

A. Okay. Well, when I came out with Trey about 20 minutes later, she was sitting in the car and it was started in the driveway.

Q. And then she and Trey left?

A. Yeah, they sat in the driveway for maybe five minutes and then left.

Q. And then Trey came back to the house eventually?

A. Yes. A few hours later he came back.

Q. And where did Trey go after that?

A. So he stayed -- he actually -- he stayed the night, and the next day I took him and dropped him off downtown.

MR. SANFORD: I have no further questions, Your Honor.

THE COURT: Cross-examination.

MS. SCOTT: Briefly.

Cross-examination by Ms. Scott:

Q. You took Dylan Foster to Complainant house. You didn't know that was her house, but you took her [sic] to a house July 31st, 2019?
A. An apartment.
Q. An apartment?
A. Yes.
Q. A townhome?
A. Sure.
Q. Okay. And then later he showed back up at your house with a woman?
A. Um-hum (affirmative).
Q. You said you really didn't know Complainant ---
A. I had ---
Q. --- or Complainant?
A. I had met her, but we weren't friends. Briefly met her before.
Q. Let me quote you. She never really comes in. You mean to your home?
A. Right. She had picked Trey up at my house a few times.
Q. Y'all were doing drugs in that house, weren't you?
A. Yes.
Q. And later on he spent the night at your house?
A. That's correct.
Q. All right. And when you were in that home and went into that private room with Dylan Foster, was that to do drugs?

A. Yeah, talk and, I mean, we weren't hiding anything. It was done in the open. It was observed by all, but me and him went, you know, we kind of, you know, because me and him are friends. We went off and just were talking and stuff.

Q. Even though you didn't know Complainant, you refer to her as Complainant, maybe, I don't know, Complainant. She wasn't comfortable being there, was she?

A. I mean, ---

MR. SANFORD: Objection. Calls for speculation.

A. Yeah, I can't speak to her ...

THE COURT: Sustained.

MS. SCOTT: One moment, Your Honor.

(Pause)

Q. Did you tell Cheri Lyda, an investigator who called you about your connection with Dylan Foster, that Complainant appeared upset?

A. I don't recall. I spoke with her briefly two years ago or longer.

Q. Okay. Do you recall having that conversation at all with Cheri Lyda?

A. I mean, I recall speaking with her, yes.

Q. Okay.

MS. SCOTT: Nothing further, Your Honor.

THE COURT: Any redirect?

MR. SANFORD: No redirect, Your Honor.

THE COURT: All right. You may step down. All right. Anything else from the defense?

MR. SANFORD: Your Honor, at this time the defense rests its case.

THE COURT: All right. Do y'all need any time to discuss whether -- any reply?

MS. LANDSVERK: Your Honor, we're not going to put up a rebuttal witness.

THE COURT: All right. Well, ladies and gentlemen, that is the extent of all evidence that will be presented to you and for you to make your decisions and to consider in your deliberation.

Now, I know it seems awful early for us, but there's a lot -- actually several -- there's lots that we need to -- first, attorneys and myself, need to -- we have what we call a charge conference to make sure that the law that I give you is the appropriate charge. And then -- so that usually takes a good little while.

And then you'd have closing arguments. And then you'd have the charge on the law. So you're looking at the earliest this could get to y'all would be 4:30-ish or so. And that is -- usually we have -- kind of have a cut-off. If we can't get it to the jury by 4:00, then it's asking a lot of people to stay well after five.

So that's kind of where we are at this point. So we're

going to break for the day. And we'll have all that ready so when y'all come in in the morning we'll have the final phases.

And that phase would be the attorneys will do their closing arguments. Then I will charge you on the law. And then at that point you can finally go back to your jury room and begin your deliberations.

But in the meantime, my four rules, do not discuss the case among yourselves or anyone. Do not do any type of research about the case or anything about it. Do not pay any attention to any media coverage. And, finally, if you're contacted by anybody other than someone from the clerk's office, please let the bailiffs know.

Other than that, y'all are free to go. And have a good evening. And we'll see you back in the morning at 9:30. Is that good with everybody?

THE JURY: (Affirmative nods).

THE COURT: All right. See you in the morning.

(Whereupon the jury exited the courtroom at 3:06 pm)

THE COURT: All right. Anything else from the State at this point? Motions?

MS. LANDSVERK: No motions, Your Honor.

THE COURT: Any motions from the defense?

MR. SANFORD: Just to renew my motion for directed verdict, Your Honor.

THE COURT: All right. And I think -- again, I think

it's -- based on the evidence that's been presented, it's clearly a factual issue for the jury, so I'll let it go to the jury.

How about any potential charges?

MS. LANDSVERK: We do have some charges, Your Honor.

THE COURT: All right.

MS. LANDSVERK: If you don't mind, we made these last night. And I just wanted two minutes just to review ---

THE COURT: Okay. How about any -- any verdict form?

MS. LANDSVERK: So we were -- I think that we've got to go over and we're trying to decide which charges we want to add, the lesser included. And a few of those, I think we may take out. I just -- I didn't know ---

THE COURT: Do y'all want to step back here so we can discuss, ---

MS. LANDSVERK: Sure.

THE COURT: ---you know, kind of off the record? And here's what I would like to do is discuss what --kind of generally what our charges are going to be. Then we can work and finalize the charges, discuss them in the morning. And then anybody can put on the record if they have any objections, or additions, or something like that.

MS. LANDSVERK: Sounds good.

THE COURT: See you in the morning.

(Whereupon court was in recess at 3:08 pm)

270

Friday, September 2, 2022:

(Whereupon court reconvened at 9:40 am)

THE COURT: All right. There's some housekeeping matters. Yesterday after we broke the bailiffs informed me that one of the jurors, Mr. Jonathan Devall, had pressing family matters that he just learned of and had to leave and go out of town. I discussed this with both attorneys. Then I went and talked to him and confirmed that I think it was appropriate to have him released. I think there was no objection from the State or defense, is that correct?

MS. LANDSVERK: No objection from the State.

THE COURT: No objection from the defense?

MR. SANFORD: That's correct, Your Honor.

THE COURT: All right. And I released him. Therefore, we will now go to the alternate. And we have two alternates. And my reading of the law is that you have to put both names in a hat, or hand, or draw them. And Mary here has gotten both names in there. And I'll let you draw it.

MADAM CLERK: Okay. 100, Mr. Irish.

THE COURT: All right. Mr. Irish. So Mr. Irish will be promoted to a regular juror.

MS. LANDSVERK: Your Honor, which one is out? Which one left, again? I'm sorry.

THE COURT: Which is ...

MS. LANDSVERK: What juror ---

THE COURT: Number 46, Jonathan Devall, D-e-v-a-l-l.

MS. LANDSVERK: Okay.

THE COURT: All right. So he has been -- in his place will be Jared Irish. All right. Any objection to the process of selecting the ---

MS. LANDSVERK: No objection, Your Honor.

THE COURT: --- from the alternates?

MR. SANFORD: No, Your Honor.

THE COURT: Okay. Also in chambers we went over the verdict form. And I gave a copy to both sides. Is there any objection to the verdict form from the State?

MS. LANDSVERK: No objection.

THE COURT: Any objection to the verdict form from the defendant?

MR. SANFORD: Not to the verdict form, no, Your Honor.

THE COURT: Okay. And, finally, we also went over the jury charge. And I believe we were in pretty much agreement on all of what should be charged. Specifically as to the -- the charges, they'll be burglary, first degree, criminal sexual conduct, first degree, and the lesser included of criminal sexual conduct in the second degree, kidnapping, domestic violence, first degree, and the lesser included offense, domestic violence, second degree.

Y'all've also -- we went through the charges. Are there any objections, or exceptions, or additions by the State? And

if we need to make any changes ...

MS. SCOTT: Yes, Your Honor. It's not criminal domestic violence, it's domestic violence.

THE COURT: Okay. We have ---

MS. SCOTT: And I'd just note, for a clearer record, it comes up sometimes Appellate Court that that starts to reference our old law.

THE COURT: Yeah, and I'll -- yeah, I didn't catch that. We will make that change. Old habits. In the charge -- the charge, I said that. So -- all right. Any objection, exceptions to the charge from the State?

MS. LANDSVERK: No, Your Honor.

THE COURT: And defense?

MR. SANFORD: Your Honor, I do have one after speaking with my client. On the criminal sexual conduct, second degree, the lesser included, we would -- we would object to that being there. The only reason is because on the indictment I believe the only thing that is said there is aggravating -- is aggravated force. Second degree sexual conduct has all the elements except aggravated force. And so with aggravating force being the only element on that -- on that indictment, we don't think that second degree would apply in this case.

THE COURT: What you think?

MS. LANDSVERK: Your Honor, I think that's a question for

the jury. And it's traditionally always an option to have a lesser included and it's appropriate. I think if anything it gives them the option to go lower on -- so it says right here that aggravated coercion means the defendant threatened to use force or violence of a high and aggravated nature to overcome the victim. So he could have used technically other aggravated coercion or force. It's just the either or. He could have used force or violence. So it's ---

MR. SANFORD: But the criminal sexual conduct says that the defendant used aggravated coercion to accomplish the sexual battery. If aggravated coercion is not in the indictment, then the jurors won't even be considering that.

THE COURT: Well, here's a question for you. Is there -- I mean, the only evidence is, from the State's side, is aggravated force. The evidence on behalf of the defendant is no aggravated -- consent, anything happened was all consent based on his statement. So do we even have -- don't we either just have aggravated force or not?

MS. LANDSVERK: I think, Your Honor, we could -- there could potentially be aggravated coercion because the definition says the defendant threatened to use force. And he did threaten her a couple of different times.

And at a certain point she -- she convinced him that she wouldn't do anything because she didn't want to wake the kids up. And she would just -- so he didn't really have to use

force after that.

MR. SANFORD: Once again, Your Honor, I would say that the indictment only says force and not coercion, and those are two different things.

THE COURT: Right. And I think -- but as a lesser included, I think it's appropriate. So I'm going to keep it in, but your objection is noted.

MR. SANFORD: Thank you, Your Honor.

THE COURT: He's going to print this right quick.

(Whereupon court was in recess at 9:50 am)

(Whereupon court reconvened at 10:00 am)

THE COURT: All right. Is the State -- anything else from the State before we bring the jury in?

MS. LANDSVERK: Nothing else from the State, Your Honor.

THE COURT: Anything else from the defendant?

MR. SANFORD: Nothing, Your Honor.

THE COURT: All right. And y'all got the -- I changed the verdict form. Thank you for catching that. All right. Bring the jury in.

(Whereupon the jury entered the courtroom at 10:05 am)

THE COURT: Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: All right. First of all, sorry for the delay. We had some things -- we also realized we needed to go ahead and get your selections for lunch so that that can be in

the works. Should have done that first thing when y'all got here, but I apologize for that.

Also, one of your members has been promoted. I was going to tell you a little bit about that. One of your members yesterday came to us afterwards and had a pressing family member out of town that he just learned of. Since we had an alternate, and after consulting with the attorneys, we felt like it was appropriate to go ahead and let him go from the jury.

And this is an interesting quirk of our law is in a civil case you would just pick the next person selected. In a criminal case you actually have to put both the names of the alternates in a hat and draw them out. So it may be a good day to go to the lottery, get a lottery ticket. So, Mr. Irish, you are now moved up into that position. All right.

As I said yesterday, all of the evidence that's going to be presented has been presented. We're down to the kind of final phases of the trial. And that will be closing arguments by the attorneys, then we will have -- I will charge you on the law, and then you'll begin -- you'll go back and you can begin your deliberations. So at this time I'd ask that you would give your full attention to the attorneys.

MS. LANDSVERK: Thank you, Your Honor.

You are braver than what he did, to the 911 operator, to Complainan on the night of July 31st, 2019 when she called sobbing

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MADAM COURT REPORTER: Ms. Landsverk, I'm sorry. I need for you to speak up.

MS. LANDSVERK: Okay. Sure.

--- when she called sobbing, explaining her story in the account of how the defendant violated her. And, ladies and gentlemen of the jury, that 911 operator was absolutely right. Complainant is braver than anything the defendant did to her and could do to her. And she was brave from the moment this happened, July 31st, 2019, all the way, three years later, to the trial this week.

She was brave when he came to her back door the second time. He knew he did not need to be there. He had already come by, he spoke with her, he got all the things that he needed to pick up. He knew that her children were there and that he was not allowed there that night. He didn't live there anymore.

He didn't -- he wasn't in a relationship with her anymore and yet he still came at 1:00 in the morning unannounced and asked her if he could come inside. And at that moment she was brave enough to say no, absolutely not. She didn't trust him anymore. She knew he had -- he had dealt with a lot of drug issues. She didn't want him coming inside in the middle of the night when her children were upstairs asleep.

She told him he couldn't come in. He then continued to

ask her, well, -- coming up with more excuses. I need to go to the bathroom. No, I'm not going to let you in to go to the bathroom. He then -- she decided, okay, you know what I'm going to do is try to do everything she can to get him taken care of so he can leave. She gets him some toilet paper, and she tosses it out.

And at that moment he took advantage of that opportunity to force his way in the house. And as y'all saw the pictures, and you're welcome to look at them a little bit later or anytime when you go back and deliberate, you can see her -- make sure I get the best picture for this, the sliding glass door was right next to this couch. So it was a very quick situation.

As soon as they got inside he overpowered her. She's on the couch, he's slamming her head against the couch. And she can feel the interior wall of the couch. He then goes to choke her. He puts his hand over her nose and her mouth so she can't breathe. She's begging him to please let her breathe. Please take your hands off me. He finally agrees to do this when she says she's not going to scream.

And, ladies and gentlemen, she is brave in that moment not to scream because she knows that if those children wake up and walk downstairs, they're going to have to see the atrocity that is happening to their mother and they have to have this image for the rest of their life. So she holds it together so

they can continue sleeping as she is being raped.

As he finishes and he's looking at her phone, going through her phone, still inside of her, he decides, okay, maybe for a moment he'd had enough. Then he forcibly grabs her head, shoves it toward him, and it happened so hard as he hit the back of her neck and she gagged, in his own words gagged. And then she threw up. You saw evidence of the throw-up on the ground.

At that moment he decided, you know what, I need to go -- he needed to run some errands. He needed to get his next drug fix. And guess what? He needed her money, too. Said, you're coming with me because I need you to go to the ATM to get some money out for me. She didn't want to do that. She didn't want to leave her children. And she begged him to just let her be. Just let me stay here. And he said, no.

She wanted to go upstairs and check on her children because clearly that is her priority. And -- as it should be. So they go upstairs, he follows her upstairs because he doesn't want her to do anything. He doesn't want her to wake anybody up to alarm anybody, but more so to find a cell phone or do something in order to try to get help. He's going to watch -- keep his eyes on her.

They then end up leaving. He forces her to leave. Again, she doesn't want to leave, but she thinks to herself, this man just raped me, he overpowered me and raped me, what

else could he do to me? What else does he have the ability to do? She didn't feel like she had an option. Maybe if I just go with him, do what we need to do, get home back to these kids. So she did. She went with him.

And he kidnapped her in that way because he forced her to leave. He took her keys. He took her phone. And he ends up driving her vehicle because that's something else that he doesn't have here. He's taking advantage of her in all forms, physically, financially. I mean, let's just focus on the sexual need and let's focus on his drug fix. Everything is about him at this point in time. He doesn't think anything about her and those children.

Finally, they go to the QT to get some money. They then go to a hotel so he could get the drugs. They then go to a friend's house so they can -- he can get high with his friend as she's sitting there upset. She's probably freaking out inside, I can only imagine, trying to figure out how long this is going to take.

Then they go back to the QT because guess what? He needs cigarettes. Let's focus on something else that he needs and let's get those cigarettes, let's get some more money. And then finally she was able to convince him to drive the car and to drop him off at his friend's house.

So, ladies and gentlemen, as she finally was able to leave she called her friend, Doug Bowlby. She knew that he,

because of his job, he was going to be out late that night. And she knew that he was someone that she trusted. She then gets home.

And the next step is, as far as her bearings is concerned, is going to get that rape kit. Because based on what the SANE nurse told us, that is not a comfortable process. I mean, and having, as the SANE nurse said, to be retraumatized after she's just gone through all this to then have to go to the hospital and have to have this whole ordeal being done. And that's when the swabs, the DNA swabs are taken.

Then, ladies and gentlemen, she tells law enforcement and she tells a couple of different officers. And I wanted to point out that in that she was consistent. Every single person she told, she told the same story. She told the same story to, obviously, Doug Bowlby, her dad, Aardsma. She tells the SANE nurse about her lip and her injuries. And then she goes and tells Cheri Lyda the same exact story.

And then the last part of her bravery comes in full swing when she's got to come three years later and talk about one of the worst nights of her life in front of a courtroom full of strangers. And she tells that same story that traumatized her that night again.

Ladies and gentlemen of the jury, I submit to you the defendant is guilty of burglary, first degree, criminal sexual

conduct in the first degree, domestic violence, first degree, and kidnapping. And in this case and as in all criminal cases the State has the burden of proof. And what that means is we have to prove that the defendant committed this crime beyond a reasonable doubt.

And how we do that is we go through each crime and talk about the elements in each crime. So what we did is -- my co-counsel and I here have a PowerPoint to make it a little easier to see. Now at the very end of the presentations the Judge will go step by step and give you a more detailed version. It's a lot to fit on one screen, so I just put quick bullet points so you kind of know -- kind of a roadmap of what we're looking at here.

So to start off, burglary, first. We have here the first bullet point, the defendant entered the dwelling without consent. We have the testimony from the victim. She didn't want him to come inside. She didn't want him -- she told him he couldn't come inside. He pushed his way in.

We also have the fingerprints taken that show his palm on the outside glass of that sliding glass door. So we know that there was some ability to push that door open as he went inside, forced his way inside.

The next element is intended to commit a crime at the time of injury. And the State submits to you that that crime that he was intending to commit, well, actually had a couple,

was trespassing, was trying to get any money he could. So he knew at that point he was down and out and that he was trying to do whatever he could to get that extra money and then potentially have sex with her, too, while he's there.

We know for a fact that he was going -- that in the past that was something that he commonly did. He admitted that in the interview that he stole the money and that he believed that she ended up hiding her purse whenever she's -- whenever he was there because she knew that he -- he couldn't be trusted.

And then lastly, defendant entered or remained in the dwelling at night. We know it happened at night based on the security surveillance video and the fact that he called -- the testimony talked about it being after midnight.

Next we have DV, first degree. Okay. So the first element, defendant and Complainant used to live together. So we know that was established through the testimony by both the victim and then the interview with the defendant. The next part is Complainant suffered great bodily harm or defendant's actions were done through means likely to result in great bodily injury.

And I have a quick definition of great bodily injury down at the bottom. But it basically just says it causes a substantial risk of death or which causes serious permanent disfigurement, or protracted loss, or impairment of the

function of a bodily member or organ.

And in this situation the State is not saying that he caused great bodily harm, the second part of it, that his actions were likely to cause great bodily harm between hitting -- violently hitting her head on the couch and choking her. Those are all things that could have caused great bodily harm. By the grace of God she didn't get extremely hurt, but it could have caused it. And that's part of the definition of great bodily harm.

So we're moving on to criminal sexual conduct in the first degree. The first part is defendant engaged in sexual battery against Complainan. Now the Judge will also give you a more detailed instruction on what sexual battery is, but I'll just read it off here. I wrote it down so I wouldn't get it wrong. Sexual battery is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the person's body.

Now in the victim's testimony she talked about how the defendant forced sex with her. And she was forced to give him oral sex. And we know that the defendant's story is a little different. He says -- he denies them having sex, but he does admit to oral sex.

And just that alone, just oral sex alone meets this definition because we do have fellatio that is mentioned, but also the definition is any intrusion into a person's body,

however slight. But the fact that he went inside the mouth is enough. But, obviously, the State is saying that there was both. There was both sexual intercourse and oral sex that was forced, that was not consensual.

So that's the next part, the defendant used aggravated force. And basically this just means you used physical force or physical violence of a high and aggravated nature. And in this case he used his strength to overpower her. And he used force in choking her where she couldn't breathe in order to get the act done.

So the next thing is kidnapping. Kidnapping, the defendant knowingly and unlawfully seized, confined, kidnapped, abducted, or carried away Complainant without authority of law. And there's a little snippet at the end. It says kidnapping does not have to be for any personal or monetary gain for any illegal purpose, but may be for any reason at all.

Now in this case he did take her away for an illegal purpose of going to get drugs. But just a caveat, it can be for any reason at all against her will. So we know the defendant took her, her car, took her car keys, took her car with her and then he drove and had control over her.

The next slide we're going to talk about is voluntary intoxication. And it's important for you to know that voluntary intoxication is not a defense. A person who is

voluntarily intoxicated is just as responsible for the crimes he commits as someone who is not intoxicated. And the defendant even says when it comes to drugs and heroin, it's like I got a devil in me or something. Even under the influence, he's still responsible. That does not excuse his behavior.

We all have decisions to make, right, every single day. And as part of those decisions and as part of being an adult, there are consequences with each decision that we make. And part of his decision-making in this was using drugs. And I think, you know, it's interesting because he talked a lot about his addiction and which that's very -- that's a hard thing, I can only imagine how hard the addiction is, but it doesn't diminish the crime that occurred.

And maybe his memory in some ways may be affected by his drug use that night. The victim's been raped, doesn't erase what happened. She knows, and she feels, and remembers exactly what happened. For her, she was not under the -- the intense effects of this. Okay.

As I talked a little bit in the beginning, talked about you guys are the judge of the facts. You determine really what happened based on the testimony you heard and the evidence that you heard. And in that you have the ability to decide what part you believe happened and what part that you don't.

Well, specifically in this case I want to talk about the defendant's credibility. And I submit to you that he's not truthful, that he doesn't have any credibility. We know that he was homeless. He was couch-surfing. We know that he was most stable in the last couple of years when he was with her. She provided that stability for him.

We know that he was an addict. And he was -- he actually -- I didn't think that he really felt -- he didn't come across that he was that sympathetic about it as far as, well, yeah, yeah, I stole a bunch of money of hers. I mean, he needed to deal with some of the drug use and the addict behavior, and that was part of it. I mean, it was kind of like there was no shame with it. Well, yeah, she knew that about me. I stole her money.

We also know that in the interview he talks with Sergeant Lyda. And one of the first things he says, within like the first 10 minutes, he says, oh, we didn't have sex that night. Oh, really, that's interesting because we found your DNA in her. That's very interesting. So we know right there he wasn't being truthful.

And we know -- we talked with the SANE nurse, and that was why I really went into the questions on -- even though it's a little bit -- sometimes nobody really wants to hear all the details of a vaginal examination. But we know that in her exam she tried specifically to not touch anything on the

outside, just go all the way on the inside for purposes of finding out if there was any DNA all the way inside of her, which they found. They found the defendant's DNA.

I also think it's interesting to note that the stories are actually quite similar, the defendant and the victim. And I think they're similar in the way that the details before and after the sexual assault are pretty much alike. Which I think also corroborates the victim's testimony. They both talk about we were both there. They both talked about the back door. He just doesn't want to admit that this was forced. I mean, who would?

I think as far as corroborating her account of the story and him forcing his way in, I wanted to show you this picture that is in evidence. It's -- we have defense exhibit in mine as well.

MS. LANDSVERK: Your Honor, ---

THE COURT: Oh, sorry.

MS. LANDSVERK: --- I'll put one picture up. Okay.

So hopefully that's blown up a little better. It's a small picture. But what's interesting is -- can y'all see the toilet paper roll out there? So her, I mean, it's just some of the small details that add up with her story, how she didn't want him to come in. If you've got to go to the bathroom, I'm going to get -- I'll toss you the roll. So these things, these details are adding up.

So also I think it's a true statement the defendant admitted when asked about whether or not the victim threw up. He said, no, she didn't throw up. She gagged a little. Does that sound like it's a consensual sex to you? Sure doesn't to me.

And then there was also about something that was very interesting that popped up is his continual blame of everybody else but himself. He talks about what happened. Sergeant Lyda said, why did you start using drugs again? He decides to say that it was Complainant fault. That, you know what, she went out with another guy, she left me with the kids, and I couldn't handle it. How about let's take responsibility for our own emotions and how we deal with some of these things.

We all have to deal with heavy emotions, whether it's jealousy, anger, resentment. But he's the one that decided to use the drugs. She didn't force him to use the drugs to then go down the spiral.

Now I do want to go quickly over beyond a reasonable doubt and what that means. So as I said before, the State has to prove to you that he committed these charges, these crimes beyond a reasonable doubt. And I think the best way to describe that, like I said, the Judge will go over this further, is whether or not you are firmly convinced of his guilt.

So we know that there are very few things in this life

that we know of a hundred percent certainty. And despite what the defense may want you to believe, you don't have to have absolute certainty.

And there may be doubt as to exactly all the details, what happened, because we weren't there. We weren't in her home that night. We didn't see -- we didn't witness it for ourselves. But the State submits to you that there isn't a reasonable doubt as to what happened here. Her story has been consistent and has been corroborated along the way.

Now there is something that I did want to talk to you about on deliberation. And it's so important, as y'all know. I think a few have already served on a jury this week, deliberation, just talking about the case and going over everything. And not until the very end will you decide if you are firmly convinced, but you go through all the details and kind of hash everything out.

But I don't want you all to get bogged down in the details of this case. And when I say details, I mean some of the issues that defense might bring up as far as the cell phone, for example, on whether or not she had the cell phone, when she had it. I think it's kind of crazy that we're trying to blame her for -- why didn't she get out of this situation? No, no, no. Why did he put her in this situation? Why are we finding ways that she needs to seek help? Why is she in this in the first place? Why did the defendant put her in this

situation where she's having to figure out how to get out of it? That's what we need to focus on here.

I mean, I think it's normal not to know on a regular basis where your cell phone is and, I mean, I know I lose mine all the time. Or I lose track of where it is in the house. And I can't imagine in a tragic situation like this remembering every step of the way on where your cell phone is. She may have gotten it back. We don't know for sure. But that doesn't matter. That is completely besides the point. The point is, she should have never had to worry about getting herself out of this to begin with.

We've got to focus on the big picture. And the big picture is that, ladies and gentlemen, the defendant in this case forced his way in, he physically hurt her, he had sex with her against her will, and he kidnapped her to run his errands, his drug errands. And the State will ask you to find the defendant guilty of all four charges today. Thank you so much.

THE COURT: Mr. Sanford.

MR. SANFORD: Thank you, Your Honor.

Ladies and gentlemen of the jury, if you remember a couple of days ago I talked to you about movies. I talked to you about the movie that you were going to see here -- the movie you were going to see here. You were going to see two different cuts of the same movie. And I think you've seen

that. Even the solicitor just admitted that. A lot of the details are the same, but there are different edits, there are different things that they had seen.

Now I know that we're about to enter a long weekend. I know Labor Day is Monday. And so before I do that I want to give y'all a couple of movie recommendations, okay? The first one I'm going to recommend is from 2003. It is a comedy/drama. It is starring Sigourney Weaver, Shia LaBeouf and John Voight. It's a good family film.

The other one I'm going to recommend to you is from 2008. It is a Academy Award nominated film that stars Meryl Streep and Philip Seymore Hoffman. And I think both of these films show what the State's case is and what it has. Those two films are Holes and Doubt. I'd like y'all to watch those this weekend.

So holes and doubt. Let's go over the State's version of this story. Now the State just said that she kept the same story through everybody. And to quote another film, Kevin McCallister played by Macaulay Culkin in Home Alone, I don't think so.

[redacted] testimony, she said initially that he came over nine, ten, eleven. She told Deputy Reese up there, she said, well, he was over here at 1:30. You heard that testimony. You heard Doug Bowlby say, well, she called me at one. And then you heard Officer Lyda say, well, she told me that he

came over at 11. You also heard Complainant say that she had been notified that he was coming over. She knew that there was a chance that he was coming over. And how did she know? He texted her phone.

Now they were at the house. You heard Officer Bowlby say that he never told Deputy Reese Mr. Foster could stay there. But then Deputy Reese testified that she wrote in her report that Doug Bowlby got a call from Complainant saying that Trey is over here and he is going to stay on my porch.

And then you had Lawson up there. And he said that he took Trey over to Complainant house and he didn't come pick him back up. So he left him there. Trey is without a car. If he came over at 11, he was there until they left to go to the QT.

Now basic structure of this is there is an alleged assault that happened at the house. They left. They went to the QT. From the QT they went to buy drugs. After they bought drugs, they went to Lawson's house. They went back to the QT, went back to Lawson's house, Trey was dropped off and then Complainant went home.

Now let's talk about each of these individually. Let's talk about the assault. So we have a bunch of photos here. And the State likes to talk about look at the mess, look at what happened here. But if you look at a couple of things, the State says this sliding door is right here next to the couch where the assault happened. You have a stack of

blankets right there, neatly stacked, that if there was a lunging onto that portion of the couch, you'd think that there would be some disturbance in that stack of blankets. And if there was this alleged assault, I don't think that those blankets would have been stacked after the alleged assault.

You also have the blinds where the sliding door is. Now I don't know if any of y'all have ever lived in an apartment, or a home, or somewhere where these blinds are, but you hit one of these things and it is going to twist, it is going to break. I've had them in apartments, and they are a pain. And as you can see, there looks to be no disturbance.

We also heard no testimony of any type of show of force on the door, any type of show of force on the front door or the back door. Now we also have the photos that Complainant sent to the solicitor's office in April. She said she re-sent them. Now whether she re-sent them or she sent them, if you're re-sending them, why are we sending them? Because somebody says they don't have something. That's the only reason they're doing that.

You heard no testimony that proves that they were taken on that night. They could have been taken anywhere from July 31st, 2019 until April of 2022 because that's when the solicitor's office received them. There's no marks on those photos saying when they were taken, it's just a photo.

Now we also have to talk about Complainant because as she

testified she used to work for the correction's office. She used to work over at Greenville County Detention Center. And she said that she got special training, that she got special training on how to act in situations when you had people bigger than her that were coming to overtake her.

Now, yes, Mr. Foster is bigger than her. And, yes, I understand, you know, it is -- it is an attack, allegedly, but if she had those skills, she should know what to do in that situation. She should have known to do -- in this whole situation because she had special training.

Then I also want to talk about the carpet. Now you heard that they cut out this piece of carpet and they took it into evidence. But you never heard any testimony that that carpet was taken into a lab, that that carpet -- they tested whatever that substance is on there.

Other than them saying that it's throw-up, there is no evidence that shows that that is throw-up on that carpet. Even the -- I think Mr. Wolfe, who it was up there, said, it's just a substance. I don't know what it is because I'm not the one who tested it. And as far as we know, it didn't get tested.

Now let's talk about being forced to leave. Well, step back one more second. They just showed you this picture with the toilet paper sitting there. With that toilet paper sitting there, the State just said that when she went to open

that door and hand him that toilet paper, that's when he rushed in. If he didn't get that toilet paper and he rushed in, why is it sitting on there? Why is it sitting upright and not somewhere in the -- in the yard right there? How can that be? How would you take time to sit that toilet paper there unless it was just a conversation and he took it and said, I want to come inside, and put it right there.

Now also in that picture you see her walking behind him. You heard the State say earlier that, oh, well, he walked behind her upstairs to deal with the children because he didn't want her going off and doing anything. Well, if that's true, then why is he allowing her to walk behind him right then? Because she could have had a chance to turn around, lock that door and get in the house and not have to do anything -- start -- you know, start calling somebody, doing what she needed to do.

Now we also heard -- well, we also heard that there's no video footage on those cameras. They were mysteriously deleted. Now if we had that footage -- because she testified that there's cameras on the front and the back. You'd be able to see that if he rushed in, if he forced her in, but those cameras were never deleted. And Sergeant Lyda even said that she had never seen those pictures until I showed them to her yesterday. Holes and doubt.

They went to the QT first. Now she's outside in the car.

She has opportunity to leave, to run if she's being kidnapped, to run inside, to tell the clerk, something, but she didn't do that.

And you see on there that Mr. Foster does have a phone. Could be his phone. Could be her phone. But we know that Complainant said that he told her earlier that he was coming over. So we know that he had a phone. So more than likely that is his phone at that point. And why would he need Complainant phone? She was not kidnapped. She went willingly.

Then they went to buy drugs. We haven't hid the fact that he has a drug problem. He admits that. And they went and they bought drugs. Then they went to Lawson's house.

Now Deputy Reese who used to be Deputy Aardsma -- I know there's -- there's a lot of different names here in this case. She testified that in her report she mentioned nothing of this friend's house. Complainant mentioned nothing about going to the friend's house.

Complainant also said that she was forced to be in front of Trey the whole time. That he couldn't take her [sic] eyes of off her for fear of her doing something. Then you heard Lawson say that, no, we went in the other room to do drugs and to talk. She was in the car by herself for five minutes. She was in other rooms doing other things. So she had another opportunity to get out and tell somebody if she was in this situation. Holes and doubt.

Then they went back to the QT. Now I know Officer -- Sergeant Lyda said that there were two different QTs, but once again, if you look very carefully at the two different photos here you'll see that the wet floor cones are in the exact same spot. Now I know if you went to different QTs, yes, they might have wet floor cones on, but they're not going to get down there with a ruler and say, well, I need to put it four inches from the floor. If you look at those pictures, it's the same QT. They went back to the same QT.

Now at this QT, Complainant comes in. Complainant -- just say I don't have my phone, I don't have anything -- and she's also driving at this point, too. You saw on that photo that she has a phone in front of her. And she said, well, I didn't want to call any -- if I had a phone I didn't want to call anybody because -- didn't want it to take too long.

If we look at the time stamps here you see that she gets the money after she checks out. She's checking out at 3:09, she's getting the money at 3:11. She had two or three minutes there to where if she had been texting with Mr. Bowlby like she said all night, she could have shot a text to him. That's not going to take too much time.

She could have called her father and said, can you please go see the kids. That's not going to take much time while she's getting the money out of the ATM. She had specific training from the police academy. She should have known what

to do if she was in one of these situations. And yet she didn't because she wasn't in one of these situations. She had gone willingly.

Now Complainant -- at this time also Complainant, you know, she drove. She had control of the car. And Trey had admitted that he had done drugs. He was high. You heard Deputy Reese say that when people get high on heroin they can go anywhere from, you know, very, very high and active all the way down to almost comatose and inactive.

Now I am not here to say where Trey was on that scale, but the fact that he was high, that at that point she had an opportunity if she was in this situation, which she wasn't. Because if she can't see him, he probably has less concept of time, can't see him is not -- and not doing certain things.

And then she dropped him back off at Lawson's house. Holes and doubt. He went to Lawson's house. Lawson confirmed that, that he came back. Complainant said to Deputy Reese initially and to the 911 call that you heard, well, I dropped him off at -- I think it was a gas station or a strip mall. Didn't mention the friend's house at all. Didn't drop him off at a gas station or strip mall. Dropped him off at Lawson's house. That has been confirmed.

And then once she went home -- Officer Bowlby also said that he took her to the ER. But we also had testimony that the EMS took her to the ER. So how did she get to the ER?

Now let's talk about some stuff a little bit outside the 31st. Now Complainant said that Trey had been living with her, but, you know, he [sic] kicked her out and she had -- he hadn't been there in a long time. But you heard Brooks here say that he picked him up for work even just a few days before this. And he had seen him driving Complainant car just a few days before this. So he was staying at her house. He did have access to her car.

She also said that she didn't know anything about him staying with another female in another apartment, but you heard Officer Lyda testify that she told him that she went over to the apartments and dropped some stuff off, but she said that she didn't know anything. Now she went to the apartment. She should have some idea of what's going on there. And, of course, she even said that she had no idea of any of that had gone on.

And if you listen to the statement that my client gave to Sergeant Lyda, she checked out what he said. He said, I was staying at Megan's apartment. Called Megan, Megan said, yep, he did stay at this apartment with me for a couple of days. Said, well, I went over to Lawson's house after this. Called Lawson, Lawson said, yep, he was over here.

That's probably some of the best police work that Sergeant Lyda did in this whole case. Because as you heard yesterday, she didn't even listen to the 911 call. She hadn't

seen those photos til yesterday. You, the jury, have heard more evidence in this case than the chief investigating officer on this case. Holes and doubt.

Let's talk a little bit about forensics, fingerprints. He had been staying there. His fingerprints, palm prints, hand prints are going to be there. So if somebody's in a place, their fingerprints are going to be there. It doesn't prove a crime, it just says they were at that place. They testified to that.

DNA, now you heard him say that there is, you know, a -- he is not excluded from the panel, which means it's not him, but it's not not him. It's not a pinpoint accuracy. You also heard him say that in their sample size, it occurred more likely in an African American than in a Caucasian. And I haven't researched my client's lineage, but I don't think he's African American.

And also, the State talked about finding the DNA. Now they said it was way back in there. Well, you heard my client testify that they'd had sex just a couple of days before. DNA is going to stay on somebody.

You also heard them testify that they only found one swab that had any DNA on it. And it was that inner-vaginal swab, but if they had sex days before, it would be there. And that was consensual. And everything that happened this night was consensual. Holes and doubt. There's too many

inconsistencies in this story for it to be a hundred percent true.

This time-line isn't even -- it doesn't even make sense to me. So if we go by what she told Officer Lyda in her statement, she said 11:00. Now if you look at the photo here, you can see that this is around two am. And the first stop at the QT is around 2:25.

You heard testimony that it takes about 15, 20 minutes to get to that QT. So that is a photo of them leaving the house with Complainant walking behind. So if she -- he showed up at 11, then what are they doing for three hours? We didn't -- we don't know how long this assault took, but I don't think it took three hours.

What makes sense is my client's statement. That they were sitting on the couch, that they were talking, and they argued a little bit, but, yes, they were talking. Can you talk to somebody for three hours? Yeah, you definitely can.

Now I know Complainant said that he left, but doesn't have a car. Lawson said he didn't come and pick him up. So unless Trey was hanging around the house, I don't know where he went. He was on that couch talking to her.

If you listen to the statement that Trey gave, every single step is logical, it makes sense. It is easier to look at that story and say that is something that links up. When you look at Complainant story you see holes and you see doubt.

You see different stories. You see things that don't make sense.

And I know the State said don't look at the details, don't look at the -- they don't want you to look at the details because all of these cases are found in the details. Look at all the details.

Well, it doesn't matter that she had -- yes, it does. It matters because she said she didn't have her phone. She said that she was trying to go get a -- her son's phone upstairs so she could call the police, but 30 minutes later she's like, you know, I'm not going -- I'm not going to call the police now that I have my phone. Details matter. Mr. Foster did not force himself into that home. He was allowed in. Mr. Foster did not sexually assault [redacted]

Now I don't know -- I'm not going to get into gag reflexes and how that works and all that kind of stuff and how forceful it was. But if anything sexual happened that night, and he admits that there was oral sex that happened that night, as far as we know they found no DNA from any swabs inside her mouth. It was consensual.

He did not kidnap [redacted] had opportunity to leave. [redacted] had opportunity to do what she wanted. She had control of her car. She had her phone.

And he did not assault [redacted]. If you think back to the SANE nurse, she testified that she saw no bruises, no bumps,

no nothing on the back of her head, which has been said that he slammed it so forcefully into the frame. Something would show. She saw no trauma that happened on the back of the -- back of the head. Holes and doubt. When you look at all of this I think you'll find that there are holes in the State's case and there is doubt all over the State's case.

State said the Judge is going to charge you here in a minute. He's going to charge you with reasonable doubt and he's going to charge you on the law. And when you start looking at things -- and I know the State talked about reasonable doubt. I want to say it's such a high burden -- it is a high burden. It is.

But if you're sitting in there and you're saying, well, it's possible this other story happened. This other story may have happened. This other story could have happened. That my client's story -- if you believe my client's story or even if you think it could have happened, you have to find my client not guilty. And I think once you look at all the evidence, once you talk among yourselves, you will find my client not guilty of all charges, and you should find my client not guilty of all charges. Thank you.

THE COURT: All right. Rebuttal.

MS. LANDSVERK: Yes, Your Honor.

I will be brief. Don't let the defense cloud your judgment. No offense to Mr. Sanford, he's an excellent

attorney. And he's just trying to do his job. He's just trying -- he's nit-picking the case because that's what he has, right? But for his purposes he wants you to go down rabbit holes that lead to nowhere.

And I did want to talk about a few things he brought up, and then I'm going to sit down and be quiet and move forward so you guys can get into deliberation. But he talked about the blankets piled up here. And we do see -- it seems like in general I think that that actually shows she kept an orderly home.

But what we see down here is we see -- we have a little better photo here. But her story was that he pulled her shorts off, her underwear right here. We have -- she threw up and he threw a towel at her, that same towel to help wipe up the vomit.

And so it doesn't seem like that these folded towels, that any of that would be there if her story wasn't true. Because it seems like the rest of her house was orderly and was put together. So I think it actually further shows that this did happen based on the things on the floor.

We have -- he talks about burglary force -- burglary, first, that he didn't see any force. The State does not have to prove that there was any force to gain entry. It's just -- and I want to make sure I read this correctly. It's just we have to -- I just want to make sure I state it correctly.

The defendant entered the dwelling without consent. That is the law. And that is the law the Judge will give you. It doesn't have anything to do with force. We still believe in this case that he forced his way inside, but we don't have to prove that. We just have to prove that he went inside without consent.

He also talked about how law enforcement didn't document her injuries, but we know that the nurse documented her injuries. And I have here straight from the report, straight from the testimony of the SANE nurse, her lips were sore and she was bruised internally. So that picture lines up with testimony of somebody that saw her right after it happened.

And then we have the vomit. Ladies and gentlemen, vomit is vomit. I think we can all use our own personal experience in determining what vomit looks like and our own common knowledge to go from there.

She also talked about the clerk, why she didn't talk to the clerk. Again, trying to figure out why the victim didn't try to help herself. In this case if she had tried to go talk to the clerk, he would then see her. And QT has -- it's all glass windows. So he can see what's going on from the car.

And if he had any suspicion, why wouldn't he have gone home? He threatened that. If you don't do exactly what I tell you to do, this is going to happen to you and your children. And so for her purposes she didn't feel like she

had the opportunity or -- to tell him. She had to do what she had to do. Get in and get out so she could get back home. But ultimately what's important here is the defendant did violate the victim, and he should be found guilty. Thank you.

THE COURT: All right. Ladies and gentlemen, is everybody okay? Anybody need to take a break before I start my charge?

THE JURY: (Negative nods).

THE COURT: I always have everybody -- have the jury stand and take a stretch break for a second before I start my charge. So you can stand -- we call this the seventh inning stretch.

(Pause)

THE COURT: All right. You may be seated. All right.

Now I will charge you on the law of the case. And before you become overwhelmed because you've heard a lot of information and you've got a lot of charges that you have to deal with, in your jury room, and I'll go over this in a little more detail, you'll have a verdict form. And it breaks down each indictment and kind of tells you what question you have to answer. So that'll help you. So I'm telling you that before you get -- so you don't get too overwhelmed right now. All right.

Let's, first of all, as I told you at the beginning of this trial, you and I have separate duties. Your duty is to

determine what the facts in this case are. And how do you determine that? You are to review the evidence. And evidence is -- some of it's exhibits that were placed into evidence. There was testimony, maybe stipulations. That's what you're to consider.

And you're to give it the weight and value which you feel is appropriate. And you apply the law which I'm giving you right now. If there was anything that was excluded, I don't remember if there was, but if anything was excluded or, you know, you're to disregard anything that was stricken from the record.

Now my job, as I told you also, was to preside over the trial, to rule -- make rulings on evidence and to charge you on the law. Now this doesn't -- that's what I'm doing right now. And if you came into this courtroom and you felt like you knew what the law was or you have an opinion as to what you think the law should be, if it contradicts what I'm telling you now, you're to disregard that because you have given an oath that says you will apply the law as I'm giving it to you right now. And, again, it's all -- when all that boils down, you're to give every piece of evidence after you've applied the law, the weight and the value that you feel is appropriate for it.

Now there are four different offenses that are -- that you are to be considering. You have burglary in the first

degree. You have criminal sexual conduct in the first degree. You have kidnapping. And you have criminal domestic violence in the first degree. Those are four separate charges.

And when you're -- during your deliberations you are to consider each of those charges independently. Your decision on one should have no effect whatsoever on your decision on the next one. You can find the defendant -- if you find that the -- if the State has met its burden on each of them, you can find the defendant guilty of all of those.

If you find that the State has not met its burden on any of them, you can find him not guilty on all of those. Or if you find that the State has met its burden on some, but not others, then you can -- your decision can be accordingly. And I'll -- so your verdict is going to be separate on each one of those charges.

Now I also told you at the beginning that the fact that someone was arrested, charged, indicted, you heard reference to an indictment, that's nothing for you to consider. That's not evidence. That's merely the formal document, the paperwork that brings this matter to court. Those are the allegations by the State to which the defendant has pled not guilty.

That puts the burden on the State to prove each of the elements of each of these charges beyond a reasonable doubt. And I will go over with you in just a few minutes on the

elements of each one of these charges. And the fact that these indictments or charges, that is no presumption whatsoever as to the defendant's guilt.

Now as I said, the defendant has pled not guilty. And he has -- and, again, as I told you, that puts the burden on the State. In every court, criminal court, no matter how small, magistrate's court up to circuit court, no matter what the charge, every defendant has a presumption of innocence. That's a very important part of our criminal system is that presumption of innocence.

That means that he is absolutely presumed innocent of all of these charges until you, the jury, have determined that the State has met its burden beyond a reasonable doubt that he is guilty of these charges. And only then is that presumption removed. But if the presumption is not removed, then that's when -- then you would find that the defendant is not guilty. And that's a very important part. That's not just a legal theory. That's just kind of one of the foundations of our criminal system.

Now what is reasonable doubt? You've heard that phrase a lot. And you probably have heard it on TV. And you may have been involved in a matter involving that. Reasonable doubt, that's the burden that the State has in each element of every charge.

And I always like to make sure I distinguish this than a

civil matter because if you've been involved in a civil matter or a lawsuit or you may have sat on a jury maybe earlier this week -- I don't think y'all ever -- nobody ever got to a jury -- actually the deliberation on a civil case. But if you actually have sat on a civil jury before, there's a distinction, that is more likely than not.

You may have -- the phrase is preponderance of the evidence. That's just kind of almost like a balancing. That does not apply here. It is a much higher standard. Again, beyond a reasonable doubt. And that's, you know, in criminal cases that is a very strong burden. Reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. You know, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

Now there's very few things in this world that we know with absolute certainty. And this burden does not require the State to prove this with absolute certainty. But -- and does not prove -- and they're not required to prove -- overcome every possible doubt.

But, if based on your consideration, if you're firmly convinced that the defendant is guilty of the charge which you're considering, then you are to find him guilty. But if you find that there is a slight doubt or possibility that he's not guilty of these charges, then you're to give him the benefit of that doubt and find him not guilty. Facts and

circumstances that merely place a defendant in great suspense of the crime charged is not sufficient for you to determine that he is guilty.

Now there's two types of evidence that the State can rely on in meeting this burden, and it's direct evidence and circumstantial evidence. And whether the State relies on direct evidence or circumstantial evidence or a combination of the two, the burden's still the same. And everything, as you keep hearing me say, the burden is beyond a reasonable doubt.

Direct evidence is when a -- is evidence that shows exactly the fact that they're trying to show. And direct evidence is, you know, the person -- a statement a person made, a -- what they've heard, what they saw, what they felt.

Circumstantial evidence is sometimes when you have to show a series of facts to prove a particular point or an inference. And when the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and when taken together form conclusively to the guilt of the defendant, again, beyond a reasonable doubt. If these circumstances merely portray defendant's behavior as suspicious, then the proof has failed.

Now another thing that you have to determine, and when you're weighing or giving the weight and value you feel is appropriate, is you need to determine the credibility of witnesses. And that just means believability of witnesses.

Now you may accept one witness over several witnesses. You may accept several witnesses over one witness. You may accept all of a person's testimony and reject another person's testimony or you may reject all of a person's testimony. You may accept a portion of it and reject another portion of it. Again, you're giving it the weight and value you feel is appropriate.

And the things that you can consider is, you know, how the witness acted on the stand, if he has any particular motive or he or she has any particular motive, bias, or prejudice. All of those just using your common sense to give the weight and value for that particular witness.

And we also had several individuals qualified as experts. And as I told you at that time, normally a person can't testify about their opinions and conclusions about things. They can only, what we call lay witnesses, can only testify about what they observed, heard, felt, those kind of things. The exception to that is an expert witness. And that is usually based on somebody's training, experience, their education, their work in that particular field.

And then they can be qualified in that particular field as an expert to give their opinion and conclusion. But like any other witness, just because a person is designated as an expert does not mean you have to accept that even if there's no contradictory evidence. You're to give that testimony, the

same as everything else, the weight and the value which you feel is appropriate.

Now there's also been a reference to a statement made by the defendant. And that's -- the Court has ruled that that -- the statement was admissible. But you have to determine -- make an evaluation of that statement as well. Although the Court has determined that it's admissible, you must have the ultimate decision of whether or not the defendant made the statement.

If the defendant made the statement, then you must determine whether the statement was made voluntarily and of his own free will. That means that the statement was not caused by pressure, force, fear, threats, coercion, or intimidation, or by hope or promise of leniency, or a reward of any kind.

In determining whether the statements were voluntary, you should consider both the characteristics of the defendant and the details of the questioning. And here's some factors that you can consider when you're making that evaluation as to the voluntariness of the statement; the age of the defendant, his education or lack of education, his mental ability or capacity, his IQ or intelligence, his background and environment, the place and length of detention at the time of the statement, the nature of the questioning, and the advice or lack thereof to the defendant of his constitutional rights

including, but not limited to the right to remain silent, that any statement could be used against him in a court of law, the right to have a lawyer present, that if he could not afford a lawyer a lawyer would be appointed to represent him without cost, and that he could stop making the statement at any time.

You must consider all these factors and the surrounding circumstances before you give the weight to the alleged statement. And, again, the State has the burden of proving beyond a reasonable doubt that this statement was voluntary. If you determine it was, then you can give the statement further consideration as you deem it appropriate. You must decide what weight, if any, to be given to this statement. If you decide that the statement was not free and voluntary, then you should not consider this statement at all.

Now as I also told you -- I'm not sure if I said this in the beginning or not. I don't think I did. But another very important foundation of our criminal justice system is the Fifth Amendment, and that is the defendant has the right not to testify. And that cannot be used against him in any way. I repeat, that cannot be used against him in any way.

The defendant has no burden in this case. So, therefore, he has nothing that he has to prove. So the fact that a defendant exercised his constitutional right by not testifying, you're not to consider that at all. That is not even something that should be discussed in your jury room

because that is merely an individual exercising his constitutional right. And I'll just repeat, that is something that is not to be considered by you or even discussed. Your focus should be on the evidence presented by the State and whether they met their burden of proof.

Now let me talk to you about intent. That's one of the elements of criminal liability. Criminal intent is required to establish criminal liability. For example, the mental state to be proven for a particular crime may be purpose, intent, knowledge, or recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. And criminal intent is always a matter that must be determined by the jury based on the circumstances.

Now, of course, you can't -- there's no way to scientifically determine what an individual was thinking at the time. So, therefore, you have to look at all the circumstances surrounding the matter and the evidence to determine what the intent was.

And the matters can be inferred from the evidence presented. It's not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as the other facts by taking into consideration the acts of the party and all the facts and circumstances of the case.

Now criminal intent is a mental state. It's a conscious

wrong-doing. And it's up to you to determine what the defendant intended to do based on the circumstances existing at the time. Criminal intent can arise from action or failure to act. It may arise from negligence, recklessness, or an indifference to do or to consequences that is considered by law to be an equivalent of criminal intent.

Now let me talk to you about voluntary intoxication. Under our law a person who voluntarily becomes intoxicated is just as responsible for the acts committed while intoxicated as when a person is not intoxicated. So those are the general rules that you will have to make a determination of this case.

Now what I'm going to do is go over the elements, the specific elements of each offense. All right. First charge here is burglary, first degree. And the elements of burglary, first degree, what I'm going to do is I'm going to go through the elements and then I'm going to give you some -- each of the -- each of the charges has some additional kind of information and definition of some of the terms used in this.

So burglary, first degree, the elements of burglary, first degree, is the following; and the State must prove each element beyond a reasonable doubt, that the defendant entered a dwelling without consent and the defendant intended to commit a crime, either a felony or misdemeanor, at the time of the entry and that this occurred in the nighttime.

For some definitions that you may -- that may be helpful,

a dwelling is any building or portion of a building in which a person ordinarily sleeps. Also the State does not have to prove that force was used to gain entry. If a person enters a building by using deception, artifice, trick, or misrepresentation to get consent to enter, then this is an entry without consent.

As to the second element that the defendant intended to commit a crime, either a felony or misdemeanor, the mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after the entry, it is not burglary.

On the other hand, if the defendant intended to commit a crime at the time of the entry, it is a burglary even if the event was abandoned after the entry and does not matter that the intended crime was not completed. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent.

Finally, the State must prove that the defendant entered or remained in the dwelling in the nighttime. Nighttime is the period between sunset and sunrise during which there is not enough daylight to recognize a person's face except by artificial light or moonlight. So, again, there are your elements for burglary, first degree.

Now we'll go to the second charge of criminal sexual conduct, first degree. Now on this one and also on the

domestic violence you're going to hear me use another phrase, and that's lesser included offense. And what this means is we're going to have the -- and I'm going to tell you about the elements of criminal sexual conduct, first degree. But if you determine that the State hasn't met its burden on this one, then you can consider a lesser included offense, which has the same elements, but they'll be -- it's a lesser. And it'll make sense when I read the instructions on that.

Criminal sexual conduct, first degree, the elements of criminal sexual conduct, which the State must prove beyond a reasonable doubt is that the defendant engaged in a sexual battery with the victim and that the defendant used aggravated force to accomplish the sexual battery.

Now here's some definitions that would help you there. Sexual battery is any of the following; sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, on any part of a person's body or of any object to the genital or anal openings of another person's body except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

If you find that the State has not shown beyond a reasonable doubt that a sexual battery has occurred, then you should not -- you should stop deliberating on this particular offense and your verdict would be not guilty on this charge. If you find that a sexual battery did occur, then you must

determine whether the defendant used aggravated force to accomplish the sexual battery. And actual -- aggravated force means the use of physical force or physical violence of a high and aggravated nature to overcome the victim. All right.

Now let me show you criminal sexual conduct in the second degree. And as I said, this is -- and your verdict form goes through this with you. And what it says is it's a lesser included offense.

If you find that the State has met its burden on criminal sexual conduct, first degree, and you find him guilty of that, then you would not even consider this second degree. You would just go on to the next charge. But if you find him not guilty -- if they didn't meet the burden, then you could consider this lesser included offense.

And the first part of this charge is the same, and that is the defendant engaged in a sexual battery with the victim. The only difference is this is -- says that the defendant used aggravated coercion to accomplish the sexual battery instead of aggravated force. That's the only distinction there. Aggravated coercion means that the defendant threatened to use force or violence of a high and aggravated nature to overcome the victim or another person. Did the victim reasonably believe the defendant had the present ability to carry out the threat? Aggravated coercion may also exist if the defendant threatened to retaliate in the future by inflicting --

infliction of physical harm, kidnapping, or extortion under the circumstances of aggravation against the victim or any other person. All right. So that's the lesser included offense for criminal sexual conduct. All right.

Now I'm going to go to kidnapping. All right. Kidnapping is -- which the elements which the State must prove beyond a reasonable doubt are the defendant knowingly and unlawfully, and some of these words are really old fashioned words, they just haven't updated them, seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away another person without authority of law. Okay.

Now let me define each of these terms used there. To do a thing unlawfully is to do it wilfully against the law. Knowingly means with knowledge, consciously, not accidentally. Seize means to take hold of suddenly or forcibly. Confine means to limit, restrict, or enclose within bounds, imprison or keep in.

Inveigle means to lure, entice, or lead astray by false representations, promises or other deceitly means. Decoy means to lure by or lure by decoy -- by decoy. A decoy is something to entice a person into a trap. Kidnap is to remove a person against his will by unlawful force or fraud. Abduct means to carry off secretly or by force for an illegal purpose. Carry away means to remove.

Now the State does not have to prove that the defendant

committed all of these. But if he -- if the State proves beyond a reasonable doubt that the defendant committed any of these, then you must find the defendant guilty of kidnapping. Something done without authority of law is something which the law does not sanction, permit, allow, or condone. Kidnapping does not have to be for a personal or monetary gain for an illegal -- for any illegal purpose, but may be for any reason whatsoever. All right.

So we've gone through burglary, gone through criminal sexual conduct, kidnapping, and now the final charge of domestic violence. Okay.

Domestic violence, first degree, the elements again of this charge that the State must prove beyond a reasonable doubt are as follows. And I'm going to use the word household member here. And I'm going to tell you it's not what you normally would think of as a household member. I will define that -- our law for domestic violence has a very specific, very broad definition of a household member. And I will go over that in just a minute.

But the elements are for domestic violence, first degree, that the defendant caused physical harm or injury to a member of the defendant's own household or that the defendant offered or attempted to cause physical harm or injury to a member of the defendant's own household with the apparent present ability to cause harm or injury under the circumstances

reasonably creating a fear of imminent danger and great bodily injury resulted or the act is accomplished by means likely to result in great bodily injury. Again, it's causing physical harm or likely to cause physical harm, great bodily injury resulted, or could have been caused by the means -- by the acts.

Now I said that about the household member because household member is much broader than what you normally think of what the general -- the general definition of household member. A household member under this statute, domestic violence, is a spouse, a former spouse, a person with whom the defendant has a child in common, or a person with whom the defendant is living or has lived in the past. So as you can see, that's a much broader definition than normally what you'd think of as your household members.

The State must prove that great bodily injury to the defendant's own household member resulted or the act is accomplished by means likely to result in great bodily injury to the defendant's own household member. And for this the great bodily injury that occurred or could have occurred means bodily injury which caused a substantial risk of death, or which caused a serious permanent disfigurement, or protracted loss, or impairment of the function of a bodily member or organ.

Now this also has a lesser included offense. And that is

for the purposes -- if you find that the State has met its burden on domestic violence, first, then you would select guilty. If you find they did not meet their burden on domestic violence, first, then you could consider what we call a lesser included offense of this, and that's domestic violence, second degree. Okay.

And, again, it has some of the same elements but one element is a little different. And that's -- and you wouldn't even consider this unless you found him not guilty of the first degree. But if you find him not guilty, then you would -- then you would -- and this -- your verdict form, when I go over it, kind of tells you this a little in there. Okay.

There's the domestic violence, second degree. It says DV, first, at the top, but it should say second in parentheses. The elements of domestic violence, second degree, which the State must prove beyond a reasonable doubt -- and I'm going to tell you in advance, the only difference is in domestic violence, first, you'd have great bodily injury that we were talking about. And in domestic violence, second, you're talking about moderate bodily injury. That's the only difference in the elements.

But the elements on this one that the State must prove beyond a reasonable doubt is that the defendant caused physical harm or injury to a member of the defendant's own household. And, again, you're using the same definitions as

before.

Or the defendant offered or attempted to cause physical harm or injury to a person of the defendant's own household with the apparent present ability to cause harm or injury under circumstances reasonably creating a fear of imminent danger and moderate -- moderate bodily injury resulted or the act was accomplished by means likely to result in great bodily injury. So, again, the difference in those two would be great bodily injury versus moderate bodily injury. All right.

Now -- and let me just define moderate bodily injury. And that means physical injury that involves a prolonged loss of consciousness, or that causes temporary or moderate disfigurement, or a temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia, or injury that results in a fracture or dislocation. Moderate bodily injury does not include one time treatment and subsequent observation of scratches, cuts, abrasions, bruise, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care. All right.

So I know I've thrown a lot at you, but here's where I'm going to show you the verdict form so you will -- it'll kind of help guide you. So -- okay. Let's talk about -- all right.

This is the verdict form. As you can see the top of it is just the caption. It says verdict form. And the order of them is by the order of indictment number. So there's no -- pay no attention to the order. That has no significance or whether guilty or not guilty is first. There's no significance. All right.

When you -- when you're looking at burglary, again, you're going to look at each of these separately. You will first start off, burglary, first degree, as to the charge of burglary, first degree, and that indictment number, we, the jury, unanimously find the defendant, Dylan Trey Foster, you will check one. If you find that the State has met its burden on that charge, you would check guilty. If you find the State has not met its burden on that charge, you would find not guilty. Then you would go to the next one.

As to the charge of criminal sexual conduct, first degree, we, the jury, unanimously find the defendant, Dylan Trey Foster -- again, if you find the State has met its burden on that one, you would check guilty. If you find that the State has not met its burden on that one, you would check not guilty.

But that doesn't stop your deliberation as to criminal sexual conduct because then you go to the lesser included offense. It says if you find the defendant guilty of criminal sexual conduct, then you would go to number three, first

degree. But if you find the defendant not guilty of first degree, then you must consider whether the defendant committed the lesser included offense of criminal sexual conduct, second degree, and answer the following question.

And it says as to the lesser included offense, criminal sexual conduct, second degree, we, the jury, unanimously find that Dylan Trey Foster -- and, again, if you find the State met its burden on that charge, then you would check guilty. If you find they did not meet their burden on that charge, you'd check not guilty.

Then as to kidnapping, you go through the same evaluation. If you find the State's met its burden, then you would find the defendant guilty. If you find the State has not met its burden, as I indicated, you would check not guilty. All right.

And then this is the second page. Again, you go to domestic violence. If you find the State has met its burden on domestic violence, first degree, you would check -- beyond a reasonable doubt, you would check guilty. If you find the State has not met its burden on that, you'd check not guilty.

And then you would go -- if you find him not guilty -- if you find the defendant guilty of domestic violence, then you'd go no further on this charge. But if you find the defendant not guilty of domestic violence, first degree, then you must consider whether the defendant committed the lesser included

offense of domestic violence, second degree.

And you would answer the following question. As to the lesser included offense of domestic violence, second degree, we, the jury, unanimously find the defendant -- again, if they met their burden, you'd check guilty. If they did not meet their burden, you'd check not guilty.

So you will go down this and answer each of these questions. And then once you have reached your verdict on all four charges, you would sign, date, and let the bailiff know.

Now a couple of rules about your verdict. Your verdict must be unanimous. That means all 12 of you must agree on the verdict. Your verdict should be based on the evidence and your -- the weight and the value you should give to the evidence. It should not be based on any passion, any prejudice, any bias, any sympathy, anything outside the record, strictly on the law which I have given you, the evidence which has been presented.

Now if you should have any questions, this is where foreperson comes into play. You would write that on a piece of paper, give that to the -- write it on a piece of paper, sign and date, and you'd give that to the bailiff. And the bailiff will bring it to me.

I have two ways to answer that. I can write it out -- a response on the piece of paper. It may require me to bring you back into the jury [sic] room and give you some additional

instruction.

I will tell you that we can't answer factual questions. We can't answer anything about -- anything that's not in the record. Those are the things that you must determine. If it's not in the record, that's not something for your consideration. Because I know sometimes people will -- sometimes juries will say, well, what about a form that was referenced? A medical record that was referenced? If it's not in the record, then it's not for your consideration.

So also as far as statements -- I don't think we had -- we didn't have any videos. We had -- we only had audios, I believe. Yeah. Okay. I'm not sure -- if you needed to listen to the audios, we'd probably have to bring you back in here for you to listen to that. You would just let us know.

The -- I know that, as you said -- as you know, y'all selected lunch. And that should be probably either already delivered or close. Now y'all can make the decision, do you want to deliberate while you're eating lunch or do you want to take a break, and take a breath, and eat your lunch and then deliberate? It's totally up to y'all, okay?

Now let me talk to my alternate. You were very important in this trial. You worked just as hard as everybody else, but under our law you're not allowed to participate in the deliberation.

But I don't want you to think that that means that you

weren't just as important because if -- as you saw, we ended up having one juror was not able to continue on. And if we didn't have alternates that could step in that had been involved in the whole case, then we would not be able to complete the trial. So your role as an alternate is just as important even though you're not able to complete the case.

So I know that's giving y'all a lot of information, but I'm sure that the 12 of y'all can get together and come up with what y'all feel is appropriate.

So at this point I'm going to send you back to your jury room, all of you including the alternate, but you can't discuss the case yet. And this is why. I need to make sure that I have not missed anything or misstated anything. If I have, I'll bring you back out. But don't worry, I won't do the whole thing. I'll just bring you -- I will bring you out and either give you the corrected statement or whatever I missed.

The signal for you to begin deliberation is the bailiff will bring all of the exhibits with the verdict form and will ask the alternate to step out of the room. But until then, do not discuss the case. At this time you may proceed to the jury room.

(Whereupon the jury exited the courtroom at 11:38 am)

THE COURT: All right. Any exception or objection to the charge from the State?

MS. SCOTT: Yes, Your Honor, we do.

THE COURT: Okay.

MS. SCOTT: I'm sorry. We were talking about we were going to tag-team this, Judge, and in the past you didn't like tag-team.

THE COURT: No, that's fine. Whatever.

MS. SCOTT: Okay. Judge, I don't know if you ever intend to send back the written items that you placed here on the projector, but I wanted to point out on the second degree domestic violence, not only the DV, first, of, you know, paragraph, which you did mention ---

THE COURT: Okay. DV or sexual?

MS. SCOTT: Second degree domestic violence ---

THE COURT: Okay.

MS. SCOTT: The one that you put up on the projector. If you could take a look at that. So you -- of course, you recognize the parentheses of DV, first, which was fine. And I think they understood that. And you actually read out something, but I think it was corrected.

I don't think it needs to bring the jury back, but in the event you give this sheet of paper to them, I'd ask for you to look at your definition of moderate bodily injury. It's the third paragraph ---

THE COURT: I see that I added great bodily ---

MS. SCOTT: You added -- it says great bodily injury.

THE COURT: Yep.

MS. SCOTT: And that's just in regards to if they ever see this paper again, I'd just ask that it not be shown ---

THE COURT: Right. And what I'm -- a lot of times they'll ask for the elements. So I'll make those corrections if I send that to them.

MS. SCOTT: Okay.

THE COURT: I think the way I explained it ---

MS. SCOTT: It was ---

THE COURT: --- covered it all like that. So I'm sorry we didn't catch that. So -- all right. Yes.

MS. LANDSVERK: And, Your Honor, we talked about this briefly before, but just for the record purposes, it's still on the verdict form, criminal sexual -- I'm sorry -- it's the criminal ---

THE COURT: Did I -- did we not change one of them?

MS. LANDSVERK: We were both looking at it, and I was like -- what am I saying here? It's where it says criminal sexual degree, second degree, should be conduct instead of degree. It's the third bolded section.

THE COURT: Oh, I see that. All right. We will change that before we send it back. All right. Okay. Anything else?

MS. LANDSVERK: That's it, Your Honor.

THE COURT: All right.

332

MR. SANFORD: Nothing from the defense, Your Honor.

(Pause)

THE COURT: I guess -- we'll wait on that. Y'all look at the exhibits and make sure everything's in proper order.

(Pause)

THE COURT: All right. Everybody looked at the revised verdict form and it's going back. All right. Send it back and bring -- ask the alternate to step out. All right. If you go anywhere, make sure Mary has your cell phone number or can reach you.

(Whereupon the jury began deliberating at 11:50 am)

(Whereupon court was in recess at 11:50 am)

(Whereupon court reconvened at 11:56 am)

THE COURT: I guess as soon as y'all took them their lunch they said they wanted to be able to listen to the -- what did they say?

THE BAILIFF: Correct, Your Honor. That is exactly what they ---

THE COURT: All right. They said they wanted to listen to the statement. We have a clean laptop that we can send back there to them. And I just wanted to put that on the record that we're doing that. And we'll send that back and have the bailiffs just instruct how to use it. Anything from the State on that?

MS. LANDSVERK: Nothing from the State.

333

THE COURT: Anything from the defense?

MR. SANFORD: Other than just want to make sure that laptop is fully clean and it's been ---

THE COURT: Yeah. I think it's the one they normally use for this.

MR. SANFORD: Okay.

THE COURT: All right. That's all I wanted.

MR. SANFORD: All right.

MS. LANDSVERK: Okay.

MR. SANFORD: Thank you, Judge.

MS. LANDSVERK: Thank you.

THE COURT: Okay. Now you can go.

(Whereupon court was in recess at 11:56 am)

(Whereupon court reconvened at 3:41 pm)

(Whereupon Court's exhibits 2 and 3 were marked)

THE COURT: All right. We've got two -- we've got one question. It says can we get the charge on the law of kidnapping? And while we were waiting they sent out and said can we also get the charge of law for first and second degree criminal sexual conduct? Can we get the charge of the law for first and second degree domestic violence?

And what I have got -- I want y'all to look at it. I have just attached to that a response, see attached. And it's what I put up there on the board. And I did change that domestic violence one. I changed it to DV, second, and

334

changed it to moderate bodily injury that y'all ---

MS. LANDSVERK: Okay.

THE COURT: So y'all look at this. So, obviously, they are still -- got a long ways of deliberation if they're wanting the -- y'all look at those and see. And like I said, that one -- the domestic violence, second, I put DV, second, at the top and changed that to moderate in the part that y'all pointed out.

MS. LANDSVERK: Oh, yeah. Great. It's only once.

THE COURT: Yeah. All right. Any objection from the ...

MS. LANDSVERK: Nope.

THE COURT: Any objection from the State?

MR. SANFORD: You mean defense, Your Honor?

THE COURT: State.

MS. LANDSVERK: State. Sorry. I thought -- I thought I said no.

THE COURT: Oh, okay.

MS. LANDSVERK: I'm sorry. I'm used to saying it in my own head, apparently.

THE COURT: Oh, okay. All right. Yeah. Sounds like communication with me and my wife. But, anyway, -- and I'm not going to say which one.

(Laughter)

MR. SANFORD: No objections from the State -- from the defense.

THE COURT: All right. Any objection from the State?

MS. LANDSVERK: No objection from the State.

THE COURT: Any objection from the defense?

MR. SANFORD: No, Your Honor.

THE COURT: All right. Okay.

(Whereupon court was in recess at 3:43 pm)

(Whereupon court reconvened at 5:08 pm)

THE COURT: All right. According to the bailiffs, we've been advised that there's been a verdict. And I realize this has been a long ordeal, but I don't want to hear any response from anybody, you know, everybody needs to keep their composure. We don't want to compound matters. We have officers here to take care of anything otherwise.

MS. LANDSVERK: Your Honor, can we just -- I think the victims are outside ---

THE COURT: Okay. Yeah, okay. That's fine.

(Pause)

THE COURT: All right. Is the State ready?

MS. LANDSVERK: Ready, Your Honor.

THE COURT: Anything else from the defendant?

MR. SANFORD: No, Your Honor. Nothing.

THE COURT: All right. Bring the jury in.

(Whereupon the jury entered the courtroom at 5:11 pm)

THE COURT: All right, ladies and gentlemen. I understand -- Madam Forelady, I understand that you have

reached a verdict.

MADAM FORELADY: Yes, sir, we have.

THE COURT: All right. If you could hand that to the bailiff. All right. Looks in proper form. You can publish the verdict.

MADAM CLERK: All right. Your Honor, in the case of the State of South Carolina versus Dylan Trey Foster, indictment 2021-GS-23-4397, 4398, 4399 and 4400, number one, as to the charge of burglary in the first degree, indictment 2021-GS-23-4397, we, the jury, unanimously find the defendant, Trey Dylan -- Trey Foster, not guilty.

Number two, as to the charge of criminal sexual conduct, first degree, indictment 2021-GS-23-4398, we, the jury, unanimously find the defendant, Dylan Trey Foster, not guilty.

As to the lesser included offense of criminal sexual conduct, second degree, we, the jury, unanimously find the defendant, Dylan Trey Foster, guilty.

Number three, as to the charge of kidnapping, indictment 2021-GS-23-4399, we, the jury, unanimously find the defendant, Dylan Trey Foster, guilty.

As to the charge of domestic violence, first degree, indictment 2021-GS-23-4400, we, the jury, unanimously find the defendant, Dylan Trey Foster, not guilty.

As to the lesser included offense of domestic violence, second degree, we, the jury, unanimously find the defendant,

Dylan Trey Foster, not guilty.

And this is signed unanimous decision of the jury by -- is it Noonkesser?

MADAM FORELADY: Yes, ma'am.

MADAM CLERK: Ms. Noonkesser. Ladies and gentlemen, if you agree these are the verdicts you reached in your deliberation room, would you please raise your right hand.

(Whereupon all jurors raised their right hand)

MADAM CLERK: I thank you.

THE COURT: All right. Anything from the jury from the State?

MS. LANDSVERK: Nothing, Your Honor.

THE COURT: Anything from the jury from the defense?

MR. SANFORD: No, Your Honor.

THE COURT: All right. Ladies and gentlemen, I want to thank you for your service. I know this has been a long week and this is a long day. And I appreciate your very -- your commitment to this.

And I have -- and if y'all would like -- at this point I'm going to ask that you go back into your jury room. I'll step back there and talk with you briefly while they gather stuff. And then if y'all would like to stay, then that would be -- we'll make arrangements for that. So step back there and I'll step back there in just a minute. All right.

While y'all gather your thoughts -- well, hold on before

we do that.

(Whereupon the jury exited the courtroom at 5:14 pm)

THE COURT: Any motions from the State?

MS. LANDSVERK: No motions, Your Honor.

THE COURT: Any motions from the defendant?

MR. SANFORD: No, Your Honor.

THE COURT: All right. While y'all are gathering your thoughts, get your paperwork together, and I'm going to step back there to the jury room.

(Whereupon court was in recess at 5:14 pm)

(Whereupon court reconvened at 5:21 pm)

THE COURT: All right. Is the State ready or y'all still need a minute?

MS. LANDSVERK: Just need just a minute.

THE COURT: Okay.

(Pause)

THE COURT: All right. State ready?

MS. LANDSVERK: Ready to proceed.

THE COURT: All right. Y'all want to come up?

MR. SANFORD: Yes, sir.

THE COURT: All right. The way I'll do this is I'll hear from the State and anything they want to tell me, and then I'll hear everything -- whoever you want to tell me.

MS. LANDSVERK: Your Honor, may I approach?

(Whereupon a bench conference was held off the record)

(Whereupon the bench conference was ended)

(Pause)

MS. LANDSVERK: Your Honor, the State's ready.

THE COURT: All right. I'll be glad to hear from the State.

MS. LANDSVERK: Okay. Thank you, Your Honor. Your Honor, before sentencing the victim did want to speak. I don't know how much summary, obviously, you want to hear. And I also wanted to give you his prior record.

THE COURT: Okay.

MS. LANDSVERK: Your Honor, he has a 2011 breach of peace, assault and battery, third degree, a couple of failure to appears. And then he also has a 2011 conviction for possession with intent to distribute heroin.

Your Honor, he has a total of 1,128 days, however, 266 of those days -- and I did the math, but technically it's 862. Two hundred and sixty-six (266) during this time as a result of his violation of probation because he was out on probation for the PWID heroin when he was charged with these crimes. So they ended up going ahead and going through with that probation violation, and he went down to SCDC for 266 days.

And the State -- I do not believe he needs to get credit for that because that was on a separate charge. But I wanted to make sure Your Honor was aware of all of the time. But the State thinks at this point that he needs to get credit for the

862 days. And prior to that he was on HIP for 111 days.

THE COURT: Is that part of the 862?

MS. LANDSVERK: It is. We added that in. And he violated HIP, which is why he had to go back to jail and why he has so many jail days because when he was out he was not of good behavior.

Now, Your Honor, the ---

THE COURT: What was the total amount again?

MS. LANDSVERK: The total amount was -- well, the total amount including the SCDC days?

THE COURT: Yes.

MS. LANDSVERK: One thousand, one hundred and twenty-eight (1,128). And without the SCDC days, it's 862.

THE COURT: Okay.

MS. LANDSVERK: And, Your Honor, the original offer in this case was 20 years.

THE COURT: Okay. All right.

MS. LANDSVERK: And, Your Honor, the victim would like to address the Court.

THE COURT: All right. I'll be glad to hear from you.

MS. [redacted]: The last ---

THE COURT: And make sure you speak up so I can hear you. I know this is difficult.

MS. [redacted]: The last three years of my life has been flipped upside down. And I have gone through so much and lost

so much because of this that I just ask that he get a lot of time for what he's done to not only me, but what my kids have had to watch -- watch me go through as well.

THE COURT: Thank you. All right. Anything else from the State?

MS. LANDSVERK: Your Honor, we just -- we ask for a minimum of 20 years based on the fact that that was the offer.

THE COURT: Well, I mean, I would note that the offer was for all four charges.

MS. LANDSVERK: It was.

THE COURT: So ---

MS. LANDSVERK: That's correct.

THE COURT: And the jury's found him not guilty on two of them. So -- all right. Anything else from the State?

MS. LANDSVERK: Nothing else, Your Honor.

THE COURT: All right. I'll be glad to hear whoever -- whatever you want to tell me.

MR. SANFORD: Thank you, Your Honor. In speaking to the -- to the SCDC days. From what I can tell, he was in SCDC from June 3rd, 2020 to February 24th, 2021. And from what I can see, he went straight from there to the Greenville County jail based on his HIP violation.

I believe that he probably -- and I believe the HIP violation may have also been part of his probation situation as well. And so he probably would have either been on HIP

still or gone to jail here had he not been on probation and not gone to SCDC had his HIP been either violated or he had remained on HIP other than the probation violation.

Your Honor, speaking about the negotiations. Yes, he was found not guilty on two of the charges. And the State's offer of 20 years was to all of the charges as charged. There were no reductions, there were no dismissals.

Your Honor, I know that we have dealt with Mr. Foster a little bit due to the loss of his father in some motions that I have filed with you. And that is very fresh in his mind and also with his family. I know this is rough on his family as well.

Mr. Foster -- the case here this week has definitely shown his issues with drugs, his issues with drug addiction. And I will say that since Mr. Foster has been, obviously, incarcerated, this has done wonders for him.

In the difference when we first took this case and from what I've seen now how he's gotten, you know, off drugs, basically been, you know, completely sober for this whole time, it is -- from what his family has said and from what he's told me is the best he's felt, this is the best he's been, you know. I think that Trey is somebody that has a lot of life left. He's only 30.

He was trying to do his best when he was -- when he was out and when he was off drugs. As you can see, as you've seen

this week, he has a lot of family support. His family members have been in and out and especially his mother, who obviously lost her husband, now she is going to have some time without her son. This has been very rough on her.

I don't know if she was like -- would like to speak or not. If you don't want to, that's perfectly fine. But she obviously has a very strong love for Trey and loves Trey.

Your Honor, looking at the charges that he was charged with I would -- I would ask that the sentence be somewhere in the 10 to 15 year range. I do believe that that is appropriate for this charge.

I know kidnapping does go up to 30, but I believe that is for a little bit more seriousness of kidnapping. I believe that Mr. Foster can be a benefit to society and he can help society and people once he gets out. So that would be my ask for the sentence in this case.

THE COURT: Mr. Foster, I'll be glad to hear anything you want to tell me.

MR. FOSTER: I just want to first apologize to the victim in this case, some of the things that, you know, happened during our relationship and the things that she's been through since all this.

And to my family, you know, for the person that I used to be. And it's torn my family apart. And the past few years that I've been incarcerated, you know, I've built

relationships back up with my mom, my grandmother, my son, my father, who just passed away. And, like I said, I just want to apologize to them for putting -- putting them through all this and the victim's family, too.

THE COURT: All right. Anything else from the defense?

MR. SANFORD: No, I don't have anything, Your Honor.

THE COURT: All right. I'm going to run these concurrent. And then I'm going to give you credit for the 862 days. The Department of Corrections may calculate that differently. But the sentence on both of these will be 14 years in the State Department of Corrections. So good luck to you, Mr. Foster.

MR. FOSTER: Thank you, sir.

THE COURT: All right. Anything else from the State?

MS. LANDSVERK: Nothing from the State, Your Honor.

THE COURT: Anything else from the defense?

MR. SANFORD: Nothing from the defense, Your Honor

THE COURT: All right.

(Hearing Ended at 5:38 pm)

(End of Requested Transcript of Record)

345

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 31st day of August 2022 - 2nd day of September 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 8, 2022

Susan W. Hudgins

Circuit Court Reporter

WITNESSES

Cheri H Lyda

Greenville County Sheriffs Office

8/2/2019

ARREST WARRANT NUMBER

2019A2310100324

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

346

DOCKET NO. 2021-GS-23- CCL **004398**

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2021

THE STATE

vs.

DYLAN TREY FOSTER

Indictment for

0160

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

VIOLATION § 16-03-0652

ENTERED
ACCT.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT FIRST DEGREE

At a Court of General Sessions, convened on JUL 06 2021 the Grand Jurors of Greenville County present upon their oath:

That DYLAN TREY FOSTER did in Greenville County, on or about the 31st day of July, 2019, engage in sexual battery, with [redacted] Complainant, and used aggravated force to accomplish this sexual battery. This is in violation of South Carolina Code of Laws Section 16-03-0652 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Courtney C. Jandovich
SOLICITOR BAR # 100158

WITNESSES

Cheri H Lyda

Greenville County Sheriffs Office

8/2/2019

ARREST WARRANT NUMBER

2019A2310100326

ACTION OF GRAND JURY

TRUE BILL

FOREPERSON GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

348

DOCKET NO. 2021-GS-23- CCL 004399

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2021

THE STATE

vs.

DYLAN TREY FOSTER

Indictment for

0095

KIDNAPPING

VIOLATION § 16-03-0910

ENTERED ACCT.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on JUL 0 6 2021 the Grand Jurors of Greenville County present upon their oath:

That DYLAN TREY FOSTER did in Greenville County, on or about the 31st day of ~~January~~ July, 2019, unlawfully seize, abduct, confine, inveigle, decoy, kidnap, abduct or carry away [redacted] Complainant without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Courtney C. Jandron
SOLICITOR BAR # 100158

350

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

STATE
VS.

Dylan Trey Foster
AKA:
Race: WHITE Sex: M Age: 30
DOB: [redacted] SS#
Address: [redacted] Lake El Jema Dr
City,State,Zip: Piedmont, SC 29673-8550
DL#: [redacted] SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021GS2304398

A/W#: 2019A2310100324
Date of Offense: 7/31/2019
S.C. Code § : 16-03-0653
CDR Code #: 0160

SENTENCE SHEET

0-20 yrs

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Sex, Crim Sex Cond, Second Degree

in violation of § 16-03-0653 of the S.C. Code of Laws, bearing CDR Code # 0161

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is:] As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Courtney C. Jant 100158
Courtney Connell SC Bar# Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,**

for a determinate term of 14 days/months/years/Time Served ☐ **Youthful Offender Act** not to exceed years

and/or to pay a fine of $ provided that upon the service of days/months/years/Time Served and or payment

of $; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 9/2/22

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
867 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS Dylan Trey Foster INDICTMENT/CASE#: 2021GS2304398

SPECIAL CONDITIONS: A/W#: 2019A2310100324

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning : _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee: _____ $ _____

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		$
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____		
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/ Deputy Clerk: Paul B. Wilkinson

Court Reporter: Hudgins

Presiding Judge: [signature]

Judge Code: 2755

Sentence Date: 9/2/22

352

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

STATE)
VS.)

Dylan Trey Foster)
AKA:)
Race: WHITE Sex: M Age: 30)
DOB: [redacted] SS#)
Address: [redacted] Lake El Jema Dr)
City,State,Zip: Piedmont, SC 29673-8550)
DL#: [redacted] SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2021GS2304399

A/W#: 2019A2310100326
Date of Offense: 7/31/2019
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

0-30 years

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Kidnapping (gs)

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

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Landsverk, Courtney Connel SC Bar# Defendant SC Bar#

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☐ Other: _____

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	TOTAL	$ 128.75

Clerk of Court/ Deputy Clerk: Paul S. Wickensimie

Court Reporter: Hudgins

Presiding Judge: _____

Judge Code: 2755

Sentence Date: 9/2/22

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED
Jun 13 2023
SC Court of Appeals

Respectfully Submitted,

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 12th day of June, 2023.